

**KENYA AT A CROSSROADS –
REFLECTIONS IN THE MIDDLE OF POST-ELECTION VIOLENCE ON 29TH JANUARY 2008**
Helmut Danner

In January 2008, Kenya is suffering from a serious crisis. Kenya needs help. She has support from high-ranking Africans who assist in finding a solution. Above all, Kenyan needs local politicians of all camps who have the country at heart. And Kenya needs the *understanding* from politicians as well as media from abroad. Do the Europeans and Americans *understand* what the country is really suffering from? Are they not reducing the problem to election fraud and the allegations of election fraud to the side of PNU and its allies? For, obviously, there was clear a violation of free and fair elections on the side of ODM, too. Why was *this* not mentioned, for example, by the chairman of the EU observers?

However, Kenya's *real* problem is not restricted to the level of who has rigged or who has rigged in a more efficient way than the opponent. Cynically, one could say that rigging of elections is nothing new in Kenya. The debate on the election procedures and election results addresses only the *surface* of the problem. This does not mean to underestimate the seriousness of a rigged election. There is no doubt, any form of election fraud is a breach of law; it undermines the credibility of the democratic system of law and order. This damage has indeed been done to the Kenyan society. In the current situation, it is most urgent to concentrate on this aspect and to find a viable solution, if it has to be: a painful compromise that is acceptable for all sides.

But again: this acute political and legal situation is only the surface of Kenya's problem. When the focus is narrowed to this aspect, then one behaves like a narrow-minded driver who causes a car accident and kills and destroys because he has the *right* of way. He sees the green traffic light and races over the crossroads, not noticing that there are other components of the traffic situation and dimensions than his right of way. When we take this as a metaphor for the Kenyan situation, then the actual political and legal dimension is only *one* aspect; for, it is *caused and fuelled by* other underlying dimensions:

The hostility between the Luos and the Kikuyus;

The 'Odingaism';

 The general hatred against the Kikuyus;

The unsolved land problem;

 The extreme gap between poor and rich;

 The lack of ability and willingness to solve disputes in a peaceful way.

The least that can be said about the relationship between *Luos and Kikuyus* is that they do not like each other. Although there are exceptions, as a rule, a Luo does not marry a Kikuyu and vice versa. For them it may be less 'shameful' to get married to a foreigner than to a woman or a man of the other tribe. From where does this animosity come? Can it be addressed, analysed, brought to a sober view of each other? Is it possible to name and to accept the strengths of the other tribe and the weaknesses of one's own?

There is a pseudo-religious aura about the *Odinga clan* who are Luos. This goes back to Raila's father Oginga. He has claimed as Raila claims today that they have to rule Kenya. Oginga is reported to have said: Allow me to sit on the presidential seat at least for one day! Repeatedly Raila compares himself to Jesus; just recently he questioned whether Kalonzo Musyoka could sit like Judas at the table with Jesus and his disciples, i.e. on a table together with ODM leaders. Such remarks are not only tasteless but also frightening. This kind of self-perception is supported by fanatic and blind followers. In 2005, at the time of the discussion of a new constitution, Raila's followers would say: we don't have to read the proposed constitution as Raila has already said that it is bad. Raila's influence in Nyanza is so strong that nobody has a chance to be elected as an MP or councillor if he does not follow Raila. However, how is this claim to rule Kenya justified? If it had to be another tribe than a Kikuyu, why a Luo, because there are 40 other tribes? With which good reasons could Raila Odinga and his fanatic followers justify their claim that it is their turn to rule?

Kikuyus can be found in the whole country. They run small and big businesses and are economically successful in a small and big scale. But this is not because they have got favours from the government – on the contrary, for 24 years they were disadvantaged by the Moi regime. For instance, in a Kikuyu village you may find a church, a primary school, a secondary school and a dispensary on one compound, all financed and built by the local community without any government support. Where else can you observe such civic commitment? Also, you will observe that every square foot of Kikuyu land is agriculturally used. In other parts of the country vast parts of fertile land are lying unused. Is this way of being industrious a reason for the envy and hatred against the Kikuyus?

Besides those tribal animosities, Kenya has been suffering from an unsolved *land problem*. This goes back to colonial times and to the Kenyatta and Moi regimes. The hatred amongst different tribes is partly related to this problem – which is complex and complicated. Special cases in this context are the land disputes within the coastal strip, i.e. the ten mile zone and the volatile Rift Valley.

