energy security, encourages renewable energy and energy efficiency, and supports hard-working families and communities around the country.

This year's Energy bill finally moves past the misguided debates of previous Congresses and the fiscally and environmentally irresponsible proposals that were considered and passed in recent years. The United States is at an important juncture. By supporting the Energy bill, I am supporting a new direction for our Nation's energy policy: one that encourages renewable energy, conservation of the resources we have, and American innovation.

TORTURE

Mr. CARDIN. Madam President, as co-chairman of the Helsinki Commission, I chaired a field hearing this week at the University of Maryland College Park campus. The title of that hearing was ''Is It Torture Yet?''—the same question I was left with after Attorney General Michael Mukasey's nomination hearings.

The day of the hearings was also International Human Rights Day, which commemorates the adoption of the Universal Declaration on Human Rights nearly 60 years ago. The historic document declares, ''No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.''

In the Helsinki process, the United States has joined with 55 other participating States to condemn torture. I want to quote one particular provision, because it speaks with such singular clarity. In 1989, in the Vienna Concluding Document, the United States—along with the Soviet Union and all of the other participating States—agreed to ''ensure that all individuals in detention or incarceration will be treated with humanity and with respect for the inherent dignity of the human person.'' This is the standard—with no exceptions or loopholes—that the United States is obligated to uphold.

I deeply regret that six decades after the adoption of the Universal Declaration, we find it necessary to hold a hearing on torture and, more to the point, I regret that the United States' own policies and practices must be a focus of our consideration.

As a member of the Helsinki Commission, I have long been concerned about the persistence of torture and other forms of abuse in the OSCE region. For example, I am troubled by the pattern of torture in Uzbekistan—a country to which the United States has extradited terror suspects. Radio Free Europe reported that in November alone two individuals died while in the custody of the state. When their bodies were returned to their families, they bore the markings of torture. And, as our hearing began, we were notified that a third individual had died under the same circumstances.

Torture remains a serious problem in a number of OSCE countries, particularly in the Russian region of Chechnya. If the United States is to address these issues credibly, we must get our own house in order.

Unfortunately, U.S. leadership in opposition to torture and other forms of ill-treatment has been undermined by revelations of abuse at Abu Ghraib prison and elsewhere. When Secretary of State Rice met with leading human rights activists in Moscow in October, she was made aware that the American forces' conduct at Abu Ghraib has damaged the United States' credibility on human rights.

As horrific as the revelations of abuse at Abu Ghraib were, our Government's own legal memos on torture may be even more damaging, because they reflect a policy to condone torture and immunize those who may have committed torture.

In this regard, I was deeply disappointed by the unwillingness of Attorney General Mukasey to state clearly and unequivocally that waterboarding is torture. I chaired part of the Attorney General's Judiciary confirmation hearing and found his responses to torture-related questions woefully inadequate. On November 14, I participated in another Judiciary Committee hearing at which an El Salvadoran torture survivor testified. This medical doctor, who can no longer practice surgery because of the torture inflicted upon him, wanted to make one thing very clear: as someone who had been the victim of what his torturers called ''the bucket treatment,'' he said, waterboarding is torture.

This week, this issue came up again—this time at the Senate Judiciary Committee's hearing on Guantanamo. One of the witnesses was BG Thomas Hartman, who was specifically asked whether evidence obtained by waterboarding was admissible in Guantanamo legal proceedings. Like Judge Mukasey, he would not directly answer that question. Nor would he respond directly when asked if a circumstance arose—hypothetically—whether waterboarding by Iranians of a U.S. airman shot down over Iran would be legal according to the Geneva Conventions. In fact, the Geneva Conventions prohibit the use of any coercive interrogation methods to obtain information from a Prisoner of War. I am deeply concerned that the administration's efforts to avoid calling waterboarding what it is—torture—is undermining the interpretation of the Geneva Conventions, which we have relied upon for decades to protect our own service men and women.

The destruction of tapes by the CIA showing the interrogation of terror suspects raises a host of additional concerns. First, these tapes may have documented the use of methods that may very well have violated U.S. law. Second, the tapes may have been destroyed in violation of court orders to preserve exactly these sorts of materials. If the administration is willing to destroy evidence in violation of a valid court order, we have a serious rule-of-law problem. Finally, it is profoundly disturbing that materials formally and explicitly sought by the 9/11 Commission—mandated to investigate one of the worst attacks on American soil in the history of our country—were not turned over by the CIA. The destruction of the CIA tapes should be carefully investigated.

