

The Kenyan Post-Electoral Crisis and the Prospects for Stabilization

by
Dr. Tim Murithi

Content

- Introduction
- Historical Background and Context
- The Post-Electoral Crisis
- Domestic Responses: civil society Initiatives
- International Responses: The Annan Mediation Effort
- The National Accord and Reconciliation Agreement
- Regional Implications of the Kenyan Crisis
- The Prospects for Stabilization
- The Way Forward

Content: Overview; Introduction; Historical Background and Context; The Post-Electoral Crisis; Domestic Responses; International Responses: The Annan Mediation; The National Accord and Reconciliation Agreement; Regional Implications of the Kenyan Crisis; The Prospects for Stabilization; and The Way Forward.

Overview

This briefing provides a background to the post-electoral crisis in Kenya, and discusses the domestic and international responses as well as the prospects for stabilization. It begins by tracing the historical context to the crisis before examining what transpired following the December 2007 presidential elections. It will subsequently explore the mediation process led by Kofi Annan, the former Secretary-General of the United Nations, and the National Accord and Reconciliation Agreement. The conclusion assesses the regional implications of the Kenyan crisis, the prospects for stabilization and the way forward.

Introduction

Following the presidential elections held in Kenya on 27 December 2007 the results of the poll were heavily contested by the two main political parties the Party of National Unity (PNU), and the Orange Democratic Movement (ODM). The political disagreement over the outcome of the poll led to the outbreak of sporadic violence across Kenya which affected communities in the low-income areas of the capital city of Nairobi, as well as in key urban and rural centres including Mombasa, Kisumu, Eldoret and other parts of the Rift Valley and Nyanza Provinces. An estimated 1,200 people were killed in the violent clashes that ensued and an estimated 400,000 people were internally displaced. Reliable evidence indicated that there were grounds upon which to contest the results of elections. The Chairman of the Electoral Commission of Kenya (ECK), Mr. Samuel Kivuitu, also confessed after the fact that he was not certain who had won the election. Subsequently, the incumbent President Mwai Kibaki was hastily

sworn in as the President of the country amid protests from the opposition leader, Mr. Raila Odinga, of the Orange Democratic Movement (ODM). These tensions created by this contested leadership further fuelled the violent protests that afflicted the country in the early months of 2008. This briefing will assess the issues underpinning these contested polls and assess the prospects for stabilising the country.

Historical Background and Context

In order to effectively analyse the post-electoral crisis in Kenya, the events that were witnessed in December 2007 and early 2008 have to be situated within a historical context. The tragedy of Kenya's situation is that the seeds of dissension that manifested after the elections in the form of spiralling violence were sown in the very fabric of the post-colonial nation-state, when the country inherited its current constitution, system of government and its electoral system from the former British colonial administration.¹ Successive Kenyan leaders did not appreciate the necessity or did not see the long-term political expediency of changing and transforming the way in which political power is centralized in what is in effect an imperial and exceptionally powerful presidency. A Westminster model was adopted for the legislature that fostered an acceptably high degree of competition and a winner-takes-all framework of interaction which entrenched the politics of exclusion. As a consequence the stakes in terms of controlling the presidency are inappropriately high. Since independence in 1963, three of Kenya's post-colonial presidents have come from only two ethnic groups, the Kikuyu and Kalenjin. The first President Jomo Kenyatta and the third President Mwai Kibaki were from the Kikuyu ethnic group. President Daniel Arap Moi was from the Kalenjin ethnic group. It therefore goes without saying that the remaining 40 ethnic

groups, out of Kenya's total of 42 ethnic groups, have a just basis upon which to feel indignant and impatient to take over the mantle of presidential power.