The gap between *poor and rich* is extremely wide in Kenya. In November 2004, the distribution of the income was stated as follows: 10% of the richest population get 41% of the income; 10% of the poorest population get 0.76% of the income. These figures may not be very different in 2008. Without any doubt, this inequality represents an explosive economic problem. However, it also is an expression of the *traditional structure* of the Kenyan society which seems to be typical for Africa in general. Despite an upcoming and growing middle class, this is strictly speaking a two-class society which has to be distinguished from the structure of the societies in Europe or America. On the one hand, there is the relatively uneducated –worker– without rights who does the physical work; on the other hand, there is the employer of this –worker–. They live in totally different economic and social worlds; their relationship is determined by specific social rules that are respected by both sides. The unemployed youths have to be seen in this context; they no longer respect those rules and strive for a participation in the existing wealth.

Not only now during these atrocious weeks since the 27th December 2007, there is a frightening exposure of senseless destruction, cruelty, brutality, disrespect of human life and human rights in Kenya. So called tribal clashes flared up also in the past with the same *barbaric inhumanity*.

It is absolutely necessary to find a solution on the political and legal level. However, if this would be the end of the healing process that Kenya needs, then the destructive powers of the society would be active underneath and erupt at other occasions ó if at all they could be tamed again.

How can the *tribal hatred* be overcome? Ordinary citizens have been living together in peace for decades. Why do they allow a few political inciters to divide them? More and more it becomes obvious that the destruction of whole cities ó Kisumu, Eldoret, now Nakuru, also Naivasha ó, the killing, expulsion, rape, torching were not a spontaneous reaction to an allegedly rigged election but an organized crime, planned for a long time.

How can a phenomenon like the '*Odingaism*' be demystified? Is civic education sufficient for this purpose? Or is this an irrational phenomenon that needed an enlightenment that has not yet taken place?

Is it not helpful and necessary to look at the *facts* and to call them by their name? It is shying away from the reality to say a 'certain community' was attacked by another one. Facing the facts would mean to say that Luos attacked Kikuyus, that Kalenjins killed Kikuyus and Kisis, that Kikuyus revenged and attacked Luos, etc. It must be made public how many Kikuyus were killed, how many Luos, how many Kalenjin, also at which time of the on-going riots. Who are the rapists? Whose shops were burned? How many internal refugees are Kikuyus, Kisis, Luhyas, etc.? Can the inciters be identified? Will they be brought to court ó even if they are among the so called political elite?

Does the government have the courage to address the *land issue*? Is the expulsion of Kikuyus and others not the '*majimboism*' that ODM has announced before the elections, a majimboism according to the book of Sharif Nassir which means a tribal cleansing?

Can the economic and social inequality be solved by a Marxist Revolution that obviously is in the mind and programme of the ODM leaders? What we experience is not taking a 'democratic right' to demonstrate. The looters, rapists, murderers are not innocent citizens who demonstrate peacefully. They are criminals as are their inciters and organisers. They destroy the country. They make the poor even poorer. What is the aim of all that? To take over power after the total chaos? Whether ODM likes and accepts it or not: The criminal demonstrators did their destruction and killing by shouting loudly 'ODM!' and 'Raila!'. It is Marxist terminology to call Kenya a 'neo-fascist state' because the government is using police and military to stop the 'peaceful' criminals and to protect the citizens. It is well-known that Luos were telling shop owners ó e.g. in Kisumu and Karatina ó *already before* the elections that they have 'to start to pack' because after the elections *they* would take over. And they do! House owners are kicked out, their houses occupied by ODM supporters.

Kenya is at a crossroads. Either the leaders ó with the support of the citizens ó manage to end the present violence and to find a political solution *and*, based on a peaceful atmosphere, address the underlying problems of the society in a long and fundamental healing process.

Or they remain driven by those underlying unsolved problems, rather shamelessly *using* them instead of trying to solve them.

In the first case, there is a chance, the only chance, to create a prosperous nation where citizens can live in peace and without fear.

In the second case, the nation will fall apart, deteriorate to a tribal conglomerate with fear and hatred and permanent destruction.

Which way do Kenyans want to go?

Which way do their *leaders* want to go?

