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KENYA: ON THE BRINK OF DISASTER

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1 Introduction

On 28 February 2008 a power-sharing deal, brokered with the help of the African Union and former UN Secretary General Kofi Annan, brought to an end the post-electoral violence that had shaken Kenya to its roots over the previous two months. Attached to the deal, which created the Government of National Unity (GNU), were several important institutional provisions to be carried out over the following 12 months. Contrary to some fears or expectations, the country did not immediately settle back into “business as usual”, but on the contrary pushed into a course of following up on the attempted reforms. Now, a little over a year later, where do we stand?

2 Social and Economic Unrest

The first matter at hand was how to deal with the more than 300,000 Internally Displaced Persons (IDPs) caused by the crisis. Operation Rudi Nyumbani (“return home”) has reduced the numbers still lingering in camps to about 110,000.¹ However, many of the “returnees” in fact did not return to their previous home areas, because they felt that going back to the worst-affected provinces (Rift, Western, Trans Nzoia) would expose them to further danger of ethnic persecution. They are now spread all over the country, many having moved to theoretical “ancestral homes” where they had in fact few or no connections. They still constitute a major problem, due to their lack of social and economic integration in the tribal areas of their forebears.

This problem has been compounded by Kenya’s intensifying economic crisis.² The crisis started with the post-electoral violence and has now been amplified by the local effects of the world’s economic downturn. The post-electoral violence hit massively some of the major foreign currency earning activities such as tea and fresh flower exports and tourism. Food production dropped as a result of the internal displacements and transport costs grew. Food stocks and houses were destroyed and cattle were killed. Economic growth declined from 5.6 percent to 3.2 percent in 2008 and is expected to decline further to 2.4 percent in 2009. Inflation rose to a peak of 31.5 percent in mid-2008 before declining slightly to 22 percent at the beginning of 2009. General food prices went up by 35 percent during 2008, while the staple diet of *ugali* (maize flour) saw a 150 percent increase.

The current account budget deficit now stands at a reasonable US\$ 23 million, but tax revenue has fallen drastically, prompting the Kenya Revenue Authority to run a campaign under the motto *tulipe ushuru tujitegemee* (“pay your taxes so that you are protected”). However, this has been perceived, in the present atmosphere, as being in bad taste and almost a provocation. The GNU’s plans to raise US\$ 486 million internationally have floundered due the world’s financial crisis and have now been reduced to a US\$ 100 million request to the IMF, which is still pending.³ The foreign currency reserves held by the Central Bank of

¹ United Nations Integrated Regional Information Networks, For Many, Home Is Still Where the Tent Is, Nairobi, 2 January 2009, <http://www.irinnews.org/Report.aspx?ReportId=82169> [accessed May 2009]

² Unless otherwise mentioned the following facts and figures are drawn from material on Kenya published by the Economist Intelligence Unit (EIU) during late 2008 and 2009

³ Bloomberg, Kenyan Minister Confident of IMF Approval for \$100m Loan, 3 April 2009, <http://www.bloomberg.com/apps/news?pid=20601116&sid=aeDLyRKApKcI&refer=africa> [accessed May 2009]

Kenya have been reduced to the amount sufficient to pay for 2.8 months of imports while its statutory obligation is to keep a minimum of 4 months' worth. The global result is considerable hardship weighing disproportionately on the poor and particularly on the poorest of the poor, the IDPs and the unemployed urban youth. This has led to a marked increase in the already high rate of street crime, drug trading, wild life poaching and ivory smuggling.⁴

This situation is further compounded by the growing food crisis.⁵ The insufficient food supply is due to a combination of drought, reduced food production due to population displacement, rising prices of agricultural inputs and transport costs, corruption and speculation. Drought is the main cause: insufficient rains have caused a sharp drop in cereal production and the death of many cattle. The price of a cow has fallen from KES 30,000 (c. USD 400) to KES 300 (c. USD 4) over the last six months, and sellers whose cattle are dying cannot find buyers even at this low price.⁶ Ten million people are threatened and half of those are already on reduced diets. The World Food Programme has asked for US\$ 400 million in emergency food aid while the GNU has said the figure should be at least US\$ 470 million. In such a climate the rumours of speculation and manipulation of the food supply take on a massive resonance. President Kibaki's family, which is one of the largest landowners in Kenya, has been suspected – probably unjustly – of wrongdoing. But more serious accusations have been proffered against Agriculture Minister William Ruto, who is suspected of unlawful agreements with several milling companies to allow them to buy government stocks at preferential prices in order to resell them on the free market at a substantial mark up. What is significant is that President Kibaki belongs to the Party of National Unity (PNU) and is a Kikuyu by tribe while William Ruto is a member of Orange Democratic Movement (ODM) and a Kalenjin/Kipsigi by tribe: the public's anger at the politicians is now so widely spread across the board that it makes no distinction of tribal origin or political affiliation in its suspicion of wrongdoing.

