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## Kenya's 2007 general election and its aftershocks

In December 2007 Kenya conducted the fourth elections since the return to a multiparty system in December 1991. While the first two elections, in 1992 and 1997, had clearly fallen short of meeting the international standards for democratic elections, the 2002 elections were rightly hailed as democratic, setting a benchmark for elections throughout Africa. The 2002 elections were also the first where the Kenyan people voted out the ruling party – the Kenya African National Union (KANU), that had been in power since independence in 1963. The 2002 experience boosted the Kenyans' confidence and trust in democracy as a political system. For the international community, it indicated a consolidation of democracy in Kenya. These assumptions were proved wrong by the 2007 elections and their aftermath.

The elections of December 27<sup>th</sup>, 2007, led to a largely unexpected political crisis and brought the country to the brink of civil war. The officially-declared victory of the presidential election by the incumbent President Mwai Kibaki was disputed by the opposition, civil society and domestic and international observers alike. In a rather surprising move the international community stood united, did not endorse the presidential election results and put strong pressure on Kenya's political leaders to solve the crisis. The power-sharing formula, brokered by former UN Secretary General Kofi Annan in late February 2008, would not have been possible without this united stand by the international community.

Large-scale violence erupted after the official declaration of Kibaki's victory on the evening of December 30<sup>th</sup>. Much of the unrest took the shape of an ethnic conflict between communities that had voted overwhelmingly for Odinga (the Luo, Kalenjin) and those that had voted for Kibaki (the Kikuyu, Embu, Meru). Long-standing conflicts over land and social injustice fuelled the violence. According to different estimates, at least 1,000, but perhaps more than 1,500 people were killed altogether, mainly in the Rift Valley, Nyanza Province and Nairobi. At least 350,000 people (but probably a much higher number) were evicted from their homes, mostly in the Rift Valley. The immediate crisis only came to an end after former UN Secretary-General Kofi Annan succeeded in brokering a power-sharing deal between Kibaki and Odinga on February 28<sup>th</sup>, 2008.

### The precarious façade of political stability in Kenya

The international community perceived Kenya – in contrast to its neighbours – as politically rather stable, having been on the right track to democratic con-

solidation since 2002. Kenya had had only three presidents (Jomo Kenyatta 1963-1978), Daniel arap Moi (1978-2002) and Mwai Kibaki since 2002. It had conducted elections every five years, and changes of power occurred through constitutionally sound successions.

However, particularly after the successful elections in 2002 – the first that saw a change of power through the ballot boxes – there was a tendency to overlook the fact that Kenya had had its share of destabilising developments since independence, and that its political fabric is characterised by structurally fragile power relations. Politics in Kenya have been structured largely along ethnic lines, while ideologies played only a minor role. With no ethnic group in a majority position,<sup>1</sup> ethno-regional alliances were formed in order to build stable governments. The one-party state under Kenyatta and Moi was used as a framework to ensure this stability. It provided a mix of incentives for co-operation as well as coercive and – particularly during Moi's reign in the 1980s – repressive measures. When the return to multiparty politics in 1991 opened up new political space, longstanding ethno-political cleavages took centre stage, underlined by, so far suppressed, conflicts over land access and ownership: Ethnic communities that felt sidelined by the Moi government joined the opposition (the Kikuyu, the Luo, parts of the Luhya, parts of the Kamba) while the Moi regime tried to consolidate its ethno-regional power basis among the Kalenjin, Maasai, Samburu, and Turkana (KAMATUSA) communities in the Rift Valley, with some support from the coast and segments of other communities (the Luhya, Kamba, Kisii). After the majority of Kikuyu leaders had left the KANU between 1988 and 1991, the Moi regime no longer felt obliged to safeguard the Kikuyu interests in the Rift Valley. Kenyatta, as president and Kikuyu leader, and Moi, as the leader of the Kalenjin, had struck a deal in the 1960s: The Kalenjin would redirect their land interest in the Rift Valley further north, leaving big shares of land around Nakuru and Laikipia for the Kikuyu; they would be compensated by senior positions in and integration into the KANU coalition. However, a strong discontent among the Kalenjin has simmered ever since. When the Kikuyu overwhelmingly joined the opposition, senior Kalenjin leaders, some of them in the Orange Democratic Movement (ODM) camp today, seized the moment and instigated 'ethnic cleansings' in parts of the Rift Valley, targeting so called 'non-indigenous' ethnic minorities (the Kikuyu, Luhya, Luo, and Kisii). Around the first two multiparty elections in 1992 and 1997 more than 1,500 people were killed and about 500,000 internally displaced, mainly in the Rift Valley, but also around Mombasa.

