



# HORN OF AFRICA BULLETIN

ANALYSES • CONTEXT • CONNECTIONS

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### Kenya's internal displacement: impunity again?

Until recently Kenya was (mis)perceived as an island of stability in the troubled Horn and Great Lakes Region. The disputed presidential election of 27 December 2007 changed this; horrific violence occurred within a struggle between the Party of National Unity (PNU) and the Orange Democratic Movement (ODM), a struggle largely over Kenya's highly centralised state power. The government of Mwai Kibaki (PNU) manipulated the election results to stay in power and unleashed appalling police brutality against opposition supporters. For its part, the opposition led by Raila Odinga (ODM) used militias to systematically kill and displace PNU supporters. In turn, PNU militias counter-attacked, generating even more displacement across the country.

On 28 February 2008 after concerted efforts by former Secretary General of the United Nations Kofi Annan and many others and after over 1.000 people were killed and over approximately 600.000 displaced, a power-sharing agreement was reached between the two fighting parties. As part of this agreement the parties will split power between a President as head of state and a Prime Minister as head of government. Other elements of the agreement include a Truth, Justice and Reconciliation Commission for parliament to establish as well as a Commission of Inquiry into the more recent violence. These are small hopeful signs that Kenya is moving back on the right path.

To understand the potential roadblocks and pitfalls ahead for Kenya, it is critical to analyse past cycles of violence and the lessons learned. While the country did not go through civil war as other African countries, it has experienced large-scale violence with the advent of multi-party politics starting in 1991. Ample evidence exists that multi-party politics without reform of a repressive state apparatus and weak rule of law actually created incentives for players within the dominant Kenya African National Union (KANU) party to use violence to "win" elections. This is indeed where Kenya's post-colonial internal displacement crisis started.

Displacement has ever since become part of electoral strategy. Strongmen politicians disenfranchise opposition voters and use the "liberated" land as patronage for supporters. This politic of displacement and hate subverts democratic politics by dividing communities and instilling fear and mistrust, which precludes multi-ethnic coalitions

and issues-based politics. It also leaves deep divisions, leads to economic destruction, exacerbates already unacceptably high poverty rates, aggravates environmental degradation and land problems and sets the scene for future violence as we saw in the last electoral cycle.

After many years of such violence in Kenya in the 1990s, around 400,000 displaced people existed by 2002 when a new National Rainbow Coalition (NaRC) government headed by Mwai Kibaki came to power. The hope of many of the displaced was that with the old dominant and dictatorial KANU party defeated, the new government would start to address this humanitarian catastrophe and actively create solutions to long-term problems linked to the internal displacement in the country. Sadly, out of political expediency, NaRC folded into its coalition key perpetrators of the violence and thus effectively ignored the 1999 Akiwumi Commission Report that urged prosecution of these culprits. The Government also shelved the plans for a Truth, Justice and Reconciliation Commission that its own task force recommended in 2003.

The current situation differs from the NaRC government years in a number of ways. First, with Kenya on the brink, unprecedented international and civil society scrutiny exists over the new power-sharing agreements. Secondly, investigations into the violence and a Truth, Justice and Reconciliation Commission are a key and public part of the agreement. Thirdly, the scale of the displacement is such that it is impossible to claim as many NaRC government officials did that IDPs did not exist or numbered in the tens of thousands. Another difference is that Kenya has ratified the Pact on Security, Stability and Development formulated by the International Conference on the Great Lakes Region (IC/GLR).<sup>1</sup> This creates an international obligation for Kenya to uphold the rights of the displaced codified in the Protocol on Internal Displacement in the Pact. This may provide more leverage in advocacy efforts.

Still reasons exist to be concerned. Indeed, we may see a repeat of the past including impunity for the perpetrators and neglect of the victims. First, international attention and focus wanes quickly. Secondly and most importantly, as the new government includes perpetrators at high levels on both sides of the PNU/ODM divide, a strong incentive exists to repeat past patterns of impunity. This would include running a Commission of Inquiry into the violence and then as with the Akiwumi Commission, delaying the report and failing to prosecute anyone, hoping that people “forget the past”. Since the Truth, Justice and Reconciliation Commission starts with injustices in 1963 it could equally take a long time before anyone gets around to the recent past. In the mean time, if Kenya’s international obligations remain obscure and civil society fails to advocate vigorously enough for the displaced, then we will see neglect of the displaced and in fact a violation of their rights. This official forgetting would feed a climate of impunity.