The way of development? During the last five years innumerable positive developments have taken place. Kenya never before enjoyed such freedom. The economy started to boom, creating jobs. The tax income more than tripled. The state budget has become almost independent of foreign aid. Free primary education, free health care for children under five years, better payments of civil servants started the distribution of the national income. No doubt, there is still a long way to go to reach an economic betterment for *all* citizens. But compared to the situation in 2002, it was an encouraging beginning.

The way of destruction? The weeks since 30th December 2007 have shown another, an ugly face of the Kenyan society: hatred, destruction, killing, rape, looting, expulsion, inconceivable brutality. In the name of a '*democratic right*' and '*justice*'. Executed by '*innocent citizens*'. Incited to '*peaceful demonstrations*'. It is perverse to justify destruction, killing, rape, looting and expulsion with those attributes. They may sound good in the ears of foreigners. Are those not fooled by a shameless propaganda?

Kenyans are at a crossroads. Which way do they intend to go? Or are there no Kenyans, only Luos, Kalenjins, Kikuyus, Kisis, Swahilisí

BALANCE OF POWER¹

Helmut Danner

Since March 2008, a grand coalition of political opponents has been running Kenya. The situation in the country is relatively peaceful, but people do not have a lot of trust in their government.

When Raila Odinga founded the Orange Opposition in Kenya in November 2008 and later the party Orange Democratic Movement (ODM), the base was laid for the bloodshed that started after the 2007 elections. Odinga's ODM was mostly supported by the ethnic groups of the Luo and Kalenjin, whereas the Party of National Unity (PNU) of President Mwai Kibaki was dominated by the Kikuyu.

The elections resulted in a stalemate and the ODM called for mass demonstrations. In January and February 2008, looting and murder marked the country. The Kalenjin tried to drive the Kikuyu out of the Rift Valley, and the Kikuyu fought back.

After some mediation attempts of John Kufuor, Ghana's president at the time, former UN secretary general Kofi Annan stepped in. In late February, a coalition was formed with Kibaki serving as president and Odinga as prime minister. The post of prime minister was a constitutional innovation; it had to be created for the purpose of the coalition.

At first, the coalition resembled a forced marriage. Kibaki and Odinga had difficulties with each other. Odinga and his people complained that the president did not consult them before making decisions. The prime minister did not feel treated adequately. There was debate about the ranking of the vice president, with Odinga insisting on a superior position. After Odinga invited Kibaki to his home in Luo-land early last year, the relationship improved, however. By then, Odinga was already alienated from the Kalenjin-wing of the ODM. They accuse him of having letting them down after they had fought for him.

Due to the ODM/PNU coalition, there is peace in Kenya. Progress is observable in road building, electrification, for the rural health system and funding for small-scale development projects. Moreover, the central bank has issued infrastructure bonds. Some people, nonetheless, are still living in refugee camps unable to return home because they fear attacks from neighbours.

The coalition agreement boosted the role of the parliament and its committees, even though there is virtually no opposition. ODM and PNU take all decisions. But the members of parliament matter, and in that sense, the president lost some of his supreme power. Democracy has thus been strengthened to a limited extent.

Kenya is still far from an ideal type democracy. State institutions, such as parliament, courts, law-enforcement agencies and ministries basically help the elites to protect their power, status and wealth. Impunity is another crucial issue. The term charac-

¹ In: Development and Cooperation, 2010/01, p. 41; German in: Entwicklung und Zusammenarbeit, 2010/01, S. 41.

terises the present coalition. Two years after the riots, perpetrators are still not being persecuted. Parliament rejected the establishment of a national tribunal.

The government is delaying cooperation with the International Criminal Court (ICC) even though it initially supported the idea. Investigation of the main suspects was not transferred to the ICC. The lack of political will is obvious, so most Kenyans now trust the ICC more than their own judiciary. Faith in Kibaki's and Odinga's political leadership, moreover, is dwindling.

The president and the prime minister are stuck in a difficult situation. They want a standstill, which neither the majority of Kenyans nor the international community would accept. Both leaders were not active perpetrators of violence, but they knew what was going on and supported their respective sides. The Waki Report names the main culprits, six of whom now are cabinet members. Top politicians are protecting criminals from their parties and tribes.

Interference ó whether from the US, Europe or even Kofi Annan ó tends to annoy Kenyans. At the same time, they see the inaction of own politicians. Annan urged to implement already agreed-upon reforms on judiciary as well as land and measures to fight poverty and unemployment. At least, a draft for a new constitution was presented. For the followers of Kibaki and Odinga, however, the main issue is still the balance of their power.