The fundamental problem with the system of government and elections in Kenya is that even though a minority of ethnic groups succeed in capturing state power it will not alter the essential sense of exclusion that other groups will undoubtedly feel. In his book *The Wretched of the Earth* published in 1961 the Pan-Africanist thinker Frantz Fanon warned the post-colonial African states that were created held within their design all the seeds of a divisive and ultimately violent future for African people and societies. Fanon was observing the process of decolonization as it unfolded in the early 1960's and noted that the political parties which had taken over control from the colonial powers were in fact strongholds for ethnic group power. He noted that the typical political party 'which of its own will proclaim that it is a national party, and which claims to speak in the name of the totality of the people, secretly, sometimes even openly organizes an *authentic ethnical dictatorship*'.² He argued that after such political parties captured state power they would seek to maintain and extend their power and domination over other groups within states, or enter into alliances with a few select ethnic groups to consolidate their position. Fanon goes on to note that 'this tribalizing of the central authority, certainly, encourages regionalist ideas and separatism. All the decentralizing tendencies spring up again and triumph, and the nation falls to pieces, broken in bits'.³ Fanon was prophetic in his analysis written in 1961. What he describes, and more, has come to pass in Africa notably in Somalia, the Democratic Republic of Congo (DRC), Côte d'Ivoire, the Sudan and is today threatening Kenya. The fact that Fanon wrote this 46 years ago even before Kenya was independent is a testimony to his prophetic understanding of

the challenge of governing the post-colonial African nation-state without altering how power is configured. Historically the process of decolonization left behind an arbitrary logic of statehood which has sown the seeds of the current instability and 'ungovernability' of several African states. Most of the existing boundaries were drawn by colonial administrations without regard for, or knowledge of, pre-existing indigenous or cultural social political groupings. This arbitrary division of community created, and continues to sustain, the potential for tension and it also contributes toward the cycles of violence which plague a number of African countries.

It is evident that through the 'ethnicisation' of the Kenyan state, political elites were able to appropriate state power to advance their private accumulation. Asymmetrical economic development is a contributing factor to the exacerbation of ethnic chauvinism, particularly when ethnic coalitions utilize and instrumentalise the apparatus and machinery of the state to advance capital accumulation. Today, Kenyans are experiencing a country that Fanon predicted and described 46 years ago. The degree of ethnic animosity has been fuelled by years of misrule, economic mismanagement, and corruption. Effectively, the politics of polarization in Kenya today have become manifest through the tragic confluence of this legacy, the deep seated sense of being aggrieved politically among some ethnic groups, a restless and anxious populace, and the inability of the ECK to fulfil its effectively mandate.

History also suggests that Kenya has to develop modalities for bringing government closer to the people through a system of devolved power. This policy of regionalism is not a new addition to the political lexicon in Kenya. Following Kenya's independence there was a school of thought that argued for the devolution of authority to the regions, an

institutional framework also known by its Swahili word as "Majimbo," which was advocated by a number of smaller ethnic groups in the country. However, over time this philosophy has acquired negative connotations and has become distorted and misinterpreted. Regionalism was a notion that was fostered by members of the Kenya African Democratic Union (KADU), a collective of minority groups, much to the displeasure of the dominant Kenya African National Union (KANU), dominated by the Kikuyu and Luo the two largest groups, which ruled the country from 1963 to 2002. Tamarkin observes that 'KADU managed to become a powerful party and win elections within a few months of its formation. It was able to do so by appealing to a sense of tribal unity and solidarity, by encouraging tribal antagonism and hatred, and by mobilizing the network of leadership and social control established by tribal associations'.⁴ Pre-colonial tribal antagonism set the stage for post-colonial manipulation of the state by dominant ethnic groups in effect marginalising other groups.

The independence constitutional conferences between the Kenyan delegations and the British colonial administrators were defined by running disagreements between KANU and KADU on the form of government that Kenya should adopt. KANU was in favour of a Westminster form of government whereas KADU was in favour of a form of regionalism which would divide Kenya into autonomous regions and ensure the self determination of minority.⁵ The Westminster model was viewed by KADU as potentially consigning them to being a 'permanent minority'. Therefore, a framework of regionalism proposed by KADU 'reflected a concern about two principles: protection from majoritarian tyranny and apportionment of political power to ensure minority participation'.⁶ Given this historical context it is evident that in addition to reconfiguring the system of governance in the

country, it will be equally important to institutionalise an economic programme to promote social cohesion.

