

Draft
Kenya on the brink; democratic renewal or deepening conflict

We are here today because approximately a year ago and a half ago, Kenyans realized that we were not a nation yet, but a nation in embryo. What happened over two months was a clear demonstration of the impossibility of denying history and its many paradoxes.

For the first time, I think the country came to terms with the fact that the foundations of the state, its institutions, and its peoples were at odds with each other. That the state could be threatened so completely by an election showed that the state commanded neither the loyalty nor the respect of the people under it. Even more importantly, there was a realization that the ties that bind Kenyans together were wafer thin.

The December 2007 post-election violence in Kenya has been described as unprecedented, not because it was the first time that violence associated with elections had been experienced, but because the violence after the 2007 election was “by far the most deadly and the most destructive...(as well as being)...more widespread than the past”.¹

While the immediate cause of the violence was the disputed results of the 2007 general elections, the deeper causes of the violence have been attributed to a range of factors, in particular the institutionalisation of the use of violence, the manipulation of ethnicity for political and economic gain with concomitant marginalisation and inequality in access to resources, as well as the breakdown of state institutions.² The repeated failure to stem the ethnically-based political violence, purging official impunity and hold perpetrators of human rights abuses to account has created a climate of impunity in Kenya that led to cycles of violence. The atmosphere of distrust and division created by the longstanding lack of justice has been repeatedly manipulated by leaders in support of their own political agendas disguised under a community interest tag. It is also this tolerance of impunity that is contributing to renewed cycles of violence, both by implicitly permitting unlawful acts and by creating an atmosphere of distrust and revenge that is being manipulated by leaders seeking to foment violence for their own individual political agendas.

Institutionalisation of violence

There has been a historical legitimacy and institutionalisation of the use of violence in Kenya, dating back to the colonial period, and continuing after independence was attained in 1963.

Violence has been used by successive regimes to maintain political power and repression, using both state apparatus’ as well as gangs and militia³. This has in turn led to a culture of impunity as those responsible for violence often went unpunished.

Political power and ethnicity

Prior to Kenya’s independence, one of the most widely contested political issues was the question of decentralisation and the related issue of equitable access to political power and resources. Indeed, political power and economic resources in Kenya have largely been vested in the ethnic groups of the sitting President;

¹ See Report of the Commission of Inquiry into Post Election Violence (CIPEV) (Waki Report), Government Printers, October 2008; See also KNCHR, “On the Brink of the Precipice: A Human Rights Account of Kenya’s Post 2007 Election Violence (August 2008); A multi-party system of government was reintroduced in 1991, and since then three general elections have been held: in 1992, 1997 and 2002

² See Report of the Office of the High Commission for Human Rights Fact-finding Mission to Kenya, 6-28 February 2008, 6 <<http://www.ohchr.org/Documents/Press/OHCHRKenya-report.pdf>> accessed 22 March 2008(OHCHR Kenya Report); see also the Waki Report Ibid, 21-35; See also Republic of Kenya, *Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land*, Government Printer, Nairobi, 2004, 1(Ndung’u Report); See also Country Review Report of the Republic of Kenya, African Peer Review Mechanism, May 2006 (Kenya APRM Report) 47-62.

³ See generally the Report of the United Nations Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions, Phillip Alston. Mission to Kenya, A/HRC/II/2/Add.6 26 May 2009, pgs 29, 48; See also Waki Report, Ibid, 24, 33, 258.

in Kenyatta's (1963-1978) and Kibaki's (2002 to date) tenures- the Kikuyu- and in Moi's reign (1978-2002) -the Kalenjin.⁴

Land and inequality

After independence, as part of his Africanization policy, Kenyatta promoted the redistribution of land owned by British settlers on the basis of the 'willing seller and willing buyer' principle. Much of this land was in the Rift Valley, historically inhabited by the Kalenjin ethnic group from whom it was taken during colonial times.⁵ Successive governments failed to redress this inequity. Today, as political elites use the situation to mobilise ethnic support, it has become an issue that pits the indigenous Kalenjin against the more recently settled communities, particularly members of the Kikuyu ethnic group.⁶ Widespread perceptions that the election of 2007 was rigged only served to re-awaken memories of these historical injustices and the fear of continued economic and political domination.

There is one explanation for the crisis of confidence in the state – and it was not the illegitimate election. It is simply that the Kenyan state lacks a foundational and normative legitimacy and has been unable to create a population that is truly Kenyan.