In such a climate news about corruption scandals take on a particularly dangerous weight. What we could call “the scandal scene” (in Kenya this has been a spectacular ongoing saga over the last 25 years) showed a slight decline in the immediate wake of creating the GNU, but unfortunately picked up soon after. First there are the remnants of past scandals which were never successfully prosecuted, such as the massive Goldenberg fraud of the early 1990s, which is still being investigated. Bad memories of the Goldenberg scandal were again brought to the fore in late January 2009 when the former governor of the Central Bank of Kenya, Eric Kotut, saw all charges against him suddenly dropped without any explanation.⁷ The same thing had happened shortly before with Interior Minister George Saitoti. Both men

⁴ Kenyan, Tanzanian Poachers Now Gang Up with Chinese Criminals, *The East African*, 17 February 2009, <http://www.theeastafrican.co.ke/news/-/2558/530146/-/rkc88oz/-/index.html> [accessed May 2009]

⁵ International Federation of Red Cross and Red Crescent Societies, *Multi-disciplinary Assessment Mission: Report on the Horn of Africa Food Crisis*, Nairobi, December 2008, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/JBRN-7M8KA6?OpenDocument> [accessed May 2009]; Agence France Presse, UN Set to Double Kenya Food Aid, *BBC News*, 18 March 2009, <http://news.bbc.co.uk/2/hi/africa/7951332.stm> [accessed May 2009]; Kenya Seeks Sh32bn in Food Aid, *Daily Nation* [Nairobi], 16 January 2009, <http://www.nation.co.ke/News/-/1056/515550/-/item/0/-/h9eevn/-/index.html> [accessed May 2009]; Third Failed Harvest Devastates Kenya, *Agweek*, 9 February 2009, http://www.agweek.com/articles/?id=2473&article_id=13545&property_id=41 [accessed May 2009]

⁶ Tales of Suffering Abound as Prolonged Drought Continues, *Daily Nation* [Nairobi], 31 March 2009, <http://www.nation.co.ke/News/-/1056/555438/-/u3qj6y/-/index.html> [accessed May 2009]

⁷ Goldenberg Cases against Kotut Halted, *Daily Nation* [Nairobi], 23 January 2009, <http://www.nation.co.ke/News/-/1056/519032/-/u1d2qe/-/index.html> [accessed May 2009]

were prominent members of the Daniel arap Moi administration and both are widely believed to have been beneficiaries of the Goldenberg scam, which involved fraudulent claims of gold exports.

More recent wounds were reopened when the British Serious Fraud Office (SFO) decided on 5 February 2009 to drop its prosecution of the Anglo Leasing scandal, when hundreds of millions of dollars were stolen from the Kenyan Treasury through fake orders for a variety of government supplies made to a non-existent British company.⁸ The SFO announced that it had dropped the case because of the systematic non-cooperation of the Kenyan authorities without which it could not progress. Shortly after this announcement the former National Rainbow Coalition (NARC) government's anti-corruption chief John Githongo came back from exile in the UK, where he had been forced to flee after his publicizing of the Anglo Leasing scandal had exposed him to repeated death threats. Githongo, who has recently been the subject of a well-informed book centered on corruption in Kenya,⁹ declared that "all sides seem to have their snouts in the trough".¹⁰ His sharp declarations have been confirmed by a series of revelations over recent months:

- acting Roads Minister Chris Obure revealed in October 2008 that road building budgets had been repeatedly voted and had repeatedly disappeared, with 64,000 miles of highway still to be built;¹¹
- in December 2008 the National Cereal and Produce Board (NCPB) was linked to accusations of corruption in the supply of emergency maize;¹²
- in January 2009 the managing director of the parastatal Kenya Pipeline Company (KPC) was dismissed after it transpired that over 126 million litres of fuel worth US\$ 98.7 million, had been released to a private operator, whose purchase was funded by government credits, but who had sold the fuel and then left the country without repaying the loans.¹³

