

MANAGEMENT SYSTEMS INTERNATIONAL

**USAID/USAID KENYA:
DEMOCRATIC GOVERNANCE STRATEGY**

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EXECUTIVE SUMMARY

I. RATIONALE FOR THE DG PROGRAM

Democratic governance is a relatively new pursuit for USAID and its bilateral donor partners in Kenya. Kenya is not a new area of interest for the US or for USAID, however. Substantial assistance has been provided for three decades in pursuit of economic development. The guiding development hypotheses have been that economic development is a necessary basis for building and sustaining a stable, democratic political system, and that Kenya is a central factor in re-establishing and maintaining the stability of the region.

USAID's interest in the establishment and support for democratic governance through direct activities in the governance arena derives from the recognition that this development hypothesis is incomplete. Economic development is an important factor contributing to democratic governance, but is itself dependent on democratic governance. They interact. In the absence of democratic governance, the gains of economic development are precarious. USAID pursues democratic governance, therefore, both as a value in itself and because *it appears essential to the sustainability of the economic development investments and outcomes that is the raison d'etre of development aid.*

II. HISTORICAL CONTEXT

Kenya was granted independence from Britain in 1963 on the basis of a modified Westminster-style parliamentary system. The US already had a substantial interest in Kenya in this period, which saw the "airlift" of Kenyan students during the Kennedy administration and a strong commitment of support to Tom Mboya, in particular, whose ties with American labor and with the Kennedy family set the stage for a relationship that has continued to the present.

The independence constitution imposed on Kenya a decentralized, federal structure of governance meant to accommodate, within a government of the majority, the interests of the settler community and the smaller ethnic groupings. After the formal granting of independence, however, the KANU majority in parliament set about a determined and successful effort to amend the constitution, removing the federalist structure and concentrating many powers in a strong, executive presidency. Kenya experienced economic stability and growth under Kenyatta's capitalist regime, but at the price of the gradual erosion of alternative viewpoints and the development of a benign form of "personal rule" based on patronage politics. Political dissent became unacceptable, even dangerous; several political assassinations occurred. Kenyatta died in 1978.

Fears of ethnic violence, mostly perpetuated by the European community, were quickly extinguished. Vice President Moi took over the reins of government peacefully on Kenyatta's death and was formally elected to his Baringo parliamentary seat in the parliamentary elections on Nov. 8, 1979. His position as head of the ruling party in what was now a *de facto* single-party state made him automatically the president.

In 1982, however, elements within the Kenya Air Force mounted an abortive coup, allegedly an attempt to preempt a coup by the army. President Moi's suspicions that those loyal to his predecessor were plotting his demise appeared to be confirmed, his patience evaporated completely and a series of repressive measures culminated in the declaration of Kenya as a *de jure* one-party state.

Economically, the regime made an effort to redress the imbalances that were long established in Kenya. The Moi government perceived, correctly, that it needed to establish political allegiances in the peripheral areas of the country that had been neglected during Kenyatta's reign. In the process of redistributing economic rewards and access to the western parts of the country, Moi's government began to dismantle the instruments of economic privilege and advantage that the settler population and its successors had enjoyed. This was, unfortunately, done in a manner that discouraged production and investment in the areas that had previously provided the bulk of the country's taxes and foreign exchange earnings. The negative impact on both production and the revenue base contributed to the economic decline of the 1980s, no less than to the development of political antagonisms and opposition.

After a period of increasing repression and paranoia through the mid-80s, opponents of the regime began to coalesce around the need to halt the deterioration of both economy and polity. These "multi-party" forces began to push actively and publicly for reform, carrying their demands both to their own interest groups and constituencies, and to the international community. The latter was celebrating the end of the authoritarianism of the eastern bloc. Kenya's pro-democracy cries arrived at precisely the right time to engage this audience.

Concerted international pressure was exerted on the Kenyan government in 1991 to permit a political liberalization. The government reluctantly acceded to the demands for multi-partyism. Parliament repealed Section 2(A) of the constitution that had, in 1982, turned Kenya into a legal one-party state. Further political and economic liberalization has occurred after concerted and unified pressure from domestic reformers and the international community, including a shake-up of the senior civil service in mid-99 to address the demands coming from all corners for action on wide-scale, grand corruption throughout government.

Summary. Kenya has been a close African ally of the US since its independence. Its democratic promise has been tarnished by the rise of an aggressive form of personal rule, beginning early in the Kenyatta period, with the dismantling of the independence constitution, its protections for minorities, its institutional checks and balances. Executive power and privilege have turned at times to abuse. Economic deterioration, caused in good part by mismanagement and corruption, has fueled frustration and dissent. A combination of domestic and international pressures which began to be exerted in the late 1980s ultimately produced a government relaxation of political control and a significant increase in freedoms of speech and association, but have yet to bring a corresponding improvement in economic governance.

III. CURRENT POLITICAL CONTEXT

Multi-party politics and elections. The political liberalization of 1991 and the multi-party election of 1992 which followed it were grudging concessions by the current regime, hard and

unfairly fought, which had several important consequences. The election demonstrated graphically the 40%-60% split (KANU/opposition) that underlies Kenyan politics, and that has remained fairly constant since independence. It demonstrated as well that the 60% opposed to the governing party's stranglehold on power could not unite to replace it. The regime's need to ensure KANU's control of parliament contributed to serious economic damage in the form of inflation of the money supply consequent on massive efforts to buy the vote, and to the introduction of a form of ethnic cleansing in areas the regime felt important to control politically.

KANU won only a 12-seat majority in 1992 and a razor-thin 4-seat majority in 1997, the former augmented by presidentially-nominated MPs and the latter by election petitions and by-elections in vulnerable opposition seats. Complaints of massive election rigging were made. In neither 1992 nor 1997 did election observers witness massive rigging during the polling itself, but high levels of vote-buying and administrative manipulation of the campaign give credence to these complaints.

Civil Society Ferment and the IPPG Reform Process. The frustration of opposition politicians and civil society leaders with the Government's policy of marginalizing parliament and ignoring all alternative points of view produced an increasingly assertive program of civic action prior to the 1997 elections. Massive rallies, street demonstrations, and threats of boycott produced a government response in late 1997. A bipartisan parliamentary working group produced a package of minimum reforms which it was hoped would satisfy the bulk of the opposition leaders that the electoral playing field, while not level, was not fatally tilted against them. These reforms included: elimination of the President's right to nominate all 12 additional MPs, allocating them instead to the parties according to the strength of their elected representatives; appointment of an equal number of members of the Electoral Commission by the opposition parties; and promises that the Provincial Administration would be removed from the electoral process.

The successful negotiation of this agreement produced a division in the civil society/opposition party coalition. Civil society leaders viewed this agreement as a pact with the devil, through which politicians could continue to pursue election and the rewards of office without any real change in the domination of the political scene by one party, under the control of a handful of individuals. This division between political leaders and civil society leaders is not complete, but remains important.

Economic Issues and Corruption. The major issue for the international community at present is corruption and its deleterious impact on the Kenyan economy. Once a beacon of economic prosperity and investment, Kenya now manifests most of the negative aspects of capitalism and few of its advantages. Corruption on a grand scale has become the order of the day as the patronage needs of the regime have induced it to grant favored positions in the market to important clients. Economic liberalization, while removing many of the public sector sources for such rewards (such as import licenses and foreign exchange controls), has forced the regime's patrons to resort to the remaining sources -- the government contracting process, the banking system and even the privatization process. This is a key issue for Kenyans and for the donor community, which must recognize that a system of personal rule, based on patronage politics, cannot simply remove the glue that holds it together overnight.

Constitutional Reform Process. The central reform agenda at present is the reform of the constitution. A Constitutional Reform Commission, mandated by an Act of Parliament in 1998, has not been successfully constituted because of failure to agree among the parties on its composition. President Moi has expressed the view that the constitutional reform process is legally a responsibility of parliament, while civil society forces that have led the reform drive are opposed to a reform process confined to parliament. The resolution of this dispute will be a central factor shaping the programmatic choices USAID makes in pursuing its Strategic Objective, discussed below.

IV. ALTERNATIVE POLITICAL AND ECONOMIC SCENARIOS

The probable near-term political and economic scenarios Kenya might experience will shape the specific programmatic emphases the Mission adopts in pursuing its SO. Four scenarios are considered in detail in the text. These are summarized here. Their implications for the Mission's program are drawn out further below, in the section that discusses specific activities.

Progress, or the "Rosy Scenario"

In the **Rosy Scenario**, the key variables all move in a positive direction: the constitutional reform process is successfully restarted and pursued, an election producing a successor to Moi is held in a relatively free and fair manner, the parliamentary drive for greater autonomy and power produces results, the regime's economic policies are successful in reversing the current declines and beginning the fight against corruption, and the security situation improves.

Some Improvement, or the "Best Guess A" Scenario

The **"Best Guess A"** scenario assumes improvement in some of the key variables, but recognizes that the politics surrounding these variables will be very keenly felt and fought in this period of a major regime transition, and that the depth and sustainability of improvements may be precarious. Improvements might include some progress on further reform without a full constitutional review, further electoral reforms (but not likely including a shift of electoral constituencies to substantially increase equity in parliamentary representation), an election in 2002 run more competently than in 1997, some progress on parliamentary autonomy but without clear resource commitments, and a lessening of some security problems, particularly with respect to the elections-related ethnic clashes. Some macro-economic improvement could occur with adroit management, but no long-term sectoral improvement or reduction in major corruption would be likely.

No Change, or the "Best Guess B" Scenario

The **"best guess B"** scenario assumes that the current stalemate (i.e. mid-1999) between the incumbent regime and its critics continues into the electoral run-up. It assumes that the governing party continues to protect the regime by manipulating the constitutional reform and electoral processes, which are pursued in a manner that excludes or marginalizes both opposition political forces and most of the party's own reformist elements. The transitional election might trigger more serious boycotts than in 1997 and the outcome therefore have less legitimacy.

Parliamentary autonomy would not be successfully negotiated or funded. Economic improvements would be cosmetic at best with no improvement in either macro-economic performance or important sectors of the economy. The security situation would remain a significant problem, both in the northern areas of the country and in terms of urban crime.

Breakdown, or the "Worst Case" Scenario

The worst case scenario assumes that the political situation deteriorates. The constitutional reform process remains completely stalled. No agreement is reached even on minimal reforms needed to ensure participation of the main social and political forces in the election in 2002. Boycotts of the election and rejection of the results are widespread, with the result that the regime's control over the political system is maintained by increasingly repressive measures. (A pre-emptive hand-over to the military is frequently discussed by pessimistic Kenyans.) Parliamentary autonomy is rejected, the economy deteriorates further with continued embargo of economic support funding by the multi-laterals. Corruption continues as the mainstay of the regime's patronage base. Security deteriorates.

The **probability** in the Mission's view is that Kenya will experience some variant or mixture of the middle two scenarios.

V. PROBLEM STATEMENT

USAID/Kenya's DG program is driven by the belief that Kenya is characterized by *personal rule rather than the rule of law*, and by *popular dissatisfaction with the outcome of personal rule*. Replacing personal rule with an institutionalization of the rule of law is USAID Kenya's and its Kenyan partners' overall development goal. Presidential authority has been increased enormously through constitutional amendments, through administrative reorganizations that have brought many functions under the purview of the Office of the President, and through the President's strong grip on the ruling party.

Personal rule does not automatically and inevitably have negative consequences. Some personal rulers have provided states with valuable nation-building experiences and mechanisms. Ultimately, however, personal rule ceases to satisfy the growing diversity of interests in a modern, industrializing polity. Personal rule in Kenya has been accompanied by political repression (which have been eased somewhat in recent years), by economic mismanagement and deterioration, and by the growth of cynicism and frustration with a government that does not have effective mechanisms of accountability.

Restoring the rule of law will require the negotiation of a new social contract, a *consensus* on the rules with respect to:

- the acquisition and transfer of power,
- the separation of powers among agencies of government,
- the institutionalization of checks and balances and accountability mechanisms,
- the rights and responsibilities of individuals,

- the appropriate division of responsibility between central and local authority,
- the establishment and maintenance of the integrity of the public service.

Kenyans have widely spoken of this as the need for constitutional reform, and the Government agreed to begin a constitutional review as part of agreements reached before the 1997 elections.

A constitutional consensus by itself will not ensure that the rule of law is re-established, however. To be sustainable, the constitutional, legal and political reforms that many Kenyans desire must be a product of *effective demand*. Effective demand for reforms, and for mechanisms of accountability, must be expressed **both** by the citizenry (through elections, and through civil society representation and advocacy) **and** by strategic elites in key governance institutions -- parliament, the judiciary, autonomous Executive agencies. The construction and organization of effective demand for the reforms that would comprise a new social contract thus becomes the key "problem" confronting Kenyans as they seek to re-establish the rule of law.

VI. RESULTS FRAMEWORK

GRAPHIC

The Mission's overall goal, strategic objective, key intermediate results, and subordinate results are depicted in the graphic overleaf.

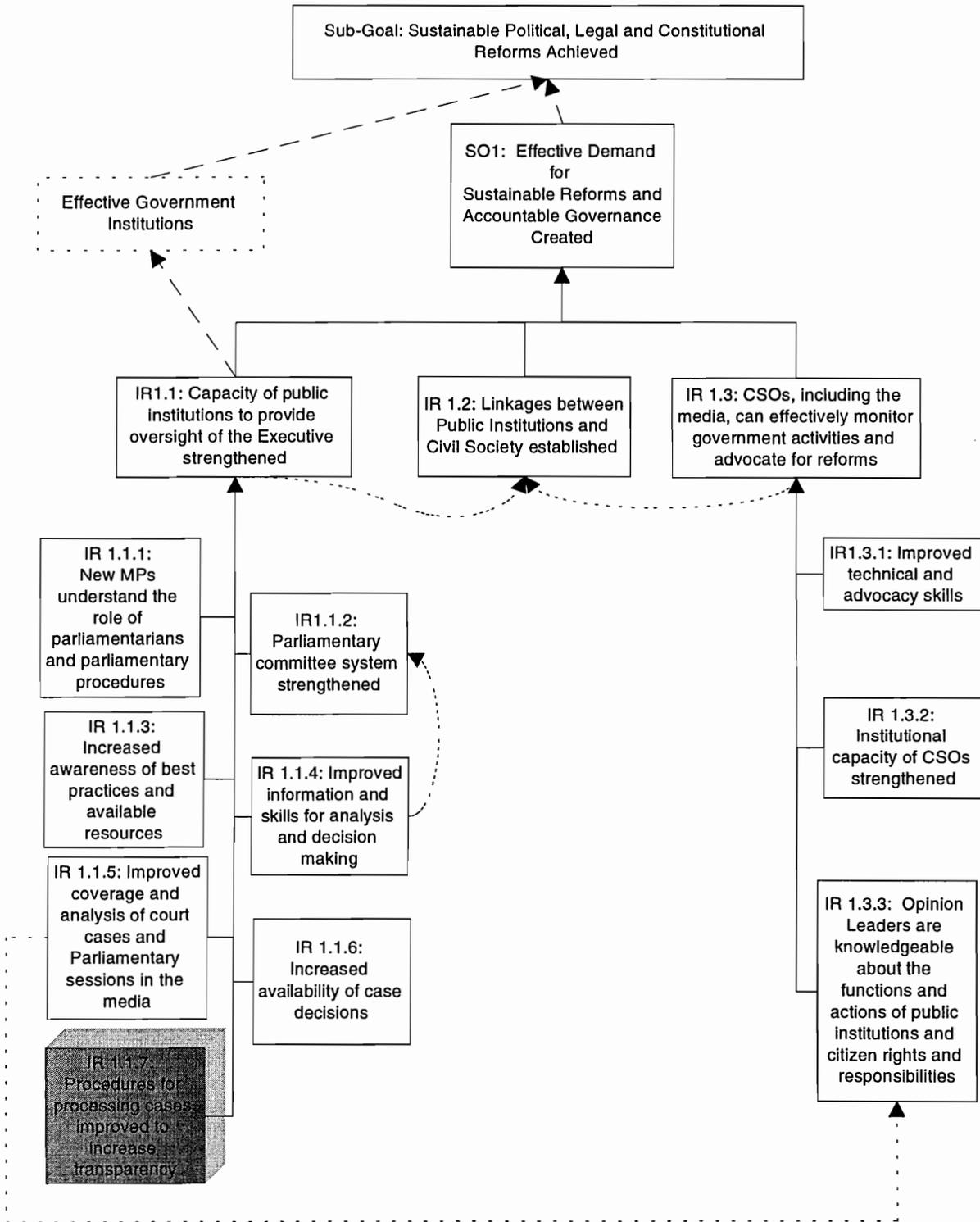
STRATEGIC OBJECTIVE

The Mission's Strategic Objective in pursuit of democratic governance reaffirms and extends the SO it has pursued in the country program for 1996-2000.

SO1: Effective Demand for Sustainable Reforms and Accountable Governance Created

Definitions

This statement of the SO contains three phrases which need definition.



Critical Assumption:

1. Public Institutions received stable and adequate resources from the executive.

Legend:

- Primary Relationships —————>
- Secondary Relationships - - - - ->

Reflects results that will only be supported if the benchmarks outlined in the narrative are met.

Accountable Governance. The phrase "accountable governance" does not appear in the previous statement of the SO. Accountable governance refers to the requirement in a democratic polity that the government be accountable to the citizenry.

Accountability is an operational term which must be demonstrated. While the massive negative effects of corruption in present-day Kenya suggest that accountability in the financial sense is in the front of Kenyans' minds, accountable governance is a broader concept. Accountability refers ultimately to the requirement that the government be subject to removal from office through some periodic mechanism such as elections, or referenda, or parliamentary confidence motions. Accountability is ultimately demonstrated through elections, and requires that regular, open, competitive elections be held.

Accountable governance also requires that the citizenry have reasonable powers and mechanisms to question government policy and government expenditure, and to have an impact on policy and expenditure. This component of accountability is demonstrated primarily through the legislative process and the ability of elected representatives to contribute to legislation, including decisions about expenditure. This aspect of accountability requires not just that fora and procedures for input into government decision-making exist, but that the representatives of the citizenry -- whether legislators or lobbyists -- be knowledgeable about Government decision-making procedures and about the implications, including financial, of specific policy decisions.

Sustainable Reforms. This phrase appears in the previous statement of the Mission's SO and relates the SO to the Mission's goal statement. The previous statement of the goal and the SO did not explicate the type and scope of the reforms in question. These include:

- reduction of Presidential powers and arbitrary authority;
- reconstruction of the checks and balances among branches of government attendant upon a rational separation of powers
- rationalization of central-local powers and resources
- legal reforms, including removal of the power of the Attorney General to block any litigation against agencies of government or to take over prosecution of such litigation himself

There are as many statements of needed reforms as there are Kenyans. Even staunch supporters of the governing party, KANU, cite examples of overdue reforms, some of them quite significant: for example, the support for replacing the current system with a federalist constitution, and a prime minister, voiced by some core KANU leaders.

However, reforms are significantly easier to effect than to **sustain**. Sustainability is key to meaningful reform. Reforms of the present governance system will only be sustainable if the government **must** sustain them -- that is, if the government is **held accountable** for the institutionalization of these reforms on a sustained basis.

Effective Demand. For government to be held accountable, there must be *effective demand* for such reforms. The Mission did not define effective demand adequately in the previous CSP. The Mission's program was premised on the conviction that assistance to the "supply side", that is the governance institutions themselves, would be unsustainable in the absence of effective demand for improved, democratic governance. The record of USAID assistance to improving public sector capacity, in the absence of effective demand for accountability, shows a clear pattern of temporary gains in capacity that disappear with transfers of power, or simply with transfers of the key personnel who have supported and benefited from the assistance. The Mission remains convinced that sustainable improvements are *demand-driven*, and that assistance that does not first concern itself with the nature, origins and level of *demand* for the outputs of the assistance will not have sustainable impact.

The nature of effective demand for reforms and for accountability needs clarification. The Mission considers that *effective demand* is:

- focused and concrete, rather than general, diffuse, or abstract;
- presented within the public sector arenas of governance, not just in the media, the church pulpits, or the streets (although these also remain legitimate avenues for the enunciation of demand when the public arenas of governance remain closed);
- presented not just by civic leaders but also by strategic elites, that is those who participate in institutions of governance, and who thus essentially participate in **supply** as well as demand;
- informed and supported by concrete, vested professional and commercial interests, which respond to constituencies which cannot be ignored;
- contains within it some of the building blocks of eventual **supply**.

This does not mean that demand is **only** effective if it brings about the desired action or output. However, demand is certainly **not** effective if it precipitates only political or other opposition to the actions being demanded; it is **not** effective if it does not mobilize key allies, including those in public sector institutions. Effective demand is demand that enlists the support of those whose actions and opinions count in circles of power, *and whose continued support is necessary to the sustainability of the change or action being demanded.*

The Mission's strategy for the period 2000-2005 will focus on strategic elites to the extent possible. Considerable attention will continue to be paid to support for the civil society organizations that generate information useful for the mobilization and agenda setting efforts of strategic elites. Since important elites function *inside public sector institutions* and are critical to both the constructive engineering of change and its sustainability, these institutions may become a more important focus for the Mission's program than in the past. *Whether the Mission chooses to pursue the empowerment of these actors through the public institutions directly, or through the civil society organizations which organize and respond to them, will depend on*

the degree to which public sector institutional functioning appears to be sufficiently independent of political manipulation to ensure that assistance can have an impact. The Mission will monitor benchmarks of independence in making these determinations.

Development Hypothesis

The development hypothesis that guides the choice of this SO rests on the belief that personal rule, which characterizes many Third World polities, is increasingly unproductive in both political and economic terms. Kenya's political system has been characterized by increasing degrees of rancor, distrust, and instability over the three decades during which personal rule has become entrenched.

Replacing personal rule with the rule of law is a long-term process, one that is not in USAID's manageable interest. Two key steps in that process are:

- *the development of a consensus on what the rule of law comprises* -- a new social contract, currently being debated in Kenya in terms of a new constitution, but which could also be conceived as a wide-ranging set of reforms of the existing constitution and legal codes;
- *the empowerment of institutional mechanisms which can impose accountability on government*, and specifically on an unchecked Executive -- the "personal ruler".

Our development hypothesis holds that both of these are necessary. A new social contract, a consensus on the contents of the rule of law, can only be as good as the accompanying institutional mechanisms for its enforcement.

Our development hypothesis further posits that these requisites of democratic governance are not sustainable without *effective demand* for them, "effective" being interpreted as sustained demand that is presented by elites important to the governing regime or coalition. Some of these will be actors who actually participate in the institutions of governance themselves. Members of Parliament and the parliamentary arena are foremost among these. The Mission also sees a need to work with public sector institutions that serve as a check on an Executive which presently confronts few checks, institutions that can *effectively* demand accountability.

Our development hypothesis, therefore, is that effective demand for reforms (amounting to the construction of a new consensus), and for accountability -- *with effective demand referring both to the voicing of demand and to its presentation via institutional mechanisms that can operationalize it* -- are within the scope of USAID and its donor and civil society partners.

INTERMEDIATE RESULTS

The Mission intends to pursue this Strategic Objective through activities focused on achieving the following Results.

IR1.1 Capacity of public institutions to provide oversight of the Executive strengthened

IR1.2 Linkages between public institutions and civil society strengthened

IR1.3 CSOs can effectively advocate for reforms and monitor government activities.

These three Intermediate Results are linked logically. The Mission's program for the past five years has concentrated on civil society organizations, which have generated information and advocacy for reforms. The Mission proposes to add a second prong, support for public institutional actors and arenas that can contribute to this effort through providing oversight over the Executive -- *effective demand for accountability*. Further, the Mission sees this two-pronged strategy as presenting the opportunity to focus on linkage mechanisms between civil society and the public sector, a need which was emphasized in the mid-term review.

These IRs in turn suggest contributory results. The sub-IRs and a summary of the types of activity which USAID may fund in pursuit of their achievement follows.

IR1.1 - Capacity of public institutions to provide oversight of the Executive strengthened

Parliamentary Strengthening

IR1.1.1 New MPs understand the role of parliamentarians and parliamentary procedures; this will involve training on parliamentary roles and procedures for new MPs in particular, but also for experienced MPs who wish to learn how to use the mechanisms of parliament more creatively

IR1.1.2 Parliamentary committee system strengthened. Strengthening the committee system entails development of research staff to service the committees, similar to Congressional staffers but attached to committees rather than individual MPs. It will also involve information and training on specific technical topics that individual committees identify, and on making research resources and skills available to committee members

IR1.1.3 Increased awareness of "best practices" and available resources; information generation and dissemination on regional and international "best practices", both with respect to parliamentary functioning, including committee systems, and substantive policy choices. Both internet connectivity and exchanges with regional parliaments are envisioned.

IR1.1.4 Improved information and skills for analysis and decision-making; provision of information resources and analytic capability to parliament, initially in the form of committee staffers able to find relevant material and provide syntheses of use to MPs (an example is the CGD Bills' Digest, although staffers would be able to provide a much wider range of analytic

assistance); ultimately in the form of a parliamentary resource/ research center.

Justice Sector Strengthening

IR1.1.5 Increased availability of case decisions; involves development of law reports, which have appeared in Kenya only sporadically and from private resources in recent years. The absence of these greatly constrains the ability of the judiciary to render consistent decisions and renders individual justices more vulnerable to various forms of manipulation.

[IR1.1.6 Procedures for processing cases improved and made more transparent]

This is a result which is essential to increased effectiveness and legitimacy of the rendering of justice; lags in case processing are frequently exploited for personal gain, by judges, lawyers, or litigants. However, USAID will rely on other partners coordinated by the World Bank for assistance to achieve this result.

IR1.1.7 Increased coverage of court cases and procedures in the media; court case coverage in the media is not insignificant at present, but primarily comprises case reporting and discussion of the reasons for decisions in the newspapers. Newspapers are not an effective medium for reaching the mass of the population, who rely on the radio for most public information they receive. Demystification of the court system and resuscitation of its credibility require greater coverage of both cases and the structure and function of the justice sector institutions in the media.

Other Institutional Foci

The Mission's Results Framework does not include results relating to any other public sector institutions. The 1998 mid-term review of the Mission's strategy reviewed other relevant arenas and found that they were constrained by a lack of independence or of the political commitment necessary to the pursuit of USAID's strategic objective. However, it would be shortsighted to assume that in a five to eight year period, no other public institutional arenas will become potential investment foci. A number of other institutions could become relevant, depending on the outcome of the constitutional reform process and the period leading up to the election in 2002. These include the Electoral Commission of Kenya, the Office of the Controller and Auditor-General, the Office of the Attorney-General, and the Kenya Anti-Corruption Authority. They could conceivably also include an Office of an Ombudsman, not currently in existence, but supported by strong forces on both sides of the aisle in parliament; and a Police Review Commission, also not currently in existence, but sorely needed and likely to command the same support as an Ombudsman.

The Mission will examine the political environment and the potential for support of its strategic objective by these, or other, institutions during a mid-term review which will be undertaken in

early 2003, a few months after the election, similar to the mid-term review of the present strategy.

IR1.2 - Linkages between public institutions and civil society strengthened

This is a key IR in the Mission's framework. It emphasizes the linkages between civil society demand creation and the public institutions that contribute to both demand and supply. There is currently a need for the development of productive fora through which civil society can interact with decision-makers. The information generated needs to be presented in arenas where it has a strategic value, rather than being presented in confrontational arenas and through confrontational methods, such as the media and the streets. These fora need to be **public**, not simply the usual channels to the Executive through the appropriate civil servants.

Parliamentary Committees. The Mission views the parliamentary committee system as the most promising of these fora at present. Parliamentary committees can and do invite CSOs to present information and advocacy germane to the legislation a committee is considering, or the problems it is investigating.

Public/private partnerships. On a less institutionalized basis, private/public partnerships in implementing specific projects are another linkage mechanism. Producing law reports through a partnership between the judiciary, the Law Society and private publishing interests, for example, can build rapport between relevant CSOs and the public sector.

Other mechanisms. Other institutional mechanisms that could serve this function include citizens' review boards, which are not presently a Kenyan practice, and Commissions and Task Forces, which are. Support for CSO participation in these, and inducements to government to include CSOs through informally conditioned support for such mechanisms, are an avenue of pursuit of this IR which the Mission will explore.

IR1.3 - CSOs can effectively advocate for reforms and monitor government activities

IR1.3.1 CSOs demonstrate improved analytical and advocacy skills.

Increased analytic and advocacy skills, including media strategies, are essential in providing and effectively communicating the types of information that decision makers need. Kenya's CSOs have developed an admirable arsenal of advocacy approaches and tools, but these could be improved. Media and information dissemination skills are particularly in need of improvement. Analytic skills involved in costing the impact of specific policies, or lack of policy, are also an important area for improvement.

IR1.3.2 CSOs demonstrate stronger institutional capacity

CSOs' institutional capacity is also critical to their ability to sustain effective demand. Many CSOs are the product of one, or at most a handful, of individuals with an idea and a desire to implement it, but little understanding of long-term

institutional development. These NGOs remain the personal property of their founders. Internal accountability is weak. A long-term strategic organizational plan is rare. For CSOs to play a credible role in enforcing government accountability, they must be accountable themselves. The Mission will monitor and evaluate grantees' performance and provide relevant technical assistance to improve institutional capacity in this sector.

IR1.3.3 Opinion leaders/strategic elites demonstrate knowledge of public institutional function and policy, and citizens' rights and responsibilities

Knowledgeable strategic elites are essential in order for CSOs to be able to present constructive, effective demand for reform and accountability. The membership of CSOs and the broader opinion leadership for whom they provide information need to be knowledgeable about the **structure and function** of government institutions, and about the decisions they make. Without an understanding of parliamentary function, such as its committee system, for example -- which is currently not something many leaders are aware of -- the **arenas** in which advocacy can fruitfully be pursued are not clear.

