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# Up from the Ashes? Kenya's Political Crisis

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### **Lucy Hannan:**

Thank you! Well, when I got on the plane on Sunday, I didn't know what I might be talking about because events, as we have seen this week, move so quickly as we have seen today.

This is a point that I really want to point out, that Kenyans are held hostage daily, sometimes from morning to evening by the political stand off and that there is no stability yet. Kenya has become a very fragile state. And I brought one of the papers that I read at the airport. It's an outrage of endless bickering, living in tents of fear and despair. This is really what people wake up to every morning and by evening commit themselves to listen to the news. Nobody knows what's happening.

As to the wider world, Kenya has to remain a concern. This is a protracted political crisis and it represents a serious threat not only to the nation but also to the region. The anxiety is not just at home. This week has not seen a solution. If anything, it revealed a patterns or a status quo suggesting that there may be no genuine commitment to power sharing. I don't think it should be seen as just a squabble over Cabinet seats but really a continuing argument over the power of the presidency and the legitimacy of the leaders, that's President Mwai Kibaki and Prime Minister – designate Raila Odinga. So, it goes against the spirit of the agreement. The two sides are still reading from different scripts.

Heightened public anxiety and anger at the stand-off led to renewed rioting this week, which was just a taste or a reminder of what happened before. There was also sabotage of the railway line in Kibera. There were riots in Kisumu again; where I have been recently and where people openly declare that they are ready and willing to fight for what they see as the right to install their leader. They insist the vote was stolen from them. So violence in other words is becoming an avenue of expression to many in the absence of, what they see, as the absence of any other credible process.

And meanwhile, thousands of displaced people are stuck in camps, churches, stadiums and local refugee compounds. They're on standby mode and they know that until the deal is properly done, they are out in the cold and not just politically. The rains have arrived. It's freezing at night. Confinement and anxiety are made worse by discomfort. There was one place I went to in Timborora where they said that the tent floods at night. They find a chair and sit on it. No one really knows the exact figures of displacement. It started off as around 300,000. Perhaps it is around 150,000 now.

However, the numbers are not really an issue at this stage. I think what counts is that an enormous amount of people have been evicted from their homes, forced out of jobs, forced out of schools and do not have the confidence to go home. They have become an underclass in the national sense. In some areas people face attacks and harassment, threats and derogation on the basis of their ethnicity, without any apparent right to protection by the state or recourse to the law. They feel they are at the mercy of the mob still. Without a power sharing deal in place and a fully functioning government, reconciliation on the ground at this stage is really fairly inconsequential. In fact the continued absence of governance and leadership means that the displaced are de facto second class citizens.

Now, first I want to state the obvious. This is a political crisis. And now I want to state the less obvious. This is not tribal warfare. It is about the failings of a political system that has an all powerful president and weak institutions. This is despite calls for constitutional reform ever since the multi-party system was introduced in 1991.

As it stands, the system allows powerful and corrupt politicians, devoid of ideology to hang on to power, by mobilising ethnic constituencies along the lines of 'If you belong to me and vote for me I'll do you favours'. Political parties in Kenya have become vehicles for individuals to grab resources and become tribal barons.

Consequently the groups you saw attacking each other so viciously on your screens did not do so out of hatred but because of the political parties they were associated with. Some were paid to do it. Some were not. As long it is a winner-takes-all system with an all powerful presidency the stakes are just too high. If you have lost you go to the bottom of the pile in a country where more than 70% already live below the poverty line. Infrastructure is very poor. Even the promise of a tarmac road is considered a blessing. On the other hand, Kenyan MPs are the fifth highest paid in the world. I think they have a basic salary of around \$11,000 a month. They are at the top of the pile, whether in government or opposition.

So, the battle has been over power, corruption, land, unemployment and it has been fought along ethnic lines, according to political affiliations. Kenyans are trying to come to terms in all sorts of ways about what has happened and the role of ethnicity is acknowledged, but it should be seen as the symptom rather than the cause. So, what is most significant in Kenya is the gap between the haves and the have-nots. I think corruption and punity means

that this gap has widened and I think that one of the results of this crisis is that this gap has become more visible and is less likely to be tolerated.

Now, when the crisis hit, it came as a profound shock. Yet, all the pointers had been there and this was put very well to me by a constitutional lawyer at the time. He said that this was an emotional shock but not an intellectual one. Throughout the 1990s, much has been written about the need for reform, getting rid of the imperial powers of the presidency and tackling land-grabbing and corruption. All this was at the heart of the crisis and yet nobody really anticipated that what happened could happen.