These scandals were unfortunately "run of the mill" in the Kenyan context. But they were happening at a time when a reformist government had degenerated into murderous factions

⁸ UK Blames Kenya over Anglo Leasing, *Daily Nation* [Nairobi], 5 February 2009, <http://www.nation.co.ke/News/-/1056/525110/-/u1vu3n/-/index.html> [accessed May 2009]

⁹ McConnell, T., Kenya Corruption Sees Return of 'Czar', *Global Post* [Boston], 26 February 2009, <http://www.globalpost.com/dispatch/kenya/090223/kenyas-anti-corruption-czar-returns> [accessed May 2009]; Wrong, M., *It Is Our Turn to Eat: The Story of a Kenyan Whistle Blower*, London: Fourth Estate, 2009. Booksellers selling the book in Nairobi have been repeatedly submitted to illegal raids by the police who confiscated their stock.

¹⁰ Quoted in Allen, K., Has Kenya's Power-sharing Worked?, *BBC News*, 3 March 2009, <http://news.bbc.co.uk/2/hi/africa/7921007.stm> [accessed May 2009]

¹¹ Roads Ministry Needs \$1bn More, *Bor Globe*, 9 October 2008

¹² Maize Scandal: The Lies and the Facts, *Daily Nation* [Nairobi], 5 February 2009, <http://www.nation.co.ke/News/-/1056/525410/-/u1vwg1/-/index.html> [accessed May 2009]

¹³ KACC Asked to Probe \$98.7m Triton Oil Theft at Kenya Pipeline, *The East African*, 9 January 2009, <http://www.theeastafrican.co.ke/news/-/2558/512818/-/rliqydz/-/index.html> [accessed May 2009]; Bloomberg, Kenya to Arrest Oil Company Director after Shipment Disappears, 21 January 2009, <http://www.bloomberg.com/apps/news?pid=conewsstory&tkr=KNCB:KN&sid=awoBMbm.rHmY> [accessed May 2009]

which the international community had painfully brought back together to avoid the worst and at a time when poverty and economic duress had reached a point of high crisis. As a result public toleration of such scandals had considerably decreased.

3 The Security Situation

Compared to many poor countries' security situations, Kenya's security problems are not daunting. But they become significant because of the fact that they are all seen to be mishandled by a government that could, with a little bit more care and a little bit less corruption, successfully face these threats. As a result the nation's security problems are perceived by the public as matters of failed internal policies, even when the threat is external.

3.1 Border Issues

The Somali border problem is a perfect example. Refugees keep pouring into Kenya from Somalia in large numbers.¹⁴ The weapons used to arm the various tribal militias getting ready to fight in case of a replay of the January 2008 clashes are bought in Somalia, and several Kenyan government officials have been kidnapped and even murdered by the armed bands operating across the border. In the face of this growing problem the GNU is not seen as doing anything coherent. Its latest proposal – to tax the *khat* drug which is grown in Kenya and sold in Somalia and to pay such taxes to the newly organized Somali government led by Prime Minister Sheikh Sharif Sheikh Ahmed in the hope that this will achieve a better control of the border – is widely perceived as a wild shot and a probable cause of further corruption.¹⁵ Recent threats by the al-Shabaab radical faction of the Somali Islamist movement to invade north-eastern Kenya are probably largely rhetoric.¹⁶ But they could be a prelude to more cross-border raids which the Kenyan army does not seem to be in a position to contain.

In the north of the country the Ethiopian border is permanently unsafe, even if it is much less dangerous than its Somalia counterpart. Extending from the Turkana tribal cluster in the west to the eastern Oromo country (Gabra, Rendille, Borana), it is a wild and desolate area, periodically ravaged by destructive cattle raids. These are not politically motivated but are rather ecologically, culturally and economically driven.¹⁷ The government has not done anything significant to bring the various tribal communities to talk to each other or tried to improve the cattle raising situation by digging more boreholes and providing veterinary services. Instead it has relied on a very heavy-handed policy of forced disarmament by the army. The brutality of the operation has been such that church leaders have asked for its termination (even though most of these tribes are “pagans”), arguing that it only made the