ILLUSTRATIVE ACTIVITIES

Feasibility of activities in pursuit of the IRs depends on the political environment both generally and in terms of the specific public institutional sectors in which the Mission can invest. *The DG strategy must be very flexible in order to adapt to the political environment.* The Mission has considered several possible scenarios for the near-term political environment and will tailor the specific activities of the DG program to the scenario that actually evolves. The implications of these varying scenarios for the program might be as follows.

Rosy Scenario

This scenario assumes significant progress in the political-economic environment and justifies significant investment in both civil society and public institutions which can contribute to the achievement of the SO.

Civil Society

- USAID funds key NGOs providing input into parliamentary and justice sector information generation: examples include CGD, which runs workshops for parliamentarians; IEA, which produces policy analysis, documents and workshops; PLI, which pursues public interest litigation; others as relevant.
- USAID funds membership-based CSOs representing members' interests in public fora: examples are KAM, which provides policy recommendations on the part of the manufacturing community to the Ministries of Finance and Planning; KNUT, which represents teachers' interests; other professional associations relevant to specific policy areas and to the establishment of overall professional ethics: doctors, lawyers, nurses,

university staff, accountants/auditors, surveyors, architects, contractors, bankers, large farmers, the cooperative movement.

- USAID funds NGOs and CSOs providing targeted civic education: the churches, the women's network, and a growing network of groups doing conflict resolution and prevention education.

Parliamentary Support Strategy

- USAID funds initial activities in workshops and International Visitors (USIS), FY 1999/2000.
- USAID opens discussions with the House administration on support for committee staff development.
- USAID funds technical assistance to committee staffs (FY 2000/01-01/02) and begins preparatory work on parliamentary research services/resource center
- **(Election; the outcome and implications of the election of 2002 will be a critical event in the Mission's programming; a mid-term review similar to that of 1998 should be done in 2003)**
- USAID initiates activities and funding toward a parliamentary resource center, inside parliament (FY 2002/03, depending on benchmark review at that time).

Justice Sector Support Strategy

- USAID funds an experimental program to produce law reports
- USAID provides preliminary technical assistance to the judiciary on improvements on case management

Other Public Sector Support

There are other public institutional arenas that could conceivably become relevant under the rosy scenario, as indicated above.

Prioritization and Funding Scenarios. The sectors have been listed in order of priority -- i.e., civil society, parliament, justice sector, and other public sector institutions. A ***low*** funding scenario would permit primarily funding of civil society activities; a ***medium*** funding scenario, civil society and parliament; and a ***high*** funding scenario would permit commitments in those two areas and one or more other institutional arena, depending on the performance of the relevant institutions on USAID Kenya's benchmarks of independence and effectiveness.

Some Improvement, or the "Best Guess A" Scenario

This scenario assumes a moderate improvement in the political-economic environment and justifies significant investment in civil society and modest investment in public institutions.

Civil Society

- USAID funds key NGOs providing input into parliamentary and justice sector information generation: examples as outlined above; ***emphasis is put on media dissemination of the information in the strategy***
- USAID funds some membership CSOs representing members' interests in public fora: examples as outlined above; ***emphasis is put on CSOs representing the interests of memberships relevant to USAID's other SOs***
- USAID funds CSOs working to prevent conflict around the electoral process

Parliament

- USAID funds workshops for MPs through relevant NGOs
- USAID funds NGOs providing information to parliamentarians on issues related to key legislation and to oversight of the Executive
- USAID monitors benchmarks, such as numbers of committee meetings, bills reported out, amendments or other committee output, CSO accessibility, and if warranted begins discussions with House leadership on staff development support.

Justice Sector

- USAID funds an effort, through an NGO, to produce law reports

No Change, or the "Best Guess B" Scenario

This scenario assumes no change from the political-economic environment as of this writing (June/July 1999) and justifies an investment strategy similar to the present civil society strategy, with increased focus on CSOs which target key public sector institutions as the consumers of their advocacy and information generation.

Civil Society

- USAID funds NGOs with specific, targeted policy interests, including natural resource management issues, legal sector reform issues, and economic policy issues
- USAID funds CSOs/NGOs with conflict identification, prevention and resolution agendas; ***emphasis is put on monitoring and preventing pre-election conflict***
- USAID funds women's networking efforts and civic education providers, such as the church, which have broad grassroots constituencies

Parliament

- USAID funds workshops via appropriate NGOs but holds off on discussion of parliamentary staff development until after the election of 2002
- USAID funds CSO "think tanks" to produce information for MPs, working on the "alternative resource center" model i.e., a resource center outside of parliament which could provide a basis for a parliamentary resource center, but which is entirely outside of the ambit of parliament until and unless the environment improves.

Worst Case Scenario

The worst case scenario assumes significant deterioration in the political-economic environment. USAID's investment strategy in this circumstance would focus on CSOs that document economic and human rights situations and bring them to the notice of both the Kenyan public and the international community.

- USAID funds civil society organizations generating information on the human rights situation, on the economy and its impact on citizens' rights and living standards, and on conflict; *emphasis is put on a media strategy to ensure widespread dissemination of the information, both domestically and internationally.*
- USAID funds NGOs generating information and targeting it at parliament or the judiciary
- USAID/USIS pursue an international visitor program aggressively, including parliamentarians and key actors in the justice sector

VII. BENCHMARK STRATEGY AND THE NEED FOR FLEXIBILITY

The strategy is designed to be flexible, particularly in respect of the focus of public sector support at a given time, because of the extremely fluid conditions of Kenya's current political transition, which are bound to continue through the three year period leading up to the elections of 2002. Flexibility must be carefully managed to provide consistent support and signals, however, and so as not to deteriorate into a "target of opportunity" approach to assistance. The Mission will do this through a system of benchmarks that track the political commitment, independence and effectiveness of relevant public sector institutions. These benchmarks indicate whether the conditions for productive investment exist in a public institutional arena, whether progress is being made, or whether an amber or warning light should be heeded and investment curtailed.

VIII. MANAGEMENT AND RESOURCE IMPLICATIONS

USAID Kenya is proposing an ambitious program of activities in DG, one that will increase substantially over the period of the next country plan in line with an improvement of the political environment. The Mission's DG section is fully occupied managing a large civil society portfolio. Even with no increase in program, there is an existing gap in evaluation of performance of civil society grantees. With any increase in the program, particularly an increase by means of a public sector investment, (e.g. parliament), existing resources will be inadequate. Since the management burden could not be borne with existing personnel, some alternatives need to be considered.

If there is no increase in budget, the method for management will likely remain the same, although the Mission is seriously considering seeking a local firm to handle the key administrative managerial tasks, leaving the Mission's staff freer to do a more adequate job of monitoring and evaluation, which is critical to optimal long-term impact. If a budget increase occurs and a parliamentary effort is initiated, even giving it entirely to a contractor via an IQC mechanism would not take care of the need for in-mission assistance with monitoring and evaluation, especially if the civil society program remains at the same level.

The Mission's greatest need is not for straight administrative management, for which the existing capacity is sufficient, but for ***technical assistance with the development, maintenance and programmatic use of a monitoring system*** for: 1) the benchmarks that have been identified to guide programming decisions, and 2) a monitoring and evaluation system for the civil society portfolio.

USIS is an important resource on which the Mission relies for assistance with DG activities. The Mission hopes to increase the coordination and targeting of USIS and USAID activities in pursuit of the DG SO.

¹KENYA DG STRATEGY: SO1

INTRODUCTION

Democratic governance is a relatively new pursuit for USAID and for its bilateral donor partners in Kenya and other countries of the East African region. Kenya is not a new area of interest for the US or for USAID, however. USAID has had a development program in Kenya for decades, with substantial investments in agricultural production and health and population activities that have borne significant fruit.² Private enterprise and micro-enterprise, and natural resource management activities, are newer foci of development support.

In all these areas the guiding development hypothesis has been that economic development is a necessary basis for building and sustaining a stable, democratic society and polity. USAID's interest in the establishment and support for democratic governance through direct activities in the governance arena derives from the recognition that this development hypothesis is incomplete. Economic development is an important factor contributing to democratic governance, but is itself dependent on a significant degree of democratic governance. They interact. In the absence of democratic governance, the gains of economic development appear to be fragile. US strategic interest and development investment in Kenya has been substantial. The protection of the progress achieved by past and current investments is a powerful motivation for activities in support of democratic governance.

USAID pursues democratic governance, therefore, not just as a value in itself, but because it appears essential to the sustainability of the economic development investments and outcomes that is the raison d'etre of development aid.³

HISTORICAL CONTEXT

Kenya is a republic in East Africa, located on the Indian Ocean below Somalia and above the Republic of Tanzania, bordered on the north by Ethiopia, on the northwest tip by southern Sudan, and on the west by the Republic of Uganda. The population of Kenya is currently estimated at around 32 million. A population census carried out on August 24/25, 1999 will provide more accurate information.

Kenya's government is a mixed parliamentary/presidential system, based in part on the British Westminster parliamentary model. Kenya's government since independence has been a civilian government. It is headed by a Cabinet comprising at present writing (mid-1999) 27 Ministers and 43 Assistant Ministers -- one more than one third of elected Members of Parliament. At present there are around 32 registered political parties, of which six or seven have significant followings and presence in parliament. The governing party, KANU, holds at present 112 or 113 seats to the 96 or 98 held by the opposition parties.

Kenya was a British colony from the turn of the century until independence on Dec. 12, 1963, with a substantial settler population that controlled the politics of the colony (unlike the case of the neighboring countries.) Appendix I gives a chronology of the significant economic and political events and indicators that have shaped Kenya.

Kenya's independence in 1963 was negotiated among three parties: the outgoing colonial government; the representatives of Kenya's larger or more mobilized ethnic groups, who had coalesced into the Kenya African National Union (KANU) to fight for independence; and the representatives of Kenya's smaller or less mobilized ethnic groups, who had similarly coalesced into the Kenya African Democratic Union (KADU) to protect and defend their own interests against both the settler community and KANU.⁴ The US already had a substantial interest in Kenya in this period, which saw the "airlift" of Kenyan students organized during the Kennedy administration and a strong commitment of support to Tom Mboya, in particular, whose ties with American labor and with the Kennedy family set the stage for a relationship that has continued to the present.

The independence constitution imposed on Kenya a decentralized, federal structure of governance meant to accommodate the interests of the settler community and the smaller grouping within KADU. The interests of these two groups were by no means identical, but they were similarly opposed to domination by the strong nationalist coalition that came to power under Jomo Kenyatta after an abortive but decisive period of civil violence.⁵

Origins of Personal Rule. After the formal granting of independence, however, the KANU majority in parliament set about a determined and successful effort to drastically amend the constitution, removing the federalist structure and concentrating powers in a strong, executive presidency.⁶ They were aided in this effort by a collapse of the opposition coalition, the members of which were induced individually to cross the floor and join KANU. An effort in the mid-60s to challenge KANU's hegemony (and Kenyatta's personal ruler-ship; this concept is developed below) came to naught, as the political forces behind it were maneuvered into leaving the party and forming a new one, which then required that they fight new elections. The whole of the state apparatus was brought into play to ensure their electoral defeat. Despite an impressive showing in the popular vote, two-thirds of these candidates were defeated, and the party -- the KPU -- ultimately collapsed under the persecution of its leadership.

Kenya experienced economic stability and growth under Kenyatta's capitalist regime, deceptively named "African socialism" and expounded and defended by Mboya against the more radical or populist economic philosophy of his main rival, Oginga Odinga. The effort by Odinga to create a serious opposition party, the Kenya People's Union (KPU), based on more socialist economic policies, having been adroitly blocked by Kenyatta and Mboya, between 1966 and 1969, Kenya subsequently operated as a *de facto* one-party state. Mboya himself was assassinated in 1969, a political killing that set the stage for the subsequent violent removal of several regime opponents⁷. Despite these disturbing incidents and the negative impacts of the oil price hikes of 1973 and 1978, Kenya appeared to be an island of tranquility and progress in a region that was increasingly deteriorating.⁸

Transition from one personal ruler to another. Kenyatta died in 1978. Fears of ethnic violence, perpetuated mainly by the remnant European community, were quickly extinguished. Vice President Moi took over the reins of government peacefully on Kenyatta's death⁹ and was formally elected in the parliamentary elections on Nov. 8, 1979. His role as leader of the

governing party, KANU, meant he automatically assumed the role of president, although he was not in fact elected to that position by a national electorate.

In 1982, elements within the Kenya Air Force mounted an abortive coup attempt, allegedly an attempt to preempt a coup by the army. While no very convincing accounts of that period have been written, the Air Force participants were seen to be supporters of Odinga and the radical or populist forces in Kenya; the army coup they were alleged to be preempting was obliquely tied in subsequent court testimony to a royalist Gikuyu group. President Moi's patience with his rivals evaporated completely at this point. A series of repressive measures culminating in the declaration of Kenya as a legal one-party state, and the effort to use KANU to control all arenas of political expression,¹⁰ were the not- unexpected outcome of this situation.

The regime also made an effort to redress the economic imbalances that were long established in Kenya and which had been increased by the Kenyatta government's land allocation efforts, and its "hands off" capitalist policies. The Moi government perceived, correctly, that it needed to establish political allegiance in the peripheral areas of the country that had been neglected during Kenyatta's reign -- and that these allegiances needed to be based on material rewards and benefits, not just the symbolic ties of ethnicity, pastoralism, and poverty that had held these areas in a loose coalition during the independence period, in KADU.

Economic Decline. In the process of redistributing economic access and rewards to the western parts of the country which had been peripheral during the Kenyatta regime, Moi's government began to dismantle the instruments of economic privilege and advantage that both the settler population and its successors had enjoyed.¹¹ Unfortunately, this was done in a manner that discouraged production and investment in the areas that had previously provided the bulk of the country's taxes and foreign exchange earnings. The negative impact on both production and the revenue base contributed to the economic decline of the 1980s, just as it did to the development of political antagonisms and opposition.

The mid-80s were a period of increasing repression and paranoia. The Government found enemies in many corners and stage-managed a series of trials that produced what were widely perceived as coerced confessions of sedition. Those jailed for this offense were reportedly tortured to induce the confessions and were treated badly in jail.¹² Inevitably, the levels of paranoia and domestic surveillance became intolerable and triggered a backlash. The regime's opponents became vocal and began looking for allies both domestically and internationally. A major rally of the opponents of the Moi regime's repression was held on July 7, 1990, in the Kamukunji sports grounds in Nairobi. Calls for multi-party democracy were loud and clear. The police intervened and several people were killed.

Movement toward Liberalization. This "saba saba" event (saba saba meaning "seven seven", or the seventh day of the seventh month, i.e. July 7) proved the final straw. The multi-party forces mobilized and pushed for reform, carrying their demands both to their own constituencies and to the international community. The latter, quite coincidentally, was celebrating the end of the authoritarianism of the eastern bloc, and the victory of democracy. Kenya's pro-democracy cries arrived at the right time to the right audience. International pressure henceforth was exerted on the Kenyan government to permit a political liberalization.

The government ultimately acceded to the demands for multi-partyism; parliament repealed Section 2(A) of the constitution that had, in 1982, turned Kenya into a legal one-party state. This abrupt turnaround came as a surprise. The hard-line faction of the party had vehemently opposed it, until the President called for the repeal of the single-party state proviso, at which point the opposition was extinguished the bill was quickly passed in parliament -- another indication of the degree to which personal rule had been institutionalized in Kenya.¹³ Further liberalization has occurred, generally after concerted and unified pressure from domestic reformers and the international community.

CURRENT POLITICAL CONTEXT

I. Recent political history; 1991 to the present

Kenya now has entered a period of political transition fraught with uncertainty and opportunity. In 1992, when the country held its first multi-party elections in over 25 years, Western nations began to see the need to support institutions that could facilitate the transition from a one-party state to a more open, liberal political order. Many devised strategies to support emerging civil society actors, who were applying pressure on the Kenyan government to make good on the implicit promises of the 1992 election, which presaged a democratic transition. Now, with that liberalization only barely begun, Kenya faces additional transitions.

Leadership transition. The transition **from one leader to another** is precarious in all new states where a peaceful, routine process of transfer of power has not been institutionalized. Kenya is presently confronting the transition from the leadership of President Daniel arap Moi, who has been the head of state since mid-1978, to an as-yet unknown and ungrooved successor, who will assume the reins of power after an election anticipated for 2002 under the provisions of Kenya's current constitution.

Political liberalization. The transition **from an authoritarian regime** -- whether colonial, or a benign dictatorship (as many characterize the Kenyatta state), or a more malevolent authoritarianism such as gripped much of Africa in the 1970s and 80s -- **to a more open, pluralistic system**, is equally precarious. Kenya embarked on this transition in 1991, grudgingly and as a "house divided", with President Moi abruptly and reluctantly acceding to the unprecedented, united and sustained pressures of domestic opponents and the international financial community.

Economic transition. Even more filled with uncertainty is the transition **from a rigidly controlled economy**, characterized by high levels of unproductive economic rent that undergirds an increasingly fractious political coalition, **to a liberalized, "privatized" economy** with far fewer state-controlled resources to maintain the patronage base. There is little likelihood of an economic turnaround unless this corruption, which reaches to the core of the economy and provides distorting incentives while squandering resources, is combated effectively. Kenya's present regime has made numerous promises and half-hearted actions to crack down on corruption. There is little to show for the promises thus far.

A few critical points about recent political events related to these transitions are important and have implications for the formulation of USAID's DG strategy for the period 2001-2005. For a more detailed historical background and the assessment of its significance, the reader is referred to the relevant sections in the DG assessment of 1995, the mid-term review done in 1998, and the extended historical discussion in the parliamentary assessment done in 1999.

1. Political Liberalization. The political liberalization of 1991 and the multi-party election of 1992 which followed it were grudging concessions by the current Kenyan governing regime, hard and unfairly fought, which had several important consequences:

- they brought the economy closer to the point of ruination through the inflationary spending the Government felt compelled to make on the election to ensure KANU would retain control of Parliament;
- they triggered state-sponsored violence in the form of ethnic clashes, a form of ethnic cleansing, which were engineered to guarantee control of the maximum possible number of threatened seats in "KANU zones", as well, in the eyes of some analysts, as to discredit the whole idea of multi-partyism;
- *they nonetheless produced a KANU parliamentary majority of only 12 seats*, which was then augmented by the President's prerogative of appointing 12 members, who were, of course, staunch party supporters.

By harassing opposition candidates during the 1992 election campaign in the harsh spotlight of international attention, the Government triggered a backlash from a core of enraged Kenyans with unified international backing and support. *The harassment campaign thus, perversely, fomented an inexorable move toward greater civil liberties, including freer speech and association, which has continued and increased.*

2. KANU's Efforts to Neutralize Parliament. The KANU government, subsequent to the 1992 election, easily obstructed disunited opposition efforts to move any agenda through parliament. Parliament continued to be marginalized as an arena of decision-making. The regime mounted an aggressive effort to co-opt opposition members, harass them, and to engineer by-elections by any means possible, in order to increase the parliamentary majority to something more comfortable. *Despite these efforts, the opposition lost only 12 of 29 by-elections -- less than half -- and maintained a credible presence in the Assembly.*

3. Civil Society Ferment. Because of the apparent emasculation of parliament and the inability of opposition-elected MPs to make any impact, civil society organizations began to "move to the left" and to pursue a parallel agenda of mobilization of their own constituencies in support of reform. This agenda ranged from the production of a "model" constitution (by the Citizens' Coalition for Constitutional Change) to threats to boycott the 1997 elections and to hold a national constitutional convention (by the National Convention Assembly, an umbrella group.)

The KANU government yielded once again under the unusually united pressure and organized a compromise response. This consisted of a cross-parties agreement (marshaled under the auspices of the Inter-Parties Parliamentary Group, IPPG, a loose grouping of key KANU and opposition MPs) for the bare minimum of legal reforms that would ensure opposition party participation in the 1997 election. One outcome of this process was a growing estrangement of civil society from the "political class", the parliamentarians, who were perceived as opportunistic and vulnerable to manipulation.

Despite the manipulateness of the IPPG process, it both: 1) confirmed the viability of concerted civil society action/international community pressure in bringing the GOK to the table and 2) provided a graphic demonstration that negotiation and compromise were possible even in this highly charged, polarized polity.

4. The IPPG Reforms. The IPPG process produced small but important changes in legislation relevant to the electoral process, as well as agreements on areas outside the purview of legislation, dealing with the broader electoral environment. Among them:

- The Electoral Commission was enlarged to incorporate Commissioners from opposition political parties equal in number to the original, Government-appointed Commissioners, and the parties themselves were mandated to submit names of nominees for Presidential assent.
- Presidential nominees to the Assembly were henceforth to be selected in proportion to the strength of the parties' elected representatives in the Assembly, and were to be proposed by the parties and confirmed by the President.
- Councilors nominated to the local councils by the Minister for Local Authorities also have to be selected in proportion to the party distribution of elected councilors.
- Standing Orders of Parliament were altered to require that the hitherto-dormant sectoral committees become a necessary step in the legislative process. All bills would henceforth be sent to the relevant committee after the first reading. Committees are composed of KANU backbenchers and opposition party MPs in proportion to their distribution in the Assembly and are thus structurally immune to Government domination. The committees introduce a new arena for political and civil society input into and oversight of the legislative process.
- A Constitutional Reform Bill was tabled -- though not formally enacted -- setting out a process for undertaking constitutional reform after the election.

Several other agreements were reached, including one to provide equitable access to the media during the campaign (not honored); an agreement to "stand down" the Provincial Administration from partisan support for KANU (variably acceded to in areas of overwhelming opposition strength, ignored in KANU's areas of strength and the crucial swing areas); and a reversion of the control of the Public Accounts Committee (PAC) and the Public Investments Committee (PIC) to

the parliamentary majority party, a change which represented a step backwards in the view of many.

The IPPG process was rejected by many observers with the criticism that the motivations of the Government in its participation were not genuine, but wholly manipulative. This is no doubt true.

All political compromise is born from the need to try to keep the game going, and maneuver the situation to one's advantage, rather than to have the game turn into a war. This is what the IPPG was meant to do, and did. Purity of motives on either side is both non-existent and irrelevant.

Despite the meager output of the IPPG process, *it involved a "first" in terms of significant numbers of KANU and opposition party members talking together and negotiating a compromise to forestall a complete political breakdown.*

5. The 1997 Election. The outcomes of the 1997 election, which was characterized by administrative incompetence and significant vote-buying, included:

- further economic deprecations to acquire the wherewithal to influence the vote in KANU's favor, but with less of an impact on the macro-economy than in 1992
- renewal of the "ethnic clashes/cleansing" strategy on a scaled-down basis to retain or increase KANU's seats in the coast, Nakuru and Kisii
- a fragmentation of the opposition parties as these parties divided into their ethnic components
- the removal of the Chairman of the Electoral Commission two and a half weeks prior to the election, and his appointment as Chief Justice, positioning him, not inconsequentially, to deal with election petitions in a manner favorable to KANU when the inevitable campaign to unseat opposition MPs began
- **nonetheless, KANU managed only a 4-seat majority, with 107 elected MPs to the combined opposition's 103** (bearing in mind that the opposition is in no sense united). KANU has recaptured a handful seats in by-elections, increasing the margin to around over dozen seats.
- post election, an "informal" coalition between KANU and the National Democratic Party (NDP), and less clearly FORD-Kenya, the parties of the two largest political communities of western Kenya.

Despite the marginalization of parliament during the late 80s and from 1992-97, KANU's leadership clearly perceives parliament, and control over it, as paramount in their political strategy.

6. Constitutional Reform. A major issue in the election campaign was the demand for constitutional reform. A Bill setting out a Constitutional Reform Commission was substantially amended and enacted, in June, 1998, after a contentious negotiating process involving most of

the major stakeholders. These included parties, NGO leaderships, and civil society organizations, most notably the church, which has attempted to chart an independent course.

The constitutional reform process has currently stalled over the issue of the composition of a 25-person commission to run it. KANU's aggressive rejection of an earlier-agreed formula for the distribution of party seats, followed by a slight concession (agreement to scale back its demands by one seat) have brought out multiple cracks in the opposition and its strategy. *The Government's struggle to maintain parliamentary control are compounded by the need to maintain control over the form and direction of the constitutional reform process, since it will have significant implications for the structure of the electoral process and the resultant parliamentary composition.*

7. Presidential Succession. Presidential succession in 2002 is legally mandated with the two-term limit established by a 1992 amendment to Kenya's current constitution. The presidential succession struggle is underway. *The President is a lame duck, the VP is a "place holder", and the succession struggle is driving further ethnic division of Kenyan politics.*

8. Ruling Coalition Fragmentation. Concurrent with the full-scale emergence of the presidential succession struggle, the coalition that has provided the regime's bedrock support shows signs of crumbling. Alternatives are emerging, as attested by:

- KANU A/KANU B struggles; a seesawing of primacy by moderates vs. hard-liners. With the abrupt attempt to demote Finance Minister Nyachae and his subsequent resignation, the hard-liners regained the ascendancy in early 1999. It remains to be seen whether the more recent (July 1999) shuffle of the top of the civil service, bringing in technocrats, suggests a movement back toward the center. It seems likely that the party's leadership hopes that a thorough technocratic attack on corruption can take place without unduly destabilizing the dominant faction's hold on power.
- The northern core of the ruling party's support base, however, is fragmenting. Violent cattle raids among and between the Pokot, Turkana, Tugen and Markawet (and the Karimojong of Uganda) are casting long shadows on the Kalenjin periphery, while increasingly open debates in the county councils and party branches animate the Nandi, Keiyo, Marakwet and Kipsigis Kalenjin core. The cattle raids have been linked to large-scale commercial operations, with finger-pointing at the regime for protecting the cattle barons/thieves. In the view of some observers the cattle barons represent a "third force" loyal to the KANU Government or to President Moi, in case the security forces should fail them.
- Pastoralist coalition partners are increasingly vocal about and critical of the lack of Government attention to their problems. They are especially critical of the serious and deteriorating security problems on the borders with Somalia and Ethiopia, which have seen numerous incursions that resulted in many deaths. The Pastoralist Parliamentary Group has been particularly active and vocal, and the situation is exacerbated by the poor relations between the security forces and these northern peoples.

- Other ethnic groups are talking across party lines in parliamentary caucuses, frequently about strategy for positioning themselves advantageously in the presidential succession struggle. These include the Kamba, the Luhya, and the Kisii, all critical swing areas that have been the target of KANU's efforts to co-opt MPs.

Regime maintenance tactics in the past have always involved "side payments" to the constituent groups of the core political coalition, in the form of both political and economic patronage. With the shrinking of available economic patronage through liberalization/privatization, regime maintenance has become significantly more difficult.

9. Macro-economic Issues. The present negative macro-economic situation, a function of political patronage and the necessary side payments -- corruption -- has contributed to the regime's unfavorable position. The Central Bank used fiscal policy (high interest rates) to mop up the excess liquidity caused by the flood of money in the 1992 election. The Government then capitalized on the attendant embarrassment of riches (which were accompanied by the inevitable squeeze of private sector investment) to finance government's recurrent operations through public borrowing. The regime thereby maneuvered itself into a corner from which it had only recently begun to extract itself -- by dramatic improvement in income tax administration/collection combined with an austerity program announced by Finance Minister Nyachae -- when Nyachae's removal was announced.

The dramatic improvement in the Government's financial position, especially the decrease in short-term interest rates to a reasonable 9+%, from the 27% characterizing the era of the revolving T-bill floats, is suspected to be premised on a temporary halt by Government in payment of bills. Payment resumed in the post-budget period, with some attendant upward pressure on short term interest rates. Interest rates were moving upwards in June/July, 1999.

Even if the improvements can be sustained, Kenya's economic woes require assistance from the international community, giving western donor nations useful leverage. The IMF delayed the meetings that were scheduled for April. The Bank has expressed its commitment to seeing an improvement in governance before considering further loans. It has more recently been involved in negotiations for a major crackdown on corruption in the civil service, symbolized by the appointment of Richard Leakey as head of the civil service, together with the replacement of several other key permanent secretaries. Whether the promise of these appointments will bear the anticipated fruit remains to be seen. *It is becoming increasingly clear that economic governance issues and political governance issues cannot be divorced; that economic improvements require political reforms that combat the pernicious effects of neo-patrimonialism and personal rule by increasing both institutional pluralism and effective oversight of the Executive.*

Summary. Kenya is being pushed inexorably in the direction of a political realignment which holds out the **potential** for democratic advance. The incumbent regime's need for a palatable succession after Moi has fueled some erratic actions on its part, such as the year-long hiatus in Vice President Saitoti's reappointment as Vice President, as well as erratic reactions from

alternative leaders and political forces; for example, the futile "no confidence" motions in parliament which were tabled despite the fact that it was obvious to all they would fail.

The patronage strategy that has served the present regime is failing. The constituent parts of the ruling coalition, as well as of the increasingly fractious opposition, have less and less to lose by taking novel actions. The visible crumbling of physical infrastructure and increasing pressure on middle class incomes, conversely, have brought home to a significant portion of the population, especially the urban population, just **how much** they have to lose, **and have already lost**. The tone of the ensuing discussions is increasingly ethnicized, which may be inevitable but is nonetheless worrisome.

II. Alternative Political and Economic Scenarios

Key factors conditioning the environment for US assistance over the forthcoming five-year period need to be assessed. The DG team identified five potentially key sets of factors that will be critical in determining the parameters within which the US mission's DG strategy can be successful:

- constitutional reform process/consensus
- presidential succession struggle and outcome
- parliamentary independence and performance
- economic performance
- security situation

Their implications for the probability of success in the attainment of our objectives by means of *particular activities* will be factored into the strategy. Most of the key factors are closely interrelated. There is realistically not a large number of combinations and permutations of these factors, but rather a fairly coherent "clumping" of the key variables along a spectrum. The fact that they vary together permits us to look at a few likely scenarios. The following four scenarios are based on the most important factors, and each is followed by a brief discussion of implications they might have for the strategy. More detailed, programmatic implications are outlined in the section on Specific Activities, below.

PROGRESS, or the "ROSY SCENARIO"

In the **Rosy Scenario**, these variables all move in a positive direction.

Constitutional reform/consensus: Progress is made on building a constitutional consensus on the basis of an *inclusive* process.

