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COULD KENYA BECOME ANOTHER RWANDA?**

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In the movie *Hotel Rwanda*, Don Cheadle, starring as real-life hero, Paul Rusesabagina, a hotel manager at a 4-star hotel who not only saves his own family during the genocide crisis, but also the lives of more than 1,200 Rwandese, waits for the Belgian army to come to the rescue of his group in vain. Even when the Belgians arrive, he realises that that the long-awaited soldiers have come only to aid the evacuation of the Europeans. In his devastation and bitterness he cries out: "I have no memory, I have no history." This is often the reaction of most people under extreme social crisis; a sense of abandonment and disconnection which invariably leads to paralysis in solution seeking. Recall Hannah Arendt, who in the light of the Jewish holocaust, pointedly observes that "*At the time, the horror itself, in its naked monstrosity, seemed not only to me but to others, to transcend all moral categories and explode all standards of jurisdiction; it was something that men could neither punish adequately nor forgive...*"¹ Yet the probe of both the Rwanda genocide and the events in Kenya since December 27th 2007 cannot be fully appreciated unless they are considered from a historical perspective. Nor can they be completely understood unless the possibilities for the utilization of national and international rule of law tools to secure vindication for victims and retribution for perpetrators are brought to bear.

Before the manipulated December 2007 elections, the aftermath of which has led to the death of over 1000 and the displacement of close to

¹ Hanna Arendt, "Personal Dictatorship" in Jerome Kohn, *Responsibility and Judgement* (ed) (New York: Schocken Books, 2003) p23

500,000 people, Kenya had been celebrated as Africa's democratic scion, in the same league as South Africa, Benin, Mozambique and Botswana.² The peaceful transitions in 2002 and the overwhelming sense of nationhood that followed this transition was unparalleled. An economic growth of up to above 5% for five years constituted a major shift from the years of poor economic performance, corruption and maladministration. The international community got the cue that the country was on its way to sustainable economic social and political recovery. It thus invested heavily in direct budget support and programming for development. Underneath these seeming successes, however, lay a subaltern and insidious reality that was largely ignored by Kenyan civil society, churches, media and judicial institutions, and which neither the government nor the international community was willing to confront. These realities, in a sense, accord fairly closely with the Rwanda of 1994.

The first reality was the increase in inequality, both monetary and non-monetary. While unequal development has been at the heart of Kenya's economic logic since independence, Kibaki's regime exacerbated this situation.³ Basic commodity prices plummeted making the poorer sections of the society unable to access basic goods. Disproportionate stock exchange returns accrued both to the middle class and politically allied corporations,

² See e.g., Barkan Joel D., "Kenya after Moi" *Foreign Affairs* 83, no. 3 (January/February 2004). It is notable that even while welcoming Kibaki's win in the 2002 elections, Barkan observes quite pointedly that Kenya's democracy was tenuous: "...it lacks centralized leadership, is riven by ethnic factionalism and is threatened by mounting economic and security challenges", he observed at pg.1 of his article. See also: Wolf T. Carolyn Logan & Jeremiah Owiti, *A New Dawn? Popular Optimism in Kenya After a New Transition* (2004) Afrobarometer Working Paper No 33: Institute for Democracy in South Africa; Munene M, 'Kibaki's Moment in History' *East African Journal for Human Rights and Democracy* 1, no. 1 (2003): 26

³ Tom Mboya's Sessional Paper No. 10 of 1965 for instance divided the country into "high potential" and "low potential" areas, and argued that the quest for rapid industrialization required public sector investment to focus on high potential areas, mainly in the white highlands in central and some parts of the Rift Valley provinces, hence the exclusion of most of the other parts of the country for being marginal to this goal.

not without the help of insider trading information. Public sector investments were also disproportionately allocated to one region at the expense of the other six. Inequality took an ethno-regional dimension, a fact validated by several studies.⁴ For instance, according to a Society for International Development Report, about 93% of women in North Eastern province have no education at all, compared to 3% in Central province., the 10% richest households in Kenya control more than 42% of all incomes while the poorest 10% 0.76% of income. Furthermore, the income inequality according to SID, means that while the top rich Kenyan earns 56 shillings, the bottom poor earns 1 shilling. Inequality is also reflected in land ownership, particularly in the resource rich Rift Valley province.⁵