I first understood that something was different this time around on New Year's Eve when I tried to drive to Eldoret. It was two days after the disputed results had been announced and the country was in a state of shock. President Kibaki had been rushed on to the lawn of State House for a quick swearing in at dusk. I was getting very disturbing phone calls from my cameraman, Walter Kigali, who was stuck in Eldoret. He had gone home to vote. He talked of burning houses, killings, road blockades, the sounds of shooting through the night, people were trapped in houses, they weren't able to go out to shop and they were living in terrible fear.

So, I thought I would go and get him and took with me a colleague from my office, Nick Njache. Once out of Nairobi, it felt a bit apocalyptic. There were fuel shortages and the roads were deserted and leading the crew in Central Province, we started to see desolate lines of people walking with their possessions and children. The odd vehicles we passed were full of fleeing families with furniture piled up high on the car roof. People were gathering in Police and church compounds and smoke was visible in the distance.

Then we came to the roadblock, on the Eldama Ravine Road for those of you who know it. It was manned by about thirty young men with machetes, knives, sticks, rocks and any crude weapon they could get their hands on. They had covered a section of the road with logs and rocks. It was like a trap. It wasn't just a road block. They converged immediately around the back of the car where Nick, my colleague, was. 'Have you got a Kikuyu in there?' they demanded. We talked our way through using words like colleague, friend, cameraman, Kenyan, anything other than acknowledging Nick's identity and we managed to get out. But I realise now how I was risking somebody's life in a way that I have never seen before in Kenya. We had to somehow turn around. The only way we could get back was by going back through the roadblock. Very close to the roadblock we came across a group of armed Police and I told them what had happened. 'Weren't they polite to you?' the

Police asked. And that's when I realised that the Police was basically working with the vigilantes. We did actually manage to get back and went straight back to Nairobi.

For two months, in January and February, the same sort of violence continued in various parts of the country and it became very complex. It was basically ODM versus PNU or vice versa but ethnicity became the instant way of identifying political enemies. It was like a party card you could not throw away. And people watched with horror as people were pulled out of public transport and killed for their identity, even in front of TV cameras. Security forces at the time were also using a de facto shoot to kill policy and more than 1,500 people were killed since the elections. These figures are based on the mortuary figures so that is possibly a conservative estimate.

So, what was the difference this time around? Obviously the closeness of the count and the ability to watch it all play out on national television, but ironically I think it was also the maturity of the vote and the belief in democracy. People believed that they could use their vote to choose and there was disbelief and outrage when it became evident that all political habits of manipulation and fraud were going to take the upper hand. The process was ruined in front of people's eyes and in a broader sense Kibaki had come in, in 2002, on a reformist platform and had brought a sense of change and personal rights and freedoms which had been internalised. People really thought that, for the first time, they could vote out an MP or a president if they wanted to. They'd had a taste of success with that in 2005 in their referendum, but the old political elite just wasn't ready for it, so it was a mixed message.

The result of the violence was Balkanization. People were driven out or fled to safety to what is now being called their ancestral homelands, and for many people this really isn't home. Once ethnic segregation had taken place, it moved into a new phase, where it was maintained or patrolled by armed gangs, who moved unhindered in both urban and rural areas issuing threats and spreading hate leaflets. This segregation has moved on in many ways. It is still with in key areas in the Rift Valley in Western Province and some of the Nairobi slums. During the quiet period, after the signing on 28 February, the displaced were encouraged to return. In fact, Kibaki always told people to go home, even throughout the crisis. Also the humanitarian agencies are understandably concerned that the counts will become long term and institutionalised, so they are also encouraging people to go home. Some people have gone home. Some can't or won't. Some people are waiting for compensation.

But the bottom line is that, for as long as the power sharing deal is not honoured, or executed there is no guaranteed protection or freedom of movement. There will be no satisfactory solution on the ground for the displaced until there is a political solution at the top. Everything hangs on that political deal at the top.

Meanwhile, it is the NGOs that are taking on the role of the government in many ways. There is an absence of governance which can be felt in places like Eldoret, Kisumu and in the Rift Valley. Services that should be provided by the government are not being provided. Attempts to bring elders together to start reconciliation among the communities are actually being initiated by the NGOs. The government is really not visible yet. This inability to provide governance shows how fragile the state is. And if at this stage there is no solution soon, it will have a chronic effect on livelihoods, security and a willingness or propensity to turn to violence.

The signing of the deal on 28 February provided necessary hope and did provide a workable foundation of reforms but this basic vacuum of leadership has continued and that obviously affects the working of government. Kibaki and Odinga remain preoccupied with their legitimacy to govern and their entitlement to power. Kibaki's problem increases so long as he is perceived to be hanging on to a disputed power, rather than taking a lead on resolving it. Similarly, Odinga, for a while, seemed to accrue more legitimacy outside government than Kibaki did inside government by taking leadership initiative and articulating popular concerns. However, this erodes very rapidly the more he is perceived to be incapable of securing power and abandoning his popular mandate.