Succession: A relatively open and competitive approach to the transfer of power occurs, via an electoral process in 2002 that shows improvement over the 1997 election both in administration and in the equally important campaign environment in the months leading up to the election.

Parliamentary Performance: The constructive actions parliament has initiated or talked about materialize:

- The Parliamentary Services Commission (PSC) Bill passes during this calendar year and is funded in the next budget
- Offices and committee rooms are substantially constructed by the end of the FY 2000; tenders are proper
- Committees meet reasonably regularly on the basis of an increased budgetary allocation
- Committees become increasingly accessible to CSOs, publicize their meeting schedules (and possibly invite the media into the meetings)
- NGO-funded workshops are well-attended, with KANU MPs continuing to attend
- Parliamentary caucuses cross-cutting parties continue to meet

Economy: Progress is made on economic governance issues and some major economic sectors show improvement, including key agricultural sectors, leading to a resumption of the ESAF. Political commitment to prosecute corruption is demonstrated.

Security: No resumption of ethnic clashes occurs before the elections in 2002. The security situations in Northeastern Province and in the northern Rift Valley are brought under control.

Implications for USAID's program:

Under the "rosy scenario", which the Mission considers improbable but not impossible, USAID's program in support of democratic governance would have the widest scope, consistent with the mission's Strategic Objective. The mission will be justified in providing assistance both to a wide range of civil society organizations and to key public sector institutions that provide avenues of access for citizen input into the decision-making process, and that serve as instruments of oversight over that policy process.

The main public institution the mission will focus on is parliament. Specific activities are discussed more fully below, as we describe the Results Framework in detail. Significant, continued progress might also justify attention to the justice sector, local government, or other public institutional arenas. It is unproductive to predict in detail what might happen five to eight years down the road in Kenya, especially with a watershed transition election occurring near the beginning of this period. Under the rosy scenario, however, the mission will confront the widest spectrum of potentially useful interventions, and will use its benchmark- monitoring system to determine optimal resource allocation at the mid-point and near the end of the five-year period.

SOME IMPROVEMENT, or the "BEST GUESS A" SCENARIO

The "Best Guess A" scenario assumes improvement in some of the important critical assumptions made with respect to the achievement of the Strategic Objective. It recognizes that the politics surrounding these variables will be very keenly felt and fought in this period, and that the depth and sustainability of improvements may be precarious.

Constitutional reform/consensus: A deal is brokered on the constitutional reform process that avoids a simple reversion of the process to parliament and provides a few more degrees of freedom with respect to the electoral process in 2002. Constitutional reforms produced are insufficient to be considered a new social contract, but are sufficient to sustain a political coalition that promises to engineer further legislative reform.

Succession: The moderate constitutional/legal reforms induce political parties to participate in both the review process and the election. The process is not sufficiently inclusive to persuade civil society to participate in either. An election takes place with more substantial boycotts than in 1997. Moi's successor is elected on the basis of an uneasy, fluid support base. Key political groups continue to jockey for position and for inclusion in the system rather than rejecting the outcome. The electoral environment is perceived as skewed but the administration of the election is no worse, or somewhat better, than in 1997.

Parliamentary Performance: Parliamentary independence is not clearly established but some headway on parliamentary oversight of the Executive is made:

- The PSC Bill passes but funding is not clarified
- Substantial progress is made on offices and committee meeting rooms
- Committees continue to meet. Precarious budgetary resources curtail some activities.
- Some CSOs gain access to committees. They include CSOs in which USAID is invested in pursuing related DG activities (e.g., justice sector), or other SOs.
- NGO-funded workshops are attended mostly by the opposition and a dwindling number of KANU MPs.
- Cross-party dialogue becomes more difficult as the election approaches. Major maneuvering by the ruling party within parliament disrupts committee functioning.

Economy: Enough economic progress is made to induce the IMF to resume ESAF support but no fundamental restructuring occurs. Privatisation continues to be contentious and manipulative. Civil service reform is delayed or deflected, maintenance of existing infrastructure continues to be neglected while new projects of dubious value or sustainability are begun. Some sectoral improvement occurs. The Treasury resists the inclination to fund government operations out of a renewed T-bill float, but no real anti-corruption program is successfully pursued. Grand corruption on the Goldenberg scale declines but petty corruption in government contracting continues.

Security: The security situation improves slightly. The Ethiopia/Somali border areas present a continued external security threats and the northern Rift is the most significant internal security problem. No serious new ethnic clashes are fomented by paramilitary groups but ethnic conflict erupts sporadically during the run-up to the election on the basis of competitive party youth wings.

Implications for USAID's program:

Under the "Some Improvement" scenario the Mission would be justified in pursuing its civil society strategy and in providing assistance to the parliamentary committee structure. The latter is a focus for increased citizen input in the decision-making process as well as for increased oversight of the Executive. Other investments would be less likely, although any public institutions which appear to have established a reasonable degree of autonomy from the Executive, and to have adopted an agenda which includes oversight of the Executive, would be legitimate foci for investment, depending on the funding scenario. Decisions to invest in such institution(s) would be guided by the same type of benchmarks of independence and effectiveness constructed for the mission's decisions about potential investment in parliament, the justice sector and local government. (See Institutional Assessment, May, 1999, for a full description of these.)

NO CHANGE, OR THE "BEST GUESS B" SCENARIO

The "best guess B" scenario assumes that the current stalemate between the incumbent regime and its critics continues into the electoral run-up, and that the governing party's "hard-line" faction continues to attempt to protect the regime by manipulating the constitutional reform and electoral processes. These are pursued in a manner that excludes both opposition political forces and most of the party's own reformist elements.

Constitutional reform/consensus: The constitutional reform process is directed by the incumbent regime, either through an IPPG process widely rejected as disingenuous, or through the manipulation of parliament to provide the regime with the 2/3 majority allowing it to produce constitutional reforms without participation by the opposition.

Succession: KANU maintains a unified front in an electoral process plagued with widespread perceptions of unfairness. Electoral boundaries are not revised to represent the population more equally. Non-registration of some parties that threaten the regime continues. The opposition pursues its now-famous, kamikaze, "let a hundred flowers bloom" strategy, with the result that no opposition figure presents a credible electoral threat to KANU's candidate. The winner is considered illegitimate by important communities.

Parliamentary Performance: The Eighth Parliament's initial promise is dissipated as it is unable to maintain its independent posture:

- The PSC Bill passes with amendments that keep Executive control over the House staff.
- Office provision is significantly delayed, or controversy emerges over contracts awarded for the work.
- Committees meet irregularly due to budget constraints. Committee memberships change or shrink through Executive manipulation; or prorogation of parliament interferes with parliament's functioning entirely.
- Accessibility of the committees to CSOs is selectively restricted, either by the Executive, by KANU's parliamentary group leadership, by the House administration, or by the committees themselves.

- Manipulation of MPs changes the House party membership in KANU's favor significantly: many MPs defect or are forced into by-elections, or resign.
- NGO workshops are embargoed for KANU MPs; fora for cross-party dialogue dwindle.

Economy: The Government rejects elements of the Bank's/Fund's liberalization program, resulting in the continued suspension of the ESAF. The Central Bank begins to float T-bills for recurrent expenditure. The regime seeks out the remaining sources of money that can fund the necessary patronage, focusing on cooperative societies, and particularly the Saccos (Savings and Credit Cooperative Societies), manipulating the rules for cooperative society and Sacco savings, investment, and lending. No sectoral improvements are recorded, except possibly in tourism, and no credible anti-corruption efforts are sustained.

Security: The security situation remains unchanged or worsens. Ethiopia/Somali border problems continue and the army's efforts to contain them produce further depredations like the Bagalla massacre in January 1999. Conflict worsens in the upper Rift Valley, with serious repercussions for the provision of civilian services in the area. Ethnic clashes are once again instigated (by whomever) to maintain the electoral balance of terror, as KANU goes into its third multi-party election as a minority (albeit plurality) party.

Implications for USAID's program

Under the No Change scenario, USAID's main program emphases would remain little changed from its present strategy. The main difference would be a greater focus in civil society efforts, both to target them to provide inputs into public institutional arenas and to reach strategic elites with important political and economic interests. The rationale for this shift in the civil society strategy toward professional and membership associations is the need to enlist the commitment of key institutional actors in the public sector and to demonstrate support for their reform agendas. By increasing the size of the critical mass of those supporting reforms, the mission hopes to assist in moving the system away from the current polarization and stalemate.

BREAKDOWN, or the "WORST CASE" SCENARIO

The worst case scenario assumes that the political situation deteriorates as the constitutional reform process remains completely stalled. No agreement is reached even on minimal reforms needed to ensure participation of the main social and political forces in the election in 2002, with the result that the regime's control over the political system is maintained by increasingly repressive measures.

Constitutional reform: The constitutional reform process aborts. No significant legal or constitutional reforms are made, or those reforms that are made wholly advantage the governing party.

Succession: The succession is stage-managed through a pre-emptive process of some sort, the worst case being a pre-emptive military intervention. The competitive electoral process is abandoned; if held, an election is widely boycotted.

Parliamentary Performance: The parliamentary arena is perceived as too threatening by the regime and is completely marginalized; or the opposition, frustrated by its inability to make any progress, adopts a wholly obstructionist strategy.

- The PSC Bill dies after contentious debate and a manipulative amendment process; or the Bill is passed after substantial amendment to eliminate provisions related to House autonomy
- Office provision stalls or is selective, and/or the contracts are corruptly awarded and managed
- Committees are marginalized through manipulation or budgetary constraint, or rescission of the Standing Order calling for their operation and role in the legislative process
- Parliament is prorogued or marginalized as the election approaches
- Committees are not accessible to CSOs or to reporting of their deliberations
- Cross-cutting dialogue within parliament ceases, with hard party lines drawn and enforced
- NGO workshops are attended only by opposition MPs and are denounced by the GOK.

Economy: The economy deteriorates further as the ESAF is suspended indefinitely. Large-scale corruption continues to characterize government operations, inhibiting both foreign and domestic investment, and government spending resumes its reliance on the T-bill float, further reducing investment as interest rates soar. The strategy cannot be maintained for very long and the typical consequences of mixed inflationary and deflationary tendencies ensue. No major sectoral improvements occur. The standard of living of middle-class Kenyans drops significantly.

Security: The security situation deteriorates, with cross-border conflict continuing in the northeast. Northern Rift Valley conflict over commercialized cattle raiding continues and threatens settled populations and agriculture in the area. Ethnic clashes surface around the election (if held). The security situation in Nairobi worsens as the economy deteriorates.

Implications for USAID's program:

This "worst case" scenario would result in a significant curtailment of the DG program and a redirection of residual efforts. Assistance would be targeted in the opposite direction from the new approach outlined above for the optimistic scenarios -- i.e., in the worst case the human rights-oriented civil society groups would have the most strategic impact, together with those emphasizing conflict prevention and resolution. The Mission would emphasize these, and media strategies through which their fact-finding could be disseminated widely, rather than the representational CSOs and public institutional arenas that would characterize the strategy under more promising political conditions.

Probabilities

The middle two scenarios are the most likely, although neither the first nor the last can be ruled out entirely. The first is so unlikely that it would be unproductive to base a strategy on it. The last is unthinkable. The Mission has decided to deal with the ambiguities of this critical transitional period by designing a strategic objective that permits us to "ratchet up" the number and variety of activities we might pursue if this very unlikely, positive scenario materialized.

Within the two middle scenarios, there is considerable scope for variation on one or more of the parameters. It is possible, though not likely, that moderate economic progress could be made while the political situation remained in stalemate or deteriorated. It is possible that both moderate economic and political movement could be frustrated by an increasingly shaky security situation. The models set out above are not definitive, but illustrative. They are meant to illustrate the way in which variation in these important parameters will influence the mission's program. The mission will be monitoring these parameters closely and will summarize them in annual R4s, indicating the "trigger points" that would result in an increase or decrease in mission activities in specific areas.

III. Conflict: Sources, Vulnerabilities, Implications for AID Programming

Vulnerability to conflict is an important issue in the East African region and in USAID's program efforts. Several documents specifically addressing conflict issues and management in Kenya are available and have been used in producing an updated assessment of the significance and implications of conflict for the mission's program. These include the 1995 paper, "Conflict Management in Kenya" produced by Crawford Young and Willet Weeks for the current country strategy, as well as a more recent set of conflict studies commissioned by USAID Kenya, and a literature review, done by researchers at IDS Sussex, of the causes and consequences of pastoral conflict, a serious current problem which has significant implications for the incumbent government.

A discussion of the variety of sources of vulnerability to conflict is found in an Appendix to this report. The following section summarizes this appendix and discusses past and future program implications.

Sources of Conflict

Vulnerability to conflict comes from both internal and external sources.

External sources of vulnerability to conflict have come at various times from all of the countries that border Kenya except for Tanzania. Threats from Uganda, whether real or imagined, continued through the 1980s but appear to have receded, apart from the involvement of the 'Karimojong' of Uganda in the serious cattle raiding that is occurring in the northwestern part of the country. Conflict from Somalia has spilled over into Kenya periodically and currently presents serious problems of security in the northeastern part of the country, not least because the security forces are unable to distinguish Kenyan Somalis from their ethnic confreres across the

border. The situation is exacerbated at present because of the concurrent conflict in Ethiopia, with the Oromo Liberation Front also seeking sanctuary with ethnic Oromo in northeastern Kenya, and with the involvement of Somalis in the Ethiopian conflict. The regime has had strong support among Kenyan Somalis, despite heavy-handed security operations, and it is critical to it to retain this support. It is nonetheless critical that the use of Kenyan territory to fight their battles by Somalis and Ethiopians be curtailed, and that the massive arms influx from these two sources also be curtailed. The ambiguous situation of refugees from the conflict areas of the region, including both the Horn and central Africa, is a further problem for the GOK. Refugees have been implicated in considerable urban crime and gun running. The regime has been accused of harboring refugees from some of the more unsavory regimes in the region, contributing to its own problems.

Internal sources of vulnerability to conflict derive ultimately from massive disparities in wealth and income. The proximate causes for the most serious kinds of conflict recently have been elections, land tenure disputes (and particularly plot grabbing and illegal allocations of public land in the urban areas), a pathological form and level of cattle raiding, and the near-total erosion of security services or "law and order", resulting in an explosion of mob justice and vigilantism.

- Elections-related violence has involved both the ethnic clashes and campaign violence. Ethnic clashes have been instigated by as-yet unidentified person(s) thought to be close to the regime, and amount to a form of ethnic cleansing meant to discredit multi-partyism and safe-guard parliamentary seats in areas with large population of immigrants from areas not known to be pro-government. Campaign violence has generally been a function of youth wings of some of the political parties, not limited to the governing party.
- Land issues have animated Kenyan politics since long before independence. No widespread rural land violence has ensued, however, along the lines of the land invasions of Latin America. There are local eruptions and occasional invasions of one large holding, but the conflict predicted in our earlier conflict assessment, based on the squeezing of pastoral lands by out-migration of settled farmers into more marginal habitats, has not materialized. What has intensified is the practice of illegal plot allocation and land grabbing in urban areas -- one of the remaining areas for regime patronage -- and the increasing public outcry over these abuses. Violent confrontations in urban areas between those who have been using a piece of land, and the usurpers, have become frequent and serious, and have become a staple of the political strategy of groups opposed to the governing regime.
- Cattle raiding in the upper Rift Valley has taken on a pathological character. Long practiced as a *rite de passage* among warriors in the pastoralists groups that inhabit the area, the whole practice has now been taken over by commercial interests, some allegedly tied to prominent politicians, and the level of violence has increased as modern weapons have proliferated. This, even more than northeastern Kenya, is a core area of regime support, and getting control over this violence is essential to regime stability.

- Mob justice and vigilantism have grown as the capacity and probity of the police force has deteriorated.

Impact on USAID's Program

Conflict in Kenya could have an impact on USAID Kenya's program. Three areas are particularly relevant.

Land tenure issues and insecurities, a traditional concern and source of conflict and one which many Kenyans consider key, are relevant to USAID Kenya's Strategic Objective in increasing agricultural production, specifically in increasing marketable surpluses. Marketable surpluses of food crops are only likely to be achieved if security of tenure is at least sufficient to persuade farmers that they can make the investments in land improvements and fertilizer that produce such surpluses. In some areas, particularly those parts of the Rift Valley where ethnic clashes have chased populations out and their return is slow, security of tenure is a key concern.

This is doubly important an issue for Kenya to deal with in a rapid and forthright manner, since these are the areas of greatest agricultural potential, the areas from which marketable surpluses **must** increase to ensure long-term food security. Immigration of peoples from other parts of Kenya -- notably Central Province -- to take advantage of the land potential is in fact causally related to the ethnic clashes; without agriculturally-inspired immigration, these clashes would not have occurred.

Similarly, in areas where semi-arid lands are being encroached on by expanding populations moving off of densely populated land, such as the Kitui and Kisii border areas, there are thorny issues of land tenure and access between pastoral peoples and expanding agricultural populations. Increasing the agricultural production and marketable surplus of these populations is seen as critical to stabilizing their movement and protecting the land. Without an increase in marketable surpluses, the investments in human labor and infrastructure needed to protect these fragile environments will not be forthcoming. However, conflict over land access and rights may continue to impede the necessary investments and surpluses.

Land and other natural resource allocation and access in the ecosystems outside the national parks can have an impact on the achievement of USAID Kenya's Strategic Objective in natural resource management. Conflict over resource allocation and use could impede the activities planned for this Strategic Objective. Since many of these natural resources are owned and regulated by the County Councils, conflict in the councils could spill over and negatively affect the program.

Ethnic clashes and electoral conflict could prevent the mission from working with the relevant public sector institutions to try to forge consensus on a reform agenda. While these are sporadic rather than constant, and seem to have been engineered by what Cyrus Mutiso has called "ethnic entrepreneurs", they could become important before the elections of 2002 and could curtail the activities and intermediate results planned in the mission's DG strategy.

Lessons Learned in Conflict Prevention and Resolution

Lessons learned during the current country program include:

- Elections heighten conflict potential
- Conflict resolution initiatives and mediation are useful in areas where conflict is internally generated, but may be less useful where it is externally generated; documentation may be equally important in finding the truth and achieving long-run reconciliation
- Regional conflicts will continue to have important spill-over effects on Kenya, including those generated in Somalia, Ethiopia, Uganda, and possibly even Sudan, although Sudanese conflict has not presented a serious problem for Kenya in the past. Kenya's tendency to harbor refugees from the repressive regimes in the region will continue to stand in the way of fuller economic integration
- Natural resource management needs and activities have a necessary and important component of governance, and must be inclusive of the local communities to have any chance of success
- Some "technical fixes", such as the Famine and Early Warning System (FEWS) **can** have an important impact on the potential for improved food security and stability without becoming enmeshed in politics. (It is not clear that the **long-term** policy decisions that need to be taken on the basis of the information generated by an early warning system are any likelier than the decisions needed to combat corruption; the two are related.)

Summary

Conflict prevention and resolution efforts must be a part of the Mission's methodology for assessing problems and formulating strategy. In the DG program, support for church groups to provide civic education around the electoral process to minimize violence and conflict has been central, and will likely continue to be. Support for groups specifically mobilizing the communities in the clash-prone areas to teach conflict prevention and resolution techniques has continued, even beyond the electoral cycle. The involvement of communities in SO2's natural resource management efforts is designed to provide mechanisms for conflict prevention and resolution in these communities. Other important sources of vulnerability to conflict are outside USAID's purview and portfolio (e.g., cattle raiding and the security situation in the northeastern area).

PROBLEM STATEMENT

The **ultimate goal** USAID Kenya's DG program pursues, in common with other AID missions, is the institutionalization of democratic governance. This general goal statement is a truism. To guide policy formulation, it requires a more concrete and specific statement relating an

assessment of the problem -- that is, the **concrete obstacles to democratic governance** that Kenya confronts at the present time -- to the requirements and resources that need to be mobilized to remove these obstacles. This assessment is discussed in detail below.

To summarize the specific problem assessment that drives USAID/Kenya's DG program, Kenya is characterized by *personal rule rather than the rule of law*,¹⁴ and by *popular dissatisfaction with the outcome of personal rule*. Replacing personal rule with an institutionalization of the rule of law is USAID Kenya's -- and its Kenyan partners' -- overall development goal. Kenyans express this goal and the requirements it implies in many ways, recently focusing on the need for a wide-ranging constitutional reform. However conceived, this is a long-term process that is not remotely within USAID's manageable interest.

The near-term processes necessary to the dismantling of personal rule are more amenable to donor assistance, and USAID Kenya has premised its program in support of democratic governance on these. They comprise efforts needed to *build a consensus that would define and sustain the rule of law*, and efforts in support of the *reforms of current political, legal and constitutional instruments* that will comprise that consensus. Our discussion proceeds from the theoretical and conceptual framework to the concrete manifestations of this problem in Kenya.

Personal Rule: Nature, Origins and Consequences

The nature and consequences of personal rule need clear definition. Two prominent scholars writing on the phenomenon of personal rule in sub-Saharan Africa characterize it thus:

"...a personal political system is not structured by impersonal rules that exist to uphold some conception of public interest or the common good it is a system of relations linking rulers not with the "public" or even with the ruled (at least not directly), but with patrons, associates, clients, supporters, and rivals, who constitute the "system". If personal rulers are restrained, it is by the limits of their personal authority and power and by the authority and power of patrons, associates, clients, supporters -- and rivals. The system is "structured", so to speak, not by institutions, but by the politicians themselves."¹⁵

Personal rule is not always unsatisfactory in its outcome. Personal rule on the part of an adroit ruler with increasing resources and an aggressively inclusive strategy -- perhaps Ivory Coast under Houphouet-Boigny or Zaire in the early Mobutu reign are good examples -- can be an effective intermediate model between modern and traditional forms of governance, reassuring in its direct incorporation of group interests in the ruler's own extended inner circle. Kenya in the early Kenyatta period is frequently cited as another example.

Ultimately, however, personal rule ceases to satisfy the growing diversity of interests in a modern, industrializing polity. Kenya is certainly in this second category of states, one in which personal rule has failed to serve the needs of increasingly diverse social and economic interests. For Kenyans, the reconstruction of a state based on the *rule of law* is essential. That implies the negotiation of a *national consensus on what those rules should be* -- a social contract to replace the existing constitution, which has been eroded to the point that it has lost meaning as a social

contract.¹⁶ USAID Kenya therefore pursues as a more immediate goal the construction of such a consensus.

Since the USAID mission is operating not in a vacuum but in a polity which already possesses at least the forms (though no longer the substance) of a modern social contract -- a constitution, laws, and political institutions -- the mission sees as the critical, near-term goal the *achievement of sustainable constitutional, legal and political reforms*. Brokering a new consensus is thus the near-term need, the achievement of which is critical to the long-term replacement of personal rule by the rule of law.

Kenya's Current Political Situation: Identifying the Problem

A variety of responses will be proffered in answer to the question, "What, really, is the problem in Kenya's governance realm and political system to which AID should address itself?" The perceptions of Kenyans frequently are quite different from those of western donors, academics, and other practitioners.

Many Kenyan staff members at USAID involved in the implementation of the DG program argue forcefully that **participation** by Kenyans in all aspects of political functioning is the critical issue -- that Kenyans have been locked out of the political system and that decisions about resource allocation with fundamental implications for distributional issues are made without consultation.

Distributional justice and equity rank at the top of their scale of political values that an acceptable system must provide. **Avenues of access and participation on an equitable basis** are their answer to what must be done to reverse the downward spiral of illegitimacy that their government manifests.

Many western observers, basing their judgments on familiarity with western democracies, in which participation is far less important than is the structural ability to hold a particular regime **accountable**, point instead to the unsatisfactory state of the party system. Parties in Kenya are as personalized as is the present governance regime. The present party systems in much of Africa, including Kenya, demonstrate a profound inability to provide **meaningful, structured competition**, competition that forces accountability on a regime inclined to capricious decision and corruption. Other elements of an accountability system which this perspective targets are the **checks and balances** that either are encoded in a system through a constitution or that have grown up over time through the actual operation of different branches/ agencies of government.

Academics, analyzing the situation more from the perspective of the long-term causes and consequences of political failures -- failed states, failed regimes, incomplete or completely abortive nation-building efforts and "the coming anarchy"¹⁷ -- point to the **fundamental lack of consensus** in Kenya, as elsewhere, on the political rules of the game, including the rules for transfer of power. An important analytical problem for this point of view is to explain why regimes such as Kenya's, despite a fundamental lack of consensus, has managed to muddle along in a relatively stable configuration since independence thirty years ago; and why, and whether, this "muddling through" is not likely to continue indefinitely.

Finally, there are those with strong compulsions to just "get in there and do something", who harbor a strong feeling that a major issue is the **lack of capacity** in the system -- lack of understanding of sound procedures, lack of financial and human resources. Incapacity itself produces unsatisfactory governance and alienates the citizenry. In this view, there are a number of causes for the lack of capacity, some of them long-term and common to other systems and some of them unique to the place and time. However, the answer is not to seek the root causes of incapacity. The answer is to **supply resources** -- technical assistance, financial assistance -- and in this manner to ratchet up the performance of the system. Improvements in performance will generate greater legitimacy, greater commitment of local resources, and ultimately an upward spiral in place of the downward one the system manifests.

There is no necessarily "right" answer here. It would be well to keep in mind that differing stakeholder groups perceive both the problem and the most constructive approaches to its solution differently. The extended discussion of the critical obstacles to democratic governance in Kenya that follows is not meant to set out an interpretation that invalidates any one of the differing interpretations cited above. What it does is draw together the analyses that have supported the Mission's program and strategy development to date, and suggest the implications these have for specific types of intervention -- implications for feasibility, likely impact and cost-effectiveness.

Neo-Patrimonial State + Patronage Politics = Personal Rule

A common thread running through all the situational descriptions of the assessments done to support the DG strategy over the past five years is the importance of patronage politics.¹⁸ As is the case in much of the rest of Africa, Kenya is characterized by **personal rule** rather than by the rule of law. While the recent "second liberation" has begun to reverse this condition in many African countries, it has not begun to do so in Kenya. Personal rule supplanted the rule of law in important arenas very early in the Kenyatta period and it has steadily increased. The causes and characteristics of personal rule in the Kenyan case are important in understanding the situation confronting the construction of a productive DG strategy.

Origins and Characteristics of the Patrimonial/Neo-Patrimonial State.

Loyalty to Persons, not States. The *patrimonial state* described in the classic political anthropologies of the colonial era is a state whose leader commands the support of his citizens -- or subjects -- through direct loyalty, either on an individual basis or mediated through other important leaders, whether territorial, ethnic, religious, or functional. The important point is that loyalty is to the **leader**, not to an abstract idea of a "state", let alone a set of rules, whether written or unwritten. While rules are important in a patrimonial state -- rules, after all, are essential to the survival of any social order -- they are not conceived as superordinate to the ruler himself/herself. Rules often have little to do with the transfer of power in a patrimonial state. Power is exercised without reference to the law, especially with regard to the transfer of power. Law is then promulgated to conform to the existing state of the distribution of power, rather than to regulate it.

Ineffective Transfer of Western Values. *Neo-patrimonial states* are similar in their actual operation, but they have all the trappings of a formal legal system and constitution that make the leader formally subordinate to the law. Mostly post-colonial, these polities are founded on the basis of one or more pre-colonial socio-political systems that operated patrimonially. At the end of the period of colonial over-lordship the institutions embodying the rule of law in the colonial power are transferred to the newly independent state, in the hopes that these will contain the centrifugal tendencies of the collection of heterogeneous patrimonial systems. In Kenya's case, the independence constitution combined elements of the British parliamentary system with the American federal system, including a strongly decentralized structure and a bicameral legislature meant to balance the needs of minority and majority groups.

Incorporation of Heterogeneous Patrimonial Systems. The tendency for patrimonial rule to reassert itself is strong, however. It is complicated by the fact that several traditional polities are aggregated together, some of them sharing politico-cultural traditions and some of them holding quite strikingly different traditions. In Kenya, the importance of political differences between pastoralist and settled communities; between Bantu and Nilotic groups, as well as the intermediate Nilo-Hamitic groups, cannot be overestimated.

In Kenya's case, the tendency toward reemergence of patrimonial rule was also emphasized, ironically, by the actual operation of the colonial system, which was very authoritarian, based on an arbitrary, all-powerful central leader in the form of the Governor, and at district level the District Commissioner. These had increasingly to bow to an activist settler community that enforced accountability through a legislature -- but not to the African majority population. The democratic values encoded in post-independence constitutions were not expressed in the practice of colonial rule. Little transfer of these values could be expected.

Patronage as the Essential Organizing Principle. What ensues is a regime characterized by loyalty to a hierarchy of leaders. Patron-client ties, expressed through both symbolic and material exchanges, are the architecture and the currency of the system. At its best, such a system can provide the rudiments of accountability to major constituent groups, through the careful incorporation and balancing of intermediate leaders -- carefully ethnically balanced cabinets and militaries and the appropriate incorporation of modern, functional elites in the arenas in which resource allocation related to their livelihoods is determined.

Intermediate leaders in turn develop extensive networks of followers, in the best case balancing the variety of groups that inhabit the arenas they represent. Such systems can operate for extended periods with apparent satisfaction of the requirements of both legitimacy and accountability. The first decade of post-independence Kenya might be a good example. The patrimonial system built by Houphouet-Boigny in the Ivory Coast is probably the quintessential African example.