The Post-Electoral Crisis

Following the December 2007 elections the country found itself at an impasse because the Kibaki administration maintained that it won the election legitimately, while the Odinga-led opposition has refused to recognize and legitimize this claim. The 2007 elections were organized in a climate that was relatively free and fair. It was when results from around the country were being collated centrally in Nairobi that discrepancies begun to emerge. The fact that Mr. Kivuitu has cast doubt on the final tally of the Kenyan presidential vote, held on 27 December 2007, means that the country was no longer faced with a situation that could be resolved through adjudication and arbitration by national judicial institutions, since they tended to favour the status quo. In effect neither the PNU nor the ODM could unequivocally claim to have won the presidential elections. Jendayi Fraser, the United States (US) Assistant Secretary of State, declared that based on reliable information that she obtained there were electoral irregularities in areas where both PNU and ODM were dominant.

The view at the time was that an independent audit of the presidential votes would resolve the situation. However, this would only partially address the core issue of how to govern the country in a way that does not perpetuate the dominance of one ethnic group or groups. Even if elections were held again the fundamental problem of how the country is governed will not be addressed. In the medium- to long-term a fundamental restructuring of the configuration and distribution of state power in Kenya would become absolutely vital for its continued survival. The mandate of the ECK has to be revisited. The

political appointment of electoral commissioners also has to be reviewed. Following the controversy of 2007 there needs to be an acknowledgement that the judiciary may have to play a greater role than the executive in selecting commissioners.

The contested 2007 presidential elections have raised questions about the role of elites in promoting ethnic mobilization in their drive for state power and the problems that face electoral politics in the Kenya. Stephen Ndegwa suggests that 'ethnic identity in Africa is a relatively recent phenomenon whose salience is largely a product of colonial rule and post-colonial dynamics in which elites have continued to reify ethnic identity for political mobilisation'.⁷ In effect ethnicity is socially constructed and it is highly susceptible to manipulation in the formation of imagined or invented communities by ethnic entrepreneurs.⁸

As a consequence of the crisis it was evident that the situation demanded a process of political dialogue that should be conducted through negotiations, including at the very minimum, the Party of National Unity and the Orange Democratic Movement. These negotiations would have to be assisted by Pan-African and international mediation in the form of African Union (AU) with the support of the United Nations (UN).

Domestic Responses: Civil Society Initiatives

During the crisis one element that manifested the desire of the majority of Kenyans to transcend the current impasse was the widespread call for peace by Kenyan citizens in civil society, private enterprise, ecumenical groups, and professional associations. Civil society actors took the initial lead when politicians were locked in an impasse immediately following the December elections and in

early January 2008, to encourage mediation and peace building. A civil society grouping was established under the leadership of Bethuel Kiplagat, an experienced mediator who was involved in the Somali process, and General Lazarus Sumbeiywo who was the Inter-Governmental Authority on Development (IGAD) mediator in the South Sudan conflict. In early January 2008, the African Conference of Churches, based in Nairobi, invited Archbishop Desmond Tutu to Kenya to begin the process of creating dialogue between the PNU and the ODM. This early response by civil society actors was motivated by a desire to see the country stabilise, in contrast to politicians who were driven by their quest to consolidate their power bases. Ultimately, any hope of resolving the situation in Kenya will require the active participation of civil society and the media. In particular, civil society has taken the lead in implementing relief operations for internally displaced people around the country. Civil society will also have an important role to play in the implementation of the peace agreements that emerge from the mediation process in the short-term. In the medium to long-term civil society will need to undertake country-wide reconciliation and civic-education initiatives to ensure that genuine peace is sustained.

International Responses: The Annan Mediation Effort

In early January 2008, the then Chairman of the African Union Assembly of Heads of State and Government, President John Kuffor of Ghana, flew to Kenya to assess the situation and see what could be done to bridge the divide between the parties. The first sign of hope that a way forward could be found out of the Kenyan crisis emerged when the PNU and the ODM agreed to a dialogue and mediation process convened by the African Union through the form of an Eminent Panel led by Kofi Annan, the former United Nations (UN)

Secretary-General, and supported by Benjamin Mkapa, former President of Tanzania, and Graca Machel, a former leader within the Mozambique freedom movement. Faced with the violence that was threatening to engulf the country there was clearly a need to transcend the political stand-off and the unhealthy brinksmanship that persisted between the opposition and government. Several hardliners within both the PNU and the ODM were against the mediation process because they believed that their side had legitimately won the polls. However, in practical terms there was no way to transcend this situation, unless the parties involved in this crisis were prepared to resort to force. An escalation of tension would have undermined the immediate prospects for restoring peace and tranquility in Kenya. If the violence escalated then the difficulties of promoting reconciliation in the long-term would be compounded.