The second reality is portrayed by ethnic manipulation, which although extant before Kibaki's regime, deepened with the dismemberment of the NARC Coalition which had brought Kibaki to power in 2002. Ethnic profiling and hate reached its height in the course of the constitutional review process, and in particular during the referendum on a new constitution. The expulsion of the LDP faction , associated with Raila Odinga, from government after the 2005 referendum loss and a deliberate "kikuyunization" of civil service and strategic control of key state and non

⁴ See e.g., Society for International Development (SID), *Pulling Apart: Facts and Figures on Inequality in Kenya*, (2004): 12.; Makoloo Maurice O., *Kenya: Minorities indigenous people and ethnic diversity* (2005): 54 London: Minority Rights Group International/CEMIRIDE; "Country Review Report of the Republic of Kenya" (2006):70 *African Peer Review Mechanism* retrieved online at <http://www.aprmkenya.org/downloads/kenyareport.pdf>;

⁵ See Chris McGreal, 'Who's to blame? It depends where you begin the story' *The Guardian* February 7, 2008 retrieved at <http://www.guardian.co.uk/print.html>: "The extended Kenyatta family alone owns an estimated 500,000 acres (2,000 sq km). That represents a large chunk of the 28m acres (113,000 sq km) of arable land in Kenya. The remaining 80% of the country is mostly semi-arid and arid land. The Kenya Land Alliance says more than half the arable land in the country is in the hands of only 20% of the population. Two-thirds of the people own, on average, less than an acre per person. There are 13% who own no land at all." See also Sing'Oei Korir A., "Indigenous People in Africa: A Quest Yet Unmet" in Hakima Abbas (ed) *Africa's Long Road to Rights: Reflections on the 20th Anniversary of the African Commission on Human and Peoples' Rights* (2007) 36 Fahamu/Oxford: London

state institutions-judiciary, anti-corruption commission, law reform commission, police, army etc. – destroyed any vestigial basis for equality amongst Kenya's 42 ethnic polities...These policy moves were followed by a deliberate tagging of ethnic communities as “uncircumcised” or “uneducated” or “refugees” and therefore not fit to lead the country. Similarly, specific individuals were targeted as either “non-developmentalists” or for being “a communist” or “majimboists” a term which means federalism in Kiswahili. *Majimbo* has been especially subverted by those who favour a more centralized state, who have deliberately associated it with ethnic puritanism within a given locale and expulsion of foreigners.

The third reality is institutional deligitimization. The judiciary, electoral commission and Police and Military institutions were deliberately re-aligned to ensure ethnic control by certain group at the highest managerial levels. It would seem also that the mandates of key institutions were also deliberately tinkered with. For example, the Kenya Anti Corruption Commission was rendered toothless through the enactment of an amendment to the Economic Crimes Act to disrobe the Commission of jurisdiction to investigate pre 2003 allegations of corruption. This was an attempt at granting, through the back door, unfettered amnesty to the perpetrators of Kenya's grand corruption scandals, notably the Goldenberg and Anglo leasing scandals, and smoothing the way for Kibaki's close collaboration with former president Moi in stopping the Orange Movement's political ascendancy. Similarly, Kibaki unilaterally appointed nine new commissioners to the Electoral Commission of Kenya, the body constitutionally mandated to oversee the entire electoral process, without consulting the opposition and in total disregard of the principles set out by

the Inter Party Parliamentary Group agreement reached in 1997. The results were a Commission that could not be trusted to preside over a free and fair election.

The question then is whether these factors are so entrenched and therefore likely to lead to the Rwandan genocide type of situation. I argue that the situation while grievous is unlikely to approximate to the cataclysmic meltdown witnessed in Rwanda in 1994 for reasons *internal* and *external* to the two countries.

Internal dynamics

Rwanda's ethnic profile is less diverse than that in Kenya. In the case of Rwanda, the Tutsi-Hutu contestation, went back to the pre-colonial period of the *Mwami Rwabugiri*, the Tutsi aristocrat, Kenya's multiethnic state is a composite of well over 42 ethnicities. In this construct therefore, it follows that ethnic differentiation is a lot more diffused and nuanced in the Kenyan context as opposed to Rwanda, where the binary relationship that pitted the Tutsi against the Hutu, constituted the administrative and political *raison d'etre* for governance during the colonial and post colonial state. This sharp ethnic division, contrasts with Kenya's political context, which although in practise is largely constructed on the basis of ethnicity, is less bifurcated and institutionalised. Mobilizing ethnicities as instruments of vengeance for the redress of real or perceived historical wrongs in Kenya, is therefore a lot more onerous, and none of the parties to the current conflict, can sustain such a claim.