Personal Rule and the Erosion of the Rule of Law

Despite the potential for periods of satisfactory governance under a system based on personal rule, the system takes a heavy toll on the institutions and values of the rule of law. In Kenya, this process began immediately after independence and was well-advanced long before the end of the

Kenyatta era. The major amendments to the Kenyan constitution and the way in which they contributed to a dismantling of the checks and balances embodied in the original separation of powers is aptly outlined by Mpaka,¹⁹ who points to an accretion of powers in the Office of the President that proceeded by fits and starts and accelerated in the Moi era. Mpaka divides the post-independence period into three phases in terms of constitutional manipulation:

- 1964-69, when such major changes in the constitution were made that they produced virtually a new constitution. They replaced the Westminster-model parliamentary system with a Republic, dismantling federalism, greatly increasing the centralization of power in the Executive, and making fundamental inroads into constitutional guarantees of individual rights
- 1974-86, which saw an increasing number of completely arbitrary presidential initiatives, including the promulgation of Swahili as the official parliamentary language and the amendment permitting the president to extend retroactively the prerogative of "mercy" in the case of elections-related offenses (and thereby to remove the disqualification for candidacy of his friend Paul Ngei; it should be noted that these were all initiatives of Kenyatta's, not Moi's, although Moi has been castigated as the main culprit in the accretion of excessive power in the Executive).

In 1982, under Moi, Kenya was declared a one-party state *de jure*; it had been one *de facto* since 1969/70. In 1986, as perhaps the lowest point of Kenya's experience with the rule of law, the constitution was amended to remove the security of tenure of the Attorney General, and the Controller and Auditor General. The parliamentary debate, according to Mpaka, amounted to the argument that "the amendments were necessary in order to centralize power in the president and to avoid the growth of alternative centers of power." (Mpaka, 1997, p.10.)

- 1987-92, during which several amendments curtailing individual rights were passed -- an amendment making treason, murder, robbery with violence and attempted robbery with violence non-bailable offences; an amendment permitting the police to hold suspects in capital cases for up to 14 days rather than the previous 24 hours. Further, security of tenure for members of the Public Service Commission and for judges of the High Court and the Court of Appeal were removed. Finally, in 1991 an amendment setting new minimum and maximum numbers of electoral constituencies was passed -- a task statutorily reserved for the Electoral Commission, but performed by the one-party parliament suspiciously close to the 1992 elections. (In the event, no additions were made to the constituencies until 1997, when the Electoral Commission carried out a boundary review.)

The period's excesses culminated in a massive domestic and international resistance that ultimately forced the Government to back down. In 1991, the security of tenure for judges, public service commissioners and the AG and Auditor-General were restored. The momentous repeal of Section 2A of parliamentary Act No. 7 of 1982 turned Kenya back into a multi-party state.

The legal and constitutional consequences of personal rule are not the only consequences. As the rule of law erodes other negative effects become apparent.

Institutional ineffectiveness and favoritism. Institutions are relegated to the margins as personal relationships and loyalties become the key currency of political life and structure. What this has meant in Kenya is the placement of key regime supporters and clients in positions of institutional importance, whether they have the qualifications for these positions or not. This has been most evident in parastatals (state enterprises), which escape the stricter civil service control by the Public Service Commission that regulates the senior ranks of the civil service. Even the top ranks of the civil service, including Permanent Secretaries, are staffed and shuffled according to the dictates of political expediency. Permanent Secretaries are circulated frequently as the regime attempts to maintain the intricate balance of patronage networks while factions fall in and out of favor. Their circulation triggers further shuffles, transferring out technical officers who are not their own clients in favor of those with whom they have developed patron-client relationships in previous postings.

The end result is a civil service in which senior and mid-ranking officers serve on sufferance from their superiors, and which therefore is not in a position to exert pressures toward accountability. Frequent shuffles, such as occurred in the mid-1980s, produce a situation in which junior (and even senior) technical officers are afraid to make decisions or take actions, fearing they may become grounds for unfavorable transfers. The civil service experiences serious demoralization.

A contributing factor is the tendency of ministerial patrons to increase staffing at the subordinate levels: drivers, clerks, messengers, secretaries, in response to the inexorable pressures for jobs. The increasingly bottom-heavy civil service puts intolerable strains on management capacity. Demoralization increases as the excess staff have little work to do, while the senior staff are overburdened because of their inability to delegate any technical responsibilities to this bloated subordinate cadre -- or even to trust senior technical officers who may be loyal to other patrons.

An overbearing Executive with few effective checks on power. As the civil service deteriorates, there is a tendency for the Executive to take on more and more critical functions. The President's henchmen can only effectively exercise control over day to day administration of these functions if they have administrative responsibility for them. The result in Kenya has been the proliferation of activities, departments and resources in the Office of the President, previously performed under sectoral ministries. Examples in Kenya include the Office of Development Coordination (previously under the Ministry of Finance and Planning); the entire internal security portfolio (previously under the Office of the Vice President); and numerous others.

This is not unique to Kenya. Other systems based on personal rule demonstrate the same gradual accretion in the office of the president of key functions, suggesting that this is a function not of a particular political system and configuration but of personal rule more generally. Meanwhile, parliaments are sidelined from exercising oversight of Executive action, even within the circumscribed Westminster parliamentary model, through a variety of tactics, ranging from one-party rule to efforts to develop patronage ties to MPs that will silence any criticism.

Perversion of constitutional and legal order. Ultimately, the rule of law ceases to be predictable. It does not disappear entirely, but can no longer be relied upon. Capricious executive decisions are promulgated through administrative fiat, where the more formal constitutional amendment process is considered too time-consuming or politically awkward. Kenya has had less experience with this form of personal rule than Malawi under Banda, Liberia under Tubman and Tolbert, or more recent experience in Mugabe's Zimbabwe. Interference with key court cases, whether blatant or exercised through careful Executive signals and public statements giving judges "cues" about decisions, may be "exceptional" but is nonetheless deeply corrosive of a constitutional order, precisely because of the centrality of the cases.

Economic deterioration and corruption. Public resources are used to maintain the political base in many polities based on personal rule. It is important not just that personal and direct loyalties to the leader are demonstrated, but that the leader's loyalties to his citizen/subjects be demonstrated as well, generally in the form of tangible resource flows to the communities demonstrating these loyalties. This need not always have as dire an outcome as is presently the case in Kenya -- political machines can operate a "productive" form of corruption, not just a destructive form. This is feasible primarily where the economy continues to grow, however, and where corruption amounts to a degree of favoritism in the allocation of the rewards of growth, rather than the allocation of the fruits of plunder.²⁰

Repression of alternative opinion and models of governance. The repressions of the 1980s are well-enough documented to need no repetition here. Alternative opinion and alternative models of governance imply competition with the personal ruler. While a few African personal rulers -- Museveni is an example -- forego the severe repression that Kenya experienced in the 1980s, and maintain a more sincere commitment to the rule of law, none are comfortable with the idea of competition, which by definition threatens the patronage network they need to maintain. While some turnover in patronage networks is expectable, it must be predictable and controlled by the patron, not by his rivals and alternative elites. Personal rulers tinker with the rules of electoral competition to advantage themselves, triggering cynicism and devaluing the idea that the law is above the ruler. (Elections are a soft spot in the democratic process generally; heightened conflict, manipulation, and rule breaking are expectable.)

Patronage Politics

The key constraint of neo-patrimonial regimes is the glue that holds them together -- the resources that form the basis for the profession of loyalty. This need not be only material. Systems based on important symbolic values have existed, such as the strong Islamic fundamentalist regimes and the Tibetan traditional order, which is based on a divinity; even the Japanese state prior to WWII. In Kenya's case, however, the glue is clearly material.

Patronage politics in Kenyatta's regime was founded on land distribution to the inner core of the regime's coalition, and land and other business opportunities for the key leaders of the wider collection of ethnic groups. In Moi's regime, as available land has diminished, the currency of patronage has diversified to include a host of natural resources (including land legally reserved for public amenities) and business opportunities, as well as the fall-out of the privatization of

innumerable state enterprises under economic liberalization. Government contracts and unsecured bank loans have also fueled the patronage system, replacing favoritism in import licenses, as resources available from the wider economy have shrunk under liberalization.

Two aspects of Kenya's patronage-based system distinguish the Kenyatta system from Moi's. They are important in explaining the degree to which Kenyatta's reign is viewed as benign, despite its significant contribution to the replacement of the rule of law by personal rule, whereas Moi's reign is viewed increasingly as malign, by wide swaths of the populace and not just the key supporters of the Kenyatta regime.

First, though Kenyatta assiduously cultivated leaders in all ethnic communities, and "ruled" indirectly, through a Provincial Administration that he staffed with his most trusted lieutenants, he nonetheless by and large let the population exercise real choice in leadership through the electoral process. Elections were real contests, albeit within a one-party setting. The politicians who ran up the largest numbers of votes were unfailingly given Cabinet appointments, whether they were in Kenyatta's inner, personal circle of confidants or not; most were not.

Moi, by contrast, began in 1983 to attempt to manipulate electoral outcomes in order to guarantee that the principal "clients" he had cultivated from a particular community were duly elected as the leaders of that community. The farce of the 1988 elections, in which all the key contests were decided during the KANU primary, in a queue-voting exercise rejected by many of Kenya's communities, was the most egregious example of this. This procedure was roundly rejected and the regime subsequently dispensed with it in 1992, but efforts to manipulate electoral outcomes are now solidly identified with the Moi regime.

Second, the glue in patronage politics, it has been argued, is the exchange of resources -- loyalty for material benefits, clients providing the loyalty and leaders the material benefits. This calculus has in Kenya, in recent times, been stood on its head, however, especially as resources for the insatiable patronage machine prove elusive. For example, *harambee* under Kenyatta was an important mechanism for organizing resources for local development projects, with local leaders contributing the efforts at organization. Kenyatta used *harambee* as a method for gauging the competence of his lieutenants, but **not** for direct resource extraction. (At least, the resources remained in the local area.)

Currently, the most important clients, the leaders of Kenya's disparate communities, are evaluated and promoted according to their ability to provide resources to the Leader -- a patronage system that works by primarily extracting resources rather than distributing them. Competition is thus based on the ability to provide material resources upward in the system, rather than downward. Examples of this are too numerous to list. They include most centrally the increasingly extortionate nature of the *harambee* phenomenon, which changed entirely from a mechanism for raising money locally to be used for common resources, to an extractive mechanism that feeds the presidential patronage coffers.

Under Moi, *harambee* has been entirely discredited, recognized now as solely an extractive mechanism which siphons resources from poor rural areas and feeds them into the upper reaches of the patronage machine, to reward the "haves" at the direct expense of the "have nots". To be

sure, some of the resources extracted trickle down ultimately to the "have nots", but primarily in the form of unpredictable, publicly-proffered Presidential contributions to local projects rather than as predictable public service provision.

Kenyan Consequences of Personal Rule

Some of the specific characteristics of personal rule in the Kenyan case have been mentioned, as has the origins of the phenomenon in the Kenyatta period. A few key consequences stand out and need to be kept in mind as USAID charts a strategy for the next five years.

Corruption and Credibility. The regime's shrinking patronage base and its need to continue feeding the assortment of clients/ leaders that it has brought into a loose coalition have produced a level and type of corruption difficult to deal with. Its inability to deal with it strain its credibility with most Kenyans, even regime supporters. Kenyatta's regime was under far less strain, with a buoyant economy and far fewer economically mobilized groups whose loyalty needed to be bought.

The recent Goldenberg scandals, the quintessential symbol of corruption, have become unfathomable to the populace at large, as cases are filed to obstruct earlier cases being heard, and judges dismiss cases for lack of evidence. This is greatly injurious to the regime's credibility. The top leadership including the President are alleged to have been involved, or at the very least knowledgeable. Lack of closure and of prosecution of these cases has alienated most Kenyans, including regime supporters. Prosecution of the "small fish" or even of significant corruption in government contracting is not likely to placate the public, which has learned (from NGO information campaigns) that the economic recession-cum-inflation of the 1993/94 period directly resulted from the infusion of the massive amounts of cash that "Goldenberg" supplied for the elections in 1992, in an effort to ensure KANU's victory.

While the President himself has made repeated verbal commitments to ridding his Government of corruption, and has recently even directed that the courts clear the Goldenberg cases, the imperatives of personal rule militate against it. The principals in the scandals are all key lieutenants of Moi's, clients whose loyalty (and the subsidiary loyalty of whose supporters) he must retain. How they can be sacrificed remains to be seen. The smart money would be on the sacrifice of some second-tier individuals who obeyed orders but were not key players. Indeed, the key players in the scandals generally have not left enough of a paper trail to make prosecution viable, or so the Attorney General has argued on several occasions.

Electoral manipulation. Electoral manipulations in 1988 induced a high degree of cynicism in Kenyans about the whole electoral exercise. This marked a change from earlier years, in which astronomically high turnouts indicated a strong faith in the regime's integrity and willingness to abide by electoral rules.²¹ No longer. The impact of those mid-80s manipulations has been to breed massive cynicism on the part of the electorate about all aspects of the electoral process. Turnouts have declined precipitously in some areas, although they remain higher, for all the cynicism, than in American presidential elections. Voters now routinely interpret administrative error and shortfalls as deliberate manipulation. Even aggressive attempts at domestic and international monitoring have not restored the electorate's belief in the integrity of the system.

The need of the Moi regime²² to ensure the safe return to parliament of many increasingly unpopular leaders during those pre-multi-party years has thus devalued the currency of elections and muddled the underlying bases of patron-client ties.

Vigilantism and the Rule of Law. The lack of effectiveness of the courts, hamstrung by a lack of resources, by corruption within judicial ranks and by political interference with the prosecution of corruption, is compounded by a police incapacity that borders on the criminal. The Police Commissioner has recently admitted publicly that some police are involved in criminal activity and that this has been an increasing problem. Public regard for the police is non-existent. They are seen extorting money from the public (traffic police) and responding to calls for help in an opportunistic fashion, assisting those who are prepared to pay and ignoring those who are not. The resources the police have are entirely inadequate to the job, but lack of capacity is not the most critical issue; corruption is.

As a result, more and more cases of vigilantism are occurring -- citizens taking the law into their own hands, lynching thieves and suspected thieves, as well as invading land that has been illegally grabbed and grabbing it back. There has been no effective response on the part of law enforcement officials, with the exception of occasional attempts by district administrations to arrest those involved in lynchings. Personal rule has contributed to this sorry state of affairs, as prominent persons who are staunch regime loyalists, and who have broken the law (grabbing land, inciting the public to violence against immigrant communities), are not prosecuted. In much of Kenya, citizens have concluded that the rule of law is inoperable, and have occasionally taken the law into their own hands.

Implications of Personal Rule for Addressing Democratic Governance: Establishing a Consensus on the Rules

Personal rule has replaced the rule of law in important public arenas in Kenya. Kenyans' views of political operations and values are infused with the model of personal rule rather than that of the rule of law. This is nowhere more apparent than in the strident calls for loyalty to Moi that have issued forth from some of the regime's main clients accompanied by threats to expel dissidents, even kill them.

Loyalty to the man, to the person who is the best and most nationally-acclaimed leader, are the sole content of these statements. No reference to the legal order, the constitutional order, or anything else that portends something greater than, or super-ordinate to, the leader, can be gleaned from these utterances.²³ Public calls by moderate leaders, both opposition elements and even those within KANU, to discipline such irresponsible "loyalists" and to put Kenya back on the road to the rule of law, have met with a deafening silence.

More critically, concomitant with the triumph of personal rule over the rule of law, there is a *lack of consensus on many important rules of political life*. The constitutional consensus of the independence agreement was a consensus of a small coterie of opposed political elites, **not** a widespread popular consensus. The current regime is comprised of a coalition of political forces that basically **lost** in the massive constitutional redrafting that occurred via the amendment process in 1964-67. This regime has thus had an especially strong inclination to rule through

personal loyalties and administrative fiat, rather than through the imprimatur of a constitution which theoretically advantages the "majority" communities in Kenya.

What are the areas in which consensus over the rule of law is presently non-existent, feeding the primacy of personal rule?

1. There is a lack of consensus on the rules for and control over the **transfer of power**, and of who should legitimately inherit power. This includes the whole area of electoral process, most importantly constituency sizes but also party registrations, independent candidates, and electoral offenses and prosecution, as well as the larger questions of distributive justice that are so critical in African political thought -- how should power be rotated among heterogeneous communities?
2. There is a lack of consensus on the **separation of powers**, the legitimate sphere of the Executive and the legitimate role of other branches of Government in holding the Executive accountable. Recent confusion and disagreement over the roles of the judiciary and parliament have been front-page news.
3. There is a lack of consensus on **central vs. local powers**, including a serious disagreement over federalism or other forms of decentralized governance, a disagreement that dates back to the independence era and to the independence constitution. Expression and protection of group rights turns on this issue, which will be central in the constitutional reform when it eventually occurs.
4. There is a lack of consensus on **individual rights**, particularly the rights of anti-regime speech, press and organizing. While Kenya has a bill of rights, the manner in which they can be protected and adjudicated is ambiguous.

There is, however, a growing consensus that major reforms are needed to restore the rule of law as the operative principle of governance, and to eliminate personal rule.

The Government itself has acknowledged the need for legal reforms in numerous areas, as attested by the AG's establishment of Task Forces on various aspects of the legal code about eight years ago. These were at that time the GOK's view of the appropriate manner of producing reforms – i.e., to make the necessary technical changes without surrendering Executive power and authority. More recently, the grudging acceptance of the Act creating a Constitutional Reform Commission is further commitment to such reform, although the Commission has been stalemated over the composition and therefore the control of this process. Further recognition of the need for reform is seen in the AG's more recently-established Legal Sector Reform Committee, mandated to deal with the broad issues of legal sector reform.

Institutions within the governance realm are arguing the need for greater autonomy to re-establish the separation of powers and balance the powers of the Executive. Parliament has taken recent steps that indicate its resolve to fend off interference in its jurisdiction and to extend its areas of autonomy and its effectiveness. The Electoral Commission, though cautiously and with little fanfare, has taken first steps toward increasing its own autonomy, although it retains a

narrow interpretation of its jurisdiction with respect to sanctions and discipline in cases of electoral offense. Even the judiciary has recently expressed the need for financial autonomy, obviously essential if it is to exercise any oversight over Executive agencies.

Civil society organizations, including both human rights NGOs with technical and professional memberships, and the mainstream churches, have made strenuous efforts to articulate the reforms necessary, publicize them, disseminate information about them to the masses, and raise the issues in public fora. These fora remain few and controlled, but the space is gradually increasing. Certainly the amount of critical public commentary and debate is several dimensions greater than was the case even in the period surrounding the 1992 election.

Political parties acknowledge the needs for reform, but the mechanisms through which it should be negotiated remain an item of contention tied up with the relationships of the parties (including the internal factions within KANU) to the ruling regime. A central issue at present for some parties is the need for a government of national unity. This is seen as a reform, since it is not constitutionally possible to have such a government at present, according to the regime's interpretation of the constitution, but might in reality be a way of avoiding the hard choices and self-definition implicit in partisan competition.

Given the widespread voicing of a general need for reform from all quarters, USAID's goal has been the achievement of **legal, constitutional and political reform**. By political reform we refer to the need to nurture a politics based on economic interest and compromise, rather than the zero-sum politics of the patronage model as it has been practiced in Kenya in recent decades. Reform is sought not simply for the sake of reform, but for the ultimate goal of institutionalizing the *rule of law* in place of the *personal rule* that has prevailed since independence.

Nature of the Reforms Needed

Kenyans express the need for constitutional, legal and political reforms in increasingly concrete and practical terms, a sign that domestic demand is becoming more *effective*.

Constitutional reforms identified include checks and balances between branches of government, based on a clear and enforceable separation of powers; guarantees of independence and accountability of parliament and the judiciary; greatly reduced Executive powers; better balanced central-local powers and resources, including in the view of many the complete dismantling of the Provincial Administration and its replacement by empowered local governments; clear provision for coalition governments as an intermediate step between pan-ethnic patronage government and forthright competitive partisan politics; and an expanded and enforceable bill of rights.

Legal reforms identified include specific codes that need updating, including those involving police procedure in the gathering and presentation of evidence, those relating to business regulation, and many codes relating to specific government service provision areas; operations of the judiciary, including improved management of cases and discipline of justices; and the administrative regulations governing operations of government departments, such as lands, the Electoral Commission, the Provincial Administration (assuming it is retained), and local government.

Political reforms identified include popular political behavior and belief, including reduction of the tendency to sell votes and to respond to ethnic appeals in electoral politics; the zero-sum game mentality that governs partisan political behavior; the lack of clear and differentiable party platforms, with the parties relying instead upon ethnic and clan appeals as the line of least resistance in drumming up electoral support

Achieving these reforms in an inclusive manner, whatever the specific procedures agreed upon, amounts to the *negotiation of a basic consensus on the "rules"* of political structure and function, the appropriate exercise of power and the legitimate transfer of power. So the near-term goal is the achievement of consensus, manifested in the constitutional, legal and political reforms that Kenyans advocate.

RESULTS FRAMEWORK

USAID Kenya's Results Framework, depicted graphically over, comprises a Goal Statement, a Strategic Objective and three Intermediate Results. Definitions, assumptions, and the Mission's partners in pursuing this objective are discussed below, together with the development hypothesis.

I. Graphic

The Mission's Results Framework is depicted in the attached graphic.

II. Strategic Objective

The Goal statement remains unchanged and has been discussed in detail in the section on problem identification above. The Mission's Strategic Objective in the pursuit of democratic governance both reaffirms and extends the SO it has pursued in the country program for 1996-2000.

SO1: Effective Demand for Sustainable Reforms and Accountable Governance Created

1. Definitions

This statement of the SO contains three phrases which need definition.

Accountable Governance. There is a new phrase, "accountable governance", which does not appear in the previous statement of the SO. Accountable governance refers to the requirement in a democratic polity that the government be accountable to the citizenry.

Accountability is an operational term which must be demonstrated. While the massive negative effects of corruption in present-day Kenya suggest that accountability in the financial sense is in the front of Kenyans' minds, accountable governance is a far broader concept. Accountability refers ultimately to

the requirement that the government be subject to removal from office -- that is, that through some periodic mechanism such as elections (or referenda, or parliamentary confidence motions) be held to a test of popularity. Accountability is demonstrated first and foremost through elections. Accountability in this crucial sense requires that open, competitive elections be held regularly, that they be open and competitive and that there be a reasonably level playing field.

Accountable governance also requires that the citizenry have reasonable powers and mechanisms to question government policy and government expenditure, and to have an impact on policy and expenditure. This component of accountability is demonstrated primarily through the legislative process and the ability of elected representatives to contribute to legislation, including decisions about expenditure. It must be noted that this aspect of accountability requires not just that fora and procedures for input into government decision-making exist, but that the representatives of the citizenry -- whether legislators or lobbyists -- be knowledgeable about Government decision-making procedures and about the implications, including financial, of specific policy decisions.

Accountable governance thus implies an open, competitive electoral process; mechanisms for citizen-representative input into policy-making, through questions, amendment, and the possibility of veto of the Government's legislative program; and informed representatives who are able to use these mechanisms effectively.

Sustainable Reforms. This phrase appears in the previous statement of the Mission's SO and relates the SO to the Mission's goal statement. The previous statement of the goal and the SO did not explicate the type and number of the reforms in question. Some of these have been mentioned above:

- reduction of Presidential powers and arbitrary authority;
- reconstruction of the checks and balances among branches of government attendant upon a rational separation of powers
- rationalization of central-local powers and resources
- legal reforms, including removal of the power of the Attorney General to block any litigation against agencies of government or to take over prosecution of such litigation himself

There are as many statements of needed reforms as there are Kenyans. Even staunch supporters of the governing party, KANU, cite examples of overdue reforms, some of them quite significant -- for example, the support for replacing the current system with a federalist constitution, and a prime minister, voiced by some core KANU leaders.

However, reforms are significantly easier to effect than to **sustain**. Sustainability is key to meaningful reform. The history of the Kenyan constitution is a good example of this fact. The constitutional agreement reached at Lancaster House in 1962, under which Kenya achieved independence in 1963, was an agreement of the moment only. It was entered into for opportunistic reasons by a government-in-waiting, which proceeded to overhaul it shortly after independence, and then to further erode the separation of powers and the independence of the

legislature. Reforms of the present governance system will only be sustainable if the government **must** sustain them -- that is, if the government is **held accountable** for the institutionalization of these reforms.

Effective Demand. For the government to be held accountable for the required reforms, there must be *effective demand* for such reforms. The Mission's program in the current country is premised on the conviction that assistance to the "supply side", that is the governance institutions themselves, would be unsustainable in the absence of effective demand. The record of USAID assistance to improving public sector capacity, in the absence of effective demand for accountability, shows a clear pattern of temporary gains in capacity that disappear with transfers of power, or simply with transfers of the key personnel who have supported and benefited from the assistance. The Mission remains convinced that sustainable improvements are *demand-driven*, and that assistance that does not first concern itself with the nature, origins and level of **demand** for the outputs of the assistance will not have sustainable impact.

That said, the nature of effective demand needs additional development since it is the key element of the SO. The Mission did not define effective demand adequately in the previous CSP. The Mission considers that *effective demand* is:

- focused, concrete demand, rather than general, diffuse, abstract demand;
- demand presented within the public sector arenas of governance, not just in the media, the church pulpits, or the streets (although these also remain legitimate avenues for the enunciation of demand when the public arenas of governance remain closed);
- demand that is presented by strategic elites, those who participate in institutions of governance and who thus essentially participate in **supply** as well as demand;
- demand that is informed and supported by concrete, vested professional and commercial interests, and which thus responds to constituencies which cannot be ignored;
- demand, in other words, which contains within it some of the building blocks of **supply**.

The "effectiveness" of demand is not straightforward. Simple demand creation involving education and mobilization of the public about changes in governance that would be desirable is a necessary but not a sufficient component of the construction of demand. This is the strategy the Mission has pursued during the country program 1996-2000. It has had a reasonable impact and has in particular produced a significant amount of information useful to the mobilization of the strategic elites who will form one of the target groups of the strategy as it is expanded in the period 2001-2005. It putting more emphasis on *effective demand* in the forthcoming period, the Mission will focus more attention on the response to demand.

This does not mean that demand is **only** effective if it brings about the desired action or output. However, demand is certainly **not** effective if it precipitates only political or other opposition to the actions being demanded, and thus makes their attainment less rather than more likely. It is **not** effective if it does not mobilize key allies including those in public sector institutions in support of the action demanded. Effective demand is demand which, while not necessarily bringing an immediate response, nonetheless enlists the support of those whose actions and

opinions count in circles of power, *and whose continued support is necessary to the sustainability of the change or action being demanded.*

These may be key elites in civil society, such as the clergy and the professional associations.²⁴ They may be *parliamentarians* or *judges*, whose roles in the legislative process and the adjudication and application of the laws makes them both strategic and essential actors in sustainable reforms. They may be military or police officials, whose understanding of and commitment to the reforms is critical in determining whether they will be applied or abrogated. The active participation of such elites in the reform process and the framing of a new social contract is critical to achievement of USAID's ultimate goal, democratic governance. While it is difficult for USAID to work directly with some of these, such as military and police officials, it is very feasible to work with others, such as parliamentarians and justices, either through enhancing the capacity of their institutions directly, or through civil society approaches to these elites.

The Mission's strategy for the period 2000-2005 will focus on strategic elites to the extent possible. Considerable attention will continue to be paid to support for the civil society organizations that generate information useful for the mobilization and agenda setting efforts of such strategic elites. Since important elites function *inside public sector institutions* and are critical to both the constructive engineering of change and its sustainability, these institutions may become a more important focus for the Mission's program than in the past. *Whether the Mission chooses to pursue the empowerment of these actors through the public institutions directly, or through the civil society organizations which organize and respond to them, will depend on the degree to which public sector institutional functioning appears to be sufficiently independent of political manipulations to ensure that assistance can have an impact.* The Mission will monitor benchmarks of independence in making these determinations, as described below.

2. Development Hypothesis

The development hypothesis that guides this SO follows from the problem statement. Personal rule, which characterizes many Third World polities, is increasingly unproductive in both political or economic terms. Many Kenyans have deplored the depredations that personal rule has had on their political and economic system and have called forcefully for a return to the rule of law.

Replacing personal rule with the rule of law is a long-term process, one that is not in USAID's manageable interest. Two key steps in that process are:

- the *development of a consensus on what the rule of law comprises* -- a new social contract, currently being debated in Kenya in terms of a new constitution, but which can also be conceived as a wide-ranging set of reforms of the existing constitution and legal codes;
- the *empowerment of institutional mechanisms which can impose accountability on government*, and specifically on an unchecked Executive -- the "personal ruler".

Our development hypothesis is that both of these are necessary. A new social contract, a consensus on the contents of the rule of law, will not be self-enforcing. It will be only as good as the accompanying institutional mechanisms for its enforcement. Accountable governance presumes mechanisms to hold the government accountable, not just a consensus on the need to do so, or on the substantive manifestations of accountability, and not even just constitutionally mandated procedures for accountability.

Our development hypothesis further argues that these requisites of democratic governance are not sustainable without *effective demand* for them, "effective" being interpreted as sustained demand which is presented by elites important to the governing regime or coalition, actors who actually participate in the institutions of governance themselves. The Mission sees a need to work with the institutions that will present sustained demand for reforms, and participate in the formulation of reforms, parliament foremost among them. The also Mission sees a need to work with public sector institutions that serve as a check on an Executive which presently confronts few checks.

Our development hypothesis, therefore, is that effective demand for reforms and for accountable governance will amount to the construction of a new consensus; that effective demand refers both to the voicing of demand and to its presentation via institutional mechanisms that can make it effective; and that, while ambitious, this focused objective is within the scope of USAID and its donor and civil society partners.

The new institutional focus is thus in pursuit of the same objective as at present. Parliament is clearly central to this aspect of the objective as well as in the formulation of the reforms, the new "rules." As suggested above, electoral choice is the ultimate expression of accountability, making the Electoral Commission an important potential instrument of accountability. Judicial restraint of Executive action is similarly an important potential instrument for exercising a check on the Executive.

USAID Kenya has explored these institutional arenas and determined that parliament presents the most immediate potential for achieving significant progress on accountability. However, the election approaching in 2002 will put a spotlight on the Electoral Commission again, and the Mission will need to consider in what way it can contribute to the role of the electoral process in enforcing accountability. The current major public examination of the judicial system being undertaken under Bank auspices may also increase the potential for judicial contributions to accountable governance. The Mission will monitor the performance and potential of these major public sector institutions, observing a set of benchmarks of independence and effectiveness it has developed and will determine the optimal arenas for public sector investments -- if any -- on the basis of this system, discussed below.