The reason for this illegitimacy is embedded in the distortions of history, or what are commonly called historical injustices. In Kenya's case, historical injustices can be divided into three key historical eras – the injustices of the colonial state, the injustices of the earlier post-colonial state and the injustices of the latter colonial state under NARC and the Coalition government.

These injustices are economic, social, and political – but they are expressed in ethnic terms because of the incoherence of the state and its failure to create a Kenyan national psychology and identity.

It is against this back-drop that the project of national reconciliation and peace-building must occur. However, the key to resolving the conflict and averting the possible recurrence of violence along ethnic and political lines does not lie in finding a quick-fix solution.

Kenya is more likely to be successful where impunity, genuine grievances/injustices and structural inequities are confronted and addressed. This calls for among others a constitutional settlement accommodating the interest of all communities and importantly healing and reconciliation among Kenya's diverse communities; and addressing structural violence and inequalities.

The failure to address the deep social and historical cleavages in context of civil and political rights and the economic, social, and cultural rights questions-especially poverty land grievances- have denied the Kenyan society social cohesion. Simply put, the state has been captive to narrow and callous political elite that lacks a vision for nationhood project and development in a globalized world.

Furthermore, foreigners cannot develop Kenya. The primary responsibility for Kenya's sustainable development lies with Kenyans. Part of development is own framing of development agenda, own planning and own mobilization of resources. The money we squander through corruption and waste is more than aid. The more we rely on donor aid, the more we become dependent and unimaginative. We must think for ourselves. We must act for ourselves. Then we'll be respected. Only then can we become a credible player in global politics and the global economy.

⁴ See Waki Report 26-32.

⁵ See 'How state land policy shaped conflict' *Daily Nation* 9 February 2008 <www.nationaudio.com> accessed 15 February 2008; see also 'Answers to land problems depend on political will' *East African Standard* 10 February 2008 <www.eastandard.net> accessed 15 February 2008; International Crisis Group 'Kenya in crisis' 2008 (137) *Africa Report* 1; see also P Kagwanja 'Breaking Kenya's impasse, chaos or courts' 2008 (1) *Africa Policy Institute* 1,

⁶ See Waki Report, 32-35.

We can build a national culture from our 42 or so cultures and those aspects of other cultures that we choose to borrow. Culture is the motor or soul of a people. Culture reinforces one's identity. Culture is a resource. Culture shapes the national vision and philosophy.

Kenya must undergo a moral revolution. We must after about 46 years of authoritarianism begin to learn as a country and society what is right and what is wrong. We need to develop a moral code. We must reinvent religion so that we can live our faiths. To reconstruct a country, you must begin by reconstructing its values. We must now begin to focus on developing the new values of and for the new Kenya.

We must most importantly adopt a bold and comprehensive national process of reconstruction in which the following six things must happen:

1. We must return to a policy of deliberate nation-building to de-ethnicize and de-tribalize our politics. The new law on political parties does some of this, but it is not enough. We can do this by creating a political culture that is national and not ethnic, by cultivating a national psyche and identity through a shared social, political and economic vision.
2. We must demarginalize ethnic groups through affirmative action programs, devolution of power, and the equitable distribution of national resources. The uneven development or the severe underdevelopment of some regions and groups has been the bane of the Kenyan state.
3. We must create comprehensive transitional justice mechanisms such as a truth commission, reform the electoral process, clean up and empower the judiciary, and up the political class of its rot. We cannot afford to be ruled by looters, killers, and rapists if we hope to create a modern state.
4. We must pass a new democratic constitution and new laws to re-engineer a democratic state devoid of ethnicity, abuse of power, and corruption. In other words, a new legal culture and ethos will be an integral part of reform.
5. We must grow a vibrant, independent and effective civil society that is insightful and devoid of ethnic, religious, age and gender barriers.
6. We must deliberately foster a new political class that is global in outlook, national in character, and altruistic in nature.

In conclusion, these are things that must be done - urgently - to address the historical wrongs and create a common and equitable destiny for Kenya; to realize democratic renewal and put an end to the deepening conflict. The basic pillars of the new Kenya must be the citizen, the family and communities. The state and its leadership must be facilitators, managers, enablers. They must promote the right of Kenyans to organize their lives through the medium of participation. Perhaps states and governments in Africa should just leave citizens alone for sometime. Our capacities and energies need time for self regeneration and expression.