Secondly, the colonial experience of the two countries also created polities which, in my view preponderate towards different outcomes when confronted with the canker worm of ethnicity. While the Belgian

administration pursued indirect rule, which on the basis of cost efficiency, sought to utilize existing traditional structures, to secure its strategic interests within the colonial territory-in this case, the entrenchment of Tutsi chieftaincy as the framework for governance. The British approach in Kenya was slightly different. Pursuing direct rule, the British deployed their own administrators all through the colony and more or less shunted traditional governance authority, using it only within the limited confines of native reservations.⁶ It would therefore seem that the British approach, at least during the formative years of colonial rule, while undermining ethnicity also confined the scope of its utility, rendering it, in the long term, a dysfunctional mechanism for political mobilization necessary for the execution of mass scale killings. In Rwanda however, the Tutsi, who all through the colonial regime, had been constructed as the rulers, became clearly exposed to high degrees of hate by its purported subjects, the Hutu, hence the call for segregation by Gregory Kayibanda, the first President, who saw Hutu and Tutsi as two nations with irreconcilable perspectives vis-à-vis national development: “two nations between whom there is no intercourse and no sympathy, who are as ignorant of each others habits, thoughts and feelings as if they were dwellers of different zones, or inhabitants of different planets...”⁷

On the one hand, even though the Kikuyu in Kenya were later to become beneficiaries of colonial largesse, especially education opportunities, which fitted them better to occupy economic and social positions in the newly independent country, this was mainly due to the

⁶ For a discussion on British approach to governance in Kenya, see e.g., Mungeam G.H., *British Rule in Kenya 1895-1912: The Establishment of Administration in the East African Protectorate* (Oxford: Clarendon Press, 1966)

⁷ Cited in Lemarchand, *Rwanda and Burundi* (New York: Praeger, 1970) p. 169

pivotal place of central province in the economic enterprise of the colony. In the same manner even though the Luo in Nyanza, then languished as a labour reserve that furnished both unskilled and educated labour to the centres of colonial capitalism, the British did not deliberately institutionalize ethnicity as a logic of governance, sustaining a form of native egalitarianism. The prosperity-poverty differentials between the Kikuyu and Luo, while subsequently rationalised through post independence policies was more a question of geography rather than deliberate racial design on the part of the British. Indeed, the demand for Kenya's independence, led by Jeramogi Oginga Odinga, the Luo leader, was uncompromising in their call that independence could only be acceptable to them only after the release of Jomo Kenyatta, the Kikuyu leader, then serving a detention term for leading the *Mau Mau*.

In practise, however, capitalist development and centralization of power has reinforced domination of the Kenyan economy by the Central Province and the Kikuyu, a process that withstood the twenty-four year reign of President Moi, a Kalenjin from the Rift Valley, and was stridently reinvigorated under President Kibaki's administration. In this construct, the resentment levels in Kenya, while proximally high at the present, cannot approximate that in Rwanda in 1994. While, central Province and Kikuyu dominance of Kenya's political economy breed resentment from other regions and ethnic groups, and while there are high demands for devolution of fiscal and political authority to ensure inclusion in Kenya's polity, the clarion call varies from that which resonated in Rwanda: in Kenya, the demand is inclusion and respect for diversity, while in Rwanda, it was largely a cry for exclusion and decimation of the oppressor. Discussing this issue in his book *When Victims Become Killers*,

Mahmood Mamdani avers that: “ *This was not an ethnic but a racial cleansing, not violence against one who is seen as a neighbour but against one who is seen as a foreigner...Ethnic violence results in massacres ,but not genocide. Massacres are about transgressions, excess; genocide questions the very legitimacy of a presence as alien. For the Hutu who killed, the Tutsi was a settler, not a neighbour...*”⁸

The dangers in the Kenyan situation are real, and dangers of ethnic cleansing possible. Amy Chua, in her analysis of the process of globalization through markets and democracy warns that “*...markets and democracy benefit different ethnic groups (differently).The pursuit of free market democracy produces highly unstable and combustible conditions ... (By concentrating) enormous wealth in the hands of an outsider minority foments ethnic envy and hatred among often chronically poor majorities...*”⁹

External dynamics

Part of the reason for the genocide in Rwanda was the character of the global order at the time as marked out by the indifference of the international community, as clearly exposed in *Hotel Rwanda*. Before Rwanda and Srebrenica, and before the work of the International Commission on Intervention and State Sovereignty, and the rise of international criminal justice, internal conflicts were mainly seen to fall within the domain of state responsibility; with the international community bearing only such obligations as would be requested by the government of a given state. In this era, international law was narrowly construed to vest sovereign states with

⁸ Mahmood Mamdani, *When Citizens Become Killers: Colonialism, Nativism and the Genocide in Rwanda* (Princeton, New Jersey: Princeton University Press, 2001) p.14.