3. Assumptions

A major assumption at the level of the SO concerns the establishment of effective public sector institutions. The Mission recognizes that achievement of the goal -- sustainable reforms amounting to a consensus (constitutional, legal and political) that will facilitate establishment of the rule of law -- will not be attained **solely** by the creation of effective demand. Mechanisms for enforcing accountability and maintaining accountability -- that is, for sustaining these reforms --

are also essential. In essence, this means *effective public sector institutions*, such as parliament, the judiciary, the Electoral Commission, and a functional local government system, must exist.

USAID cannot contribute definitively to the empowerment and capacity building necessary in these institutions with the limited resources at its disposal. The GOK will play the decisive role in building these institutions. Other donors will contribute, including both bilateral and multilateral donors, and civil society support groups. USAID can contribute strategically to this effort however. Specifically, the Mission can assist in the development and empowerment of mechanisms within one or more of these institutional arenas that exercise oversight over the Executive branch of government, and that impose accountability to the citizenry on the Executive.

Parliament, and specifically the parliamentary committee system, are one example of such mechanisms. USAID's assistance will be in support both of the SO itself and of the parallel requirement, effective government institutions. In both cases, the Mission will rely on the inputs of development partners. In the case of the establishment of effective government institutions incorporating realistic checks and balances, however, a critical role will be played by the GOK. USAID is prepared to take responsibility principally for the creation of effective demand, therefore, but effective demand with a difference -- effective demand that emanates from relevant public sector institutions *as well as* from civil society.

4. Illustrative Indicators

Some indicators illustrative of increased effective demand for accountability and reforms will guide the Mission in monitoring the effectiveness of its pursuit of this SO.

1. Parliamentary committees successfully request the presence and testimony of ministerial representatives on an increasing number of key issues, and successfully request response in terms of Government's legislative proposals. The number of successful amendments of bills tabled, because of committee scrutiny, might be one index, as might the number of bills tabled **because of** parliamentary committee hearings.
2. The budget is vetted substantively on a preliminary basis through the parliamentary committees; ministries that do not submit preliminary budget proposals to the relevant committee have their budget proposals rejected until they do so. [This is one of the resolutions agreed upon by a recent parliamentary workshop; it is likely to form one of the main elements of the Parliamentary Reform Bill to be tabled this year (1999), and as such represents the views of relevant Kenyan stakeholders on a critical reform to impose accountability on the Executive.]
3. An increased number of Civil Society Organizations provide information and pursue advocacy on behalf of citizen interests they represent in parliamentary committees. [And to the Legal Sector Reform Coordinating Committee.]

Should the Mission's program find the political environment congenial to the pursuit of the broadest strategy (as described in the "rosy scenario" program activities, below), and

have a corresponding resource base adequate to fund significant justice sector activity, then this latter portion in brackets would be relevant as an **additional channel** for CSO representation. In the best of all possible scenarios, for example with the establishment of an Ombudsman and/or Citizens' Review Boards (e.g. a Police Review Commission), these would also be important channels for CSO information, representation and advocacy, and USAID would monitor these as an index of achievement of its SO.

[4. Electoral turnout increases 5%-10% in 2002.]

USAID does not envision assistance directly to the electoral process but will review the situation a year before the election, as it did for the previous election. The ballot box is the ultimate arbiter of accountable governance, and electoral turnout a key indicator of effective demand for government accountability, although many things influence turnout rates. Kenya's turnouts have been declining, although they have always been regionally variable. Increased turnout can be interpreted as both a demand for accountability from a regime and/or an attempt to punish it for lack of accountability, or as a sign of an improved electoral environment -- i.e., a sign that the government is perceived as more legitimate and accountable than previously. Turnout rates thus can be a vote of confidence in a government, or at least in the viability of the electoral process. Of course, in the Kenyan context, the election of 2002 is likely to see a massive turnout in many areas because it is a "regime-change" election and the stakes are enormous, irrespective of the confidence the citizenry has in the legitimacy of the process.

III. Intermediate Results

The Mission intends to pursue this Strategic Objective through activities focused on achieving the following Results.

IR1.1 Capacity of public institutions to provide oversight of the Executive strengthened

IR1.2 Linkages between public institutions and civil society strengthened

IR1.3 CSOs can effectively advocate for reforms and monitor government activities.

These three Intermediate Results are linked logically. The Mission's program for the past five years has concentrated on the civil society organizations that have generated information and advocacy for reforms. The Mission intends to add a second prong, support for public institutional actors and arenas that can contribute to this effort through providing oversight over the Executive -- *effective demand for accountability*. Further, the Mission sees this two-pronged strategy as presenting the opportunity to focus on linkage mechanisms between civil society and the public sector, a need which was emphasized in the mid-term review.

A clear example of such a linkage mechanism is the parliamentary committee system, which provides a concrete arena in which *civil society information, representation and advocacy can*

be brought into the public decision-making process. USAID's civil society partners expressed enthusiasm for this idea, as did parliamentary staff, including committee chairmen, with whom the strategy formulation team talked. Other linkage mechanisms may emerge: the Legal Sector Reform Coordinating Committee, an Ombudsman (being talked about), citizens' review boards (not yet being talked about.) These IRs in turn suggest contributory results. The sub-IRs and a summary of the types of activity that USAID may fund in pursuit of their achievement follow.

IR1.1: Capacity of public institutions to provide oversight of the Executive strengthened

To emphasize the strategy shift the Mission is proposing, we start with the new element in the Mission's strategy, public institutional strengthening. *Effective demand* for reform requires that key central government institutions have the ability to impose accountability on other institutions, notably to exercise oversight over the Executive.

Ability to do this requires two or three things: sufficient **independence from the Executive** that oversight is possible; **capacity** of the institution to pursue oversight systematically, and to take concerted action when the situation warrants; and **commitment of institutional actors** to pursue such action. The Mission will deal with these critical assumptions as follows.

Independence from the Executive is clearly a requirement, the absence of which would suggest that investments in such institutions would not be likely to produce significant oversight of the Executive. The Mission has therefore developed a set of benchmarks of independence for the key institutions that might contribute to this result, and will consider investing in those institutions *directly* if these benchmarks for independence are met. If they are not, the Mission will invest instead in the civil society institutions that target these institutions, for information and mobilization efforts, until such time as the minimum degree of independence is attained.

Similarly, the Mission will monitor the **commitment** of key institutional actors, building on the work done for the institutional assessment in early 1999. In the absence of a critical mass of institutional actors who appear committed to the objective USAID is pursuing -- effective demand for reforms, and for accountability -- the Mission will eschew public sector investment but will continue to support the civil society actors with strong interest in the particular institutional arena, in an effort to build such a critical mass.

Where both independence and political commitment appear to exist, as the Mission feels is presently the case with Parliament, the pursuit of capacity justifies *direct investment* in the institution in concrete activities that will contribute to effective demand for reforms and for accountability -- i.e., that will impose oversight over the Executive in the near term, and both demand *and contribute to* the effecting of these reforms in the long term.

A detailed, illustrative listing of the specific activities and program emphases that the Mission would pursue under each of the four scenarios follows this section. We are concerned here with a discussion of the key "results" we expect to achieve, and with their rationale and assumptions, rather than with the alternative strategic approach through which we will

pursue them under differing political environmental conditions. The latter is considered in detail under the section "Illustrative Activities".

What is necessary to this strategy, on the public institutional side? And what can USAID expect or hope to achieve? The following results the Mission hopes to achieve will guide specific investments in the parliamentary arena.

Parliamentary Strengthening

IR1.1.1 New MPs understand the role of parliamentarians and parliamentary procedures

IR1.1.2 Parliamentary committee system strengthened

IR1.1.3 Increased awareness of best practices and available resources

IR1.1.4 Improved information and skills for analysis and decision-making

Discussion

- **IR1.1.1:** Training on parliamentary roles and procedures for new MPs in particular, but for experienced MPs who wish to learn how to use the mechanisms of parliament more creatively. There are many new MPs and there is a widely voiced demand for an orientation to effective parliamentary participation. Several donors, including the US, have sponsored exchange visits to western legislatures, but these benefit only a chosen few.

- **IR1.1.2: Parliamentary committee system strengthened.**

USAID Kenya is enthusiastic about the potential for the revitalized parliamentary committee system to play a key role in both oversight over the Executive and the reforms process proper. Evidence justifying this enthusiasm is detailed in a supporting document, the institutional assessment done in early 1999.

The committee system has been revitalized by Parliament itself, and has already begun to play a role in oversight and in increasing the input of parliamentarians into legislation -- as well as providing a forum for civil society actors to present the viewpoint of strongly interested citizens' groups. NGOs implementing USAID's population and health activities have had the occasion to testify in committee hearings and are enthusiastic. At least two of the committees have become proactive, calling representatives of the Executive, including Cabinet Ministers, to appear and explain Government's intentions, actions, and shortcomings.

Most important, the committees comprise roughly equal numbers of members of KANU and the opposition parties. They are all chaired by KANU backbenchers, who here have a **constructive** forum for voicing criticism of government in an arena where party differences are greatly diminished. This is the way the parliamentary system is supposed to operate. It has not done so

in Kenya since independence, apart from a brief interlude in the immediate post-independence years.

A strengthened committee system by itself will not have optimal impact, however. MPs must increase their parliamentary and analytic skills, or to be able to call on the resources that can complement these skills. Additional results in this area will be pursued in order to ensure that parliamentary operation has the desired impact:

- **IR1.1.3:** Information generation and dissemination on regional and international "best practices", both with respect to parliamentary functioning, including committee systems, and substantive policy choices. Both Internet connectivity and exchanges with regional parliaments are envisioned.
- **IR1.1.4:** Information resources and analytic capability provision to parliament, initially in the form of committee staffers able to find relevant material and provide syntheses of use to MPs (an example is the CGD Bills' Digest, although staffers would be able to provide a much wider range of analytic assistance), and ultimately in the form of a parliamentary resource/ research center.

Justice Sector Strengthening

IR1.1.5 Increased availability of case decisions

[IR1.1.6 Procedures for processing cases improved and made more transparent]

IR1.1.7 Increased coverage of court cases and procedures in the media

Discussion

The justice sector in Kenya is equally important to long-term oversight of the Executive. It is not at present as clearly poised to play this role. The problems of the sector are manifest and have been aired extensively lately in the press as an outcome of the legal sector reform seminars being held nationwide. The World Bank is the lead donor in this sector and has begun to develop a systematic approach to improvements.

Two obstacles to progress are significant. First, the Bank's principal concern, in accordance with its mandate as a bank, is the civil side of the justice system -- in particular, commercial courts, procedures and legal codes. These are certainly important to Kenya's long-term ability to attract private investment, domestic or foreign, and to resuscitate its economy. This will undoubtedly be the central focus of the reform efforts undertaken in the next two or three years. They do not speak to the criminal side of the justice system, however, which is the "dark side", the one that continually gives Kenya low marks in annual human rights reports and among domestic and international human rights organizations. Addressing the needs of civil courts and cases is necessary; it is not sufficient, nor is it evident how legal sector reform in support of commercial

justice will play any role in establishing or operationalizing checks and balances on the Executive.

Second, the critical mass of reformers that USAID's assessment found in the parliamentary arena do not appear at present to exist in the justice sector. The sector is more fragmented.²⁵ The justices themselves are cautious and conservative, even those few who have spoken out on need for reform; this is perhaps in the nature of judges. There are festering resentments and divisions between justices of the High and Appeals Courts, and magistrates, who are poorly remunerated and ill-equipped, and who have recently averred that the High Court frequently overturns their decisions and releases persons whom they have convicted, to come back and taunt them.²⁶ There is also major rancor between the (conservative) bench and the (liberal/radical) bar, with ethnic undertones based on differential recruitment patterns and education.

To construct an effective reformist core from this grouping of stakeholders will take much effort. The Attorney General and the Chief Justice are in the process of attempting to form such a reformist core, individually. It is not clear how much success they will have nor whether their interests are fully compatible. USAID will monitor this sector closely but will commit resources only when it is assured that such a commitment to reform exists.

There are, however, a few objectives in the justice sector that the Mission feels will contribute to the achievement of the role the judiciary needs to play in contributing to *effective demand for reform*, and particularly to *effective oversight of the Executive*. Three have been included in the Results Framework, although one is shaded, indicating that the Mission does not feel that it can significantly contribute to or effect this result, although it is critical to attaining the ultimate objective. Complementary support from other donors and consistent commitment from the GOK will be essential to accomplish this result.

■ **IR1.1.5: Increased availability of case decisions.**

Kenya has not had law reports available routinely for a considerable period. Some lawyers have produced them for some cases on a private basis as a source of additional income, and one recent Chief Justice produced them from his own resources for a seven-year period in the 1980s. The Law Society and the Nairobi Law Monthly have tried to fill in the gap for important decisions. There is no routine, indexed compendium of case decision, however, for most of the past three decades.

This greatly hinders the judiciary in the application of consistent rulings and exacerbates the existing antagonisms between the bench and the bar, since lawyers do not have documented case precedents with which to argue their cases and feel that justices are simply ignorant of the law. Some of them are, and many at the lower levels of the magistrature admit this. The production of law reports is essential for consistency, for the development of more productive relations between the bench and the bar, and for the confidence which a justice **must** have in his knowledge of the law in order to take objective decisions which may at times be against the government.

USAID feels that support for a law reporting capability would contribute to these results. The Mission will explore the possibility of a joint effort as part of a donor consortium for a full-scale effort, or alternatively support for private sector capacity already experienced in law reporting to begin on a pilot basis. Since the Bank is the lead donor and coordinates legal sector reform, close coordination with the Bank's efforts and the Legal Sector Reform Coordinating Committee will be pursued.

■ **IR1.1.7: Increased coverage of court cases and procedures in the media**

Court case coverage in the media is not insignificant at present. However, it primarily comprises case reporting and discussion of the reasons for decisions in the newspapers. Newspapers are not an effective medium for reaching the mass of the population, who rely on the radio for most information. Even the papers do not provide systematic reporting on decisions and their implications. Nor is the justice system structurally and procedurally comprehensible to most Kenyans.

Demystification of the court system and resuscitation of its credibility, require greater coverage of both cases and the structure and function of the justice sector institutions in the media. A variety of approaches to the provision of this information are envisioned. The method chosen will depend on the political environment, ranging from a donor consortium or bilateral effort including the judiciary itself, to a strictly civil society strategy.

■ **[IR1.1.6: Procedures for processing cases improved and made more transparent.]**

The judiciary has voiced strongly the need for improved case management. Delays and backlogs contribute significantly to cynicism about the justice system, to demoralization of the justices and magistrates who are at the mercy of the caprice of erratic case management and of the ability of those in the system lacking in integrity to exploit its failures for their own ends (sloughing off work, hiding lack of any managerial ability, and outright corruption.) Support for improved case management has become a popular form of justice sector assistance. It will be necessary in Kenya. UNDP has already done some preliminary exploration of the types and feasibility of assistance needed.

USAID will monitor the sector closely but feels that support for managerial capacity building, in the absence of a clear commitment to tackling the structural problems that have constrained the sector, is unlikely to promote USAID's specific strategic objective, the creation of **effective demand for reform** and the pursuit of **oversight over the Executive**. Processing cases more efficiently through the system may improve the overall investment climate, clearly the core of the Bank's objective in legal sector reform. It may also improve the morale of the majority of the bench, which in turn might increase the critical mass of those who see reform as both desirable and feasible.

On the down side, it may simply increase the efficiency with which the system is able to process the large numbers of petty offenders -- hawkers, petty thieves, street boys, vagrants, traffic offenders, foreigners without papers, prostitutes -- who are the target of a police force widely reputed to be massively corrupt, earning its income from bribes from such "offenders" not to

arrest them. The police force is at the core of the justice system. The Mission feels that, absent a serious attempt to clean up a police force that has gone completely off the rails, case management improvements will have an uncertain impact. Police reform is a "prior need", though improvements in case management are necessary.

Other Institutional Foci

The Mission's Results Framework does not include results relating to any other public sector institutions. The mid-term review of the Mission's strategy, done in 1998, reviewed other relevant arenas and found that they were constrained by a lack of independence or political commitment necessary to the pursuit of USAID's strategic objective. It would be shortsighted to assume that in a five to eight year period, no other public institutional arenas will become potential investment foci. A number of other institutions could become relevant, depending on the outcome of the constitutional reform process and the period leading up to the election in 2002. These include:

- Electoral Commission of Kenya
- Office of the Controller and Auditor-General
- Office of the Attorney-General
- Kenya Anti-Corruption Authority
- Office of the Ombudsman (not currently in existence, but supported by strong forces on both sides of the aisle in parliament)
- Police Review Commission (or other citizens' review vehicles; not currently in existence, but sorely needed and likely to command the same support as an Ombudsman)

The Mission will examine the political environment and the potential for support of its strategic objective by these, or other, institutions during a mid-term review which will be undertaken in early 2003, a few months after the election, similar to the mid-term review of the present strategy.

Linkages between the public institutional arenas and civil society.

IR1.2: Linkages between public institutions and civil society strengthened

This is a key IR in the Mission's framework. It emphasizes the linkages between civil society demand creation and the public institutions that present both demand and supply. The strategy in the present country program has emphasized civil society demand creation. A variety of activities have contributed to the generation of several different types of demand, including electoral demand and mass rallies and demonstrations, as well as workshop statements, pastoral letters, and parliamentary contributions. Much of the civil society program the Mission has pursued has generated **information**, upon which demand can be made effective.

The main present need is the development of productive fora through which civil society can interact with decision-makers. The information generated needs to be presented in arenas where it has a strategic value, rather than being presented in confrontational arenas and methods, such

as the media and the streets. These fora need to be **public**, not simply the usual channels to the Executive through the appropriate civil servants.

Parliamentary Committees. The Mission views the parliamentary committee system as the most promising of these fora at present. Parliamentary committees can and do invite CSOs to present information and advocacy germane to the legislation a committee is considering or to the problems it is investigating.

Public/private partnerships. On a less institutionalized basis, private/public partnerships in implementing specific projects are another way in which to accomplish this result. Producing law reports through a partnership between the judiciary, the Law Society and private publishing interests, for example, can build rapport between relevant CSOs and the public sector.

Other mechanisms. Other institutional mechanisms that could serve this function include citizens' review boards, which are not presently a Kenyan practice, and Commissions and Task Forces, which are. Support for CSO participation in these, and inducements to government to include CSOs through informally conditioned support for such mechanisms, are an avenue of pursuit of this IR which the Mission will explore. These need to be initiatives of the GOK, however, as they are unlikely to be sustainable if not demand-driven.

This IR represents the linkage between the public sector support the Mission envisions and the civil society support it has hitherto pursued. Linkage mechanisms will improve the performance of the public institutions, providing them with the information that CSOs generate, as well as more accurate citizen opinion, enhancing their own legitimacy and accountability. It will also greatly enhance the impact CSOs can have, breaking the self-defeating cycle of advocacy being perceived as, and degenerating into, antagonistic, hostile, anti-State activity.

Effective civil society

IR1.3: CSOs can effectively advocate for reforms and monitor government activities.

This IR continues USAID Kenya's present approach to its SO. There is no substitute for effective demand for reform, and there will be no sustainable reform without demand. The Mission is adding a component to its demand creation strategy by introducing elements of public institutional support that will contribute to such demand, and by focusing on support to linkage mechanisms that bring civil society demand into legitimate and productive public sector arenas. ***This does not reduce the need to support the evolution of a viable, constructive, capable civil society in Kenya.*** Civil society is the ultimate glue that binds a citizenry to its government and allows it to exercise accountability on a continuing basis, rather than on the limited basis provided by elections.

The Mission has assisted and observed a wide spectrum of civil society organizations and leaders during the present country program. Its experience has led to an evaluation and an evolution of the civil society strategy to incorporate the following lessons:

- civil society organizations carry more weight with strategic elites in Kenya when they are mass membership organizations, representing the interests of important segments of society; the Mission will therefore attempt to emphasize these in its forthcoming program. Examples are the professional associations, the church, and labor-economic interest groups.
- civil society organizations mirror the pathologies of Kenyan society more generally, including those of the public sector; capacity building to equip them to develop long-term strategies for sustainability, including systematic personnel turnover and renewal, are essential to the progressive development of Kenyan civil society.
- civil society organizations with a human rights advocacy orientation have played an essential role in generating the information that broader groups, such as the church, utilize, in civic education and in representations to government. The skills of these organizations themselves in advocacy are weak; advocacy skills need support and development.
- Mission capacity for managing an extensive civil society portfolio is stretched to the breaking point, and there are still unmet needs to monitor and evaluate activities more closely. Rationalizing its management burden is essential for the Mission to be able to pursue the broader program it now proposes.
- the impact of the Mission's civil society program could be increased by greater focus in the program, choosing three or four key substantive areas for support. While the mid-term review²⁷ proposed focusing on business and economic advocacy groups, natural resource management groups, constitutional reform advocacy groups, and women's groups, the Mission may alter or increase these emphases in accordance with the political opportunities at the initiation of the new country program.

The main consideration in the reformulation of the civil society strategy is the need to focus on *strategic elites* and on the role that they play in the creation of effective demand. Kenyans feel that civic education down to the grassroots is an overriding goal, and that donor support for their information and education efforts in this regard is a top priority. It will be important for the Mission to persuade their Kenyan partners of the impossibility of the task of individual donors reaching this widespread an audience, or having the impact that is needed in the short run.

What the Mission proposes is to target strategic elites, through public sector institutions (e.g. MPs), through CSOs with mass membership and representational interests (e.g., professional associations, business associations) and through CSOs with the broader human rights mandate (the church). These leaders **must** be knowledgeable about, and support, a consistent set of reforms and demands for accountability, if these demands are to be effective. They in turn play the critical role in educating the citizenry and representing its interests. They channel information both upward and downward. The Mission's main problem in this refinement of the strategy will be to ensure that CSOs and civil society leaderships that it supports are indeed

strategic, are popular and representative, and are open-minded about the contents of a reform agenda.

In pursuing its civil society strategy to create effective demand for sustainable reform and accountable government, the Mission will attempt to achieve the following results:

- IR1.3.1: CSOs demonstrate improved analytical and advocacy skills**
- IR1.3.2: CSOs demonstrate stronger institutional capacity**
- IR1.3.3: Opinion leaders/strategic elites demonstrate knowledge of public institutional function and policy, and citizens' rights and responsibilities**

Discussion

These three IRs address the key problems that constrain CSOs at present, as well as the added focus the Mission intends to place on strategic elites.

IR1.3.1. *Increased analytic and advocacy skills*, including media strategies, are essential in providing and effectively communicating the types of information that decision-makers need. This is a basic building block in creating effective demand for reform and for accountable governance. If the evolving political environment mandates that the Mission's approach to public institutional arenas must be primarily through civil society "providers" of information and advocacy, the skills of CSOs will be doubly important. Kenya's CSOs have developed an admirable arsenal of advocacy approaches and tools, but these could be improved. Media and information dissemination skills are particularly in need of improvement. Analytic skills, and particularly those involved in costing the impact of specific policies, or lack of policy, are also an important area for improvement.

IR1.3.2 *CSOs' institutional capacity* is also critical to their ability to sustain effective demand. Many CSOs in Kenya are new. Indeed, the Mission's program has nurtured a number of start-up NGOs with a single-issue or single program focus. Many of these are the product of one, or at most a handful, of individuals with an idea and a desire to implement it, but little in the way of commitment to or understanding of long-term institutional development. These NGOs remain the personal property of their founders. When the founders lose interest, move onto some other focus, or face internal conflict, the organizations suffer. Internal accountability is weak. A long-term strategic organizational plan is rare indeed. For these organizations to play a credible role in enforcing government accountability, they must be increasingly accountable themselves. The Mission needs to monitor and evaluate its grantees' performance, and provide relevant technical assistance, to improve institutional capacity in this sector.

IR1.3.3 *Knowledgeable Strategic Elites*. Finally, both the membership of CSOs and the broader opinion leadership for whom they provide information need to be knowledgeable about the **structure and function** of government institutions, and about the decisions they make, in order to be able to present constructive, effective demand for reform and accountability. Without a

clear understanding of parliamentary function, such as its committee system, for example (which is currently not something many leaders are aware of), the arenas in which advocacy can fruitfully be pursued are not clear. Similarly, awareness of citizen rights and responsibilities and a willingness to take information from the grassroots and channel it into the public arenas is essential to a legitimate advocacy role. Here, the Mission is thinking in terms of a larger emphasis on CSOs that represent membership organizations, and that aggregate the views of the citizenry, as well as serving as a critical channel for information and education downward. It is these opinion leaderships, or strategic elites, in their role as a linkage mechanism between the citizenry and the national government, that makes CSO advocacy a legitimate activity and a catalyst for effective demand.

BENCHMARK STRATEGY AND THE NEED FOR FLEXIBILITY IN INTERNAL PROGRAM EMPHASES

Need for Flexibility

Kenya's present political situation is transitional in several ways. Government/opposition hostility is very strong but also very volatile. Predicting even the near future is very much an exercise in crystal ball gazing, unlike the case in states which have reached an underlying, fundamental consensus on direction. Lack of consensus in Kenya, and the size of the stakes as the nation heads toward the end of the Moi era, mean that political maneuvering rather than policy formulation is the primary concern of most politicians.

In addition to the critical juncture the country has reached with respect to political and economic liberalization in the context of a major transfer of power, the fact of personal rule itself poses a further indeterminacy. In institutionalized states where rulers are subordinated to the law, and where there is a consensus on the law, the outcome of even such major transitional processes can be predictable. Where one individual controls all important elements of the political and economic machinery of the state, predictability is reduced to the ability to predict the actions of that individual. President Moi's actions have not been predictable -- indeed, he seems to relish his aura of surprise and unpredictability, not unlike other personal rulers in history.

In this situation, it behooves USAID to formulate its strategy as flexibly as possible. Incorporating support for public sector institutions carries risks in this political environment. The Mission will deal with them through a flexible program of activities which rests on careful monitoring of benchmarks of political commitment, independence and effectiveness. In devising this program, the Mission examined the realistic alternative political scenarios that it may confront, and the implications these have for successful investment in particular arenas. This might mean a shift in emphasis from one institutional arena to another after two or three years of experience, if opportunities emerge in a new area or diminish in one that has been central to that point.

For example, the Mission's initial focus is the parliamentary committee system. At present this is an exciting prospect for adding to effective demand for accountability and reform. If, after two or three years, the parliamentary committee system were to fail to perform to the expectations the Mission now has, while another arena appeared more promising than at present -- e.g., perhaps a

thoroughgoing justice sector reform had really begun to take off -- the Mission would turn its attention to that arena. This will be done with a program carefully tailored to address the Mission's SO, **not** with a scattershot approach. Decisions about viable institutional foci will be guided by a set of benchmarks the Mission has begun to develop.

Benchmarks

An example of the benchmark system for the parliamentary arena is given below, since it is presently viewed as the most viable in the short-term. Benchmarks have been devised for other institutional arenas, however, since the objective is to have a system for deciding *which* institutional arena is the most viable from the point of view of near-term impact. The benchmarks are described in greater detail in the mid-1999 assessment of institutional potential.²⁸

Prior to Commitment of any Funding:

- Passage of the PSC bill in a form that significantly increases House budgetary and staff autonomy.
- Substantial progress on the provision of offices and committee rooms in the premises acquired for parliament for this purpose.

Phase I:

If these benchmarks are met satisfactorily, funding for the first phase of a parliamentary support project would commence. Progress would be monitored together with benchmarks of effectiveness for this phase I, using the following benchmarks

- Continued cooperation among the existing group of reformers, continuation of the type of workshops pursued since May 1998; continuation of committee work by the eight departmental committees, as well as the PAC and the PIC; and an increase in the frequency of contact and dialogue between civil society and parliamentary committees.
- An increase in the number of MPs participating in the aforementioned activities; an increase in the number of MPs who can be classified as reformers, or sympathetic to the reformers, to at least 30% of the House.
- Continued activity on the part of the eight departmental committees to review government policy and craft or amend legislation.
- Increasing attendance by CSOs at committee meetings, either by invitation or through their own request.
- Agreement by the Speaker and the Clerk of the National Assembly to seek donor assistance to strengthen the Assembly, including the prioritization of what types of assistance are most urgently required by the Assembly in the near term.

Phase II:

If a first phase of parliamentary assistance proved successful and these benchmarks were met, the Mission would fund a second phase (probably after the election of 2002) would establish additional benchmarks of institutional independence and effectiveness; the following are illustrative.

- Departmental committees meet on a regular basis, and all legislation tabled before the House is considered by these committees, *including the annual budget estimates*. Departmental committees exercise the power to amend legislation.
- The number of MPs who can be classified as regular or active participants in the independent activities of the House increases to 50% of the Assembly.
- Completion of the remodeling of Constitution Hall and Continental House, and the utilization of these buildings by MPs and parliamentary staff on a non-discriminatory basis.
- Following from the passage of the Parliamentary Service Commission Act, the establishment of an independent scheme of service for MPs. Such a scheme would be funded by a separate vote of the Treasury and provide for a substantial increase in salaries and expenses for MPs.
- Provision of funding, following the passage of the Parliamentary Service Commission Act, to support the establishment of a new and independent scheme of service for parliamentary staff.

Phase III:

If this second phase of parliamentary assistance were satisfactorily implemented and the benchmarks continued to be met, a third phase (as described in the institutional assessment referred to above) would be implemented, with the following associated benchmarks.

- The National Assembly gains a measure of control over the budgetary process by gaining the power to amend authorization bills for the annual budget.
- The National Assembly increases its statutory authority to enforce the implementation of the recommendations of the PAC and the PIC.
- The National Assembly enhances the statutory authority of the Office of the Auditor General so that the Office may prosecute cases of malpractice uncovered in its annual review of governmental operations.