Mr. President, the Congress must act to ensure that abuses by U.S. Government personnel are not committed on the false theory that this somehow makes our country safer.

UPCOMING GENERAL ELECTIONS IN KENYA

Mr. FEINGOLD. Madam President, the last time I devoted a floor statement to Kenya it was to condemn the assault by elite police and paramilitary commandos armed with AK–47s on the offices of the Standard Group's offices in an attempt, by the government of that time, to prevent an independent newspaper from publishing a story on a sensitive political matter. That was nearly 2 years ago—in March 2006—when Kenya's President Mwai Kibaki and senior members of his government were facing serious charges of bribery, mismanagement of public funds, inadequate governance reform efforts, and political favoritism. Unfortunately, while some reform measures have been instituted, corruption continues to choke Kenya's government and permeate society as efforts to curb such practices have been significantly deprioritized. Transparency International's 2007 Corruption Perceptions Index shows Kenya sliding down to number 150 out of 179 countries, on par with Zimbabwe and Kyrgyzstan.

More encouraging have been the increasingly engaged voices of the Kenyan people and the dynamic media that has developed since the last election. The last election showed the people of Kenya that their votes did count enough to bring about a change, and the independent press has simultaneously expanded and strengthened remarkably. Media outlets have not allowed themselves to be intimidated as they persist in exposing government mismanagement. Furthermore, while the courts are not entirely independent, they have taken up several high-profile cases, and some key ministers have been forced to resign. While Kenya's democracy is increasingly robust, it is nevertheless still quite young. The new few weeks may reveal just how much progress has been made—and how much progress is likely to be made in the future.

In two weeks—on Thursday, December 27—Kenyans will go to the polls to vote for their President, Parliament, and local officials. Five years ago, the Kenyan people went to the polls and unambiguously rejected years of mismanagement, corruption, and declining economic growth by overwhelmingly electing the opposition National Rainbow Coalition, NARC, to power, ending

more than 40 years of rule by the Kenya African National Union, KANU. President Kibaki and his administration deserve credit for advancing basic freedoms and permitting the emergence of a vibrant civil society, but his failure to rein in corruption in government ranks has him now just trailing Raila Odinga, his main contender in the presidential race.

The fact that these elections are so close and hotly contested is a good sign for Kenya's democracy. For the first time, a number of parties appear to be taking small but noticeable steps away from ethnic loyalties and towards more legitimate political platforms. Such a development is an essential component as the country moves towards better governance, and I am so pleased by all the work the administration—and in particular the embassy in Nairobi—is undertaking by working closely with the Electoral Commission of Kenya, political parties, civil society organizations and other international partners through a new multidonor-funded, comprehensive electoral assistance program. Such initiatives are vital to help bring about a strong democracy.

As the 2007 national elections approach, however, there are a number of challenges to a peaceful and fair multiparty process. Like other Kenyan polls before it, this campaign period has been fraught with violence and accusations of fraud. The electoral commission is investigating reports of voting cards being bought, and the primary conventions of the mainstream political parties were interrupted by violence and chaos. On balance, there are those who say security has gotten better, but violence continues at unacceptable rates and around 16,000 Kenyans have been displaced in election-related violence.

Last May, the United States Ambassador to Kenya, Mr. Michael Ranneberger, addressed the Kenyan government and political community. He promised that the United States would be neutral in the elections and in building the capacity of political parties and civil society, but he made it clear that, and I quote, ''We are not neutral with respect to . . . the conduct of elections. We want to see an inclusive, fair, and transparent electoral process.''

As voting day draws near, it is essential that the international community speaks with one voice in calling for all parties to refrain from violence and fraud before, during, and after the upcoming polls. Kenya's political elite, military officials, judicial bodies, and 14 million registered voters must understand that the world is watching closely for signs that Kenya is truly committed to good governance and rule of law. Kenya's important leadership role in the region and throughout the continent make it particularly important that the government ensure the open flow of information, freedom of assembly, and nonpartisan conduct of the polls. Further, the government must refrain from any misuse of its resources or authorities in the runup to the election and on Election Day. All parties should renounce efforts to enflame tribal hatred, which means that politicians need to control their rhetoric, eschew violence, and avoid threats.