Therefore political negotiations between Kenyan political parties were a vital first step. These parties needed to commit themselves to preventing the further escalation of violent conflict and outline a roadmap for restoring stability to the country. This process would be more effective through international mediation because domestic actors were not viewed as being impartial. The fact that the Annan mediation process was supported first by the current UN Secretary-General, Ban Ki-moon, on 1 February 2008, and the United States Secretary of State, Condoleezza Rice, illustrated the significance that the international community attached to a resolution of this crisis.

For the mediation to yield results, in the immediate short-term a governing framework that promotes power-sharing would have to be forged. In the medium to long-term the imperial presidency will have to be gradually dismantled and replaced with a system of devolved power to the regions to eliminate the vicious cycle of competitive 'winner-takes-all'

politics threatens to tear Kenya apart. It was also evident that it will be necessary to enhance the effectiveness of the Kenyan Parliament in order to ensure that there are checks and balances to effectively constraint the excesses of the executive.

The National Accord and Reconciliation Agreement

On 28 February 2008 a peace agreement was signed between the PNU and ODM establishing a grand coalition between the two parties. The Annan-led mediation process led to the signing of an 'Agreement on the Principles of Partnership of the Coalition Government' and a 'National Accord and Reconciliation Agreement' as part of a wider set of agreements. Specifically, the Agreement on the Coalition Government noted that 'neither side can realistically govern the country without the other. There must be real power-sharing to move the country forward and begin the healing and reconciliation process'.⁹ The Agreement committed the parties to enacting a National Accord and Reconciliation Act 2008 which makes provisions for 'a Prime Minister of the Government of Kenya, with authority to coordinate and supervise the execution of the functions and affairs of the Government'.¹⁰ The President and the Prime Minister will thus lead a grand coalition. In addition, the Agreement creates two Deputy Prime Minister positions, as part of a cabinet that will include an equal number of Ministers from both sides of the coalition. The Agreement further notes that 'the composition of the coalition Government shall at all times reflect the parliamentary strength of the respective parties and shall at all times take into account the principle of portfolio balance'.¹¹

A 10-member harmonisation committee was established following the signing of the Agreement to come up with a consensual in-

terpretation of its provisions. In particular, the harmonisation committee had the onerous task of determining how the ministerial positions in the coalition government will be distributed.

Additional agreements signed between the two parties established a 7-member Independent Commission of Inquiry into the Kenyan post-electoral crisis, to be headed by the retired South African Judge Johann Kriegler.¹² This Commission will study all aspects of the controversial presidential poll through consultations with officials of the ECK, election observers, politicians, and citizens. It also created the Ethnic Relations Commission of Kenya to assess the root causes of the ethnic animosity that continues to afflict the country. Furthermore, a Truth, Justice and Reconciliation Commission (TJRC) was established to assess the violations of economic, social, and cultural rights as well as historical injustices brought about the dispossession of land. The Tenth Kenyan Parliament subsequently passed the National Accord and Reconciliation Bill 2008 which entrenched the Agreement into the Kenyan Constitution.

Regional Implications of the Kenyan Crisis

Kenya has been a beacon of stability in the Horn of Africa and the Great Lakes Region. However, the recent post-electoral crisis marked by country-wide violence and the internal displacement of Kenyan people has undermined this record of tranquillity. The political situation in Kenya will now be susceptible to internal pressures which will undermine its ability to play a constructive role in the region in the short- to medium-term. In political terms Kenya's leadership in the Sudanese and Somali peace processes remains vital for the future stability of these countries. In economic terms the inability for the goods to travel across Kenya in December

2007 and January 2008 led to significant shortages in Uganda and Burundi. Kenya's internal stability is therefore intricately linked to the political and economic development of the region. Internationally, Kenya also continues to serve as a hub and a base from which to undertake humanitarian intervention in the Horn and Great Lakes.