- The strengthening of the eight departmental committees: all committees function on a regular basis, nearly all committee members attend most meetings, and the skill level of each committee is raised in respect to the ability of committee members to understand the issues and legislation before them.
- The National Assembly censures members of the government and senior officials within the civil service found guilty of corruption and other malpractice. Government officials found guilty of corruption are forced to resign.
- The establishment of strong links between civil society organizations, particularly economic interest groups and other citizens organizations *not* concerned with issues of human rights and democratization, and the National Assembly, via the committee system.

The Mission will, during the R4 review process, fine-tune the monitoring system and the benchmarks as greater experience is gained in specific institutional arenas.

ILLUSTRATIVE ACTIVITIES

The *activities* through which USAID will pursue these results will depend on the political environment as it unfolds. Four possible scenarios over the next five to eight years have been described above. They have implications for the *tactics* that USAID chooses to pursue its strategy, but not for the strategy itself, which is based on an assessment of the underlying problems confronting democratic governance, which in USAID's view are not a function of short-term political environment. In terms of parliamentary support, these scenarios would have the following likely implications for specific activities and approach.

Rosy Scenario

This scenario assumes significant progress in the political-economic environment and justifies significant investment in both civil society and public institutions which can contribute to the achievement of the SO.

Civil Society

- USAID funds key NGOs providing input into parliamentary and justice sector information generation: examples include CGD, which runs workshops for parliamentarians; IEA, which produces policy analysis, documents and workshops; PLI, which pursues public interest litigation; others as relevant.
- USAID funds membership CSOs representing members' interests in public fora: examples are KAM, which provides policy recommendations on the part of the manufacturing community to the Ministries of Finance and Planning; KNUT, which represents teachers' interests; other professional associations relevant to specific policy areas and to the establishment of overall professional ethics: doctors, lawyers, nurses,

university staff, accountants/auditors, surveyors, architects, contractors, bankers, large farmers, the cooperative movement.

- USAID funds NGOs and CSOs providing targeted civic education: the churches, the women's network, and a growing network of groups providing education on conflict resolution and prevention.

Parliamentary Support Strategy

- USAID funds initial activities in workshops and International Visitors (USIS), FY 1999/2000.
- USAID opens discussions with the House administration on support for committee staff development.
- USAID funds technical assistance to committee staffs (FY 2000/01-01/02) and begins preparatory work on parliamentary research services/resource center

(Election; the outcome and implications of the election of 2002 will be a critical event in the Mission's programming; a mid-term review similar to that of 1998 should be done in 2003)

- USAID initiates activities and funding toward a parliamentary resource center, inside parliament (FY 2002/03, depending on benchmark review at that time).

Justice Sector Support Strategy

- USAID funds an experimental program to produce law reports
- USAID provides preliminary technical assistance to the judiciary on improvements on case management

Other Public Sector Support

As indicated above, there are conceivably other public institutional arenas that could become relevant and strategic under the rosy scenario, including local government, the Electoral Commission, the offices of the Auditor-General and the Attorney-General, the Kenya Anti-Corruption Authority. A re-evaluation will be done at the time of a mid-term review.

Funding Scenarios

The sectors have been listed in order of priority -- i.e., civil society, parliament, justice sector, and other public sector institutions. In terms of funding scenarios, a *low* funding scenario would permit primarily funding of civil society activities; a *medium* funding scenario, civil society and parliament; and a *high* funding scenario would permit commitments in those two areas and one or more other institutional arena, depending on the performance of the relevant institutions on USAID Kenya's benchmarks of independence and effectiveness.

Some Improvement, or the "Best Guess A" Scenario

This scenario assumes a slight improvement in the political-economic environment and justifies significant investment in civil society and modest investment in public institutions which can contribute to the achievement of the SO.

Civil Society

- USAID funds key NGOs providing input into parliamentary and justice sector information generation: examples as outlined above; *emphasis is put on media dissemination of the information.*
- USAID funds some membership CSOs representing members' interests in public fora: examples as outlined above; *emphasis is put on CSOs representing the interests of memberships relevant to USAID's other SOs*
- USAID funds CSOs working to prevent conflict around the electoral process

Parliament

- USAID funds workshops for MPs through relevant NGOs
- USAID funds NGOs providing information to parliamentarians on issues related to key legislation and to oversight of the Executive
- USAID monitors benchmarks, such as numbers of committee meetings, bills reported out, amendments or other committee output, CSO accessibility, and if warranted begins discussions with House leadership on staff development support.

Justice Sector

- USAID funds an effort through an NGO to produce law reports

No Change, or the "Best Guess B" Scenario

This scenario assumes no change from the political-economic environment as of this writing (June/July 1999) and justifies an investment strategy similar to the present civil society strategy, with increased focus on CSOs which target key public sector institutions as the consumers of their advocacy and information generation.

Civil Society

- USAID funds NGOs with specific, targeted policy interests, including natural resource management issues, legal sector reform issues, and economic policy issues
- USAID funds CSOs/NGOs with conflict identification, prevention and resolution agendas; *emphasis is put on monitoring and preventing pre-election conflict*
- USAID funds women's networking efforts and civic education providers, such as the church, which have broad grassroots constituencies

Parliament

- USAID funds workshops via appropriate NGOs but holds off on discussion of parliamentary staff development until after the election of 2002
- USAID funds CSO "think tanks" to produce information for MPs, working on the "alternative resource center" model i.e., a resource center outside of parliament which could provide a basis for a parliamentary resource center, but which is entirely outside of the ambit of parliament until and unless the environment improves.

Worst Case Scenario

The worst case scenario assumes significant deterioration in the political-economic environment. USAID's investment strategy in this circumstance would focus on CSOs that document economic and human rights situations and bring them to the notice of both the Kenyan public and the international community.

- USAID funds civil society organizations generating information on the human rights situation, on the economy and its impact on citizens' rights and living standards, and on conflict; *emphasis is put on a media strategy to ensure widespread dissemination of the information, both domestically and internationally.*
- USAID funds NGOs generating information and targeting it at parliament or the judiciary
- USAID/USIS pursue an international visitor program aggressively, including parliamentarians and key actors in the justice sector

DEVELOPMENT PARTNERS

The Mission has consulted closely with its development partners, who fall into three main categories, in formulating this strategy. These partners include other bilateral donors, multilateral donors such as UNDP and the Bank, and the NGOs with and through whom USAID implements its current strategy.

Bilateral Donors

USAID participates in three groups that coordinate the bilateral donors' activities in Democracy and Governance. These include the Donors' Democracy Group (DDG), a successor to the original group of bilateral donors which coalesced around the 1992 elections. This group is now attended principally by Embassy personnel from a wide range of countries and serves to coordinate political positions on democratic governance. The second is the smaller, "like-minded donors" group, comprising around 10 western donors with significant program activities in this area, who use the group as a mechanism for coordinating policy and dealing with specific implementation issues. They share information on the performance of specific NGOs and on grants to them, as well as discussing strategies and development hypotheses in more detailed a fashion than is possible in the DDG.

Finally, the Mission attends meetings of the EGG, the Economic Governance Group, which comprises the political counselors and economic officers from this same smaller group of countries, augmented by representatives of the Bank and the Fund. This group discusses economic policy and the impact on the economy of governance issues and programs. It has recently played a key role in decisions reached in bilateral donor capitals about levels and conditions of assistance to Kenya. Attending these groups' meetings aids the Mission in keeping abreast of opinion and development strategy on the part of key bilateral partners, as well as in playing a leadership role when relevant.

Several other bilateral donors were in the process of reviewing their own DG strategies as the Mission formulated this one. The following information is incomplete. However, some key bilateral donor DG foci are important in determining whether necessary complementary activities to USAID's specific IR's will be pursued.

British. The British Division for International Development (DFID) played a key role in the development of the coordinated strategy for funding and pursuing election observation in 1997, and has indicated it will continue to pursue this approach with respect to **civic education in advance of the constitutional reform process**. It considers such civic education an essential need. USAID is less convinced about the impact of large-scale civic education on such a broad issue, although in principle we support civic education, especially when narrowly and well-focused and professionally presented. DFID is also funding a public/private partnership among four legal sector NGOs and the Attorney General's Office, with the object of **developing a legal aid program**.

DFID is also pursuing a **pilot project with the Municipality of Mombasa**, funding technical assistance and financial support to the Municipality with one objective being the development of a capacity for productive incorporation of the private sector in municipal service provision. Finally, DFID is interested in **parliamentary support**. It has funded MP visits to the UK and

elsewhere in the past. DFID is a potentially very valuable partner in the pursuit of parliamentary strengthening. In general, USAID and DFID share many views about needed activities and productive program emphases.

Canada. Canada has in the recent past chaired the DDG. Its DG activities have been divided between funding for **NGO-sponsored civic education** and direct public support, primarily to **Executive agencies**, to improve efficiency and effectiveness.

Denmark. The Danes have traditionally strongly supported the NGO and CBO sector in Kenya, with an emphasis on women's organizations and human rights organizations. This emphasis is likely to continue. Denmark is committed to **civic education prior to the constitutional reform process**, and intends to pursue this through the same type of consortium that was used for the 1997 elections, which the Danes felt was very valuable.

Sweden. The Swedes are also committed to **civic education**. In the past, they have funded **human rights and legal sector NGOs**, particularly the women's legal sector organizations.

Germany. Germany provides assistance through GTZ, the German Technical Assistance organization, as well as several foundations -- in Kenya, the Friedrich Ebert Foundation (FES), the Konrad Adenauer Foundation (KAS), and previously the Friedrich Naumann Foundation. The German program has been heavily weighted toward political lobbying and representation, including direct support to **political parties** from the German party foundations, and to the **labor movement (informal sector organization)** and **local government**. GTZ presently supports the Small Towns Project in the Ministry of Local Government. GTZ also had a small project in the field attempting to provide **legal aid** in one district.

Japan. Japan is Kenya's largest donor. Japan's formal assistance in DG has been minimal, comprising primarily the supply of photocopying and other equipment for the joint diplomatic observation center in 1997. However, Japanese volunteers have been involved in programs that involve CBOs and NGOs in field programs. Japan has recently indicated that it feels the embargo on economic support funding is no longer appropriate, with the efforts the regime has made to liberalize politically and economically. Japan may be a more valuable partner in supporting direct public sector development important to USAID's DG strategy than in support to the strategy of demand creation.

There are other bilateral donors with smaller programs in DG in Kenya. The Dutch program is being terminated (although Dutch programs through Dutch NGOs may be an alternative.) Australia has growing interest in the area.

Summary. To summarize the foci of current bilateral programs, they are not dissimilar from USAID's. Most bi-laterals have supported NGOs that have been doing information generation and civic education programs, as well as legal sector NGOs. Women's organizations have been a major recipient of assistance. All of this assistance is aimed at the creation of an informed citizenry and ultimately at creating demand for democratic governance. Previous support to public sector institutions had diminished greatly by about 1995, and most missions are only now thinking through whether it should play a role in their strategies again. **(N.B. this does not mean**

that these bi-laterals have provided no public sector support; many do have programs in other development sectors with the responsible Government agencies, e.g. agriculture, cooperatives, water development.)

Multilateral Donors

The key multilateral donors are UNDP and the Bank. These are important partners in the DG arena.

UNDP has pursued a wide-ranging program in DG activities, including parliamentary support, justice sector activities, electoral support, civil society and conflict resolution activities. UNDP works directly with the Government of Kenya, unlike many bi-laterals. It is likely to continue to be interested in parliamentary and justice sector support, and has recent experience and "lessons learned" which USAID will find valuable in designing and implementing specific activities. UNDP's method of program development and funding, however, assumes considerable co-financing by other donors. Large differences in expectations about initial demonstrations of commitment make it difficult to envision situations in which UNDP and USAID could proceed this way, and many of UNDP's programs have been un-funded or drastically under-funded.

World Bank. The Bank is a lead donor in several sectors in Kenya and, like UNDP, works directly with the GOK. In DG, the Bank is attempting to bring about administrative and financial rationalization in the **local government sector** as an adjunct to its large urban transport rehabilitation loans. The Bank has been involved in this sector, mainly through loans for large-scale urban infrastructure, for a long time. No formal agreement to provide assistance in local government reform has been made, however. The Bank is also the (potential) lead donor in **justice sector reform** and is currently involved in discussions. If USAID were to become significantly involved in support to some element of justice sector reform, the Bank's partnership would be critical in coordinating activities and ensuring that complementary inputs and pursuits being assumed were actually provided.

Summary. The multilateral institutions are important partners in pursuing a DG strategy and program in Kenya. Both UNDP and the Bank work directly with the GOK, and thus can implement some of the complementary activities on which USAID's SO depends for its full achievement -- e.g., support to parliament generally, or to the judiciary, to produce greater effectiveness, while USAID pursues specifically the elements of parliamentary and judicial function focused on demand for accountable governance and oversight of the Executive.

NGO Partners. The NGO sector is large and varied in Kenya. It represents both a vehicle for USAID's pursuit of ultimate objectives, and a focus in itself for strengthening of citizen input into decision-making. A representative number of NGO partners were consulted during strategy formulation. The group expressed support for the idea of assistance to the parliamentary committee system, or other public institutions which could be legitimately involved in creating demand for effective governance. *The group also made forceful representations about the need for a greater emphasis on the dissemination of information, rather than focusing support only on NGOs involved in its creation.* They argued that USAID's strategy has neglected the vital need to get information out to both strategic elite and the wider audience involved in

creating demand for reform. The Mission will accordingly focus on the media requirements and implications of its DG investments, with assistance from USIS.

RELATIONSHIP OF THE SO TO THE AGENCY'S STRATEGIC FRAMEWORK

The Mission's strategy is responsive to the Agency's goals in respect of both the Strategic Objective and the program emphases and results it will pursue. While the program has been characterized as a "civil society" program in the past, the Mission views it as a strategy in pursuit of social consensus and ultimately the rule of law, with civil society as the principal **strategy** through which this objective is pursued. The Mission has moved away from an initial concern with support to the electoral environment and assistance, at the point of transition to a multi-party state, to a more fundamental concern with restoration of the rule of law, through creation of demand for accountable governance. The Mission views the most feasible strategy for doing this as still heavily involving civil society, but targeting strategic elites, some of whom also play significant roles in the public sector and ultimately in the supply, and the sustainability, of the reforms that re-establish a social consensus.

The Mission is responsive to the Agency's concern with conflict, which is an ever-present threat in the region. The Mission's program has incorporated conflict resolution activities through support to NGOs working in the areas of ethnic clashes. Activities pursued by other SOs have also incorporated efforts to eliminate or reduce conflict, e.g. through community involvement in natural resource management activities under SO2. These efforts to prevent or reduce conflict will continue.

The Mission's program is also responsive to the Agency's strong concern with the advancement of women's economic and political opportunities. Women's organizations are a strong focus of the civil society portfolio.

RELATIONSHIP OF THE SO TO THE OTHER SOs

The Mission's program contains synergies between the DG program and other SOs. The Mission will endeavor to strengthen these.

Health/Population. The health/population results the Mission pursues already interact with the parliamentary committee that deals with the Ministry of Health. Personnel from activities the Mission supports in health planning have been requested to testify in this committee on two occasions. The team assessing the potential for public sector investment was pleasantly surprised to discover this, as it provides first-hand confirmation of the utility of the parliamentary committee system as a channel for civil society input into the public sector. On the other side, the health/population sector managers were concerned that the DG strategy not involve politicization of such channels, and especially of the district health committees whose development they have painstakingly supported. They fear the invalidation of health sector issue lobbying if it is mixed with human rights lobbying and "civic education".

Natural Resource Management. The natural resources results that the Mission pursues have evolved to incorporate substantial community involvement in decision-making about resource

use. Communities have learned to devise "win-win" strategies, that is compromises, which have been a thorny problem for political forces at the national level. Pursuit of these results will continue to engage local citizens groups in hands-on training in democratic decision-making.

The sector is one of the most highly politicized in Kenya. Large-scale depredations of natural resources have been permitted, even facilitated, by the regime as a form of local patronage. Since ownership and regulation of many natural resources in Kenya is under the control of the County Councils -- e.g., forests, fisheries, and minerals of low value, such as sand -- the results the Mission will pursue in this SO could be jeopardized by unresponsive local governments. The activities will accordingly need to incorporate some strategies for approaching local governments, providing them with information, lobbying constructively for relevant by-laws.

MANAGEMENT AND RESOURCE IMPLICATIONS

USAID Kenya recognizes that it is proposing an ambitious program of activities in DG, one that we hope will increase substantially over the period of the next country plan in line with an improvement of the political environment. At present, the Mission's DG section is fully occupied managing a large civil society portfolio. Even with no increase in program there is an existing gap in evaluation of performance of civil society grantees. With any increase in the program, particularly an increase by means of a public sector investment, such as parliament, existing resources will be inadequate. Since the management burden could not be borne with existing personnel, some alternatives need to be considered.

If there is no increase in budget, the in-house method for management will likely remain the same, although the Mission is seriously considering seeking a local firm to handle key administrative managerial tasks, leaving the Mission's staff freer to do a more adequate job of monitoring and evaluation, which is critical to optimal long-term impact. If a budget increase occurs and a parliamentary effort is initiated, even giving it entirely to a contractor via an IQC mechanism would not take care of the need for in-mission assistance with monitoring and evaluation, especially if the civil society program remains at the same level.

The Mission's greatest need is not for straight administrative management, for which the existing capacity is sufficient, but for technical assistance with the development and maintenance of a monitoring system for the benchmarks that have been identified to guide programming decisions, as well as a monitoring and evaluation system for the civil society portfolio.

USIS is an important resource on which the Mission relies for assistance with DG activities. The Mission hopes to increase the coordination and targeting of USIS and USAID activities in pursuit of the DG SO.

1. Katumani maize and other drought-tolerant crops developed on Kenya's research stations are an important contribution to food security in the area. The agricultural training and research programs at Egerton College, with significant USAID funding, have an equally long-term implication for food security. Capacity building in the Ministry of Agriculture and a functioning early warning system are further contributions. On the health side, a several-decades long effort to introduce reliable, systematic family planning services has contributed significantly to the decline in unsustainably high fertility rates which threatened Kenya's social welfare gains in the 1980s.
2. The debate on this issue is voluminous and contentious. It has the flavor of a "Which came first, the chicken or the egg?" debate. Those who believe economic development must precede and "lead" democratization have put considerable emphasis on the 'Asian miracle', which has recently become tarnished. Those who argue democracy must be established in order for the motivations that guide economic development to take root have equivalent problems with empirical evidence. Neither perspective deals very well with the main intervening variable -- the distribution of income, and the factors mediating that distribution -- which clearly influence both political stability and economic accumulation. Since the skewed distribution of economic resources and income is so important in Kenya, it is not particularly helpful to take either one of these opposed positions. Kenya is a good example of the ways in which democratic governance and economic development interact, and of the fact that the latter cannot be pursued or maintained without attention to the former.
3. Two other central stakeholders, the British Foreign Office and the settler community itself, should be factored in for a detailed, accurate picture of the independence negotiations. See Wasserman, Gary, Politics of Decolonization: Kenya Europeans and the Land Issue, 1960-65, Cambridge University Press, African Studies Series, London, 1976, for a discussion of these negotiations.
4. For a good, neutral summary of that period, which is universally known as the "mau mau" era, see Rosberg, Carl and John Nottingham, The Myth of Mau Mau: Nationalism in Kenya, which debunks the colonial "myth" of mau mau as a primitive movement and places it squarely within the ambit of modern, post-war nationalism. Interpretations previous to this account -- which was researched during the mau mau period itself -- portray it as a primitive, nativist movement, while those subsequent to it play up class analysis and the issue of social origins. There is a massive literature on this phenomenon. The final word has not yet been written, since some of the documents have still not been made public.
5. Mkapa, Christine, "The People and Their Constitution", in Wanjala, Smokin and Kivutha Kibwana, eds., Democratization and Law Reform in Kenya, Claripress, Nairobi, 1997.
6. One other, Pia Gama Pinto, a radical Asian member of Parliament, was killed in 1965. Ronald Ngala, the dean of coast politics, died in a mysterious car crash in late 1972, in which his driver was not injured and gave widely conflicting reports of what happened during subsequent investigation. J. M. Kariuki, a populist politician who opposed the specific biases in Kenyatta's patronage politics and hoped to build a support base on his opposition, was murdered in 1975.
7. At the time of Kenyatta's death in 1978, Uganda had been through ten years of economic disaster and political violence, with Idi Amin's final depredations shocking the world; Somalia had had a military coup; Ethiopia had seen Haile Selassie overthrown and a Marxist regime of extremely sanguinary nature take his place; Tanzania had gone through the mill of "ujamaa", a radical (though non-Marxist) socialism that no one but Julius Nyerere ultimately believed in, with the economy being returned virtually to subsistence; and the Sudan was in a period of uneasy quiescence, as Jaafar Nimeiri's military government imposed intolerable religious and social burdens on the south. Kenya was seen as an important bulwark against communism, on the one hand, and anarchy, on the other, an important position as American political and economic interests in the Middle East were increasingly jeopardized.
8. See Karimi, Joseph and Philip Ochieng', The Kenyatta Succession, TransAfrica Book Distributors, Nairobi, 1980, for an account of the politics of this period, including the "change the constitution" movement and its alleged attempts to prevent Moi's accession to the presidency.
9. See Widner, Jennifer, The Rise of a Party-State in Kenya, University of California Press, Berkeley and Los Angeles, 1992, for this argument. Moi's agility in forming political alliances and commanding allegiance was most easily expressed in the party, while the arenas that Kenyatta had used -- the provincial administration and secondarily the parliament -- required major manipulation, and ultimately had to be sidelined, because they remained a threat to Moi's support base.

10. See Leys, Colin, Underdevelopment in Kenya, University of California Press, Berkeley/Los Angeles, 1973 for a comprehensive discussion of the structure of the settler economy and the manner in which it was inherited by and structured post-colonial social classes.
11. Africa Watch, Kenya Taking Liberties, Human Rights Watch, New York/London, 1991, chap. 6 (Torture) describes victims' accounts of torture from the period just prior to the multi-party opening. The accounts from those convicted in the mid-80s are similar.
12. Another telling index of the latter is the statement of the former Attorney General, Matthew Muli, who is reported in the Daily Nation of Aug. 21, 1990 (a month and a half after the saba saba rally), as saying "I wish to state that no one *except the president* is above the law. Kenya believes in the rule of law and everyone is equal before the law." (emphasis added) This captures in a nutshell the conundrum posed by the confrontation between personal rule and the rule of law in Kenya.
13. For an extensive discussion of the origins and consequences of personal rule, see Jackson, Robert and Carl Rosberg, Personal Rule in Black Africa, University of California Press, Berkeley and Los Angeles, 1982.
14. Jackson and Rosberg, op. cit., p. 19.
15. See Wanjala, Smokin and Kivutha Kibwana, Democratization and Law Reform in Kenya, Claripress, Nairobi, 1997, for a description of both the erosion of the present constitution and the types of constitutional and legal reform that are needed to stem this erosion and reconstruct a viable social contract.
16. Robert Kaplan, in "The Coming Anarchy.....", Atlantic Monthly, 1992 ?, paints a grim picture of the future in most of the Third World, as old ideas of nationality and nation-states fall under the pressure of ethnicization, irredentism, and large-scale migrations.
17. Kenya DG assessment and strategy recommendations, 1995; mid-term review, September, 1998; institutional assessment, May, 1999.
18. Mpaka, Christine, "The People and Their Constitution", in Wanjala, Smokin, and Kivutha Kibwana, Democratization and Law Reform in Kenya, Claripress Ltd., Nairobi, 1997.
19. The most famous exposition of this argument is perhaps the treatment of "corruption" vs. "honest graft" in William L. Riordan's Plunkitt of Tammany Hall, (E. P. Dutton, New York, 1963), which argues for the viability of a form of "insider" knowledge/honest graft, as opposed to the corrosive effects of "dishonest graft", depicted as a simple ripping off of the public coffers with no resultant stimulus to economic growth. Kenya's current situation unfortunately involves the latter, with the massive abuse of the public contracting process that Ugandans refer to as "supplying air".
20. See Barkan, Joel, "The Rise and Fall of a Governance Realm in Kenya, in Goran Hyden and Michael Bratton (eds.), Governance and Politics in Africa, Lynn Rienner, Boulder/London, 1992, on the evolution of electoral politics in Kenya from competitive one-party politics to the farce of the 1988 election. See also Throup, David, and Charles Hornsby, Multi-Party Politics in Kenya, James Currey, London, 1998.
21. This was not a prominent aspect of the Kenyatta regime, despite the fact that Kenyatta, too, was a "personal ruler". For Kenyatta, elections served a vital function in demonstrating who the bona fide leaders in a community were. Moi has tended instead to identify those he can most easily work with -- those who are most obviously "loyal" or subservient -- and to impose them on communities who may not respect their leadership at all.
22. It should be recalled that during the latter Kenyatta era, during the political machinations of the "change the constitution" movement (orchestrated by a strongly Gikuyu-based group which wanted to change the constitution to ensure that Moi -- a particular person -- did not accede to the presidency upon the death of Kenyatta -- a person), the then-Attorney General, Charles Mugane Njonjo, who retired from public life in disgrace in 1983 after being tied indirectly to the 1982 coup plots and who has now returned as the Chairman of the Kenya Wildlife Services, averred at the time that it was treason to "imagine the death of the President." The strength of the values expressing *personal rule* are strong, deeply-rooted and universally understood in Kenya, whereas the governance model of the "rule of law" is not.
23. "Professional associations" covers a wide territory. They could be increasingly important contributors to the specific identification and production of reforms needed, since many such reforms relate to areas that do not have political implications. Professional associations include medical (doctors, nurses, clinicians, midwives), legal (lawyers, justices, magistrates, arbitrators), educational (primary and secondary teachers, university professors, technical training institutions' instructors), financial (accountants, auditors, bankers, bank tellers), and business-

related professions (architects, surveyors, engineers, manufacturers, importers/exporters).

24. See the Mission's institutional capacity assessment, which included an overview of the justice sector, done in May, 1999.

25. Daily Nation, August 9, 1999; "In a scathing attack at a workshop organised by the association [Magistrates and Judges Association, Nairobi region] in Nairobi last Saturday, the more than 40 magistrates from Nairobi, Thika and Kiambu said the High Courts often quashed their rulings -- and even acquitted convicts -- without giving reasons. "They have promoted corruption in the judiciary. We feel intimidated when those we send to jail come back to mock us", the magistrates said.

26. See the mid-term review, September, 1998.

27. Kenya's Democratic Transition: A Strategy for USAID's Continued Support, MSI contract for USAID, June, 1999.

APPENDIX I

Conflict Vulnerabilities and USAID Programming

Conflict has been an increasing and evident problem in central and East Africa and the Horn. Both internal and external sources of vulnerability to conflict confront Kenya. They are not completely separate since border conflicts and refugees from external conflicts spill over and can trigger or exacerbate internal conflict.

Sources of Conflict

EXTERNAL

Somalia. Conflicts on the northern and northeastern borders, involving Somalia and Ethiopia have spilled over into Kenya. There is uncertain GOK control in large portions of the territory of northeastern province. There have been external raids into Kenyan territory and attacks on Kenyan populations which the GOK has had difficulty to repel or deter. The GOK has a difficult task; the population of the whole of the Northeastern Province are ethnic Somalis but Kenyan citizens, indistinguishable from the cross-border Somali populations. The security services have frequently operated indiscriminately in retaliating for Somali incursions, suspecting local groups of aiding and abetting clansmen from Somalia. Arms smuggling into Kenya from this area and these external conflicts has become a serious problem internally, feeding a local weapons trade and directly contributing to insecurity in Nairobi. Guns greatly increased at the time of the fall of Idi Amin and the capture of the Moroto armory, as well as with the early-90s destruction of the Somali state and the introduction of clan-based warlordism.

Ethiopia. Recent extension of conflict in the Horn into a three-cornered fight, with Ethiopian forces using Kenyan territory to stage attacks against the Oromo Liberation Front (which Ethiopia claims is being given shelter in Kenya by ethnic Oromo) complicates the situation further.

Uganda. On the northwestern border with Uganda, a more traditional cross-border conflict has flared recently in the form of cattle raiding between the Pokot and the Turkana, on the Kenyan side, and the Karimojong on the Ugandan side.

One improvement in the cross-border situation is the apparent dissipation of Kenyan-Ugandan tension, which periodically in the past has led to mobilization of the security forces on both sides of the border and a tense stand-off for brief periods, related to strong suspicions in both countries that the other was sheltering, and perhaps providing staging grounds, for dissidents ready to overthrow the incumbent regimes. This phenomenon has receded, hopefully permanently as the three countries in the region attempt to reconstruct the basis for economic and political cooperation.

Refugees. A source of tension and conflict in the region as a whole is the abundance of refugees, whose numbers have grown alarmingly with the regional conflicts. These are not precisely an external source of vulnerability to conflict, since by their nature they are internal -- the internalization of the regional conflicts outside a country's borders. In Kenya's case, the refugee population has been both sizable and problematic. In the case of Somali-refugees, whose numbers began to increase dramatically in the mid- and late 80s, they are reputed to be disproportionately from the clans who provided the bulk of support for Siad Barre. While in some cases this might lead to undue pressure on a government such as Kenya's to take sides in a neighboring civil war, this has been less of a problem than the connection of well-off

refugees to an explosion of the arms trade in Nairobi, and the exacerbation of local clan conflicts in northeastern Kenya by the influx of these refugees, some of whom migrate back and forth across the border.

INTERNAL

Internal vulnerabilities to conflict are more important than the external sources.

State-sponsored ethnic clashes. While the government of Kenya denies that it was in any way involved in these clashes, the ongoing Akiwumi Commission hearings and the independent research done on them indicates strongly that high-ranking regime supporters have been involved. They could be reinstigated, especially around the election period, if the regime's hold on power seems shaky to key actors.