The second cleavage that strongly influenced the elections was that between the Kikuyu and Luo communities, determined by strong tensions since the 1960s, when Oginga Odinga, father of the 2007 presidential candidate Raila Odinga, was dismissed as vice president in 1966. Three years later, the other Luo leader, KANU Secretary-General, Tom Mboya, was assassin-

<sup>1</sup> The Kikuyu (18.3%, according to the 1999 census), the Luhya (14%), the Kalenjin (12%), the Luo (10.7%), and the Kamba (10.2%) are the largest among Kenya's 42 ethnic groups.

ated; Odinga's Kenya People's Party (KPU) was banned and its leader detained. Strong feelings of betrayal have never ceased, particularly because the Luo areas of Nyanza Province have felt neglected ever since in terms of investment and development. The conflict re-entered the national political stage before and after the 2002 elections: Raila Odinga, together with a number of long-serving KANU ministers (among them Kalonzo Musyoka), left the ruling party of outgoing President Moi and joined the opposition, then led by Mwai Kibaki. A Memorandum of Understanding (MoU) between the two leaders promised Odinga that he would become Prime Minister, once this position had been created in a constitutional reform process. After his election victory, however, Kibaki did not honour the MoU. The coalition eventually split when the government presented its own constitutional draft for a referendum, thereby widely disregarding the broad consensus that had emerged through three constitutional conferences from 2003-04.

Kibaki and his government clearly lost the referendum against the new opposition alliance of the ODM, led by Raila Odinga and Kalonzo Musyoka. Nationally and internationally the government was complimented for accepting defeat.

### The election campaign 2007

In 2007, the allies of 2002 contested against each other, while Uhuru Kenyatta, the runner-up of 2002, joined the Kibaki camp, thereby uniting the Kikuyu bloc. In 2007, Odinga was presidential candidate for the ODM, Kibaki for the newly-founded Party of National Unity (PNU), and Kalonzo Musyoka, from the Ukambani region of Eastern Province, stood for the ODM-Kenya. While both the ODM and the PNU appeared as broad ethno-regional coalitions, the ODM had a much stronger leadership team, as its regional representatives held far more grassroots popularity than the PNU leaders from these regions. The PNU campaign was rather badly organised, with several factions fighting each other either for the best position in the Kibaki succession in 2012 or for regional supremacy. By contrast, the ODM campaign appeared well structured, with clear leadership roles assigned to the so-called 'Pentagon', the main decision making body of the party that symbolised the ethno-regional character of the coalition. Kibaki first led the opinion polls, his claim for re-election based primarily on the solid growth of Kenya's economy under his presidency. By autumn, however, Odinga took the lead, his appeal for 'change' directed at those who had been sidelined by the boom. Opinion polls in December pointed to an extremely close race.

Regarding the post-election violence, the most significant issue of the campaign was the debate about the system of governance. For the first time since independence, an election campaign presented the electorate with a clear policy choice: between the current centralised form of government (the PNU) and a devolved or federal system (the ODM). This difference had already dominated debates about the 2005 referendum. In 2007, however, the debate took a populist turn that paved the way for the ethnic violence after

the elections. Both sides spoke of 'Majimbo', a term with problematic historical connotations, in order to describe the ODM position on devolution. The term 'Majimbo' had been used during the ethnic cleansings in the 1990s. Employing it in the 2007 campaigns, both sides played with the aspirations and fears of Kenyans and thus fuelled the ethno-political tension around issues of land and resource distribution.

The ODM could only win by making a case for Majimbo. With not many votes to garner in Central and Eastern Provinces, the unpopularity of the concept in those regions hardly affected the ODM's overall election prospects. In other places, however, Majimbo was highly popular: In the North Eastern Province and especially along the Coast (where much of Kenya's foreign currency income is generated by tourism, with little of its profit being re-invested locally), Majimbo was popular because of the neglect experienced under all governments since independence; people expected Majimbo to provide a bigger share of the national cake, i.e. infrastructure, health and educational facilities. In the Rift Valley, Majimbo meant the option to reverse the land distribution created after independence; many Kalenjin understood it as an invitation to conclude the business left unfinished in the 1990s.