¹⁴ United Nations Integrated Regional Information Networks, Kenya-Somalia: Thousands Flee Amidst Fear of Fighting along Border, Garissa, 27 November 2008, <http://www.irinnews.org/report.aspx?ReportID=81698> [accessed May 2009]; Reuters Alertnet, Kenya Faces Crisis as Somali Refugee Camps Overflow, 3 December 2008, http://www.alertnet.org/db/an_art/55076/2008/11/4-090132-1.htm [accessed May 2009]; United Nations High Commissioner for Refugees, Thousands of Somalis Continue to Flee to Northeastern Kenya, Geneva, 27 March 2009, <http://www.unhcr.org/news/NEWS/49ccb8982.html> [accessed May 2009]

¹⁵ Kenya's Misplaced Decision to Collect Taxes for Somalia, *Garowe Online*, 5 April 2009, http://www.garoweonline.com/artman2/publish/Editorial_29/Kenya_s_misplaced_decision_to_collect_taxes_for_Somalia_editorial.shtml [accessed May 2009]

¹⁶ Somalia Militia Threaten to Invade Kenya, *KBC News*, 26 April 2009, <http://www.kbc.co.ke/story.asp?ID=57028> [accessed May 2009]

¹⁷ Galaty, J., Pastoral Conflicts across Northern Kenya, in H. Maupeu (ed), *Annuaire de l'Afrique Orientale*, Nairobi: IFRA, 2002, pp 223-44

situation worse and divided the communities further.¹⁸ The situation recently deteriorated further, when a heavily armed group of about 60 Oromo Liberation Front (OLF) fighters pitched camp at Nyachise, near Isiolo. The location is close to the Ethiopian border and the OLF fighters are poised to attack, something which will probably trigger a cross-border retaliation from the Ethiopian army. Although the Isiolo district commissioner, Waveru Kimani, stated that “all appropriate measures had been taken to ensure security”, this assurance is unlikely to be well founded.¹⁹

The Ugandan border, which had until recently been peaceful, suddenly became a new subject of conflict. This came in two stages: first the Migingo Island in Lake Victoria was occupied by the Ugandan army, and subsequently there were territorial infringements by Ugandan armed groups in the North Pokot area, at the foot of Mount Elgon.²⁰ Although probably Kenyan, Migingo had never been clearly mapped out, and its fishermen population is both Kenyan and Ugandan. The confusion over the island was if anything increased by Ugandan President Museveni stating that “the island is in Kenya and the waters are in Buganda”.²¹ Since none of the two territorial quarrels have any cultural, tribal or geographical reasons, rumours were rife that the hidden cause was political. Uganda was wanting to exercise pressure in order to force Kenya to expel the Lord’s Resistance Army (LRA) representative, David Matsanga, who has received a highly complacent hospitality from the Kenyan authorities. This complacency towards the representative of a foreign murderous terrorist movement has widely been attributed to financial blandishments coming from the LRA mission in Nairobi.²²

3.2 Internal Security

The Mungiki criminal gang activities and its repression is a purely internal problem. Mungiki is a Kikuyu ethnic fundamentalist movement with some pretensions to being a modern day equivalent to what Mau Mau was in the late colonial period.²³ This is based on an interpretation of the Mau Mau revolt which sees it mostly as an assertion of Kikuyu ethnic pride rather than as a proto-nationalist movement. Today Mungiki is a powerful criminal organization, which lives mostly by a protection racket directed at *matatu* (minibus) operators and by drug dealing.²⁴ It also entertains a complex relationship with politicized Kikuyu ethnicity, some Kikuyu political operators using the gang as a hit squad in violent political situations while others, particularly businessmen, loathe it as a dangerous predator which tends to exploit them first in the name of a spurious conception of ethnic solidarity. As a

¹⁸ Ecumenical News International, Church Leaders Say Northern Military Operation Must End, *Anglican Journal*, 16 March 2009, <http://www.anglicanjournal.com/world/015/article/kenyan-church-leaders-say-northern-military-operation-must-end/?cHash=fdb80f606a> [accessed May 2009]

¹⁹ Kenyan Govt Investigates OLF Militia Claims, *The Ethiopian Review*, 30 April 2009, <http://www.ethiopianreview.com/content/2009/04/kenyan-govt-investigates-olf-militia-claims/> [accessed May 2009]

²⁰ *The Standard* [Nairobi], 21 April 2009

²¹ Museveni: Island is Kenya’s but Water Is Ours, *The Standard* [Nairobi], 13 May 2009

²² Kenyan diplomat, Addis-Ababa. Personal interview, 20 April 2009. Although quite credible these rumours might be incorrect. But their very existence (and the fact they are widely believed) reflects the public mood.