The economic consequences of the post-electoral crisis have been substantial. Kenyan citizens have experienced a net increase in the prices of basic commodities such as bread, milk, flour and vegetables.¹³ Nationally the loss of revenue from regional and international trade as well as tourism and exports of agricultural produce was estimated at close to US \$ 30 million a day or approximately US \$ 2 billion over the two-month period from the end of December 2007 to February 2008. When the losses to neighbouring countries are factored in the cost to the Horn of Africa and the Great Lakes region would be even higher.¹⁴

The Prospects for Stabilization

Kenya finds itself at a political crossroads. Kenya's recent experiences demonstrate the challenge of governing a multiethnic country. Other parts of Africa and the world have also experienced similar challenges. The violent confrontation that manifested following the disputed 2007 presidential elections echoed the communal violence that took place following the re-institution of multiparty elections in 1992.¹⁵ In an important sense the 2007 violent confrontations are an additional warning sign that there is a need to re-open the debate on how to establish democratic institutions that can manage ethnic cleavages and moderate the instrumentalisation of ethnicity as a tool for achieving political power.¹⁶ Kenya now needs to develop institutions that are appropriate to governing a multiethnic democracy.¹⁷ In other words, the

Kenyan system of governance has to be reconstituted in order to balance the competing ethnic interests that have threatened and that remain a threat to the future peace and stability of the country. This will require the country's politicians to transcend their narrow partisan interests to work for national unity.

While the National Accord and Reconciliation Agreement is a welcome development the challenge will be in its implementation. It is significant that Kibaki and Odinga, both pragmatic politicians, were able to find common ground which led to the signing of the Agreement. However, there are hardliners in both the PNU and ODM camp who are not pleased with the concessions that were granted to the other side. These hardliners are in powerful positions in both camps and are also members of parliament and will also form part of the coalition government when it is finalised at the end of March or in April 2008. There is already tension brewing over how to distribute the ministerial portfolios, with both side obviously claiming the more high profile positions such as Foreign Affairs, Defence, Internal Security, Finance, and Provincial Administration. Therefore, the Agreement and the proposed coalition government will have its own spoilers and in-house detractors. These spoilers and detractors may seek to take advantage of the ethnic animosity that has been activated by the recent crisis to advance their political self-interests. They may also seek to frustrate the successful implementation of the Agreement and the effective functioning of the coalition government. However, the overwhelming sentiment among the majority of the Kenyan populace is to move beyond the post-electoral crisis and stabilise the country. The regional and international community is also keen to see the consolidation of peace and security in Kenya. This was underlined by the intervention that was led by the African Union following the aftermath of the elections.

The Way Forward

A confluence of pressure from domestic, regional, and international sources led to the signing of the National Accord and Reconciliation Agreement. In terms of the immediate prospects for the National Accord and Reconciliation Agreement there is a need for regional and international actors to continue to play a vigilant role in terms of making sure that the spoilers and detractors do not succeed in undermining the fragile peace in Kenya. The African Union and the United Nations will need to closely monitor the progress of the formation of the coalition government and the implementation of other aspects of the National Accord and Reconciliation Agreement. Civil society will also have its vital role to play in continuing with humanitarian relief, promoting civic education and reconciliation across the country. The operationalisation of the Commission of Inquiry into the crisis in Kenya and the Truth, Justice, and Reconciliation Commission will be vital towards restoring the confidence of the Kenyan people as well as the international community in the country's institutions of governance. These efforts will not succeed without the mobilisation of resources to facilitate the revival of the livelihoods of the internally displaced people. In addition, the implementation of the Agreement will require urgent financial support particularly the promotion of country-wide dialogue and reconciliation as well as the strengthening of governance programmes, parliament and the operationalisation of the Office of Prime Minister.

Furthermore, the restructuring of the systems of governance in the country will undoubtedly take a considerable length of time to achieve. It is evident now that there is an urgent need for all key political parties in the country to engage in constitutional negotiations in order to bring about the restructuring of democratic

institutions and to ensure ethnic accommodation. In the absence of the development of institutional alternatives to accommodating ethnic sub-nationalism, the spectre of violence and dissension will continue to haunt the Kenyan body politic.