⁹ Amy Chua, *World on Fire: How Exporting Free Market Democracy Breeds Ethnic Hatred and Global Instability* (New York: Double Day Press, 2002) p.10.

the primary responsibility to protect their citizens from avoidable catastrophe be it mass murder, rape or starvation. The role of the international community in this regard, would be to support state effort, contingent upon state request.

According to the International Commission on Intervention and State Sovereignty, the authors of the controversial Responsibility to Protect (R2P) document, the emerging principle seems to be that intervention for purposes of human protection is permissible when major harm to civilians is occurring or imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetrator.¹⁰ It is important to underline though that the R2P document is yet to acquire legal force, but provides strong persuasive imperatives to nudge the international community into action. In this regard, Kofi Annan, rallying call appears apposite:

“If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica-to gross and systematic violations of human rights that affect every precept of our common humanity?”¹¹

One can therefore argue that Kenya will not go down the Rwanda way, because developments in international law seem to support intervention to stave mass killings within the territory of a state, particularly if such is sanctioned by the United Nations Security Council. Moreover, the utilization of international criminal mechanisms, which are already being tried in the Darfur case, and have been bandied around by both parties to the Kenyan conflict, seems to present a deterrent force.

10 “Report on the International Commission on Intervention and State Sovereignty: Responsibility to Protect” (2001) 25 available online at <http://www.iciss.gc.ca/pdfs/Commission-Report.pdf>.

¹¹ Ibid, at pg.7

But the other reason is more selfish rather than altruistic; namely, the perception in the west, that Kenya, is not any African country, and that its collapse could have serious implications on peace and security, and would negatively affect the economic recovery of the entire region. It is this reason, more than the first that seems to be the motivation behind the high level visibility which the Kenyan electoral malfeasance and the killings and displacements that followed, have received. The diplomatic foray to Nairobi and the high decibel of solutions proposed by the west, demonstrates the level of interest in the country, hence the very unlikely scenario that further descent will be countenanced. The extent to which the patience of the international community will hold the situation in check however needs to be factored in.

Conclusion and way forward

Should President Kibaki and his minions therefore seat pretty because descend into complete anarchy is not anticipated...? I argue that such an action would be reckless and tragic. Nothing short of comprehensive constitutional and policy transformation, will return the country to the course of democratic development and economic growth. According to Binyavanga Wainana, a Pulitzer award writer and a Kikuyu, this was the premise that informed Kibaki's election in 2002. He argues:” *Five years ago, we voted for a broad and nationally representative government. Inside this vehicle were the country's major tribes: the Luo, the Luhya, the Kikuyu, and many Kalenjin — all the people now killing one another. We wanted this arrangement to quickly introduce a new and more inclusive Constitution,*

deal firmly with corruption and start a process of defining the nation in terms that include everybody."¹²

While Kibaki has so seriously derogated from this premise, the position and aspiration of the Kenyan people stands unmoved. Awiti Alex, a Kenyan post doctoral fellow at Stanford University from the Luo ethnic group, sees a redemptive purpose in the ongoing political imbroglio thus: "The current crisis presents a historic opportunity, a tipping point or threshold. There is a cathartic streak about the post election violence. In a gruesome way, the crisis is a kind of purging, cleansing and emptying of the bowels of ethnic hatred that could lead to a redressing of socio-economic inequities."¹³ This opportunity must not be squandered.

The resentment that stalks the country is one which must be confronted, by addressing inequality and deepening mechanisms for participatory democracy and promotion of diversity. Failure to which, the fate that has befallen market minorities elsewhere can only be held back for a little while, before they return to completely deprecate the country that many have laboured to sustain for years. The international community, particularly the United States, a net exporter of free market democracy, will not stand free of condemnation even in the Kenyan context.

¹² Binyavanga Wainanina Op-Ed contribution in the *New York Times*, January 6, 2008

¹³ Dr Awiti Alex, "In the Constitution Lies Our Problem" *Daily Nation* January 29, 2008