²³ The best piece on the origins of Mungiki is Maupeu, H., Mungiki et les élections: les mutations politiques d’un prophétisme Kikuyu, *Politique Africaine*, No 87, October 2002, pp. 117-37

²⁴ Reuters, Analysis: Kenyas Election Violence Revived Killer Gang, Nairobi, 4 December 2008, <http://www.alertnet.org/thenews/newsdesk/L4508248.htm> [accessed May 2009]

result Mungiki is at the same time a favoured tool of Kikuyu ethnic extremists and a public enemy of organized Kikuyu business forces. When the wife and brother of Mungiki leader Maina Njenga were kidnapped and murdered in April 2008, well-informed observers attributed these murders to Kikuyu businessmen who had become tired of being exploited by their “ethnic protectors”.²⁵ Known Mungiki members have been systematically murdered by the police without any provocation, a policy which has driven movement members – mostly unemployed boys – to extremes of retaliatory ferocity and caused violent vigilante-type retaliation. Recently Mungiki gangs battled local vigilantes in Mathira (Central Province) over a period of several days, resulting in 29 casualties. This marked a new increase in the seriousness of the violence since both the gangsters and the vigilantes were Kikuyu. Mungiki has now become an intra as well as an inter tribal problem.²⁶

This leads us to the problem of criminal police corruption.²⁷ The degree of police corruption in Kenya has become such that many, including UN Special Rapporteur Philip Alston, regard the police as almost a criminal organization in its own right. This is of course a partial view since many police officers honestly discharge their duties. But even they are caught in a web of organized corruption and criminality which renders them impotent. In late February 2009 Alston called for the immediate resignation of Attorney General Amos Wako and Major General Hussein Ali, Kenya’s police commissioner, in view of their role in the indiscriminating police violence of January 2008 and of the concomitant brutal repression of the Sabaot Land Defence Force (SLDF) ethnic guerillas.²⁸

The SLDF is an ethnic guerrilla movement which for the past two years had brutally targeted non-Kalenjin settlers on their land at the foot of Mount Elgon (the Sabaot are one of the eight groups making up the Kalenjin cluster). Between 2006 and 2008 it had killed about 600 people and forced over 45,000 into displacement. But then the police used the pretext of the 2008 post-election violence to crush the SLDF in such a heavy-handed way that it almost turned them into victims. Non-guerrillas, whether Sabaot or not, were arrested, beaten, raped, tortured and often murdered.²⁹ Special Rapporteur Alston documented these and other police abuses, revealing at the same time that a key witness, Constable Bernard Kiriinya, who had admitted to killing “suspects” on direct orders from Police Commissioner Hussein Ali, had then been murdered in October 2008.³⁰ Attorney General Amos Wako then declared that he would not resign and that the Alston report constituted “a near infringement of Kenya’s sovereignty”.³¹ Then on 5 March 2009, less than a week after the unveiling of the Alston report, two human rights activists who had been among Alston’s key informers and who were

²⁵ Kenyan analyst, Addis Ababa. Personal interview, 21 April 2008

²⁶ Intra-Kikuyu Violence Targets Mungiki Members, *Oxford Analytica*, 21 April 2009

²⁷ The Law Society of Kenya Releases Report on Extra-judicial Killings, *The Standard* [Nairobi], 22 December 2008; Victims Tell of Police Terror, *The Sunday Nation* [Nairobi], 22 February 2009, <http://www.nation.co.ke/News/-/1056/533360/-/u2h21y/-/index.html> [accessed May 2009]

²⁸ UN Condemns Executions Carried Out by Kenyan Police, *Guardian* [London], 25 February 2009, <http://www.guardian.co.uk/world/2009/feb/25/un-kenya-executions> [accessed May 2009]

²⁹ Tales of Terror Abound as Mt Elgon Widows Mourn, *The Standard* [Nairobi], 12 January 2009, <http://www.eastandard.net/InsidePage.php?id=1144003908&cid=4> [accessed May 2009]

³⁰ Associated Press, Kenya Human Rights Body Releases Police Video, Nairobi, 24 February 2009