The PNU reinforced such perceptions of the Majimbo issue as it spelt out the possible consequences. PNU politicians warned that the Kikuyu and other minorities would be expelled from the Rift Valley, should the ODM win the elections. Much of the Kalenjin electorate could not agree more (with the PNU) on this point. In the weeks before the elections, hate leaflets and text messages circulated widely in the Rift Valley. Political contestants on both sides accentuated and exploited the Majimbo theme and thereby even further polarized a country already deeply divided along ethno-political lines.

### The disputed election results

The elections on December 27<sup>th</sup> proceeded largely in an orderly and peaceful manner. The voters' turnout was visibly high, reaching about 70% according to the ECK's (Electoral Commission of Kenya's) official figures. From the following day onwards, the Kenyan media began to publish results of individual constituencies; some of these figures had been declared officially, while others were based merely on information gathered by journalists at constituency tallying centres throughout the country, and thus unconfirmed and not entirely consistent. Still, two major trends appeared obvious: Odinga led in the presidential polls, and more than a dozen political heavyweights in President Kibaki's cabinet had lost their parliamentary seats. Both trends seemed to confirm that a substantial majority of the electorate had voted for the 'change' represented by the ODM.

However, as more and more results from Kibaki strongholds in Central Province were coming in on December 29<sup>th</sup>, Odinga's majority began to dwindle. Uneasiness about the delay in the announcement of results became widespread; the first street protests (eg., in Nairobi and Mombasa), accompanied by sporadic violence (in Western Kenya), already erupted on December 29<sup>th</sup>. Towards the evening of that day, confusion reigned at the ECK's head-

quarter in Nairobi, where officials and party agents tried to sort out disputed results, debating the validity of returns from dozens of constituencies.

Towards the evening of December 30<sup>th</sup> the ECK announced a narrow victory for Kibaki, with 4.58 million votes as against 4.35 million for Odinga. Musyoka (the ODM-Kenya) became third with 0.88 million votes. The results were strongly regionalized, with Kibaki dominating in Central Kenya, Odinga in the West and the Rift Valley, and Musyoka in the Ukambani region in Eastern Province. One hour later Kibaki was sworn in, with only selected media admitted to the ceremony at State House. Two days later, with the country up in flames, even ECK chairman Samuel Kivuito told journalists that he was not any longer sure who had actually won the elections.

While even most international observers regarded the presidential election results as – at least – highly questionable, citing various examples from constituencies where results had ‘obviously’ been manipulated, the ODM decided it would not go to court over the results, declaring it had no confidence in Kenya’s judicial system. Based perhaps on its own campaign propaganda according to which the ODM could not fail to win except if the elections were rigged, the ODM leadership was convinced to have gained a clear victory which was simply ‘stolen’ later on. Much international reporting on Kenya in the first few days of the crisis shared this conviction. However, a closer look at the results reveals that the matter was much less straightforward:

- After Odinga’s substantial lead in the partial results published during the first day of vote-counting many critics assumed that results from the PNU strongholds in Central Province were deliberately held back in order to ‘tailor’ a Kibaki victory. Though this cannot be ruled out, it is worth noting that in 2002 results from several constituencies in Central Kenya (Gatundu South & North, Juja, Kieni, Kipipiri, Nyeri Town, Gatanga) had also come in last. This would point to the possibility that it was simply organisational deficits, rather than a rigging ‘grand strategy’, which contributed to the delays.
- Various attempts have been made to check the plausibility of results on the level of individual constituencies. Without doubt, voters’ mobilisation was high in the 2007 elections; still, extraordinarily high turnout figures in specific constituencies (going beyond 85% in some Kibaki strongholds, up to 86% in the Rift Valley or even beyond 95% in some Odinga strongholds in Nyanza) must be suspicious. They point to inflation of figures on both sides. Other analysts tried to identify major discrepancies between the number of votes cast in the presidential and parliamentary elections, respectively, assuming that such differences may point to cases of ‘vote doctoring’. However, even the results of these plausibility checks remained inconclusive as to the question of who ‘really’ won the elections. They merely suggest that rigging took place on a considerable scale, and that the number of votes of doubtful validity exceeds the number of votes by which Kibaki’s victory was secured.
- The parliamentary election results – much less controversial than the outcome of the presidential contest – were frequently mentioned as another proof of manipulations of the presidential elections. Indeed, the ODM

