

Kenya crisis: Lessons for South Africa

Kenya is at war with itself. A country that was once considered an island of peace and tranquillity in East Africa has lost those credentials. What went wrong?

The trigger was clearly the December 27 presidential elections and the hasty swearing in of the incumbent President Mwai Kibaki. The opposition Orange Democratic Movement, together with many other Kenyans and international commentators, allege that the elections were rigged. But did these claims justify the magnitude of the post-election crisis?

Commentators across the political divide acknowledge that there are deep-seated causes of the current situation in Kenya, and that allegations of a stolen election merely served to ignite the flames.

The primary cause is undoubtedly the long history of ethnic inequality in Kenya. Since independence in 1963, the Kenyan government has pursued economic policies that favoured those in power. Owners of capital and people with a decent education became the major beneficiaries of government tenders, jobs and land.

Under Jomo Kenyatta, Kenya's first president, the Kikuyu benefited immensely from political patronage. The Kalenjin were the main beneficiaries during Daniel Arap Moi's 24 year reign. Mwai Kibaki's ascent to power was buoyed by a dream and promise for change from the status quo and equitable distribution of resources. Instead, he was accused of renegeing on that promise. An overwhelming public perception that the Kikuyu entrenched themselves again during Kibaki's tenure did little to heal the wounds.

At the core of the public discontent was the manifestation of continued unequal distribution of resources and government positions. That is besides the post-colonial acquisition of land by those in power, sometimes at the expense of the indigenous communities. The problem of land inequality remains unresolved to date, despite numerous recommendations by various state-appointed commissions.

When the allegations of rigged elections surfaced, the communities in the North Rift, Western, Coast and Nyanza who have remained disgruntled and overwhelmingly voted against Mwai Kibaki, felt that they had again been wronged. They accordingly sought to punish the “culprits” – mainly the Kikuyu – through threats, intimidation, violence and murder for benefiting and supporting the incumbent. While the situation seems to have calmed, the possibility of continued violence has not been completely averted.

Although festering political and ethnic tensions and inequality underlie the current violence, they do not explain why Kenya moved so quickly and unexpectedly from peace to violence. A significant part of the blame must lie with the failure of independent democratic institutions to provide a means for the dispute over the election to be settled without bloodshed. Three of the most important institutions in Kenya, the judiciary, the electoral commission and the police, have all fallen victim to political manipulation.

While Kibaki has stated that he would be willing to re-hold the elections if told to do so by a court, Raila Odinga’s opposition have said that approaching the courts would be a waste of time.

The ODM’s negative impression of the judiciary is difficult to refute. The Chief Justice, who would appoint the judges to decide any electoral dispute, hastily swore Kibaki in as President. He is therefore perceived to be partisan with the ODM publicly doubting his impartiality and that of his fellow judges.

The Electoral Commission of Kenya seems equally guilty of failing to maintain its independence. Although the head of the Commission pronounced Kibaki the winner, he later admitted that he was not sure if Kibaki had won.

The third democratic institution to fail the Kenyan people has been the police, who have been accused of shooting to kill protestors against Kibaki’s rule. In this way, they have come to be seen as an armed wing of a particular political party rather than an independent body that enforces the law against all transgressors.

There is an important lesson here for other countries: the independence of democratic institutions is vital for maintaining peace and stability, especially where there are underlying political or historical tensions.

How has South Africa fared in this regard? Both the interim and final Constitutions prescribed the creation of several democracy-supporting institutions, including the Judicial Services Commission, an independent judiciary, a strong and impartial National Prosecuting Authority, an efficient Electoral Commission and Court, the Human Rights Commission, the Public Protector, and the Auditor-General. Although sometimes criticised for lack of teeth, for several years these organisations served the public honourably and grew stronger.

Recently, however, the credibility of the two cardinal democracy-supporting institutions in South Africa, the National Prosecuting Authority and the Judiciary, has been called into question, with some alleging that they lack the necessary independence to fulfil their constitutional functions. Last week's spat over the Deputy Chief Justice's remarks at his sixtieth birthday party is but the most recent of a string of worrying exchanges.

There have also been moves to grant greater financial control over the judiciary to the executive and to abolish the Scorpions. While we do not wish to comment on the wisdom of these specific changes, Kenya provides ample evidence of what happens when independent institutions are undermined.

Jacob Zuma's upcoming trial will test the independence of the judiciary to the limit. We can only hope that we have done enough to foster actual and perceived independence in one of our most important democratic institutions.

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