



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

July 19, 2010

The Honorable Donald A. Gambatesa  
Inspector General  
U.S. Agency for International Development  
Ronald Reagan Building  
Washington, D.C. 20523-1000

Dear Inspector General Gambatesa:

We are writing with respect to the audit that we have requested of U.S. Agency for International Development (USAID)-funded activities related to the Kenya draft constitution. As you invited us to bring to your attention any additional concerns that we may have, we would like to point out to you new information that has recently been made public.

The attached article from the Associated Press (AP) was posted on July 16, 2010.<sup>1</sup> It states that “The U.S. Embassy on Friday said that it has provided about \$11 million in support of constitutional reform in Kenya, but that an investigation into the funds found that nine of more than 200 subgrantees supported the ‘yes’ campaign.”

The chart that you provided to us on June 30, 2010, indicates that 60 subrecipients entered into a total of 50 subagreements for constitution-related activities. The total amount of USAID funding for these activities is \$23,164,457.19. In your upcoming report, please explain the discrepancy between the information contained in the chart and the information attributed by this media report to the U.S. Embassy in Kenya, i.e. \$11 million versus over \$23 million of funding and 200 versus 60 subrecipients.

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<sup>1</sup> Odula, Tom and Straziuso, Jason, *3 Congress Members Accuse US of Funding Kenya Vote*, Associated Press, July 16, 2010, accessed on July 16, 2010, at [http://www.google.com/hostednews/ap/article/ALeqM5ja2gUrB\\_o4YQy0mhJ83L1zkgvjiAD9H07DF04](http://www.google.com/hostednews/ap/article/ALeqM5ja2gUrB_o4YQy0mhJ83L1zkgvjiAD9H07DF04).

The AP article further states that “a spokeswoman said the embassy has since suspended or concluded those nine grants... She said she does not know when those nine subgrants were cut off.” In your report, please provide information about the following:

- The nine subgrants/subagreements that were “suspended or concluded,” whether each agreement was suspended or concluded, and an explanation as to the difference between “suspended” and “concluded;”
- The date on which each agreement was suspended or concluded;
- What was the event or action that precipitated the suspension or conclusion, and what was the legal basis for such suspension or conclusion;
- Whether a determination was made as to who is responsible for approving the use of U.S. Government funds to support approval of the proposed constitution, and if so, the conclusion of such determination and any actions - in addition to suspension or conclusion of the nine subagreements – taken as a result of such determination;
- If any funding under any of the nine subagreements was disbursed to the subrecipient(s) prior to the suspension or conclusion of such subagreement(s), the amount of such funding, whether such funding has been or will be returned to the U.S. Government, and if so, when; and
- Any actions taken to prevent similar agreements from being entered into prior to the August 4<sup>th</sup> referendum.

The second attached article from *The Nation*, which was posted on July 15, 2010,<sup>2</sup> states that the Central Organisation of Trade Unions (COTU) has rejected the claim that it is receiving funds from the U.S. Government to support the proposed constitution. As you know, COTU is listed twice on the chart of USAID subrecipients for activities related to the proposed constitution that you provided on June 30, 2010. It is the fourth and fifteenth subrecipient under the heading, “Office of Transition Initiatives/Development Alternatives Inc.,” for a total grant amount of \$159,683.29. In order to confirm the accuracy of this chart and to clarify the assertions made by COTU in the article, it would be useful to have copies of the two COTU subagreements and information as to when the funding under the two subagreements was dispersed.

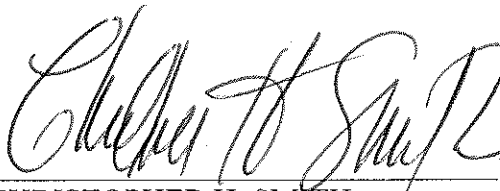
Finally, please include a copy of each of the nine subagreements that were suspended or concluded with your report so that we might better evaluate the nature and extent of the activities contemplated by such subagreements.

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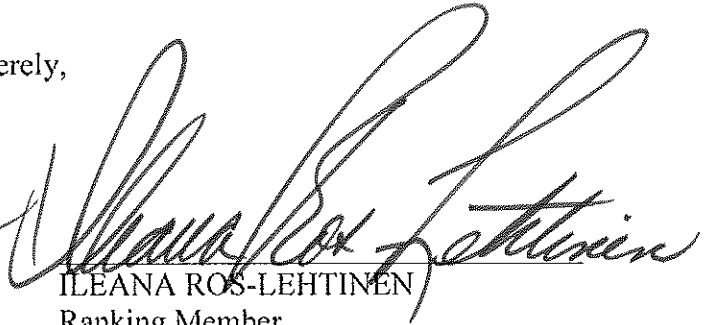
<sup>2</sup>*Kenya: Trade Union Organisation Denies U.S. Funding Allegation*, *The Nation*, July 15, 2010, accessed on July 19, 2010 at <http://allafrica.com/stories/201007160584.html>.

Thank you once again for agreeing to address our specific concerns within the context of your audit. If you have any questions or comments, please contact Sheri Rickert, Minority Staff Director of the Subcommittee on Africa and Global Health, at 202-225-3765.