won 99 seats, while the PNU got only 43. However, the ODM commanded not even the majority of the 207 parliamentary seats declared after the election. And if taking into account that the PNU was not only a party, but also an alliance of altogether 7 members and 19 associated parties, its parliamentary strength goes up to at least 79 seats.<sup>2</sup> 'Split voting' was common, especially for the PNU which won a majority of votes in the presidential poll in 47 constituencies where the parliamentary seat went to a different party.

The 'real' outcome of Kenya's December 2007 elections is unlikely to be ever known, not only because of the difficulties any attempt at re-counting the votes would face, but also because both sides to the 'deal' concluded at the end of February 2008 appear to have lost interest in it. The commission of inquiry into the elections established in March will probably come up with observations and recommendations about the procedure and organisation of elections, but is unlikely to make statements about the 'true' results of the 2007 elections.

Still, the observations summarised above allow a few general conclusions about the presidential election result: First, in all likelihood, the result was very narrow – in o in both directions, and quite consistent with the last pre-election opinion polls. Second, results were rigged to a considerable extent – the number of doubtful votes may well have been considerably higher than a realistically imaginable margin of victory for either candidate; this made the legitimacy of the election results fundamentally questionable. Third, it is likely that, while both sides rigged the elections, the government, using its administrative power, rigged more successfully and on a larger scale. Finally, and most important, the election showed Kenya's political landscape to be deeply divided along ethno-political and social lines into two different camps of almost equal strength, setting the stage for the major eruption of violence that followed.

### The dynamics of violence

The post-election violence in Kenya has frequently been characterised as a (more or less spontaneous) protest against an election result widely perceived to have been rigged. In reality, the picture was far more complex. The violence took different shapes in different political arenas and different parts of the country, developing its own dynamics. Three major areas of election-related violence can be distinguished: political and social protest accompanied by violent attacks, clamped down upon heavily by the government's security forces; a campaign of ethnic cleansing especially in the Rift Valley, resulting in numerous killings and mass displacement; and, finally, the emer-

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<sup>2</sup> These figures include the 207 mandates officially declared after the December elections; for various reasons, no results were announced for three of Kenya's 210 constituencies. Later on, further 12 parliamentary seats were filled by candidates who were nominated by the parties according to their relative strength in parliament.

gence of a more generalised form of ethnic warfare, characterised by existing and revived militias and revenge attacks.

Immediately after the announcement of the election results (and in some places already on 29<sup>th</sup> December), protests erupted in Nairobi, in Kisumu and other places in Western Kenya, and – to a lesser extent – in the Mombasa area. The protests were frequently accompanied by opportunistic attacks on the Kikuyu and members of other groups suspected to have voted for Kibaki, as well as by looting and arson. It was especially bad in Kisumu where the central business district experienced severe destruction; The Kikuyu and Indian businesspeople fled the city in large numbers. The regular police force was largely unable (and, in some cases, also obviously unwilling, for reasons of ethnic loyalty) to contain the violence. The government brought the paramilitary General Service Unit (GSU) into the hotspots: During the first few days of rioting, in an intimidating show of state power that clearly constituted excessive force, many dozens – perhaps as many as 100 – people were shot dead in Kisumu, the ‘capital’ of Odinga’s ethnic heartland. Similar battles, with dozens of people killed, took place in the Nairobi slums, where youths fought the security agencies in front of the cameras of the international media. Outside of these hotspots, police and GSU action was more civil – for example, by using tear gas, rather than live bullets, in central Nairobi to keep people away from the highly symbolic Uhuru Park, as public protest gatherings had been prohibited. The space for peaceful civic protest, as frequently called for by the ODM, was virtually crushed between the violence of the marginalised youth and that of the state.