International support for Kenya's upcoming polls includes a large number of foreign observers who will be dispersed across the country to witness the polling on Election Day. Reports from these monitors and independent media will inform opinions around the globe not only when it comes to assessing the past 5 years of President Kibaki's administration but also in determining the legitimacy of the next government. In 2 weeks, all eyes will be on a country that is an important role model of stability and growth in a region beset by natural and manmade disasters. It is not only Kenya's next president and other political leadership who will be decided on December 27, but it is also the state of its democracy.

OPEN GOVERNMENT ACT

Mr. KYL. Madam President, I rise today to comment on the OPEN Government Act. This bill is only a slightly modified version of S. 849, a bill that passed the Senate on August 3 of this year. At that time, I made a more complete statement regarding the bill—see 153 CONGRESSIONAL RECORD at S10987 to S10989 in the daily edition of the RECORD,, on August 3, 2007—as did Senators LEAHY and CORNYN—see the RECORD at S10986 to S10987 and S10989 to S10990. Thus my remarks today need only describe the changes made to the bill and a few other matters.

One section of the bill that makes important changes to the law and thus deserves comment is section 6. Although this section appeared in S. 849, I did not address the provision in August because final negotiations regarding the language of that section were completed only an hour or so before we began a hotline of the bill. The purpose of section 6 is to force agencies to comply with FOIA's 20-day deadline for responding to a request for information. The original introduced version of S. 849 sought to obtain agency compliance by repealing certain FOIA exemptions in the event that an agency missed the 20-day deadline, an approach that I and others argued would impose penalties that were grossly disproportionate and that would principally punish innocent third parties—see S. Rep. 110–059 at 13–14 and 15–19. The current draft applies what is in my view a much better calibrated sanction, the denial of search fees to agencies that miss the 20-day deadline with no good excuse.

Several features of this new system merit further elaboration. First, the 20-day deadline begins to run only when a FOIA request is received by the appropriate component of the agency, but in any event no later than 10 days after the request is received by a FOIA component of the agency. The reasoning behind this distinction is that requesters should receive the full benefit of the 20-day deadline if they make the effort to precisely address their request to the right FOIA office, and that they should also be protected by the secondary 10-day deadline if they at least ensure that their request goes to some FOIA component of the agency. So long as a misdirected request is sent to some FOIA component of an agency, it is reasonable to expect that such component will be able to promptly identify that missive as a FOIA request and redirect it to its proper destination.

On the other hand, if a FOIA request is sent to a part of an agency that is not even a FOIA component, it is difficult to impose particular deadlines for processing the request. For example, if a request is sent to an obscure regional office of an agency, it will probably simply be sent to regional headquarters. Many agencies have a large number of field offices whose staff handle very basic functions and are not trained to handle FOIA requests. Such staff probably will not recognize some requests as FOIA requests. Implementing a deadline that extended to FOIA requests that are received by such staff would effectively require training a large number of additional agency staff in FOIA, something that Congress has not provided the resources to do.

Also, because this bill imposes significant sanctions on an agency for a failure to comply with the 20-day deadline, it is important that the deadline only begin to run when the agency can reasonably be expected to comply with it, and that the law not create opportunities for gamesmanship. If the deadline began to run whenever an agency component receives the request, for example, sophisticated commercial requesters might purposely send their request to an obscure field office in the hope that by the time the FOIA office receives the request, it will be impossible to meet the deadline, and the requester will thereby be relieved from paying search fees. Given the wide variety of types of FOIA requesters, Congress cannot simply assume that every requester will act in good faith and that no requester will seek to take advantage of the rules. The present bill therefore initiates the 20-day deadline only when the request is received by the proper FOIA component of the agency, or no later than 10 days after the request is received by some FOIA component of the agency.

Section 6 of the bill also allows FOIA's 20-day response deadline to be tolled while an agency is awaiting a response to a request for further information from a FOIA requester, but only in two types of circumstances. Current practice allows tolling of the deadline whenever an agency requests further information from the requester. Some FOIA requesters have described to the Judiciary Committee situations in