If more violence erupts, the position of the security forces will be under scrutiny again. This week they are apparently more prepared, positioning themselves at flashpoints, but their role in January and February has yet to be fully faced up to. During the post-election they were overwhelmed, but they were also divided along political and ethnic lines. Security forces now have limited authority in some areas as a direct consequence. In Kisumu, for example, residents say they are now able to work effectively despite public fear of gangs and criminals who took advantage of the violence. Crime is on the rise. In some areas and in some other displaced camps, residents have actually formed their own security groups, who patrol at night or remain on standby, in anticipation of further violence. Significant also is the appearance of trained militia groups, known in Kenya as private armies, organised as a result of the violence. These range from groups of men busting into towns with machetes to people in training camps with weapons.

When I was covering for Channel 4 in February, we hired a helicopter, because we couldn't actually travel to an affected area because of the roadblocks. We flew into Sotiq. As we landed, and we were landing next to a Police helicopter, we flew on a tea plantation which appeared to move. There were thousands of men, young, old, some children, who gathered around the helicopter, thousands and thousands of them, armed with bows and arrows and any crude weapon imaginable. It seems that entire populations of young men in the villages can be mobilised.

We may never know to what degree the initial round of post-election violence was organised, and this is under debate, but there is no doubt now that a new round of violence would definitely be planned. If these groups mobilise, we would have to move from saying that there is violence in Kenya to there is conflict in Kenya. There has, of course, been conflict in Kenya before, but periodically and in marginalised areas, like the North-Eastern province (inaudible) usually where the government is alienated and depends mainly on force. Such conflicts remain localised, even if the issue, like land, is a national issue. But groups organised as a result of this crisis would be fighting in a much larger arena both geographically and politically and it would be directly linked to the leadership battle.

The inability of the government to provide security and to contain the violence was critical to the crisis and, of course, eventually begged the question, by February, of military intervention, internal or external. Unlike the police force, which has long been undermined by corruption, poor pay and politicisation, the military has retained professionalism. It has also maintained a reasonable ethnic balance, despite some political reshuffling under (inaudible) and after 2002. However, the bottom line is that, if there had been a division in the military between the pro Raila ethnic groups and Kibaki's Kikuyu and associated groups, the government would not have been able to control or dominate the military, because 70% of the army are non-Kikuyu, including its chief of staff, Kianga, who is widely respected as a non-political figure. Depending on how long the president (inaudible) and if the consequences are renewed violence, the position of the army and the role it might take, it is very likely to come to the fore again.

So, in terms of constitutional reform and the grand coalition, can it heal the fractures? I think the answer is yes, if there are constitutional reforms. According to the deal, key constitutional reforms dealing with the political system as opposed to the enacted within the year. As I have said, constitutional reform is not a new a new cry or a new remedy. It has been on the table for a long time, but it is basically reinserted by the interests of

politicians, either in power or in opposition, who want to retain the power of the presidency and the culture of impunity.

But if the spirit of the agreement is not honoured, then clearly these reforms can not take place and it won't be workable. The devil is in the detail. Whatever has already been put into place can still be used to (inaudible) the deal, if that's the intention. I don't think anybody should assume that this is necessarily going to go forward, even if it is enacted in parliament. The powers of the prime minister are still a point in contention. Kibaki is still asserting authority over the government as president. He insists he continues as head of state and government and says, for example, he has the right to name and vet the Cabinet. This is technically correct but it goes against the spirit of the agreement. The government structure is unresolved as are the procedures of running the coalition. It was left open-ended at the time, I think, because the necessity of getting the two leaders to sign a power sharing commitment was crucial to keep peace. Now, those unresolved details are being used as a stumbling block. As I have said, the squabbling is not just about the Cabinet. It runs much deeper than that and it is certainly not about running the country.

It is very worrying that there is now talk about going back to elections. Hopefully that's just posturing. Everybody knows that Kenya can not go back to having elections within the year. It falls short of a battle cry really. So, Kenyans are in a state of suspense and the future looks bleaker the longer it goes on. I think external pressure continues to be very critical, but probably needs to be tougher now. If the carrot hasn't worked, then, I think, it is probably time to use the stick.

### **Henry Maina:**

It is very hard to add much to an experienced Kenyan in that regard, but I would like to point out possibly one main thing. For me, Kenya is in the ashes. It is likely to remain there for sometime. I was (inaudible) when I said that a few people thought that I am a pessimist. I told people that ethnicity and corruption are so tight in Kenya that they have become one and because our politics is revolving around corruption, ethnicity is only the avenue it is seen through, but corruption is what is ailing Kenya.