A second, very different scenario of violence emerged in the central and southern parts of Rift Valley Province, especially in and around Eldoret. Immediately after the announcement of the election results, bands of armed young Kalenjin men attacked the Kikuyu and members of other ethnic groups who had settled in this region since the 1960s. These attacks were coordinated; some areas were cut off by roadblocks in order to keep security forces out for several days. The involvement of local elders and politicians, including the local ODM structures, in organizing and providing finance for these attacks has been documented for some places. For the time being it remains unclear to what extent higher ODM structures were also responsible; many Kenyans assume that William Ruto, the new big man of Kalenjin politics and a member of the ODM’s ‘Pentagon’, could at least have stopped the attacks at an earlier stage. The arson of a church in Eldoret on New Year’s Day, with at least 35 refugees inside being burnt alive, constituted perhaps the most gruesome example of violence in Kenya’s post-election crisis. Attacks on ‘settlers’ in the Rift Valley probably left several hundred people dead; the fear they generated accounted for the vast majority of the ca. 200-300,000 people who were internally displaced during the first two weeks of the crisis. The classification of these events as ‘ethnic cleansing’ is surely appropriate; the attackers aimed at driving ‘non-indigenous’ Kenyans away from land regarded as (historically) belonging to the Kalenjin. The security forces were much less present in the Rift Valley than in the cities, due to overstretch in the vast areas affected as well as to the fact that the government deployed Kenyan army soldiers only in rather exceptional circumstances, most-

ly for humanitarian operations and for the removal of blockages on major roads. Events in the Rift Valley bore clear similarity to the election-related violence in the same areas during the 1990s. Based on long-standing grievances about land, they had little or nothing to do with the 'protest against a rigged election'.

Thirdly, the rapidly-rising polarisation of the country along ethno-political lines generated its own, 'self-propelled' forms of violent escalation that went far beyond any electoral issues. Already during the first days of the crisis, ethnic gangs in Nairobi slums not only began to fight each other, but in effect 'cleansed' entire neighbourhoods by means of threat and assassination: Thousands of people lost their homes in the process, while others took over the abandoned space. Soon afterwards, ethnic militias (re)emerged in strength, especially the Mungiki, a Kikuyu 'sect' that, in recent years, had gained notoriety by establishing a quasi-state type of control over slum areas and operating mafia-like extortion schemes in the transport sector. A week or two into the post-election crisis, armed groups using the Mungiki name and style of operation began to 'defend the Kikuyu' who, up to this point, had been largely on the receiving end of the explosion of violence. In all likelihood, these groups were organised and sponsored by politicians. The apex of this third wave of violence was reached around the end of January, when Mungiki groups attacked, on a large scale, the Luo and others in the Rift Valley towns Naivasha and Nakuru which had a strong Kikuyu population. In popular perceptions, these attacks marked the re-establishment of a 'balance of terror' in the ethnic warfare that the Kenyan post-election crisis had degenerated into. Thereafter, the on-going mediation process helped much to reduce incidences of violence, even though general insecurity continued especially in the Rift Valley.

Political polarisation largely along ethnic lines, combined with escalating ethnic violence created a generalised climate of fear and insecurity throughout all strata of Kenyan society. A number of prominent assassination victims – among them two ODM MPs – and death threats distributed by text messages showed that the more wealthy strata of society were not immune from the risks. The ethnic militias continue to constitute a menace even after the end of the election-related violence.

### The role of the international community and the mediation process

Virtually no one among the international actors had foreseen the possibility of the elections turning into a major violent crisis. But all of them realised the severity of the situation within a few days and began to address it. The regional impact was obvious enough: Within days, the de facto closure of the transport corridor from Mombasa via Nairobi and Western Kenya led to supply shortages in the East African hinterland, especially in Uganda, Rwanda and South Sudan. Furthermore, the role of Nairobi as a major regional hub for diplomacy, communications, as well as development and relief operations

was at stake – as was the role of Kenya as the only supposedly stable country in the conflict-ridden Horn of Africa region.

It was not the manipulation of election results that motivated the international community to take a common stand towards the Kenyan political leaders. Instead, the very real danger of the country sliding into a civil war and the possible destabilising and economically disastrous effects on the entire region triggered the international diplomatic engagement.

While neither the East African Community nor the African Union, as institutions, took a clear position on the conflict, the chairman of the African Union, individual (former) heads of state and other prominent Africans came to Nairobi to offer their help in bringing the opponents together. Diplomats of the US and the EU consistently and publicly refused to give full recognition to the election outcome as it stood, thereby provoking formal protests by Kenya's foreign minister. They argued that the doubts about the validity of the results in a very close election and the severity of the violent conflict necessitated a negotiated political solution where power would have to be shared by the opponents. All relevant international actors pushed in the same direction – or at least they did nothing that would have obstructed the negotiation option.