IS THERE A POLITICAL WILL TO AVOID ELECTORAL VIOLENCE?²

Helmut Danner

Boniface Mwangi offered politicians to view his picture and video clip "Heal the Nation" – they refused. He intended to give the first copies of "Kenya Burning", his photo documentation of the 2007/8 clashes, to the top two politicians of the country – they declined acceptance. Why?

The following is a view on the contemporary political atmosphere in Kenya before the upcoming elections with respect to potential violence. I will describe a problem; but I do not have a solution for it. To make the problem obvious I have to generalize and to simplify. The problem I mean concerns the politicians, namely their political will. This is a factor to be also considered in conflict management and peace building.

In the aftermath of the clashes of 2007/2008 we got this picture: Political warlords had planned, incited, and financed the atrocities; their foot-soldiers followed them fanatically on a tribal base. During the clashes, politicians called for "mass demonstrations" and, by that, incited to more violence. Those political leaders must have been fully aware of the indescribable harm they inflicted on the ordinary citizens. Those – their subjects – had to pay for the political aims of their masters with blood, honour, and property. The political masters acted with utmost contempt towards their subjects. This is the core of the problem I am talking about: We are dealing with a *master-servant society*. The average Kenyan politician is not caring for the ordinary citizen. What counts is his/her political power and material gains. Citizens are a pure means for this purpose. There would be no need to talk about this master-servant constellation now if this had changed during the last four years. Or did it?

Raising this question, I have to pour water into the wine of the innumerable efforts of local and foreign NGOs who focus on peace building and conflict management. I may be allowed to do this as I have been involved in the same endeavours for many years. Were we able to address the mentioned core problem, namely the contempt of the leaders towards the citizens? Let us be honest and sober: Dozens of foreign and local organizations had been involved in civic, political and voters' education for more than two decades. Leaders and ordinary people should have been enlightened about good citizenship and conflict resolution, democracy and good governance, multiparty-system and party structures, the electoral system and voting, human rights and rule of law, patriotism and tribalism and land reform. There were workshops for all kinds of people. Foreigners and their African colleagues did a professional job, were didactically and educationally well prepared. But still, all the political and civic education could not prevent the Kenyan clashes four years ago. For, there exists a strong contradiction between efforts of civic education with all its ideals and the reality of Kenyan politics. The polit-

² In: Nebe, Johannes-Michael (ed.): Peace Building and Conflict Management. Trier 2012, pp. 222-225; paper delivered at the Workshop "Civil Conflict Management of the Post-Election Violence 2007/2008 in Kenya. Lessons Learnt and the Way Forward", Nairobi, 23-24 March 2012.

ical culture is determined by a pseudo-elder system, tribal identity, disrespect of the ordinary people, by an appreciation of land that goes beyond its material value, but certainly also by greed for power and wealth. I doubt that the politicians of this political environment have changed during the last four years and that civic education was able to influence them positively.

How did those politicians deal with the fact and the effects of the post-election violence? Let us look at a few indications. For me, the most striking one is that up today hardly any legal prosecution has taken place in Kenya. Obviously, there is no political will to prosecute the organizers and the executors of the crimes. In a private talk, a party chairman and former minister blamed the coalition government as the reason for non-prosecution. It has created a stalemate which works like this: If you don't touch us, we will leave you untouched. For, both partners of the coalition have to be blamed of the post-election violence. However, as the prosecution of crimes is not primarily a political question, but a legal one, we also have to question the independence and efficiency of the Kenyan judiciary. There may be technical problems like the shying away of witnesses or shoddy investigation by the prosecution. But as a whole and in general, the inactivity to bring justice to the victims and to reconcile the society is inexplicable and inexcusable.

The victims perceive themselves as forgotten by the government. Up to now, there still are Internally Displaced Persons in make-shift camps. The government was not able and willing to resettle them and to provide the necessary security during the last four years. Instead, the victims blame the government to protect the suspects of the violence. Their lawyer at Den Hague, Morris Anyah, says: "The victims perceive themselves as little people pitted against powerful individuals. It is a David-versus-Goliath scenario."³ This statement confirms my analysis, namely the master-servant-society. In addition, for instance a presidential candidate is accused of possessing land that was grabbed during the clashes⁴. Also this points to the role of politicians and raises questions concerning their sincerity to respect citizens as well as law and order.