I want to pick an example from the struggles we have about Cabinet. You had an explanation before from Raila Odinga saying that he needs a lean Cabinet and he picked thirty four, which was just a magic number and this was because the previous number was thirty four. He never went ahead to explain

why we need thirty four ministers. On the other hand, Kibaki suggested that we needed forty. Technically Raila would have wanted thirty four ministers so that he remains with a bigger clan in government, because he sees that the only place where their problems are going to be resolved is in parliament. The more of his group is (inaudible) the Cabinet, the more he loses, because they would then be (inaudible) on collective responsibility, which is a very alien thing in Kenya. Collective responsibility is collective irresponsibility. So, that is one thing that we must all see.

Two, when Kibaki's team talked about a clean government they referred to one of the opposition side's leaders (inaudible) who comes from the heart of the Rift Valley. So, everybody was saying that he is part of the group that possibly organised the violence that happened after the elections. But people forgot that Saitoti is on the Kibaki side, so what cleanliness. Cleanliness seems to be gaining a new definition, that cleanliness is if you are violent, then you are not clean. Two, that the people who, I think, the travel advisories that came after that, there was sufficient evidence that violence had been organised in the Rift Valley by people on both sides and that the second round of violence was so organised that people were transported to certain spots to go and kill. These are issues that as the two groups continue attacking without wanting to resolve we are not likely to resolve, so for me it was a big surprise that the two groups began to even bring in the word clean.

The biggest surprise, for those who have followed the discussions about Kenya's corruption, in the year 2006 the Republic of Kenya won in the Hague against a duty free company and we won that case as a republic by producing evidence that the former president was bribed by 2 million at a go in order for that contract to be awarded. This was led by our attorney general and a team of other lawyers from London and The Hague. That tells you that the government has sufficient evidence to indict and prosecute anybody it would like. But after it did that, you will all remember, as that case was being cleared, Moi was being picked to be a Kenyan envoy for Sudan. A few months later, he declared that he would back Kibaki during the referendum. He backed him during the last elections.

There was opposition coming through and being guided by the son of the former President (inaudible) has prevailed upon last year as a leader of the opposition to back the (inaudible) so we went for an election where the opposition is backing the (inaudible) only in Kenya. So, if you think that we are likely to get out of the ashes, this is where the problem is. Even though we want to see parties as possible ethnicised, there are leaders in our country who would dance in any direction so long as their interests are kept. This is

running through the whole group of our leadership. There isn't a group that can be clean. For me it is not about committing the corruption, but looking at it and saying there was no corruption is part of corruption. And I think we are already quite clear on that. Two, we have moved to a situation where thirty years ago a minister said Kenya is likely to be a country of ten millionaires and ten million poor people. We have gotten there. Increasingly this violence is going to tilt against the rich over time. It is going to go around and you will get people in Central, fighting within the Centre, fighting the rich, because they believe they the richness has not been gotten in the right way. We already have ministers who are rogue contractors thought to have been given contract whose obligations have not been fulfilled. Now they have been elected. They are part of this new group of MPs. Two contracts have just been awarded to those individuals again as they get to be new MPs and, again, you beginning to see that craft ness, while the inequalities in the country are just so much.

The country is stuck with what I call government mentality. All we are discussing is about who is the government. It is not governance, because government has become the tool of enrichment. It is not governance or the management of the affairs of the nation. To pretend that the discussions are about managing the affairs of the nation is foolish. We need to address that and constitutional reforms because we know very well that when the constitutional reforms began and there was an agreement, the Constitutional Reform Commission had views from all Kenyans and collected those views into a document called Kenya's Constitution. All we have is brief versions of that and they seem to please Moi, Kibaki, (inaudible) and Raila and that is a circus we are tied in it and so, have to find a way to move away from it.

So, how do we move forward? That Constitution must address the needs of Kenyans and governance, not the government mentality that is rotating around those four main people. Two, we need to move away from the electoral system, because that is not what participation in governance system is – that you get two votes and I get one or people abstain and you are supposed to (inaudible) over the rest. So, nobody is talking about how many people are registered, who got how many votes, why is it that so many people voted or didn't vote and what does that teach us as a nation.

The second thing is about political parties. We must come to have real political parties. What we have are vehicles of enrichment. So, if you ask anybody today what is ODM Kenya and what is its manifesto. ODM Kenya is the party that came third during the last elections, but you do not see the vice president stating any different position. Coming from his meeting yesterday

stating that we will back Kibaki if he calls for elections, is that the position of ODM Kenya, or is that the position of the ruling party now, the coalition, or is it an individual position?

So, all those dynamics we must be able to deal with. And lucky enough there was a Political Parties Act firstly in November 2007. Cleverly, that piece of legislation would have money to assist us move within that process, because we just needed a strong register of political parties who will deregister parties that have not played by the rules. That is being done by a court in (inaudible) today or yesterday, because people are beginning to see that there is need to contain political parties. The same has happened here, so we need to be able to move on that front and move away from a Cabinet that is used to distributing riches to a few people to the detriment of all others.