³¹ I won’t quit, says Wako, *Daily Nation* [Nairobi], 2 March 2009, <http://www.nation.co.ke/News/-/1056/541082/-/u3250e/-/index.html> [accessed May 2009]

on their way to meet with the head of the Kenya Human Rights Commission to talk about police abuses, were shot dead in their car in broad daylight.³²

These various instances of insecurity were compounded by the apparent inability of the security forces to deal with the problems in an appropriate way. The alternatives seemed to be either inaction or indiscriminate violence, with nothing in between. The public, and particularly the Muslim community which felt nervous because crimes were often attributed to Somali refugees, protested and asked for meaningful action.³³

4 Confrontation Civil Society/Political Establishment

It is against this extremely tense background that the political drama unfolding around the GNU should be seen.

4.1 The Waki Report

One temporarily forgotten item of the February 2008 power sharing agreement had been the preparation of an independent report on the post-electoral violence. But on 15 October 2008 Judge Philip Waki duly delivered the planned report to President Kibaki. It contained damning evidence against both PNU and ODM, alleging that several of their members, including MPs and ministers, had connived in the killings and even organized them.³⁴ Judge Waki gave former UN Secretary-General Kofi Annan an envelope with the names of the ten most serious suspects and it was agreed that Kenya should set up a tribunal, or Special Court, to judge them by March 2009. Failure to do so on the part of the GNU would mean that Kofi Annan would then turn over the names to the International Criminal Court (ICC) to start a process of international indictment for crimes against humanity.³⁵

The issue of the Special Court on post electoral violence has now become a central problem. The reason is that the law aiming to install this court was presented to Parliament on 12 February but defeated by 101 votes to 93. Although both Prime Minister Raila Odinga and President Kibaki had supported the bill, neither could discipline enough of their MPs into voting for it, the rejectionist majority coming from both sides of the House.³⁶ Paradoxically the rejections came for completely opposite reasons. Some reformist MPs (of all parties) did not believe that, given the state of corruption of the Kenyan judiciary, the Special Court could operate freely and honestly, leading them to try to push the case over to ICC jurisdiction. On the opposite side, MPs who feared to see their involvement in the post electoral violence revealed (there again, of all parties), speculated that the Special Court might prove to be too quick and too inquisitive and tried to transfer the problem to the ICC in the hope of slowing

³² Human Rights Watch, Kenya: Killing of Activists Needs Independent Enquiry, 6 March 2009 (press release), <http://www.hrw.org/en/news/2009/03/06/kenya-killing-activists-needs-independent-inquiry> [accessed May 2009]

³³ Group Urges Army Action over Insecurity, *Daily Nation* [Nairobi], 28 April 2009, <http://www.nation.co.ke/News/regional/-/1070/592152/-/75nex4/-/index.html> [accessed May 2009]

³⁴ Police and Militia Groups Blamed for Post-poll Chaos, *The Standard* [Nairobi], 16 October 2008, <http://www.eastandard.net/news/InsidePage.php?id=1143997098&cid=159&> [accessed May 2009]; Waki Report Tears ODM and PNU Apart, *Sunday Nation*, 17 October 2008, <http://www.nation.co.ke/News/-/1056/491226/-/tm255x/-/index.html> [accessed May 2009]

³⁵ Suspects in Waki Secret List Face Life in Prison, *Daily Nation* [Nairobi], 2 December 2008, <http://www.nation.co.ke/News/-/1056/497700/-/tm6exb/-/index.html> [accessed May 2009]

³⁶ What Went Wrong for the Big Guns?, *The Standard* [Nairobi], 15 February 2009

the process and delaying it beyond the next elections, due in 2012. In agreement with both Kibaki and Odinga, Kofi Annan decided to give the Kenya legislature a short reprieve. But he also made it clear that this state of affairs could not be allowed to persist since the Court issue had come to stand as a gauge of the resolve to proceed with the needed reforms before it would be too late.³⁷

4.2 Reform Demands

A key element of the needed reforms relates to the fairness and reliability of the electoral process which the December 2008 elections showed to be so sorely lacking. The resistance to the disbanding of the old Electoral Commission of Kenya (ECK) was highly symbolical of the refusal of the old corrupt political establishment to bow out. But the setting up of the new Interim Independent Electoral Commission (IIEC) has not moved forward although it is seen as a test of the possibility of reforming the system.³⁸

On 1 April 2009 the respected *Daily Nation* wrote:

Kenya's political leadership is characterized by paralysis because, beyond the two principals in the mediation, there are other interests that feel threatened by reform of the security services, of the public service and the Judiciary ... these institutions are part of the infrastructure of a deeply entrenched patronage system that must be dismantled if reform is to take off.³⁹

These three areas – security, public service recruitment and the judiciary – are vital as they embody the corruption that the Kenyan public now feels to be intolerable. One has to remember that Kenya is, by African standards, a highly-educated society with a vibrant and dynamic civil society. What might be tolerated by public opinion in a less developed country is not tolerable in Kenya.⁴⁰ To symbolize this new publicly-desired order, a new constitution is necessary. Its founding bill has been put to Parliament but has never been voted.

Central to this new dispensation, there is also a need to reassess the land-holding patterns of the country under pains of seeing the next round of violence turn into an agrarian revolt.⁴¹ The so-called “million acre scheme” set up in 1963-1965 with British help to compensate Africans expropriated by the white settlers turned into a gigantic land-grabbing scam where President Kenyatta “gave” to his fellow Kikuyu land which had initially been taken from the Maasai, Kalenjin and Luo.⁴² Anybody familiar with what had happened 40 years ago can see it tragically reflected in the pattern of the January 2009 killings in Western Kenya. In

³⁷ Reuters, Kenya PM Sees Extension to Local Court Deadline, Nairobi, 18 February 2009, <http://lite.alertnet.org/thenews/newsdesk/LI130635.htm> [accessed May 2009]

³⁸ Another Lawyer Withdraws from IIEC Top Job Shortlist, *The Standard* [Nairobi], 1 April 2009

³⁹ Why Mediation Process for Kenya's Benefit Has Stalled, *Daily Nation* [Nairobi], 1 April 2009, <http://www.nation.co.ke/oped/Opinion/-/440808/555728/-/44pq3o/-/index.html> [accessed May 2009]

⁴⁰ Our True Character as a Nation Will Be Seen in How We Handle the Waki Report, *Daily Nation*, 15 November 2008, <http://www.nation.co.ke/oped/Opinion/-/440808/491506/-/3n1c1r/-/index.html> [accessed May 2009]

⁴¹ The Bomb Is Waiting to Go Off Again, *East African*, 7 February 2009, <http://www.theeastafrican.co.ke/magazine/-/434746/525926/-/view/printVersion/-/11u1f5bz/-/index.html> [accessed May 2009]

⁴² For the background to this important problem, see Sorrenson, M.P.K., *Land Reform in Kikuyu Country*, Nairobi: Oxford University Press, 1967; see also Leo, C., *Land and Class in Kenya*, Toronto: University of Toronto Press, 1984

addition, large tracts of public lands were illegally privately appropriated under both the Kenyatta and Moi presidencies. The result is a massively imbalanced pattern of land holdings, which both contributes to present poverty and is fraught with the potential for future major agrarian conflicts.

In the light of all this, it is now vital to implement another long-delayed measure that was included in the February 2008 power-sharing agreement, namely the establishment of a Kenya Truth, Justice and Reconciliation Commission (KTJRC), whose mandate is supposed to cover the whole period from the date of independence in 1963 to February 2009. Only a KTJRC can have the moral standing and the technical expertise to dispassionately bring to the light a number of hard-to-face truths.⁴³

4.3 Political Disillusionment

The Kenyan public is exasperated by its own political class.⁴⁴ A recent poll by a reliable Kenyan public opinion institute showed that 70 percent of the population answered “nothing” to the question of what could be seen as the major achievement of the GNU since February 2008. In addition, only 33 percent thought that the instigators of the post-electoral violence would ever be brought to trial.⁴⁵ This is highly explosive.

But instead of seizing the urgency of the matter, the political class renewed its sterile and destructive bickering as soon as Parliament was reconvened. The first occasion was the choice of the new House Business Committee (HBC) Chairman. President Kibaki chose to have his political ally Vice-President Kalonzo Musyoka as Chairman while Prime Minister Raila Odinga insisted that he should be Chairman. The President claimed that the choice was constitutionally his while the Prime Minister said that as leader of the largest parliamentary group he should logically be chosen as provided for in the power-sharing agreement. The presidential camp denied that the power-sharing agreement was of such standing that it could supersede the Constitution.⁴⁶ The outcome was that Parliament remained paralyzed for a period.