Populations in the Rift Valley are especially vulnerable, but so are populations in the "swing" electoral areas, i.e. areas where the GOK is competing for votes with opposition alternatives, (as opposed to the areas where the KANU hold is solid, or where the opposition is solidly entrenched). In these vulnerable areas, nearby pro-KANU communities may be used to ignite trouble and to attempt to strike fear into the "swing" voters, to chase them out in order to lower the opposition's vote, and to discredit "multi-partyism" generally. Mutiso¹ discusses these in terms of "ethnic entrepreneurs"; it is not the case that these clashes generate spontaneously, but rather that they are incited by those who stand to gain from them. If "ethnic entrepreneurs" can be muzzled, this source of conflict could be moderated and eventually minimized. Muzzling them would require at a minimum:

- _ strong statements from the regime rejecting this use of ethnic manipulation, plus several examples made of the individuals who are making ethnicized appeals. These would include several staunch regime supporters, but no doubt one or two on the opposition side as well. It would include also lesser known individuals who are locally identified as being involved, particularly some chiefs. Sacking them is the only effective sanction.

- _ strong statements from the Embassy about the dangerous trend of ethnicization and ethnic entrepreneurs as an obvious danger for triggering unmanageable conflict, referring to the copious evidence provided by the region. The Embassy might also point to "ethnic entrepreneurship" in the US and its correlation with corruption in previous eras, and with violence against racial and immigrant minorities in this era. (It is useful to draw parallels to US experience in order not to be perceived as preaching on the basis of little or no first-hand experience.)

There are ongoing conflict resolution efforts to which donors can contribute, but only if they: are based on local initiatives, including some significant local funding, and incorporate the important civil society stakeholders, which are more likely to be Islamic groups than NGOs in many of these areas. Cross-border conflict is especially difficult, and requires both provincial and district administrations be involved. Training of district, provincial, police and armed forces officers on conflict resolution skills, local customs, etc. is a viable donor intervention. Women's roles in conflict resolution in this area, similar to what was the case in the Teso area of Uganda, is potentially very important. Women have a natural "mediation" skill and role, can initiate discussions (which will then have to involve the elder on both/all sides).

Political conflict -- that is, state-inspired conflict, especially around the time of the elections, is particularly difficult to deal with since the proportion of non-local hired hands is significantly greater, and they have no stake in resolution; rather the reverse.

Northern Rift Valley “cattle rustling” and retaliation raids are another key conflict vulnerability. These involve the ethnic groups that form the core of the incumbent regime, are perpetrated with significant amounts of modern weaponry, and have reportedly become more deadly than in the historical tradition.ⁱⁱ This source of conflict has become much more prominent and dangerous than it was at the time of the Weeks/Young assessment.ⁱⁱⁱ An unbridled war appears to have broken out between the Pokot and the Marakwet. At times it has appeared that the state has significantly favored the Pokot, for example through the disarming of the Marakwet without a corresponding disarming of the Pokot. (The Marakwet have reportedly rearmed recently.)

Cattle raiding has been described in the anthropological literature as a significant part of the culture of Kenya’s pastoral peoples. Cattle raids have traditionally provided young men with a means to test their prowess, and to acquire the cattle necessary for the dowry they need to acquire brides.

In the present era, the raids appear to have become increasingly commercial. Raiding is reportedly being sponsored by wealthy individuals in the affected areas, some of them politically prominent, and the spoils of the raids are quickly moved out of the area and sold into the national market. Unlike the case in the colonial era, during which restocking was a traditional motivation for a raid, raids at present based on commercial motivations do not serve to redistribute cattle to areas hard hit by drought. Since the cattle are raided for commercial purposes, they are no longer available for “redistribution” within the traditional systems. The raiding with this commercial outlet, instead of balancing wealth and capital accumulation, impoverishes pastoral peoples permanently, reducing them to a life of destitution as they try to eke a living out of semi-settled subsistence activities, or welfare dependency in temporary settlements where donors provide aid, or eventual migration into periurban squatter areas.

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The motivation for raiding is therefore important in assessing the prognosis for redress, but raiding is not a “pure” phenomenon that remains within an artificial classification system. The typology of “traditional”, “commercial” and “political” conflict, while it points to differing causes and motivations for conflict, says little about the requirements for conflict resolution mechanisms, since the cause of a conflict is quickly overwhelmed by the incorporation of the conflict into traditional patterns, local antagonisms, other fights, and the evolution of clan and factional political strategies in the modern era.

Domestic violence against women and children are another important issue which has received considerable attention in the press recently. The deterioration of the economy promotes this form of violence. The AIDS epidemic has also spurred an exploitive sexual use of children by middle-aged males. Neither of these is “conflict” in the traditional sense, but they either promote or constitute a form of violence. Deteriorating household income levels has a negative impact on household integrity and

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Urban squatter communal conflict between differing ethnic groups, both over access to resources and over symbolic issues, including political identification, present an increasing danger in urban and peri-urban areas, particularly but not solely Nairobi. In Nairobi inter-communal conflicts have sometimes continued for days, generally sparked by an attack on a young male in one community by others, and frequently triggered by suspicions of thuggery or thievery by the person or persons attacked (who are generally killed.) The lack of city administrative infrastructure contributes to the danger of this type of conflict. There appears to be no effective early warning system or administrative means to head it off or deal with it.

The degree to which it is manipulated from outside, as with ethnic clashes in the rural areas, is not clear. On several occasions around the electoral period it has clearly been incited by political forces. It is also clear that there are a few key inciters who have the capacity to mobilize large numbers of hooligans. These particular outbreaks are not generated by the inevitable difficulties of poverty and resource access in urban areas but by urban "ethnic entrepreneurs".

Police Ineffectiveness and Corruption are another serious problem. Not only do the police have little ability to quell conflict, but they frequently spark conflict by inaction or repressive action, rather than containing it. This is not going to stop until the entire police structure and personnel are reformed. Police are widely reported to be involved in syndicates, in raids for robbery, and in bank robberies, in which a number of police officers have been caught. The Commissioner of Police recently admitted as much and documented a few recent instances. While he professes commitment to the task of reversing the deterioration of the police force, the task is daunting.

Mob justice and vigilantism are a worrisome phenomenon that do nothing to minimize conflict. While mob violence/justice in Nairobi has been a problem for a long time, there appears to be an increase in rural vigilantism, based on the lack of police effectiveness and on increasing levels of insecurity and petty crime in urban and peri-urban areas, which have prompted self-help responses as the only recourse. Not a single week goes by without reports of a lynching of some sort, frequently in the peripheral areas around Nairobi. Vigilantism and mob justice amount to a complete rejection of the rule of law, an affirmation that the rule of law is ineffective, *although these may in fact be a rational response on the part of beleaguered citizens to the decay of the institutions of law, order and justice.*

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suspended all recent land allocations, but it remains to be seen whether any effective measures to enforce this or to sort out legitimate from illegitimate claims will be implemented. Irregular sales by councils to private individuals has resulted in the development of "land invasion" techniques on the part of high profile politically-oriented advocates, e.g. Wangari Maathai and Paul Muite, who have led urban squatters and concerned citizens to tear down fences and even buildings put up on land grabbed from the councils or from those with traditional residence rights.

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Succession. The succession struggle is heightening ethnic competition and struggle. Violence from this source cannot be discounted, depending on the succession scenario that unfolds in 2002. It should be recalled that, while there were widespread predictions before the fact that there would be unrest at the time of Kenyatta's death, in fact nothing happened. Similarly, both in 1992 and 1997 there were dire predictions in some quarters of widespread violence around the elections. While there were unacceptable incidences of violence on the campaign trail, as well as the ominous ethnic clashes, the elections themselves were peaceful. This doesn't mean that there is a high probability of a peaceful succession, but it may suggest that there are forces acting for stability that need to be identified and nurtured.

Summary. Priority among these potential sources of conflict in the previous country program and its supporting documentation^{iv} was placed first and foremost on the Northern Rift clashes and secondly on conflict in the other northern and pastoral areas. Weeks and Young recommended that the Mission develop early warning systems and continue to fund, or ideally to increase funding for, NGOs doing conflict resolution work in these areas. The present analysis suggests that priorities have changed somewhat.

Ethnic clashes, while certainly the most significant source of conflict relevant to donor aid, have receded as the 1997 election fades but could be re-instigated in 2002 if no political accommodation has been reached between the governing party and the opposition, and the governing party thus felt itself threatened with defeat. On the other hand, northern Rift conflict in the form of what are ostensibly cattle raids is very disturbing, as is the lack of effective response by the security services. As this threatens to

tear apart the core of the incumbent regime's own support base, it could have serious negative repercussions on regime stability.

Northeastern Province conflict is also very disturbing, although as the previous conflict study argued, it doesn't affect central Kenya. Human rights issues involving the army's response to the problems in the region are serious, however. They could easily place Kenya in the position of being a central focus of international watch groups again. This ultimately has an impact on the willingness of the international community to provide assistance to Kenya.

Land issues continue to be significant to nearly all Kenyans. Presently they are more likely to trigger conflict between the police (or thugs hired by urban land usurpers) and the groups which are trying to publicize the irregular allocations and grabbing, than between communities. Encroachment on pastoral land in the semi-arid areas, a key issue in the previous conflict assessment, has certainly led to degradation of the environment, but its potency in precipitating inter-communal conflict seems overrated. It may be that such encroachment is experienced by individuals, serially, rather than by communities at one time; it may be that divisions and suspicions within the communities affected prevent unified responses that would support overt conflict. Whatever the reasons, the most visible conflict related to land issues is urban and peri-urban, extra-legal land grabbing -- and the extra-legal reactions to it adopted by high profile political actors.

Urban communal violence, and *peri-urban vigilantism*, are likely to continue as economic deterioration and corruption reduce resource access for large, already impoverished urban communities. Continued immigration of refugee populations from the region's other conflicts, and the continued influx of sophisticated weapons, set the scene for ominous types and levels of conflict. While such conflict in squatter areas does not necessarily have a high price tag in terms of the immediate economic costs (little infrastructure being available in those areas to damage), the true cost must be calculated in terms of the strong deterrent such visible urban conflict presents to investment, both domestic and foreign.

Election violence is likely to continue because of the critical nature of the election of 2002, amounting to a significant transition which will be very hard fought by a regime aware of its minority status (all professions to the contrary notwithstanding) and an opposition increasingly aware of the legal limitations and constraints on competition.

POTENTIAL IMPACT ON USAID'S PROGRAM

Conflict in Kenya could have an impact on USAID Kenya's program. Three areas are particularly relevant.

Land tenure issues and insecurities, a traditional concern and source of conflict and one which many Kenyans consider key, are relevant to USAID Kenya's Strategic Objective in increasing agricultural production, specifically in increasing marketable surpluses. Marketable surpluses of food crops are only likely to be achieved if security of tenure is at least sufficient to persuade farmers that they can make the investments in land improvements and fertilizer that produce such surpluses. In some areas, particularly those parts of the Rift Valley where ethnic clashes have chased populations out and their return is slow, security of tenure is a key concern.

This is doubly important an issue for Kenya to deal with in a rapid and forthright manner, since these are the areas of greatest agricultural potential, the areas from which marketable surpluses **must** increase to ensure long-term food security. Immigration of peoples from other parts of Kenya -- notably Central

Province -- to take advantage of the land potential is in fact causally related to the ethnic clashes; without agriculturally-inspired immigration, these clashes would not have occurred.

Similarly, in areas where semi-arid lands are being encroached on by expanding populations moving off of densely populated land, such as the Kitui and Kisii border areas, there are thorny issues of land tenure and access between pastoral peoples and expanding agricultural populations. Increasing the agricultural production and marketable surplus of these populations is seen as critical to stabilizing their movement and protecting the land. Without an increase in marketable surpluses, the investments in human labor and infrastructure needed to protect these fragile environments will not be forthcoming. However, conflict over land access and rights may continue to impede the necessary investments and surpluses.

Land and other natural resource allocation and access in the ecosystems outside the national parks can have an impact on the achievement of USAID Kenya's Strategic Objective in natural resource management. Conflict over resource allocation and use could impede the activities planned for this Strategic Objective. Since many of these natural resources are owned and regulated by the County Councils, conflict in the councils could spill over and negatively affect the program.

Ethnic clashes and electoral conflict could prevent the mission from working with the relevant public sector institutions to try to forge consensus on a reform agenda. While these are sporadic rather than constant, and seem to have been engineered by what Mutiso has called "ethnic entrepreneurs", they could become important before the elections of 2002 and could curtail the activities and intermediate results planned in the mission's DG strategy.

USAID/KENYA'S PROGRAM RESPONSES TO CONFLICT VULNERABILITY

USAID Kenya has confronted some of these important sources of conflict previously, particularly those relevant to the mission's program. The mission has worked closely with GHAI's office in Nairobi to incorporate the main elements of conflict prevention strategy into the program. The main elements of the program directed at conflict prevention and resolution are:

Agricultural Production. The increased production of marketable surpluses is meant to reduce conflict, which is seen to be a constant problem in areas prone to food insecurity. Food security is a cornerstone of conflict prevention in the region, and USAID's program addresses this need.

Famine and Early Warning System (FEWS). The Famine and Early Warning System provides information on food crop production as the crops mature, giving the Government significant advance warning of shortfalls that allow it to make policy decisions in a timely and rational manner, from decisions about whether to sell food out of the reserve stock, to pricing decisions, to decisions to import food.

Natural Resource Management. Activities in support of local communities' control of natural resources, both inside and outside national parks, are targeted at reducing conflict over resource access and management. These activities are aimed at providing an economic return to the communities from environmentally sound management of the resources, preserving them for the use and benefit of others as well, and thus reducing the conflict induced by competitive access and exploitation.

NGO Conflict Prevention Efforts. The mission is addressing the issue of ethnic clashes through support for groups that are engaged in conflict resolution and prevention. Some of these are attached to the mainstream churches, which have taken an active role in attempting to resettle clash victims, induce others to return to areas that have been secured, and provide basic resources with which to restart farming efforts. The groups are engaged in training of local leaders to recognize incipient signs of intercommunal conflict, to involve local citizens in role playing and other exercises that equip them with the tools to

resist manipulations from outsiders, and to begin reconciliation efforts early and effectively in affected areas.

LESSONS LEARNED

Lessons learned during the current country program include:

- _ Elections heighten conflict potential
- _ Conflict resolution initiatives and mediation are useful in areas where conflict is internally generated, but may be less useful where it is externally generated; documentation may be equally important in finding the truth and achieving long-run reconciliation
- _ Regional conflicts will continue to have important spill-over effects on Kenya, including those generated in Somalia, Ethiopia, Uganda, and possibly even Sudan, although Sudanese conflict has not presented a serious problem for Kenya in the past. Kenya's tendency to harbour refugees from the repressive regimes in the region will continue to stand in the way of fuller economic integration
- _ Natural resource management needs and activities have a necessary and important component of governance, and must be inclusive of the local communities to have any chance of success
- _ Some "technical fixes", such as the Famine and Early Warning System (FEWS) **can** have an important impact on the potential for improved food security and stability without becoming enmeshed in politics. (It is not clear that the **long-term** policy decisions that need to be taken on the basis of the information generated by an early warning system are any likelier than the decisions needed to combat corruption; the two are related.)

ⁱ Mutiso, Cyrus,

ⁱⁱ Kratli, Saverio and Jeremy Swift, "Understanding and Managing Pastoral Conflict in Kenya: A Literature Review", IDS Sussex, 1999 The authors indicate that the literature does not present strong evidence for the view that the raids are more deadly -- and they detail the depredations of "traditional" raiding, which has become romanticized -- but they agree that the belief in this increased deadliness is widespread.

ⁱⁱⁱ Weeks, Willet and Crawford Young, "Conflict Management in Kenya", for USAID Kenya, February, 1996

^{iv} Weeks, Willet, and Crawford Young, op cit.

APPENDIX I

Conflict Vulnerabilities and USAID Programming

Conflict has been an increasing and evident problem in central and East Africa and the Horn. Both internal and external sources of vulnerability to conflict confront Kenya. They are not completely separate since border conflicts and refugees from external conflicts spill over and can trigger or exacerbate internal conflict.

Sources of Conflict

EXTERNAL

Somalia. Conflicts on the northern and northeastern borders, involving Somalia and Ethiopia have spilled over into Kenya. There is uncertain GOK control in large portions of the territory of northeastern province. There have been external raids into Kenyan territory and attacks on Kenyan populations which the GOK has had difficulty to repel or deter. The GOK has a difficult task; the population of the whole of the Northeastern Province are ethnic Somalis but Kenyan citizens, indistinguishable from the cross-border Somali populations. The security services have frequently operated indiscriminately in retaliating for Somali incursions, suspecting local groups of aiding and abetting clansmen from Somalia. Arms smuggling into Kenya from this area and these external conflicts has become a serious problem internally, feeding a local weapons trade and directly contributing to insecurity in Nairobi. Guns greatly increased at the time of the fall of Idi Amin and the capture of the Moroto armory, as well as with the early-90s destruction of the Somali state and the introduction of clan-based warlordism.

Ethiopia. Recent extension of conflict in the Horn into a three-cornered fight, with Ethiopian forces using Kenyan territory to stage attacks against the Oromo Liberation Front (which Ethiopia claims is being given shelter in Kenya by ethnic Oromo) complicates the situation further.

Uganda. On the northwestern border with Uganda, a more traditional cross-border conflict has flared recently in the form of cattle raiding between the Pokot and the Turkana, on the Kenyan side, and the Karimojong on the Ugandan side.

One improvement in the cross-border situation is the apparent dissipation of Kenyan-Ugandan tension, which periodically in the past has led to mobilization of the security forces on both sides of the border and a tense stand-off for brief periods, related to strong suspicions in both countries that the other was sheltering, and perhaps providing staging grounds, for dissidents ready to overthrow the incumbent regimes. This phenomenon has receded, hopefully permanently as the three countries in the region attempt to reconstruct the basis for economic and political cooperation.

Refugees. A source of tension and conflict in the region as a whole is the abundance of refugees, whose numbers have grown alarmingly with the regional conflicts. These are not precisely an external source of vulnerability to conflict, since by their nature they are internal -- the internalization of the regional conflicts outside a country's borders. In Kenya's case, the refugee population has been both sizable and problematic. In the case of Somali refugees, whose numbers began to increase dramatically in the mid- and late 80s, they are reputed to be disproportionately from the clans who provided the bulk of support for Siad Barre. While in some cases this might lead to undue pressure on a government such as Kenya's to take sides in a neighboring civil war, this has been less of a problem than the connection of well-off

refugees to an explosion of the arms trade in Nairobi, and the exacerbation of local clan conflicts in northeastern Kenya by the influx of these refugees, some of whom migrate back and forth across the border.

INTERNAL

Internal vulnerabilities to conflict are more important than the external sources.

State-sponsored ethnic clashes. While the government of Kenya denies that it was in any way involved in these clashes, the ongoing Akiwumi Commission hearings and the independent research done on them indicates strongly that high-ranking regime supporters have been involved. They could be reinstigated, especially around the election period, if the regime's hold on power seems shaky to key actors.

Populations in the Rift Valley are especially vulnerable, but so are populations in the "swing" electoral areas, i.e. areas where the GOK is competing for votes with opposition alternatives, (as opposed to the areas where the KANU hold is solid, or where the opposition is solidly entrenched). In these vulnerable areas, nearby pro-KANU communities may be used to ignite trouble and to attempt to strike fear into the "swing" voters, to chase them out in order to lower the opposition's vote, and to discredit "multi-partyism" generally. Mutiso¹ discusses these in terms of "ethnic entrepreneurs"; it is not the case that these clashes generate spontaneously, but rather that they are incited by those who stand to gain from them. If "ethnic entrepreneurs" can be muzzled, this source of conflict could be moderated and eventually minimized. Muzzling them would require at a minimum:

- _ strong statements from the regime rejecting this use of ethnic manipulation, plus several examples made of the individuals who are making ethnicized appeals. These would include several staunch regime supporters, but no doubt one or two on the opposition side as well. It would include also lesser known individuals who are locally identified as being involved, particularly some chiefs. Sacking them is the only effective sanction.
- _ strong statements from the Embassy about the dangerous trend of ethnicization and ethnic entrepreneurs as an obvious danger for triggering unmanageable conflict, referring to the copious evidence provided by the region. The Embassy might also point to "ethnic entrepreneurship" in the US and its correlation with corruption in previous eras, and with violence against racial and immigrant minorities in this era. (It is useful to draw parallels to US experience in order not to be perceived as preaching on the basis of little or no first-hand experience.)

There are ongoing conflict resolution efforts to which donors can contribute, but only if they: are based on local initiatives, including some significant local funding, and incorporate the important civil society stakeholders, which are more likely to be Islamic groups than NGOs in many of these areas. Cross-border conflict is especially difficult, and requires both provincial and district administrations be involved. Training of district, provincial, police and armed forces officers on conflict resolution skills, local customs, etc. is a viable donor intervention. Women's roles in conflict resolution in this area, similar to what was the case in the Teso area of Uganda, is potentially very important. Women have a natural "mediation" skill and role, can initiate discussions (which will then have to involve the elder on both/all sides).

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Elections. Electoral violence was serious in both 1992 and 1997, with perhaps some improvement in 1997. It included attacks on candidates from opposing parties attempting to speak and develop support in an area where another party was dominant. It also included the mobilization of youth wings of the parties to attack those perceived as outsiders in various areas, and to declare the areas off limits to all but the dominant party there. This was evident in the "KANU zones" in 1992, but began even then to occur in Nyanza, and was evident in some parts of Central Province, in the Rift Valley, in Nyanza, and in some of the core FORD-K areas in 1997.

Youth wingers are the main problem. A code of party discipline over youth wingers, with sanctions affecting the fortunes of the parties involved in the elections, might be an approach to this. Progress would depend on effective sanctions for electoral violence. Sanctions currently fall between the Electoral Commission (which makes recommendations to parliament on electoral laws, including the declaration of such violence as an election offense) and the police, who have seemed uninterested in or incapable of arresting and prosecuting the culprits.

Succession. The succession struggle is heightening ethnic competition and struggle. Violence from this source cannot be discounted, depending on the succession scenario that unfolds in 2002. It should be recalled that, while there were widespread predictions before the fact that there would be unrest at the time of Kenyatta's death, in fact nothing happened. Similarly, both in 1992 and 1997 there were dire predictions in some quarters of widespread violence around the elections. While there were unacceptable incidences of violence on the campaign trail, as well as the ominous ethnic clashes, the elections themselves were peaceful. This doesn't mean that there is a high probability of a peaceful succession, but it may suggest that there are forces acting for stability that need to be identified and nurtured.

Summary. Priority among these potential sources of conflict in the previous country program and its supporting documentation^{IV} was placed first and foremost on the Northern Rift clashes and secondly on conflict in the other northern and pastoral areas. Weeks and Young recommended that the Mission develop early warning systems and continue to fund, or ideally to increase funding for, NGOs doing conflict resolution work in these areas. The present analysis suggests that priorities have changed somewhat.

Ethnic clashes, while certainly the most significant source of conflict relevant to donor aid, have receded as the 1997 election fades but could be re-instigated in 2002 if no political accommodation has been reached between the governing party and the opposition, and the governing party thus felt itself threatened with defeat. On the other hand, northern Rift conflict in the form of what are ostensibly cattle raids is very disturbing, as is the lack of effective response by the security services. As this threatens to

tear apart the core of the incumbent regime's own support base, it could have serious negative repercussions on regime stability.

Northeastern Province conflict is also very disturbing, although as the previous conflict study argued, it doesn't affect central Kenya. Human rights issues involving the army's response to the problems in the region are serious, however. They could easily place Kenya in the position of being a central focus of international watch groups again. This ultimately has an impact on the willingness of the international community to provide assistance to Kenya.

Land issues continue to be significant to nearly all Kenyans. Presently they are more likely to trigger conflict between the police (or thugs hired by urban land usurpers) and the groups which are trying to publicize the irregular allocations and grabbing, than between communities. Encroachment on pastoral land in the semi-arid areas, a key issue in the previous conflict assessment, has certainly led to degradation of the environment, but its potency in precipitating inter-communal conflict seems overrated. It may be that such encroachment is experienced by individuals, serially, rather than by communities at one time; it may be that divisions and suspicions within the communities affected prevent unified responses that would support overt conflict. Whatever the reasons, the most visible conflict related to land issues is urban and peri-urban, extra-legal land grabbing -- and the extra-legal reactions to it adopted by high profile political actors.

Urban communal violence, and *peri-urban vigilantism*, are likely to continue as economic deterioration and corruption reduce resource access for large, already impoverished urban communities. Continued immigration of refugee populations from the region's other conflicts, and the continued influx of sophisticated weapons, set the scene for ominous types and levels of conflict. While such conflict in squatter areas does not necessarily have a high price tag in terms of the immediate economic costs (little infrastructure being available in those areas to damage), the true cost must be calculated in terms of the strong deterrent such visible urban conflict presents to investment, both domestic and foreign.

Election violence is likely to continue because of the critical nature of the election of 2002, amounting to a significant transition which will be very hard fought by a regime aware of its minority status (all professions to the contrary notwithstanding) and an opposition increasingly aware of the legal limitations and constraints on competition.

POTENTIAL IMPACT ON USAID'S PROGRAM

Conflict in Kenya could have an impact on USAID Kenya's program. Three areas are particularly relevant.

Land tenure issues and insecurities, a traditional concern and source of conflict and one which many Kenyans consider key, are relevant to USAID Kenya's Strategic Objective in increasing agricultural production, specifically in increasing marketable surpluses. Marketable surpluses of food crops are only likely to be achieved if security of tenure is at least sufficient to persuade farmers that they can make the investments in land improvements and fertilizer that produce such surpluses. In some areas, particularly those parts of the Rift Valley where ethnic clashes have chased populations out and their return is slow, security of tenure is a key concern.

This is doubly important an issue for Kenya to deal with in a rapid and forthright manner, since these are the areas of greatest agricultural potential, the areas from which marketable surpluses **must** increase to ensure long-term food security. Immigration of peoples from other parts of Kenya -- notably Central

Province -- to take advantage of the land potential is in fact causally related to the ethnic clashes; without agriculturally-inspired immigration, these clashes would not have occurred.

Similarly, in areas where semi-arid lands are being encroached on by expanding populations moving off of densely populated land, such as the Kitui and Kisii border areas, there are thorny issues of land tenure and access between pastoral peoples and expanding agricultural populations. Increasing the agricultural production and marketable surplus of these populations is seen as critical to stabilizing their movement and protecting the land. Without an increase in marketable surpluses, the investments in human labor and infrastructure needed to protect these fragile environments will not be forthcoming. However, conflict over land access and rights may continue to impede the necessary investments and surpluses.

Land and other natural resource allocation and access in the ecosystems outside the national parks can have an impact on the achievement of USAID Kenya's Strategic Objective in natural resource management. Conflict over resource allocation and use could impede the activities planned for this Strategic Objective. Since many of these natural resources are owned and regulated by the County Councils, conflict in the councils could spill over and negatively affect the program.

Ethnic clashes and electoral conflict could prevent the mission from working with the relevant public sector institutions to try to forge consensus on a reform agenda. While these are sporadic rather than constant, and seem to have been engineered by what Mutiso has called "ethnic entrepreneurs", they could become important before the elections of 2002 and could curtail the activities and intermediate results planned in the mission's DG strategy.

USAID/KENYA'S PROGRAM RESPONSES TO CONFLICT VULNERABILITY

USAID Kenya has confronted some of these important sources of conflict previously, particularly those relevant to the mission's program. The mission has worked closely with GHAI's office in Nairobi to incorporate the main elements of conflict prevention strategy into the program. The main elements of the program directed at conflict prevention and resolution are:

Agricultural Production. The increased production of marketable surpluses is meant to reduce conflict, which is seen to be a constant problem in areas prone to food insecurity. Food security is a cornerstone of conflict prevention in the region, and USAID's program addresses this need.

Famine and Early Warning System (FEWS). The Famine and Early Warning System provides information on food crop production as the crops mature, giving the Government significant advance warning of shortfalls that allow it to make policy decisions in a timely and rational manner, from decisions about whether to sell food out of the reserve stock, to pricing decisions, to decisions to import food.

Natural Resource Management. Activities in support of local communities' control of natural resources, both inside and outside national parks, are targeted at reducing conflict over resource access and management. These activities are aimed at providing an economic return to the communities from environmentally sound management of the resources, preserving them for the use and benefit of others as well, and thus reducing the conflict induced by competitive access and exploitation.

NGO Conflict Prevention Efforts. The mission is addressing the issue of ethnic clashes through support for groups that are engaged in conflict resolution and prevention. Some of these are attached to the mainstream churches, which have taken an active role in attempting to resettle clash victims, induce others to return to areas that have been secured, and provide basic resources with which to restart farming efforts. The groups are engaged in training of local leaders to recognize incipient signs of intercommunal conflict, to involve local citizens in role playing and other exercises that equip them with the tools to

resist manipulations from outsiders, and to begin reconciliation efforts early and effectively in affected areas.

LESSONS LEARNED

Lessons learned during the current country program include:

- _ Elections heighten conflict potential
- _ Conflict resolution initiatives and mediation are useful in areas where conflict is internally generated, but may be less useful where it is externally generated; documentation may be equally important in finding the truth and achieving long-run reconciliation
- _ Regional conflicts will continue to have important spill-over effects on Kenya, including those generated in Somalia, Ethiopia, Uganda, and possibly even Sudan, although Sudanese conflict has not presented a serious problem for Kenya in the past. Kenya's tendency to harbour refugees from the repressive regimes in the region will continue to stand in the way of fuller economic integration
- _ Natural resource management needs and activities have a necessary and important component of governance, and must be inclusive of the local communities to have any chance of success
- _ Some "technical fixes", such as the Famine and Early Warning System (FEWS) can have an important impact on the potential for improved food security and stability without becoming enmeshed in politics. (It is not clear that the **long-term** policy decisions that need to be taken on the basis of the information generated by an early warning system are any likelier than the decisions needed to combat corruption; the two are related.)

ⁱ Mutiso, Cyrus,

ⁱⁱ Kratli, Saverio and Jeremy Swift, "Understanding and Managing Pastoral Conflict in Kenya: A Literature Review", IDS Sussex, 1999 The authors indicate that the literature does not present strong evidence for the view that the raids are more deadly -- and they detail the depredations of "traditional" raiding, which has become romanticized -- but they agree that the belief in this increased deadliness is widespread.