When, on January 22<sup>nd</sup>, former UN General-Secretary Kofi Annan entered the scene, expectations were running high. He arrived at the point in time when the violence was about to reach the stage of outright inter-ethnic militia warfare. While having no direct means to force anything upon the opponents, Annan used his enormous reputation among all sides in Kenya and beyond with considerable skill and impact, bringing Kibaki and Odinga together for direct talks for the first time since the elections. He was also well aware that there would be no quick solution, making it publicly clear from the beginning that he would not leave Kenya until an agreement which would secure peace was reached. It turned out to take more than five weeks.

Both sides selected small negotiation teams with whom Annan and his advisors did most of the work. Annan held extensive consultations with stakeholders from all sectors of Kenyan society, but restricted the negotiation process proper to the two party teams. The negotiation teams included hardliners from both sides, namely William Ruto (who was by then widely believed to carry some – unspecified – responsibility for the violence in the Rift Valley) for the ODM, and the Minister for Justice Martha Karua for the PNU. In several instances, the process stalled, and direct talks between the two principals – Kibaki and Odinga – became necessary.

After the beginning of the Annan mediation process, the ODM remained consistently committed to it – unsurprisingly so, given the fact that the ODM had most to gain from whatever kind of power-sharing arrangement would be agreed upon in the end. The government side proved a much harder nut to crack. Much pressure had to be put on the government side to concede some of the power it held. Consistent pressure especially by the US and the EU (with the UK playing a particularly visible role) supported Annan's mediation decisively.

Finally, Annan succeeded in brokering a compromise that Kibaki and Odinga signed on February 28<sup>th</sup>. The deal involved the creation of the post of

a prime minister and the sharing of ministries on an equal basis, all this in the context of a grand coalition government between the PNU/the ODM-K and the ODM. Thus, Kibaki and Odinga were back at square one of the initial MoU that both had signed before the 2002 elections. A number of special commissions would be created in order to investigate the elections and the violence and to make recommendations for constitutional amendments.

The mood swung immediately: Virtually everybody was relieved that the nightmare of the preceding two months had come to an end, even though many were aware that the implementation of the power-sharing agreement would not be easy. Only a few critical observers asked whether a mere power-sharing deal among the political class had been worth all the killing, destruction and displacement.

### Perspectives

The power-sharing deal at the end of February was followed by a period of enthusiasm that celebrated the re-discovered unity of Kenyans. However, the difficulties of agreeing on the details of the ministers' list, positions in the administration, state corporations and the embassies have also shown that no real spirit of co-operation among the political elite has developed yet. Especially the PNU have continued to find it difficult to compromise on some of the positions of power that it held exclusively before. After a temporary collapse of the cabinet negotiations in the first week of April, Kibaki finally announced the new cabinet on April 13. With 40 ministers and 52 assistant ministers it is the largest cabinet in Kenyan history. Power is shared in line with the Annan agreement, with the ODM getting 20 ministries, the PNU 17 and the ODM-Kenya 3. The extremely long and difficult negotiations as well as their temporary collapse indicate the fragility of the agreement.

It remains difficult to see how (and for how long) this coalition, formed under strong external pressure, will operate. Surely, Kenya's political culture and the corporate interest of its political class, for all their deficits, provide an opportunity for the coalition's survival: Few MPs would want to face the risk (and expenditure) of the new elections that would follow a break-up. Still, the crisis since December 2007 has shown that relevant segments of Kenya's political class are prepared to pursue power politics, including the use of violence, in a manner that brought the country to the brink of civil war – and it is still not clear which kind of lessons they have drawn from this experience. In principle, the new partnership holds the potential of every grand coalition: to address Kenya's long-standing structural problems, i.e. severe social disparities, ethno-regional imbalances, unsolved land issues, and a political culture that puts a premium on ethnic mobilisation and in which the winner takes all. It is still too early to predict whether the new coalition government will be able to move forward on these issues, or whether it will be consumed by old-style ethnic power politics, the dangers of which have become all too obvious after December 27<sup>th</sup>, 2007.

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