

115TH CONGRESS
2D SESSION

S. RES. 616

Urging the Government of Kenya to respect human rights, protect democratic space for civil society, and promote transparent and accountable democratic governance.

IN THE SENATE OF THE UNITED STATES

AUGUST 23, 2018

Mr. BOOKER (for himself, Mr. FLAKE, Mr. DURBIN, and Mr. COONS) submitted the following resolution; which was referred to the Committee on Foreign Relations

RESOLUTION

Urging the Government of Kenya to respect human rights, protect democratic space for civil society, and promote transparent and accountable democratic governance.

Whereas the United States has a serious interest in the democratic trajectory of Kenya, as the United States and Kenya are partners with longstanding mutual interests in East Africa and cooperate on a wide range of economic and security issues;

Whereas unrest related to governance and ethnic tensions has periodically threatened the standing of Kenya as a stable partner in the region;

Whereas the Department of State has identified abuses by security forces, including “unlawful killings, forced dis-

appearances, and impunity”, as among the most serious human rights problems in Kenya;

Whereas the 2017 Country Report on Human Rights Practices of the Department of State for Kenya noted that, according to some human rights groups, the number of extrajudicial killings by security forces was “significantly underestimated” due to underreporting in poor areas, and the report describes impunity as a major problem with respect to both violent abuses and police corruption;

Whereas the tumultuous elections held in August and October 2017 were marred by serious human rights violations perpetrated by security forces, who used excessive force to break up protests and carry out house-to-house operations in opposition strongholds;

Whereas Human Rights Watch reports that at least 67 people were shot or beaten to death by police after the August 2017 elections;

Whereas the continued pattern of widespread sexual violence against women and girls at the time of elections and the absence of appropriate post-violence care demonstrate a failure by the authorities of Kenya to prevent, investigate, and hold perpetrators accountable for election-related gender-based violence;

Whereas, although the September 1, 2017, decision of the Supreme Court of Kenya to nullify the results of the August 2017 election demonstrated the independence of the judiciary, a result of reforms under the new Constitution of Kenya, subsequent threats and attacks against judges, disregard by government officials for court orders, and a more recent effort by the Government of Kenya to cut

the budget of the judiciary raise concerns about respect for the separation of powers in Kenya;

Whereas, following the electoral victory of President Uhuru Kenyatta in October 2017, the Government of Kenya has targeted the media and access to information, despite numerous public promises to safeguard press freedom;

Whereas, more recently, journalists and civil society activists have raised concerns that a new cybercrime law that criminalizes the publication of “fake news” may be used to stifle press freedom;

Whereas reports of anti-riot police physically attacking journalists, senior government officials threatening journalists, and arbitrary arrests and kidnappings of journalists suggest a pattern of abuse and a closing of civic space;

Whereas an independent, impartial media is crucial to ensure access to information for the people of Kenya as afforded by the Constitution of Kenya;

Whereas the lack of accountability for the police of Kenya and actions to limit democratic space for civil society threaten to undermine the Constitution of Kenya and the rule of law;

Whereas the religious, ethnic, and geographic diversity of the people of Kenya is a source of strength and economic vitality for the country;

Whereas the courts of Kenya have made some progress in providing access to justice, as demonstrated when the High Court agreed to hear a case, brought by 3 rights groups representing the lesbian, gay, bisexual, and transgender community (in this preamble referred to as the “LGBT community”), to challenge parts of the penal code seen as targeting the LGBT community; and

Whereas the Government of Kenya must continue to work towards protecting the human rights of the LGBT community in Kenya because many members of the community continue to face harassment, threats, and violence: Now, therefore, be it

1 *Resolved*, That the Senate—

2 (1) calls upon the Government of Kenya and
3 President Kenyatta—

4 (A) to enforce the rule of law by—

5 (i) publicly condemning all extrajudi-
6 cial killings and other violations perpetr-
7 ed by the security forces of Kenya;

8 (ii) ensuring that extrajudicial killings
9 and other violations are investigated and
10 prosecuted by an independent judicial in-
11 quiry, such as the Independent Policing
12 Oversight Authority;

13 (iii) investigating the excessive use of
14 force by the security forces; and

15 (iv) committing to provide repara-
16 tions, including adequate compensation, for
17 victims and their families;

18 (B) to secure human rights for all citizens
19 of Kenya, including members of the lesbian,
20 gay, bisexual, and transgender community;

1 (C) to safeguard press freedom, according
2 full respect to international law, by allowing
3 open reporting and commentary on any issues
4 of pressing public interest and by permitting
5 journalists to exercise the freedom of expression
6 as provided for in the Constitution of Kenya;

7 (D) to open up civic space by allowing indi-
8 viduals to assemble peacefully, express their
9 views freely, and hold opinions without inter-
10 ference;

11 (E) to reform electoral processes and insti-
12 tutions, including by providing support for ac-
13 countability, as part of a broader effort to ad-
14 dress the history of election-related violence in
15 Kenya and prevent future bloodshed;

16 (F) to provide access to independent courts
17 for citizens of Kenya who have suffered from
18 intimidation, corruption, and violence by the se-
19 curity forces of Kenya and armed gangs; and

20 (G) to demonstrate greater respect for the
21 independence of the judiciary by complying with
22 court orders and ceasing actions or statements
23 that may be seen as seeking to intimidate
24 judges;

25 (2) urges the security forces of Kenya—

1 (A) to show restraint and refrain from any
2 unnecessary or excessive use of force, including
3 intimidation, kidnapping, extrajudicial raids,
4 confiscation, and killings;

5 (B) to carry out arrests and prosecutions
6 in full accordance with the rule of law and dem-
7 onstrate transparent due process; and

8 (C) to publicly acknowledge violations, con-
9 duct speedy, impartial, thorough, and trans-
10 parent investigations, and hold those respon-
11 sible to account as a key step toward achieving
12 justice for victims;

13 (3) calls upon the leaders and citizens of Kenya
14 to begin a national conversation to build cohesion
15 and address longstanding issues; and

16 (4) calls upon the President, the Secretary of
17 State, and other senior officials of the United
18 States, as well as international partners—

19 (A) to raise the issues described in this
20 resolution with President Kenyatta and the
21 Government of Kenya;

22 (B) to continue to support civil society and
23 the development of democratic institutions in
24 Kenya; and

- 1 (C) to identify opportunities in which re-
- 2 sources or diplomatic engagement could con-
- 3 tribute to moving democracy forward in Kenya.

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