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*Excerpts of the Statement by Rep. Chris Smith, July 21, 2010  
Ranking Member, Subcommittee on Africa and Global Health  
(former Chairman, Africa, Global Human Rights, and  
International Operations Subcommittee)*

## **More Evidence Points to Illegal U.S. Funding and Lobbying for Draft Pro-Abortion Constitution in Kenya**

Two weeks from today, millions of Kenyans will go to the polls either to affirm or reject a sweeping new constitution in a nationwide plebiscite.

In the run up to this referendum—just like any other election—the United States and other democracies have a profoundly important, but narrow role to play. And that is to ensure to the greatest extent possible that the plebiscite—referendum—is free, fair and peaceful.

Election monitoring is a hallowed process designed to protect the integrity and legitimacy of the voting process before, on the day of actual balloting and during certification of the results.

Thus the only legitimate role of the United States and other governments is ensuring that the August 4<sup>th</sup> Constitutional referendum in Kenya is free, fair and without violence.

Under no circumstances should the U.S. government take sides by supporting, facilitating and funding projects designed to identify and motivate votes for either side.

Yet that is precisely what the Obama Administration has done.

And because the proposed Constitution significantly alters existing abortion law in Kenya, expending U.S. federal funds in support of the “Yes” campaign is also illegal.

Today, my colleagues and I note with alarm, shock and dismay that the evidence gathered by the United States Agency for International Development (USAID) Inspector General (IG) Donald Gambatesa clearly shows that the Obama Administration has funded grantees with the express purpose of identifying and mobilizing tens of thousands of “yes” votes.

Several grantees even have specific quotas of producing 20,000 “yes” votes per grantee built right into their USAID contract.

According to the USAID Inspector General, more than \$23 million U.S. taxpayer funds have either been spent or obligated—far exceeding earlier estimates. A chart provided by USAID’s Inspector General shows that 60 sub-recipients got funds for activities that include transportation, fuel, road shows, voter ID and “yes” vote “buy in” for professional elites.

It is unconscionable that U.S. taxpayers are subsidizing a massive one sided political campaign thinly disguised as “civic education” in another sovereign nation. This is a very bad precedent. And it is illegal.

U.S. law prohibits using taxpayer funds to lobby either for or against abortion (proviso eight under the heading “Global Health and Child Survival” of division F of Public Law 111-117, [123 Stat. 3035]).

If approved, the proposed Kenyan Constitution will fundamentally change Kenyan law which currently permits abortion in situations to save the life of the mother. The proposed constitution would allow abortion for undefined “health” reasons which history has shown often means just about any reason. Since the life of the mother exception is included in the proposed Constitution as well as “health”, it is clear that the Constitution drafters intended that health means circumstance and exceptions entirely different from a “life of the mother exception.”

Additionally, under the proposed Constitution, a trained “health care professional” will determine the “need” for an abortion. There is no indication as to what that means. It certainly does not restrict the determination to a medical doctor, thus, putting women’s health and lives at risk. This too would be a significant change in Kenyan law thus precluding expenditures of U.S. funding to support its adoption.

No matter what your view is on abortion, the simple fact of the matter is that the proposed Kenyan Constitution significantly changes current Kenyan abortion law. What we know now is that the U.S. is illegally and systematically funding grantees in a scheme to identify and motivate a huge number of “yes” votes that looks to this 30 year incumbent Congressman exactly like a massive lobbying, and political campaign.

Making matters worse, several pro-abortion NGOs received U.S. funding and their influence in support of the abortion provisions is under investigation by the USAID IG.

For example:

- The Kenyan Federation of Women Lawyers (FIDA-Kenya) is a member of the Kenyan Reproductive Health and Rights Alliance (RHRA), which is supported by the Planned Parenthood Federation of America (PPFA). According to the PPFA website, the RHRA’s activities include “drafting reproductive health provisions for the revised constitution.” PPFA’s work in Kenya includes “increasing the availability of affordable safe abortion services and supporting advocates to decriminalize abortion in the country.” FIDA-Kenya helped to draft controversial legislation and launched a campaign

in 2008 to liberalize Kenya's abortion law. It is receiving assistance not only from PPFA through the RHRA, but also \$85,363 from USAID for advocacy activities related to the draft constitution.

- The Committee of Experts on Constitutional Review in Kenya, which drafted the abortion-related provisions in the proposed constitution, received over \$180,000 of US taxpayer monies for office equipment and networking capability. The Committee rejected the life of the mother only exception to abortion inserted into the draft constitution by a Parliamentary committee, and added a "health" exception to abortion. It is commonly known that health exceptions to abortion often lead to abortion on demand owing to the broad definition of health that includes socio-economic reasons as exemplified in the US Supreme Court decision on abortion in 1973.
- Development Alternatives, Inc. (DAI), which is receiving almost \$3 million as a primary grant recipient, advised USAID in 2000 that USAID/Kenya would benefit by supporting civil society organizations that are advocating for "efforts to eventually legalize abortion in Kenya." While acknowledging that such activity would be "politically sensitive," DAI suggested that USAID might support local advocacy groups in their efforts as part of USAID's democracy and governance strategic objectives component that supports civic society organizations.

Finally, while the work and final report of the IG remains unfinished, new questions have been raised concerning recent actions taken by the Obama Administration.

After first dismissing and denying our concerns of serious illegal activity, the U.S. Embassy spokeswoman Katya Thomas in Nairobi admitted last Friday to an AP reporter that nine grantees had been suspended or their work concluded, presumably because of issues we and the IG have raised.

Today, we ask the USAID IG to investigate and report on exactly what that means, when were the grant recipients actually suspended or their work concluded, will they be required to return U.S. taxpayer funds, and who in the U.S. government is responsible and should be held liable for these matters? In other words, who knew and did what and when.

We are also deeply concerned that the nine grantees may be only a tip of the iceberg. The information we have obtained thus far from the USAID IG is based solely on a brief summary of the grant agreements. We ask the IG to comprehensively and with utmost urgency, ascertain whether other grant recipients are also illegally pushing the "YES" campaign at U.S taxpayer expense.