Concretely in terms of policy recommendations to address the stabilization of Kenya in the long-run, it is necessary to examine the 'ethnicisation' of the Kenyan state, its period of authoritarian rule, and its impact on institutions of governance. This should involve exploring and analysing the structural weakness of the Kenya state. There is a growing perception amongst analysts, policy-makers, academics and civil society representatives that the current equation between electoral blocs and ethnic blocs must be erased. In effect the existing political system needs to be thoroughly investigated in order to develop policy recommendations on how it can be dismantled and reconstituted.

What the contested 2007 presidential elections demonstrated was the urgent need for Kenya to reconfigure its system of governance in order to become a functional and effective state and society. The country will need to adopt strategies through which governance can be reconstituted and reconfigured to also take into account the need for country-wide economic development. Therefore, there is an immediate need to advance further research and policy development to ensure that any proposals and schemes for restructuring the systems of governance in Kenya are based on an informed analysis of the root causes of the crisis. In the absence of such analysis flawed policy prescriptions and political decisions may lead to renewed tension in the future. Ultimately, the way forward is most effectively expressed by the National Accord and Reconciliation Agreement which notes that the key to restoring stability is through the implemen

tation of 'a coherent and far-reaching reform agenda, to address the fundamental root causes of recurrent conflict, and to create a better, more secure, more prosperous Kenya for all'¹⁸.

Endnotes

- ¹ Basil Davidson, *Black Man's Burden: Africa and the Curse of the Nation-State*, (New York: Random House, 1992).
- ² Frantz Fanon, *The Wretched of the Earth*, (London: Penguin, 1961), p.41
- ³ Fanon, *The Wretched of the Earth*, p.42.
- ⁴ M. Tamarkin, 'Tribal Associations, Tribal Solidarity, and Tribal Chauvinism in Kenyan Town', *Journal of African History*, Vol.14, No.2, 1973, pp.257-274.
- ⁵ Ndegwa, 'Citizenship and Ethnicity', p.605.
- ⁶ Ndegwa, 'Citizenship and Ethnicity', p.607.
- ⁷ For a discussion on the formation of ethnicity in Kenya see Ndegwa, 'Citizenship and Ethnicity: An Examination of Two Transition Moments in Kenyan Politics', p.600.
- ⁸ See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, (New York: Verso, 1991) and Crawford Young, *The Politics of Cultural Pluralism*, (Madison: University of Wisconsin Press, 1976).
- ⁹ Kenya Agreement on the Principles of Partnership of the Coalition Government and the National Accord and Reconciliation Act, 28 February 2008, Preamble.
- ¹⁰ Kenya National Accord and Reconciliation Agreement, 28 February 2008.
- ¹¹ Kenya National Accord and Reconciliation Agreement, 28 February 2008.
- ¹² Weekend Argus, 'SA Judge Heads Probe into Kenya Election Violence', 22 March 2008, p.14.
- ¹³ Caroline Njung'e, 'Kenyans Dig Deep into Pockets', *Daily Nation*, 9 March 2008.
- ¹⁴ K. Alazar, 'The Kenya Election: Economic and Ethno-Political Factors', *Capital*, Vol. 10, No.476, 27 January 2008, p.42.
- ¹⁵ Joel Barkan, 'Kenya: Lessons from a Flawed Election', *Journal of Democracy*, Vol.4, No.3, July 1993, pp.85-99.
- ¹⁶ David Throup and Charles Hornsby, *Multi-Party Politics in Kenya*, (Oxford: James Currey, 1998).
- ¹⁷ Stephen Ndegwa, 'Citizenship and Ethnicity: An Examination of Two Transition Moments in Kenyan Politics', *American Political Science Review*, Vol.91, No.3, September 1997, p.599.
- ¹⁸ Kenya Agreement on the Principles of Partnership of the Coalition Government and the National Accord and Reconciliation Act, 28 February 2008, Preamble.

InterAfrica Group

Center for Dialogue on Humanitarian, Peace and Development Issues in the Horn of Africa

P.O. Box 1631

Addis Ababa, Ethiopia

Tel: 251-11-551-1561/11-553-7602/04 Fax: 251-11- 553-7603

e.mail: iag@ethionet.et

www.interafricagroup.org

The briefings are available online: <http://www.interafricagroup.org/Archive.aspx>