President Kibaki’s statement, recorded in *The Standard* on 13 March 2008, that the displaced should “return to their homes” and “that the violence that rocked the country was a thing of the past” is not encouraging. Kibaki’s statement suggests that the approach will – once again – involve ignoring 1) the voices and concerns of the displaced themselves, 2) the enormity of the problems created in communities torn apart by the violence and displacement and in host communities and 3) the need for careful policy which adheres to international standards and legal obligations to the displaced. Such standards include providing the displaced with adequate security and alternatives to returning to places where they are likely to face emotional trauma and violence again.

Unless, this time civil society and reformist parliamentarians, with support from transnational advocates for the displaced, strengthen their networks, policy capacity and voice and effectively exert pressure on the government, history is likely to be repeated. What this would mean is that political incentives to use violence and displacement will continue and in fact be reinforced by yet another round of impunity. We can then expect more violence in the next electoral cycle, especially by those rewarded this time round.

Fortunately, some strategies are available for those concerned with the displaced. First, the National IDP Network needs to be supported and strengthened to allow IDP voices to be heard and rights bolstered in both relief initiatives and policy. Secondly, civil society

should monitor investigations into the violence and generate their own. Where possible they should push for the continuation of travel ban and other sanctions on key culprits including ideally prosecution. Thirdly, parliament should pass key legislation against Hate Speech and also incorporate the IDP Protocol into national legislation as is required by their signing of the IC/GLR Pact. This would provide a legal framework for advocacy efforts and also serve the purpose of increasing awareness and debate about IDP Policy in parliament. This would make it harder for Kenya to move once again towards impunity and potential destruction, but the timeframe is short: one more electoral cycle.

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<sup>1</sup> The text of the Pact can be found at: [www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/60ECE277A8EDA2DDC12572FB002BBDA7/\\$file/Great%20Lakes%20pact\\_en.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/60ECE277A8EDA2DDC12572FB002BBDA7/$file/Great%20Lakes%20pact_en.pdf)

## **Darfur manoeuvring. Lest we forget the root causes**

In 1996 at a meeting with the Sudanese Society in Uppsala, Professor R. S. O’Fahey, one of the foremost authorities on the history of Darfur, told his audience that “perhaps the southern problem will not take so long time to be settled, but the other more intractable one will be that of Darfur.” At that time the Sudanese authorities described what was happening in Darfur as the “work of banditry”. While some observers shared that view, at that time even the most pessimistic people could not have imagined the present political crisis and humanitarian catastrophe into which the Darfur region has descended. Historians like O’Fahey look into matters from a holistic perspective and discern the root causes of the crisis that lie beneath its symptoms. Today’s problems in Darfur have already upset the political, economic and social systems back in history. Unfortunately, domestic and regional power struggles as well as political and military manoeuvring by all parties have, over time, turned the side-effects of the crisis, namely insecurity, ethnic and identity problems, into the main issues. Now some people consider these side-effects as the major sources of the crisis.

However, certain recent developments remind us of the root causes that have to be addressed without, of course, overlooking urgent matters such as the re-establishing of security and the stopping of bloodshed. In particular, observations and views expressed by the UN special envoy for Darfur, Jan Eliasson, illustrate the international community’s change of priorities and seriousness towards addressing the roots of the crisis. In December of last year he had an important meeting with leaders of the Fur tribe in the refugee camps – that are among the largest in the region – in a bid to persuade them to join the next peace talks. They agreed on the condition that they would be allowed to return to their land that was occupied by foreign elements and would receive proper compensations for the damage to their villages and loss of property. These leaders and the inhabitants of the camps are supporters of Abd al-Wahid M. Nur (Sudan Liberation Army/Movement – SLA/M), the faction leader who refused to join the peace talks and is now making the same demands. Later Eliasson called for the participation of representatives of the refugee camps in peace talks so that they could explain their demands, and also suggested the participation of the “Arab” tribes in the talks. Bringing the issue of land to the forefront with both the Fur and “Arab” tribes is, in fact, a crucial step towards tackling the primary structural economic issue in the region; specifically, what is known as the *hawakir* problem. In simple terms, *hawakir* refers to lands historically owned by a tribe albeit immigrant groups from other tribes were allocated pieces of land by the tribe’s chief to stay in it and use it. These immigrant groups are traditionally conceived as “guests” by