Warning lights are now blinking for the governing elite, regardless of political party or ethnic origin. The cost of the mammoth 92 member cabinet (42 percent of MPs, costing nearly 80 percent of the effective national budget) coupled with the refusal of MPs to accept that their large incomes should be subject to taxation, has riled public opinion. As a result disenchantment with the GNU is setting in and all political parties are sinking together, as illustrated by the a recent opinion poll, which looked at how voting intentions evolved during 2008-2009:⁴⁷

⁴³ Kenya Set to Get Truth Commission, *BBC News*, 22 October 2008, <http://news.bbc.co.uk/2/hi/africa/7688505.stm> [accessed May 2009]

⁴⁴ Popular Pressures Strain GNU Cohesion, *Oxford Analytica*, 15 December 2008

⁴⁵ Coalition Has Failed Say Kenyans, *Daily Nation* [Nairobi], 16 February 2009, <http://www.nation.co.ke/News/-/1056/531266/-/u2fmmc/-/index.html> [accessed May 2009]

⁴⁶ See Deadlock in Fight for House Control, *Daily Nation* [Nairobi], 22 April 2009, <http://www.nation.co.ke/News/-/1056/562936/-/u4b420/-/index.html> [accessed May 2009]. Since the HBC practically controls the setting of the whole parliamentary agenda, its chairmanship (and composition) gives enormous powers to the members.

⁴⁷ Kilner, D., New Poll Shows Lack of Confidence in Kenya's Government, *Voice of America*, 24 February 2009, <http://www.voanews.com/english/archive/2009-02/2009-02-24-voa17.cfm?moddate=2009-02-24> [accessed May 2009]

	PNU Vote	ODM Vote	ODM-K Vote	Supporting nobody
2008	29%	53%	7%	7%
2009	23%	37%	1%	37%

5 Conclusion

Kenya is now at the crossroads between reform and violence. The only way to defuse and de-ethnicize the danger of political violence is to attack its socio-economic causes, but also to show that graft and prevarication have not been the preserve of any one ethnic group but have been practised by all those who were in power over the years, regardless of their ethnic origin. Given the sophistication and vibrancy of Kenyan civil society, it is now obvious that the public suspects this much and stands ready to transcend the “ethnic hatreds” manipulated by the political establishment for its own benefit. The aspiration for reform is now so widespread that the public could be trusted to accept some temporary sacrifices and difficulties if it felt that a believable process is underway and will be pursued to a satisfactory end.

Repeated attempts to move the reconciliation and reform agenda forward, both through international initiatives like the conference recently organized by the Kofi Annan Foundation in Geneva and through national events such as the Kilaguni Lodge meeting between the GNU partners have failed.⁴⁸ The resignation of Justice Minister Martha Karua two days after the Kilaguni Lodge non-dialogue was both a protest against her impotence in steering the Ministry of Justice in a meaningful direction and a calculated piece of political manoeuvring to dissociate herself from the sinking PNU.⁴⁹ There must now be a temptation for Prime Minister Odinga to precipitate a parliamentary vote of no confidence and head towards new elections before the ODM lead in voting intentions vanishes altogether. Several segments of civil society, including some of the churches, have asked for such a course of action. But in the present climate, with several ethnic militias now arming themselves, this is a very dangerous and possibly foolhardy strategy. New elections would be as likely to blow the country asunder as they would be to unblock the GNU stalemate.⁵⁰ Quick implementation of reforms, particularly of the Special Court and of the KTJRC, remains the safest course of action. But, as Kofi Annan has warned, there is not much time left.

⁴⁸ Kenya Coalition Talks Collapse, *The Citizen* [Dar-es-Salaam], 4 April 2009, <http://www.thecitizen.co.tz/newe.php?id=11790> [accessed May 2009]

⁴⁹ Kenya’s Fragile Government Loses Justice Minister, *Mail & Guardian Online* [Johannesburg], 6 April 2009, <http://www.mg.co.za/article/2009-04-06-kenyas-fragile-government-loses-justice-minister> [accessed May 2009]

⁵⁰ United National Integrated Regional Information Networks, Coalition Cracks and Armed Militias Threaten Stability, 10 April 2009, <http://www.irinnews.org/Report.aspx?ReportId=83884> [accessed May 2009], which also shows a rare front page editorial, Don’t Lead Us Back to War, from the *Daily Nation* [Nairobi], 10 April 2009

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