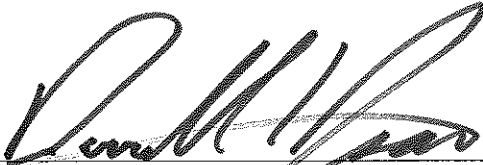
Sincerely,



CHRISTOPHER H. SMITH  
Ranking Member  
Africa & Global Health Subcommittee



ILEANA ROS-LEHTINEN  
Ranking Member  
Committee on Foreign Affairs



DARRELL E. ISSA  
Ranking Member  
Committee on Oversight  
& Government Reform



FRANK R. WOLF  
Ranking Member  
Commerce-Justice-Science  
Appropriations Subcommittee

Enclosures (2)

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## 3 Congress members accuse US of funding Kenya vote

By TOM ODULA and JASON STRAZIUSO (AP) – 4 days ago

NAIROBI, Kenya — Three Republican members of the U.S. Congress are accusing the Obama administration of using money meant for civic education in Kenya to back a draft constitution that they fear would increase access to abortion in the African country.

The U.S. Embassy on Friday said it has provided about \$11 million in support of constitutional reform in Kenya, but that an investigation into the funds found that nine of more than 200 subgrantees supported the "yes" campaign. A spokeswoman said the embassy has since suspended or concluded those nine grants.

Kenyans will vote on the draft constitution on Aug. 4, a vote that is part of wide-ranging efforts to avoid a repeat of political violence that saw more than 1,000 people killed after the country's December 2007 presidential elections.

The fight over the U.S. funding centers around one of the draft constitution's most contentious clauses — language that says abortion will not be permitted unless the life or health of the mother is in danger according to the opinion of a trained health professional.

Abortions are illegal in Kenya under current law, but hundreds of thousands of women still seek them each year. The existing law, however, also allows a doctor to perform an abortion if a woman's life is in danger.

Rep. Chris Smith, a Republican from New Jersey, argues that the "trained health professional" clause reduces the qualifications needed of the abortion provider from current Kenyan law.

"The draft constitution, with its controversial provisions expanding access to abortion, is a matter for the Kenyan people to consider and decide," said Smith. "The Obama administration should immediately withdraw all U.S. taxpayer funding used to buy votes and influence the outcome on the referendum."

A part of U.S. law known as the Siljander Amendment makes it illegal for foreign assistance funds to be used to lobby for or against abortion.

Katya Thomas, a U.S. Embassy spokeswoman in Nairobi, said that the nine suspended grants originally had been given to support civic education, and constitutional and democratic reforms. But the primary contractor gave subgrants to other groups using language that had not been approved by the Embassy, she said.

"We don't fund the 'yes' campaign, but around the region, not just in Kenya, through USAID, we support constitutional democratic reforms," she said, referring to the U.S. government's aid arm, USAID. She said she does not know when those nine subgrants were cut off.

Smith, in a statement, detailed 10 Kenyan organizations he said the U.S. Inspector General had found used funds to promote "yes" votes on the constitution.

Top U.S. officials have done little to hide their support of Kenya's proposed constitution. President Obama has said the constitution is a "singular opportunity to put Kenyan governance on a more solid footing that can move beyond ethnic violence, can move beyond corruption."

Last month during a visit here, Vice President Joe Biden said the new constitution would "deepen the roots of your democracy and ultimately guarantee your security."

Rewriting Kenya's constitution was part of the peace deal signed in February 2008 after the postelection violence. The draft constitution cuts down the Kenyan president's current enormous powers by setting up an American-style presidential system of checks and balances.

The U.S. Embassy in Nairobi this week released a statement saying that unnamed Kenyan leaders have alleged that U.S. Ambassador Michael E. Ranneberger and the embassy are providing funding to members of parliament to support the yes campaign or are intimidating opponents of the constitution.

"These claims are categorically false, and those making such allegations are lying," the embassy statement said.

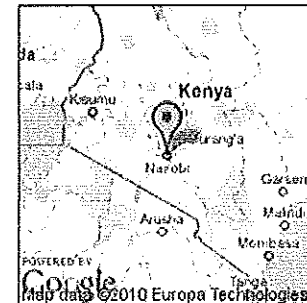
Kenyan Justice and Constitutional Affairs Minister Mutula Kilonzo denied to AP that the U.S. was illicitly giving funds to those supporting the constitution.

Mutula said that the U.S. has historically given Kenya funds to support voter education directly and through contributions to the United Nations Development Program, and that current funding is for a similar process.

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**AP** Associated Press

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Daily Nation On The Web

## Kenya: Trade Union Organisation Denies U.S. Funding Allegation

15 July 2010

Nairobi — Workers' umbrella body, the Central Organisation of Trade Unions, has rejected the claim that it was receiving funds from the US government to support the proposed constitution.

Secretary-general Francis Atwoli said the union had not received a single cent from the US.

"All the funds at Cotu's disposal, right from October 2009 when it kicked off its countrywide rallies on the Agenda 4 reforms that have been televised live, including the on-going 'Yes' campaigns, are from contributions from our 1.5 million members in the 36 affiliated trade unions in the country," he added.

Congressman

The union was reacting to a claim by US Congressman Christopher Smith that the Obama administration has pumped Sh50 million into 'Yes' campaigns.

Mr Smith claimed that Cotu was one of the organisations that had received millions of shillings to campaign for the proposed constitution.

The workers' organisation had received Sh6.9 million to conduct 'Yes' campaigns across the country, according to the Congressman.

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