

Kenya: After the crisis, lessons abandoned

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The story of Kenya's post-election violence has yet to be told. With over 600¹ dead, property of unknown value destroyed,² many people maimed, raped and dehumanised, families and marriages destroyed, children traumatised, the human and economic cost will likely be central to Kenya's soul for generations. This commentary avoids the too personal and painful aspects, but touches on the causes and acts of the violence and reflects on the last six months of 'normalcy'. It reaches the conclusion that while some changes have occurred, it would seem as if no lessons were learned, or that they have been the wrong lessons. Accordingly a future recurrence of the violence appears to be far more likely than unlikely.

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Shattered myths

From discussions with Kenyans one senses a realisation that the post-election violence has changed Kenya. There is for example the visible irritation among especially the middle classes when ‘avoidance of the Kenyan way’ is mentioned. There is a grudging acceptance of the fact Kenya is not immune to internal strife. Her neighbours might be experiencing a sense of poetic justice, for Kenya’s reference to the Somali, Ugandan or Sudanese way with regard to the civil strife in those countries has been replaced by reflective silence when others talk of avoiding the Kenyan way.

That violence, which started off as protest against an alleged stolen victory but quickly turned into inter-ethnic conflict, has brought the realisation that the state of Kenya, too, can collapse. Another consequence has been an increased awareness of ethnic identities, even among the urbanised middle classes. Everything is viewed through an ethnic prism. One of the more visible effects is a lessening of trust of Kenyan professionals and institutions. This is clear from the fact that a number of the members of the two commissions³ created to look into the disputed elections and the post-election violence are not Kenyans.⁴

Six months down the line, the mistrust continues. In a bill published to provide a process for re-drafting of the Kenyan constitution, provision is made for the work to be done mainly by a panel of experts, again with the proviso that a number of them must be non-Kenyans (Constitution of Kenya Review Bill 2008).

Militarisation

Another effect is a worrying trend of acceptance by the population that there is such a thing as ‘too much democracy’. The role of the military in Kenyan society illustrates this development. Kenya has always prided itself on its disciplined military forces, which are totally apolitical and subject to civilian rule. Indeed, apart from an attempted mutiny in the 1960s and an attempted coup in 1982, the Kenyan military has not been involved in politics. To its credit, the military is about the only institution in Kenya that got out of the post-election violence with its reputation intact. In the aftermath of the elections, the military was called in to undertake some police duties and did so without resorting to violence. In fact, parts of the country’s transport network were reopened only after military intervention. After the election violence, the military was again called in, this time to quell a growing insurgency around Mount Elgon. In this case the military succeeded in destroying a ragtag militia, the Sabaot Land Defence Force, with relative ease and achieving what the police had been unable to do in two years. However, it took place amid accusations of serious human rights abuses (Human Rights Watch 2008). Although the military forces are to be lauded for their success, their introduction into

civilian law and order issues and particularly the general acceptance and even protection⁵ of their 'hard-line' methods amount to a surrendering of freedoms and fundamental rights at the altar of peace. Subtle as this argument may be, the negation of hard-won freedom, with the consent of an insecure and traumatised populace, could turn out to be the most negative consequence of the post-election violence.

The post-election upheavals were followed by further unrest and violence: Prison warders, in an unprecedented act and at the risk of being declared treasonous, went on strike shortly after the elections. In March 2008 protesting hawkers threatened to sabotage the railway line and block all roads, a tactic used extensively during the post-election violence. During June and July 2008 pupils in over 200 secondary schools in Kenya resorted to violence over various grievances, and in the process at least two students were killed and property burned in acts of arson. Although school riots and protests by hawkers are common occurrences in Kenya, their intensity and violent tactics have led commentators (see for example Iraki 2008) to link the incidents to public acceptance of violence as a means of addressing grievances and disputes and, in the case of the students, to delayed trauma.

However, every coin has two sides and one positive side effect of the post-election violence is that it did force a political compromise which gave Parliament key powers with regard to the appointment of a prime minister. A newly assertive Parliament has within six months forced the resignation of the finance minister over allegations of corruption and the opening of parliamentary debates to public viewing on television. Similarly, a recognition that politicians played a role in inciting ethnic feelings and that ethnicity is a challenge for the country has led to discussions on the creation of a bill to address issues of negative stereotypes associated with ethnic communities.⁶ Recognition that perceived marginalisation contributed to the post-election violence has resulted in an attempt at inclusiveness in all government appointments and resource allocations, with resources being increased for the devolutionary constituency development funds. There is also a recognition that a new constitutional dispensation has to have an element of devolution of power.

The Kriegler and Waki commissions are, without pre-empting their findings, opening up several institutions and their workings to public scrutiny. The intelligence, police and provincial administration have had to explain and defend themselves and the Electoral Commission of Kenya is being scrutinised, too. Even the prisons department has been subject to scrutiny which resulted in a damning report.⁷ Although it is a pity that this scrutiny was precipitated by violence and is reactive, a proper evaluation of the institutional failures should serve to improve the situation in Kenya.