The establishment of the Truth, Justice and Reconciliation Commission has to be commended. It is supposed to investigate injustices and atrocities of Kenya's past, not only of the post-election violence of 2007/2008. However, the appointment of its chairman created a serious controversy. This resulted in a long delay to start its activities.⁵ The appointment as such and how the controversy was handled makes one question the political will to make such an important institution function.

This may only be a minor indication for the lack of political will. However, it really astonishes me that William Ruto and Uhuru Kenyatta now present themselves as political allies and even as presidential candidates "as if they were not fierce opponents in 2007/2008; as if they are not accused by the ICC; as if, by that, they are not the main suspects of the post-election violence; as if they are not charged of crimes against humanity; as if there are no victims still suffering today; as if those accusations are not

³ Sunday Nation, 4/3/2012, p. 23.

⁴ Daily Nation, 6/3/2012, p. 10.

⁵ Sunday Nation, 4/3/2012, p. 35.

tainting the office of the president¹ These are not legal questions, i.e. whether Ruto and Uhuru are guilty or not and whether they are allowed to stand for the presidential election although the accusations against them have been found worth a trial by the ICC. In my opinion, these are most and foremost *moral* concerns; it is a question of political culture. At least for moral reasons, they have to step back and wait for a legal clearance before they can again represent Kenyans as politicians. But they do not care; also here I notice contempt of the ordinary Kenyan.

The *Nation* of 5 March 2012 reports clashes on the border of Nandi and Muhoroni districts. There, more than 1,000 people along the border of Rift Valley and Nyanza provinces were displaced; five people were killed; more than forty houses and hundreds of acres of sugarcane were torched; dairy cattle were lost. Youths with bows and arrows, spears, machetes and other crude weapons were seen amid burning houses and fleeing children. Residents accused a wealthy businessman of transporting hundreds of armed youths to the area. Police said that two MPs and veteran politicians were seen addressing gatherings of youths before the outbreak of the violence. The politicians dismissed the clashes as cattle rustling and as land disputes, blaming each other. However, these clashes occurred *soon* after some commotion over electoral boundaries erupted with the release of the report by the Independent Electoral and Boundaries Commission. Lukoye Atwoli comments: *“Our politicians are scouting the situation to discover how much political mileage can be milked from these conflicts as they prepare for the next General Election.”*⁶ This scenario distinctly reminds us of the post-election violence of 2007/8 and of earlier violence related to elections. How do we have to interpret such incidents just before the next elections?

I mentioned earlier that there hardly happened any prosecutions after the post-election violence of 2007/8 in Kenya although the necessity and possible ways of prosecution were widely discussed. Even a law was launched to establish a tribunal. But the parliament turned it down. *“Don’t be vague, go to Hague!”* was the slogan to avoid local prosecution. As nothing happened in Kenya, the ICC stepped in and took over. But now Den Hague was no longer a good idea. Politicians started to discredit the complete institution: *Only Africans are tried at ICC! Foreigners attack Africans! G.W. Bush should also be in Den Hague! We can prosecute ourselves! And so on.* Kenyan politicians even proposed to leave the Rome Statute and the ICC altogether; and they wanted to support the suspects financially. The Vice President and ministers were sent to other African governments and to the Security Council of the United Nations in order to stop the trial against the so-called *“Ocampo Six”*. But those had to appear in Den Hague; and when they returned for the first time they were received and celebrated by their tribesmen like heroes.

In face of the committed crimes and of the hundreds of thousands of suffering Kenyan citizens, the many attempts by politicians to avoid prosecution are embarrassing in my opinion. What do they tell us about the political will to avoid future violence? I am afraid that the politicians have not changed; but the threat to be tried by the ICC has

⁶ *Sunday Nation*, 4/3/2012, p. 36.

hopefully changed the scenario. The ICC can be a support for ordinary Kenyans and a deterrent for their political masters.⁷

If the politicians are not willing to change the political culture, the ball is in the court of the ordinary citizens. This also concerns the students. But are stone-throwing students able to embrace non-violence?

⁷ Further reading on politicians and political will see George Ayittey's publications; on the context of culture and politics: Patrick Chabal: Africa. The Politics of Suffering and Smiling. London et al., 2009; on cultural foundations: Helmut Danner: End of Arrogance. Africa and the West ó Understanding their Differences. Nairobi 2012.