ⁱⁱⁱ Weeks, Willet and Crawford Young, "Conflict Management in Kenya", for USAID Kenya, February, 1996

^{iv} Weeks, Willet, and Crawford Young, op cit.

APPENDIX II

Chronology of Significant Events

Introduction

A chronology of events is a useful reference for those trying not only to keep track of current events but to put them into historical context. The breadth and scope of the chronology and its organizing principle require careful thought. This chronology is organized by significant time periods. It details elections and electoral campaigns; regime transitions; political violence, including assassinations; constitutional amendments; and useful economic indicators of the period. It is by no means comprehensive. It highlights many of the significant events that Kenyans have experienced, individually and as a nation, and that strongly influence their governance preferences and strategies.

Pre-independence

The pre-independence period logically has no "beginning" and is vitally important for the political, and especially economic, disparities it produced between Kenya's communities, which have had major importance in subsequent political developments.

- 1905** Kenya officially made a British colony; the 10-mile coastal strip remains nominally part of the protectorate controlled by the Sultan of Oman's representative on Zanzibar
- 1924** Kikuyu Central Association founded, signaling the beginning of political activity among the African peoples of the colony, based on ethnic blocks
- 1939** Kikuyu Central Association and other political associations banned, for security reasons, with the outbreak of WWII
- 1944** First African member of the colony's Legislative Council (Legco) nominated
- 1946** Kenya African Union founded; precursor to colony-wide nationalist political organization on a cross-tribal basis
- 1947** 13 January, general strike in Mombasa, lasted 12 days; echoed strikes up and down the East African coast that took colonial powers by surprise and were fueled by nationalist activity in India; labor organizing in Kenya begins in earnest shortly thereafter
- 1948-52** nationalist activity bubbles up colony-wide, focused particularly among the Gikuyu and Embu upcountry, and fed on the coast by the voice of Radio Cairo and the nationalism of Nasser's Egypt

- 1952** 20 October, state of Emergency declared in Central region of Kenya; forest fighters attack collaborationist chiefs and a few European settlers, killing senior chief Waruhiu, among others. Kenyatta and a handful of other leaders are detained.
- 1952** Griffiths Constitution adopted; 6 African representatives to the Legco are accepted, on a nominated rather than an elective basis and representing Coast, Central, North Nyanza, South Nyanza, Nairobi and Rift Valley/Masai regions.
- 1956** Effective end of "Mau Mau" with the defeat of the forest fighters except for a remnant few, although the Emergency remained in force until 1960
- 1957** March, first actual **election** of African representatives to the Legco, now numbering eight, produced the following results (based on an extremely restrictive franchise):

<u>Region</u>	<u>Representative Elected</u>	<u>Votes</u>
Nyanza North	Masinde Muliro	6,728
Nyanza Central	Oginga Odinga	9,316
Nyanza South	Lawrence Oguda	13,882
Rift Valley	Daniel arap Moi	4,773
Central	Bernard Mate	24,758
Akamba	J. Muimi	8,852
Coast	Ronald Ngala	3,406
Nairobi	Thomas J. Mboya	2,138

The poll represented an **80% turnout** of eligible voters.

- 1960** mid-January, 1960 Lancaster House Conference, London, at which agreement on a transitional constitution in preparation for independence was hammered out
- 1960** 27 March, formation of **KANU**
- 1960** March-April, formation of Kalenjin Political Alliance, Masai United Front, and Coast African People's Union, which join together with Masinde Muliro's Kenya African People's Party to form the Kenya African Democratic Union, **KADU**, on 25 June
- 1961** Jan-March, first general election **on a common roll basis** (i.e., not reserved seats), which produced the following results:

<u>Party</u>	<u>Votes</u>	<u>%</u>	<u>Seats</u>
KANU (Official and party-independent)	590,661	67.4	19
KADU (Official and party-independent)	143,079	16.4	11
Baluhya Political Union	28,817	3.3	1
New Kenya Party	28,284	3.2	4
Kenya Indian Congress	10,488	1.2	3
Kenya Coalition	8,891	1.1	3
Kenya Freedom Party	5,263	0.6	2
Kenya National Congress	4,561	0.5	0
Shungwaya Freedom Party	3,748	0.4	1
Coast People's Party	1,698	0.2	0
Tana River Pokomo Union	699	0.1	0
Independents--- African	13,917*		1
Arab	5,712*		2
Asian Muslim	11,880*		3
Asian non-Muslim	4,648*		0
European	12,768*		3
TOTALS:	875,109	100.00	53

This represents a poll of **83.63%** of the registered voters, who numbered 1,411,117.

* The last five categories marked with an asterisk represent the nine seats not contested on a common roll but apportioned to specific communities on a reserved basis.

1963 May 19, 22, and 25-26; the "independence elections" held to produce the government that would take Kenya to self-government and independence at the end of the year, produced the following results:

Party	Seats Won		
	<i>House/Representatives</i>	<i>Senate</i>	<i>Regional Assemblies</i>
KANU	66	19	78
KADU	31	16	51
APP*	8	2	8
NPUA**	3	1	--
CPP***	-	-	2
Independents	4	-	12
Totals	112	38	151

* Akamba Peoples' Party, led by Paul Ngei

** ?? ??

*** Coast Peoples' Party

The turnout for the election is indicated to have been high throughout the country, except in the northeast.

1963 June 1, Kenya celebrates "madaraka", or the assumption of internal self-rule

Independence to 1969

The early post-independence period was characterized by dramatic revisions of Kenya's political structure, accomplished through amendments to the Constitution, in response both to the desire of the ruling party to consolidate authority against pro-federalist, centrifugal forces, and to the need of its inner core to fend off the challenge from a strong faction wishing to take the nation in a more socialist direction.

1963 December 12, Kenya celebrates its formal independence from British colonial rule. Jomo Kenyatta is inaugurated as the country's first Prime Minister.

1964 The *Constitution of Kenya (Amendment) Act, No. 28 of 1964*, declared Kenya a sovereign Republic with the president as head of state and government, overturning the Westminster parliamentary system. The powers of the president were amplified to include:

- i Privileges and prerogatives of the British Crown;
- ii Power to appoint public officials;
- iii The discretion in (ii) was made absolute as regards the Attorney General, the Comptroller and Auditor General, the Permanent Secretaries and the Police Commissioner
- iv The position as Commander-in-Chief of the armed forces.

1964 The Constitution of Kenya (Amendment) Act, No. 2 of 1964 further strengthened the presidency by:

- abolishing the revenue basis of the regions by making them dependent on central government budgeting
- giving the President further powers in the appointment of judges, including the power to appoint the Chief Justice without consulting the regions. He could also instigate an inquiry into the conduct of any judge by setting up a special tribunal for that purpose.

1964 10 November, KADU is dissolved and its members cross the floor and join KANU.

1965 *The Constitution of Kenya (Amendment) Act, No. 14 of 1965* changed the constitutional provisions relating to the amendment of the constitution itself.

- Former provisions meant that 90 percent of the Senate vote and 75 percent of the Lower House were necessary to effect an amendment. Now only 65% of the vote in both houses was needed to amend the constitution.
- Provisions relating to the invocation of emergency powers were relaxed. (A simple majority in either house was now all that was required to authorize a declaration of emergency. This move was made in response to the activities of Somali secessionists in northeastern Kenya in this period.)

1965 Assassination of the radical labor organizer, Pio Pinto.

1966 *The Constitution of Kenya (Amendment) Act, No. 16 of 1966* introduced provision regulating the tenure of members of Parliament:

- any member of Parliament sentenced by a court of law to a term of more than six months in jail automatically lost his/her seat;
- any member of Parliament who failed to attend parliament for eight consecutive sittings without the permission of the Speaker lost his/her seat (unless pardoned by the President)

1966 *The Constitution of Kenya (Amendment) No. 2 Act, No. 17 of 1966* required any parliamentarians who had earned their seats on a party ticket and later resigned from that party to stand down from office and seek fresh support from the electorate. This amendment derived from the split in KANU between moderates, led by Tom Mboya, and radicals, led by Oginga Odinga, and the maneuvering within the party by both factions, which led to an open split.

1966 KANU holds a conference at Limuru at which major government reorganization is proposed, removing Odinga from the Vice Presidency and substituting eight regional vice presidents. KANU expels its radical rebels. 29 MPs led by Odinga ultimately resign from parliament, form the Kenya People's Union (KPU), and are forced to fight by-elections in the "Little General Election".

1966 The "Little General Elections", held over a period of two weeks to fill the seats in the chambers being contested by the KPU. The results were as follows:

<u>Chamber</u>	<u>KANU</u>	<u>KPU</u>	<u>Total</u>
House of Representatives	21	7	28
Senate	8	2	10
	_____	_____	_____
Totals:	29	9	38

Many observers of Kenyan electoral practice have criticized the skew in constituency sizes which produces a skewed vote in which approximately 40% of the vote nevertheless commands about 70% of the seats. It is noted that this early election demonstrated precisely that skew; KPU received more total votes than KANU, yet KANU won two-thirds of the contested seats.

1966 *The Constitution of Kenya (Amendment) No. 3 Act, No. 18 of 1966:*

- removed parliamentary control over the exercise of emergency powers. The president could, by a notice in the gazette, bring into operation Part III of the Preservation of Public Security Act;
- the duration of an emergency was extended from seven to twenty-eight days. Detention orders could now operate indefinitely, legalizing detention without trial.

1966 *The Constitution of Kenya (Amendment) No. 4, Act No. 40 of 1966*

- the Senate was abolished and merged with the lower house
- forty one new constituencies were created for the former senators; the sitting senators became members of parliament without being elected in those regions that they were said to represent
- the dissolution of the first parliament was postponed from 1968 to 1970.

1967 *The Constitution of Kenya (Amendment) Act, No. 14 of 1967*, established the legal rationale for the 1966 act that declared vacant the seats of all MPs who had resigned from KANU.

1968 *The Constitution of Kenya (Amendment) Act, No. 4 of 1968* required parliamentary candidates to be nominated by a registered political party, effectively eliminating the ability of independents to challenge KANU's choices for individual constituencies.

1968 *The Constitution of Kenya (Amendment) Act, No. 16 of 1968* addressed the question of regionalism, dismantling the regional structures and consolidating a strong central authority.

1968 *The Constitution of Kenya (Amendment) Act, No. 45 of 1968* changed the method of presidential elections, removing provisions for a general election and/or an electoral college and requiring that every party taking part in general elections had to put forward a presidential candidate. KANU's stranglehold on the nomination of any successful presidential candidate was thereby assured; legislative leverage over the Executive was reduced.

1969 *The Constitution of Kenya (Amendment) Act, No. 3 of 1969*

- consolidated the existing amendments
- vested increasing powers in the President, including the power to appoint the electoral commission

1969 The first elections were held under Kenya's now *de facto* one-party status. The elections should have been held in 1968, but the 1966 constitutional amendment which created the unicameral legislature also extended the life of the current parliament for a year. 700 candidates were nominated by the party to contest 158 parliamentary seats. Competition was intense: 5 out of 19 ministers and 14 out of 26 assistant ministers were defeated, as were approximately half of the incumbents. Turnout was high, but not as high as the earlier elections. Over 70% of voters in Gikuyu constituencies turned out, while only 27% of voters in South Nyanza did so, indicating the deep disgruntlement of the people of Nyanza after the manipulations to which their favorite son, Jaramogi Oginga Odinga, had been subjected in the ouster from KANU and the "Little General Elections".

Latter Kenyatta period: 1969-1978

- 1969** 5 July, Tom Mboya assassinated on a street in downtown Nairobi, by persons unknown; eventually a Gikuyu was arrested, charged and (at least reportedly) hanged for the crime, but motive remained unexplained; rumors alleged that Mboya had become too clearly an "heir apparent" and thus a threat to Kenyatta's continued firm personal rule of Kenya
- 1969** Kenyatta, for the first and last time, visited Nyanza, where his motorcade was attacked by hostile crowds. In rapid order the KPU, associated with Odinga and Nyanza, was banned and much of its leadership was detained, many for a number of years.
- 1972** December, Ronald Ngala, a former leader of KADU and the then-leader of Government business, was killed in a car crash on the Mombasa road. While an inquiry attributed his death to an accident, the responses of Ngala's driver to questions about his own actions and the vehicle's itinerary were sufficiently confused to produce rumors that Ngala was killed. Motive was similarly absent, as in Mboya's assassination.
- 1973** Arab oil producers succeed in constructing what is referred to in the West as a "cartel", forcing the price of oil up dramatically and setting an inflationary process in train in economies across the globe.
- 1973** Kenya experienced a serious drought, a periodic occurrence that has especially devastating effects in the eastern and northeastern parts of the country.
- 1974** *The Constitution of Kenya (Amendment) Act, No. 2 of 1974* made Kiswahili the official language of the National Assembly, a step from which the Government had to climb back down as it became clear that many members could not carry on business effectively in Kiswahili, whether or not they could pass a Swahili exam.

- 1974 The Constitution of Kenya (Amendment) Act, No. 10 of 1974 reduced the voting age from 21 to 18.
- 1974 The first general elections using the secret ballot were held, with a total of 737 candidates being "cleared" by KANU to contest 153 seats; five seats, including that of President Kenyatta, were uncontested. The other uncontested seats were Kiambaa (Mbiyu Koinange, Kenyatta's closest confidant); Turkana South (Peter Angelei); Baringo Central (Daniel arap Moi); and Kangundo (Paul Ngei, another of Kenyatta's closest confidants). Turnover was high, as in 1969, with 4 Cabinet Ministers, 13 assistant ministers, and 71 incumbents losing their seats. Turnout was high in the rural areas but low in Nairobi; voters travelled in large numbers from Nairobi to their rural constituencies to cast their votes.
- 1975 March 2, Josiah Mwangi Kariuki, the Member of Parliament for Nyandarua North, who had been making strong statements critical of regime policy and tailored to establishing a populist following, was assassinated, after being approached by Special Branch officers in the Nairobi Hilton Hotel. No one has ever been charged in court for this offense.
- 1975 The Constitution of Kenya (Amendment) Act, No. 1 of 1975 repealed the Act mandating Swahili as the official language of the National Assembly, providing that parliamentary proceedings would be in Swahili while all bills, financial results and written laws would be in English.
- 1975 *The Constitution of Kenya (Amendment) No. 2 Act, No. 14 of 1975* added to the President's prerogative of mercy cases of disqualification from participating in parliamentary elections on the grounds of conviction of an election offense. The bill was introduced into parliament on Dec. 9, 1975 and was debated and passed within a day, but was backdated to Jan. 1, 1975 so that Kenyatta's close friend, Paul Ngei, who had committed and been convicted of an election offense, could be pardoned and could stand for a by-election.
- 1976 Movement to "change the constitution" launched by a faction in KANU close to the Kenyatta faction, which did not want to see Vice President Moi inherit power, as mandated constitutionally, should Kenyatta die while still in office (as seemed increasingly likely to be the case, as his health visibly failed.) Dickson Kihika Kimani, currently (1999) the MP for Molo and at that point the chairman of a giant landholding company, led the battle for the "change the constitution" forces. Kenyatta's then-Attorney General, Charles Mugane Njonjo, almost single-handedly provided the opposition to the movement and effectively quashed it, specifying at one point that was treason to even imagine the death of the President.
- 1977 *The Constitution of Kenya (Amendment) Act, No. 13 of 1977*, established the Kenyan Court of Appeal as the highest court in the land. Prior to the collapse of the East African Community in 1977 the highest court had been the East African Court of Appeal.
- 1978 August 22, Jomo Kenyatta died at State House, Mombasa. Daniel arap Moi, alerted by a

member of Kenyatta's staff, travelled from his home in Kabarak, through Nakuru, to Nairobi, where he was sworn in as President. Subsequent allegations that the "change the constitution" group had set in train serious efforts to prevent his accession to power, involving a unit of elite "stock theft" (Ngoroko) police poised to intercept him at the critical moment -- but which failed because of a series of pieces of luck, including the early warning he received -- are chronicled in The Kenyatta Succession, by two journalists, Joseph Karimi and Philip Ochieng'. [N.B. This account should be read with a large grain of salt.]

Moi transition: 1978-1982

- 1978** Daniel arap Moi sworn in as President of Kenya, succeeding Jomo Kenyatta in the second peaceful transition of power in post-independence Africa.
- 1979** November 8, **elections** are held for the first time under President Moi, on schedule. 700 candidates are cleared for the 158 seats. Eight constituencies are uncontested, including Baringo Central (Daniel arap Moi) and Kerio South (Nicholas Biwott), and Moi's Vice President, Mwai Kibaki. Approximately half of the incumbents were defeated, a similar rate of turnover as previous elections, but KANU instituted a more aggressive form of screening than previously and refused the former KPU members clearance to contest the elections.
- 1979** *The Constitution of Kenya (Amendment) Act, No. 1 of 1979*, provided that English could be used as an alternative to Kiswahili in parliamentary debate, and that in the future, proficiency in both English and Swahili would be a prerequisite for qualifying for election to parliament.
- 1979** *The Constitution of Kenya (Amendment) No. 2 Act, No. 5 of 1979*, required that public officials wishing to contest the elections must first resign from their jobs, and provided that the minister responsible could gazette an order specifying the date on which such public officials had to resign in order to be eligible for election.
- 1979** The second "oil shock" hit an economy which had experienced a coffee boom in 1977 but had frittered it away. By the end of 1980, oil was consuming 50% of Kenya's foreign exchange earnings, as against falling coffee, tea and tourist revenues. At the same time, the population growth rate was assessed to be 4%, the highest in recorded human history, with the average Kenyan woman giving birth to 8 children who lived at least into infancy. This population growth rate was regionally disparate. The highest rates were recorded in the prosperous central areas of Kenya and the lowest rates in the Nyanza and coastal areas, which are subject to high infant mortality due to malaria and diarrheal diseases.
- 1982** August 1, sections of the Kenya Air Force mount a coup to try to topple Moi and take over the government. Initially successful in taking over the Post Office and the Voice of Kenya (radio and TV station), and being joined by students at the University of Nairobi, the coup plotters were overcome by the Kenya Army, under the command of Maj. General Mahmoud Mohammed, who personally led troops into the Voice of Kenya and

secured the station. Skirmishes for around 48 hours produced major damage due to vandalism and rioting in central Nairobi and to a major exodus of Asians and Asian capital, attendant on the destruction of Asian property and attacks on Asian women during the brief coup.

1982 Hundreds of coup participants, including both Air Force personnel and students, were arrested. Many were jailed for varying lengths of time. Ten coup leaders were eventually hanged. An official tally of 159 deaths was disputed in many quarters, with unofficial reports of up to 1,000 killed, including some students.

Consolidating Moi's rule: 1982-1990/91

1982 President Moi disbanded the Kenyan Air Force and reconstituted it after extensive screening. The Kamba commander of the Army was gradually moved to the side and out, being replaced by General Mohammed. A gradual Kalenjinization of the armed forces was set in train.

1982 ***The Constitution of Kenya (Amendment) Act, No. 7 of 1982 converted the de facto one-party system into a de jure one-party system***, as a response to the effort by Oginga Odinga and George Anyona to register a new political party, the Kenya African Socialist Alliance; and created the office of the Chief Secretary.

1983 Charles Njonjo, Kenya's Attorney General, was implicated in a coup plot (not the Air Force effort, which has been seen as an attempt to pre-empt an effort by elements of the army intent on re-establishing Gikuyu hegemony); a Commission of Inquiry established enough doubt about Njonjo's actions and loyalty to render him suspect, and he was forced to resign all public positions. (He was not incarcerated or convicted of any actual offense, leading to speculation that he had salted away documents proving the culpability of most of the senior members of the Moi government in various misdeeds and bargained his way out of any effective punishment. He has since returned to the government as the Chairman of the Kenya Wildlife Services, in 1998, at the behest of Richard Leakey, a life-long friend.)

1983 **Elections** under the legal one-party system were held for the first time, with 723 candidates vying for the 158 parliamentary seats. Candidates associated with the KPU were once again denied eligibility and the party campaigned hard, using the provincial administration, for its favored candidates. Moi attempted to buff KANU up into a "party of mobilization", something it had not been in the past. Most of the clients of Charles Njonjo (who had an extensive network of supporters in local councils) were roused. Turnout was much lower than in previous elections. One source indicates that only 48% of registered voters turned out, the lowest turnout since independence. 40% of sitting MPS were defeated, a slightly lower percentage than in previous elections, but still a substantial turnover.

1984 ***The Constitution of Kenya (Amendment) Act, No. 7 of 1984,***

- abolished all appeals arising out of decisions of the High Court in the hearing of elections petitions. This removed any appeal to the Court of Appeal.
- enabled Judges of Appeal to sit in the High Court to complete cases commenced before them prior to their appointment to the Court of Appeal.
- increased the membership of the Public Service Commission to seventeen (from seven) and provided for the Public Service Commission to appoint officers to local authorities.

1984 Drought of major proportions affecting all areas threatens the country with famine. Quick, pre-emptive organization of a relief effort, combined with relatively robust foreign exchange holdings allow Kenya to minimize the damage and avert widespread famine. Famine-related deaths are counted perhaps in the low hundreds.

1985 *The Constitution of Kenya (Amendment) Act, No. 6 of 1985* addressed citizenship by mandating that any person born in Kenya after Dec. 11, 1963 (the day before independence) would be Kenyan citizen if, at the time of his birth, one of his parents was a citizen of Kenya. *This removed citizenship for many Asians, born in Kenya, whose parents had opted for British citizenship in 1963 but who had elected to remain in Kenya.*

1985 As the final act of the 1982 abortive coup, a dissident organization, Mwakenya (literally, "those of Kenya" or "sons of Kenya") identified by the Government was claimed to be operating both domestically and among Kenyan exiles, particularly in London. Over a hundred such dissidents were arrested, tried on various charges of sedition in trials remarkable for their speed and for the distinct impression of forced confessions (most of those arrested pleaded guilty), and sentenced to lengthy terms in jail. Claims of systematic torture in the arrest and investigation of prisoners date from this period.

1986 *The Constitution of Kenya (Amendment) Act, No. 14 of 1986*

- abolished the position of Chief Secretary (marking the end of Mr. Nyachae's first round of prominence in the Moi government)
- increased the parliamentary constituencies from 158 to 188, significantly increasing the inequity in representation through the creation of additional seats in areas the regime counted on for support, while neglecting the more populous, already under-represented areas
- *removed security of tenure previously held by the holders of the offices of Attorney General and Comptroller and Auditor General*

1987 *The Constitution of Kenya (Amendment) Act, No. 20 of 1987* made certain offenses non-bailable, which the courts have subsequently interpreted to mean bail should not be granted in cases of sedition

1988 *The Constitution of Kenya (Amendment) Act, No. 4 of 1988*

- removed the security of tenure for judges
- increased the length of time a suspect on a capital charge -- murder, treason, robbery with violence -- could be held without being produced in court from 24 hours to 14 days

1988 General elections were held under a new set of regulations and procedures whereby the secret ballot was dispensed with in the nominations stage and all candidates receiving at least 70% of the vote at this stage were declared elected unopposed. Where no candidate had 70% or more of the open queue vote, two, or at most three, candidates were cleared to contest the vote on the basis of their tally in the nominations. The secret ballot was retained at the final election, in all cases where a run-off between or among candidates was held.

There were widespread reports of manipulation of the queues by the provincial administration or the police, and many Kenyans opted not to participate, on grounds either of fear (if they openly demonstrated support for a candidate known not to be favored by KANU) or of the unseemliness of giving public support to one or another candidate (much of the clergy, for example, abstained from voting on these grounds, claiming it would be both manipulative and divisive of their congregations to openly declare support for a candidate.)

The Government's justification for preferring queueing over the secret ballot related to the ever-present suspicions of manipulation of ballot boxes, which subsequent electoral experience suggests must be treated with more than a grain of truth. However, the overt manipulation of queues destroyed the credibility of this form of voting as well. Electoral results were as follows:

<u>Mode of Election</u>	<u>Number of seats</u>	<u>%</u>
Unopposed (no other candidate)	14	8
Elected by 70%+ queue	51	27
Elected by less than 50% on a secret ballot (i.e., more than two candidates)	36	19
Elected by a majority, secret ballot	87	46
	Total: 188	100%

While it has been reliably reported that 83% of the eligible voters were registered, after the party put on a massive drive to maximize registration, turnouts varied greatly, with queue voting turnouts generally less than half that for a secret ballot held later at the run-

off stage, and the run-off turnouts constrained by voter disillusionment with the whole exercise in some areas.

- 1990** February 13/14, Kenya's Foreign Minister, Robert John Ouko, was murdered by persons unknown, his charred and mutilated body being found three days later by a herds-boy. While President Moi took the unusual step of calling in investigators from Scotland Yard, their work was hindered from the outset. The report they submitted pointed fingers at senior regime figures such as Nicholas Biwott and Hezekiah Oyugi, who were arrested and held for a few weeks and then released for lack of evidence. Subsequently, many people involved in the case have died, some rather suspiciously, including Hezekiah Oyugi, who was unsuccessfully treated for a "nerve disease" in London. Some members of Ouko's family fled into exile in the US. Both the perpetrators and the motivations for this atrocity remain a matter of speculation.
- 1990** July 4, the anti-regime leaders of a planned rally at the Kamukunji sports ground in Nairobi, Kenneth Matiba and Charles Rubia, are arrested and detained in an effort to halt the meeting. The meeting is held on Saturday, July 7 (henceforth being commemorated as "saba saba" day) anyway, the police break it up, violence ensues, many are arrested and many leaders go into hiding to avoid arrest, including Gibson Kamau Kuria, who seeks and is granted asylum in the US through the good offices of the American Ambassador, Smith Hempstone. *The drive for political liberalization can be dated to this rally and its aftermath.*
- 1990** August 14, outspoken Anglican clergyman Bishop Alexander Muge, a Kalenjin and former member of the GSU, died in a car crash on the way back from a meeting in Bungoma, after having been warned by the sitting member of Parliament for the area that his attendance at the event would lead to his death. Muge was at the time one of the regime's keenest critics. This death, whether "accidental" or not, enraged the Kenyan clergy generally and brought them actively into the fray. It thus had the opposite effect from that intended by the Minister in his initial warning to Bishop Muge.
- 1991** Multi-party politics restored with the repeal of the 1982 amendment mandating KANU as the sole political party.

Multi-party transition: 1992-1999

- 1992** December 28, **elections** held on a multi-party basis for the first time since the "little general elections" of 1966, the first time nation-wide since 1963. Despite great expectations on the part of the opposition, KANU won 100 parliamentary seats (17 of them unopposed) and President Moi won 37% of the presidential vote, the three other serious presidential candidates splitting the other 63%. Turnout was high, considerably higher than in 1988. Allegations of massive rigging related to the campaign period harassment of opposition candidates by the provincial administration and the use by the Government of massive state resources to "buy" the swing areas it needed.

- 1993** Money supply increases 30% due to money pumped into the economy during the elections. Exchange rate jumps to nearly Shs.90/= to the dollar at one point before the Central Bank embarks on a strategy to mop up the excess liquidity in the economy.
- 1996** The Electoral Commission, after a 15-months long process of boundary review, increases the parliamentary constituencies by 22, from 188 to 210. No new constituencies are allotted to Nairobi, three of whose constituencies are roughly twice the average size.
- 1997** Rallies and demonstrations in support of constitutional reform, and threatening electoral boycott in the absence of such reform, draw police-instigated violence to the attention of the diplomatic community and CNN.
- 1997** Parliamentary compromise on a "minimum package" of pre-electoral reforms is negotiated by a large group of parliamentarians drawn from both KANU and the opposition. This "Inter-parties Parliamentary Group" passes legislation that, among other things:
- enlarges the Electoral Commission to comprise a number of Commissioners nominated by the opposition political parties equal in number to those appointed by the President
 - mandates that the Presidential parliamentary nominees must be made in proportion to the strength of the parties in parliament
 - mandates that councilors in the local authorities similarly must be appointed by the Minister in proportion to their party strength in the councils
- 1997** December 11, the head of the Electoral Commission of Kenya is removed (two and a half weeks before the election) and made Chief Justice.
- 1997** December 29, **elections** are held for the second time on a multi-party basis amid administrative and logistical problems of major proportions, requiring that the elections continue for a second day. Flooding in some areas made polling impossible and polls were eventually completed, for civic seats, in these areas later.

Results were similar to 1992. President Moi won 41% of the Presidential vote, with the other 59% split among four major and several minor alternative candidates. In the parliamentary races, KANU won 107 seats to the combined opposition's 103. Subsequent election petitions and by-elections have increased the KANU margin to 14 seats at the time of writing (August, 1999). Domestic observers criticized the Electoral Commission's lack of preparation, the pre-election atmosphere and especially the registration exercise, but found no major evidence of widespread polling irregularities on election day.

- 1998** President Moi declines to name a Vice President when he announces his new Cabinet. Simeon Nyachae, one-time Chief Secretary and strong advocate of district authority as a

strategy for combating the ill effects of Kenya's regional economic disparities, is named Minister for Finance.

- 1998** August 7, the American Embassy in Nairobi is bombed.
- 1999** Under intense pressure from all factions within KANU, as well as the opposition, President Moi reappoints Prof. George Saitoti as Vice President, temporarily reducing the frantic speculations and jockeying around the position.
- 1999** Finance Minister Nyachae is moved to the Ministry of Trade but declines the position and resigns instead. His replacement, Francis Masakhalia, lasts approximately six months and is in turn replaced by Chris Okema.
- 1999** President Moi appoints Richard Leakey the Head of the Civil Service and Secretary to the Cabinet, mandating him to institute a massive "clean-up" of the civil service. Several technocrats are brought into key positions in Finance and Agriculture to buttress his efforts. A subsequent Cabinet reorganization, purportedly reducing the ministries from 27 to 15, in fact consolidates the ministries without reducing the ministers. Twelve Permanent Secretaries are eliminated (but remain on the payroll, to be reassigned) but the redefinition of the ministries and their specific roles and functions had not been issued as of this writing (September, 1999).

APPENDIX III

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