The media, and particularly the local radio stations which were accused of fanning ethnic hostilities, have been scrutinised, too. Listeners are finding presentations by these

stations quite changed, and one only hopes it is as a result of the realisation of the harm caused and the changed political environment, and not because of threats to withdraw licences.

Where is Kenya headed?

Attempts are being made to address the failed electoral system and the post-election violence, a coalition government which was formed as part of the solution to the election dispute is holding on and in relative harmony, too. Persons displaced during the violence have been resettled with some measure of success and some people have been taken through the criminal justice system because of either partaking in or inciting to (including the spreading of hate messages) election violence. It is also heartening that no one in Kenya is suggesting doing away of with elections or moving away from competitive multiparty politics.⁸ That competitive politics is not blamed for the violence is a surprising but positive indicator of some maturity in multiparty politics in Kenya.

All of these events and occurrences indicate that Kenya is slowly but surely recovering. Unfortunately, however, there are warning signs that these improvements or recoveries are not because Kenyans appreciate the depths to which the country has sunk – and thus a deliberate effort to move away from the abyss – but rather a case of papering over the underlying causes of the violence. Perhaps, also, the people hope that not too much damage was done. It is worrying that no investigation has been conducted, and none appears planned, for the alleged importation of weapons from Somalia which were used by one of the militias in the post-election violence (Kelley 2008). The Kenyan National Dialogue and Reconciliation Committee,⁹ a body created, as the name suggests, to negotiate and provide a long-term structural process to reconciliation, practically abandoned its most important and most difficult task, which was to address root causes of the violence and recommend institutional and constitutional structures necessary to prevent a further occurrence. It would seem that once the power-sharing agreement was in place and all the ‘peace makers’ had been rewarded with cabinet posts, they became too busy to meet the Committee to discuss issues.¹⁰ This constitutes a dangerous and fundamental failure of the peace and reconciliation process.

Equally worrying is the limitation imposed on the Waki commission. After it had failed to address the root causes of the violence, the Reconciliation Committee should have supported the Waki commission’s efforts to do so. However, it actually hampered the work of the Waki commission and imposed it a two month time limit for completion of its work. The Kriegler commission, in its turn, was given a limited mandate,¹¹ which means that closure on who won the 2007 elections will never be achieved. The events echo the past history of the country, in which commissions of inquiry are set up but their reports are shelved and never made public, let alone implemented.

Further evidence that the political leadership has not learnt any lessons came during July and August 2008 when the media were full of reports of political re-alignments geared towards the 2012 elections (see for example the *Sunday Nation* (2008) and *The Standard on Sunday* (2008)). It would seem that campaigns and positioning for the presidency in the 2012 elections have already started, with erstwhile opponents discussing alliances and vice versa. One could argue that this is an indicator of a healed political regime which could serve as an example for the masses. However, that would have the effect of reducing the post-election violence to an election dispute, and of addressing only the symptoms of the violence and ignoring the fundamental causes. In an environment where a number of the persons killed in the violence has not been identified, where many displaced persons have been unable to go back to their homes due to tensions with their neighbours and where every action is still seen through the divide created by the election violence, the political elite show a reluctance to engage with the root causes of the violence.

The sum total paints a picture of a Kenya that is reluctant to face up to the divisions that undermine the Kenyan state, of which the post-election violence is but a symptom, and of a preference for amnesia. Unfortunately this is a situation that may lead to a future implosion from which recovery may be less easy to attain.

Notes

- 1 The exact numbers of those killed in the violence are in dispute. The figures range from 621 according to the police to 1 020 according to medical officials. Human rights organisations allege that an even greater number died. See Omaga (2008).
- 2 The Association of Kenya Insurers put the loss of insured property at over US \$1 billion.
- 3 The Independent Review Commission chaired by South African Justice Johann Kriegler (the Kriegler Commission) is looking into the electoral process and the Commission of Inquiry into the Post-Election Violence chaired by Justice Waki (the Waki Commission) is investigating the post-election violence.
- 4 The Waki Commission has three members, one of which is a Kenyan and the Kriegler Commission seven members, of which four are Kenyans.
- 5 Demonstrations were held in Mt Elgon by local residents in support of the military forces after the release of the Human Rights Watch report accusing them of torture and inhumane treatment of suspects and locals.
- 6 The bill will create a national ethnic and race relations commission with powers to penalise incitement to ethnic and racial hatred.
- 7 The Madoka Commission investigated the cause of the strike by prison wardens.
- 8 The only exception is former president Daniel Moi, who has blamed the violence on the existence of multiparty politics which he says have polarised Kenya along ethnic lines.
- 9 The committee, which had eight members, four from the Party of National Unity and four from the Orange Democratic Movement, was most important body that negotiated the end of the post-election violence and resultant grand coalition government. All members of the committee were appointed to the Cabinet.
- 10 The committee's work was divided into four sessions: the first dealt with an end to the post-election violence, the second with the creation of a political agreement that led to the National Accord and Reconciliation Act, 2008 and led to the creation of the post of prime minister, the third looked into

the post-election violence and the 2007 elections, resulting in the appointment of the Kriegler and Waki commissions, and the last investigated the historical and socio-economic injustices that may have contributed to the crisis.

11 The Kriegler Commission is not required to determine who won the 2007 elections.

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