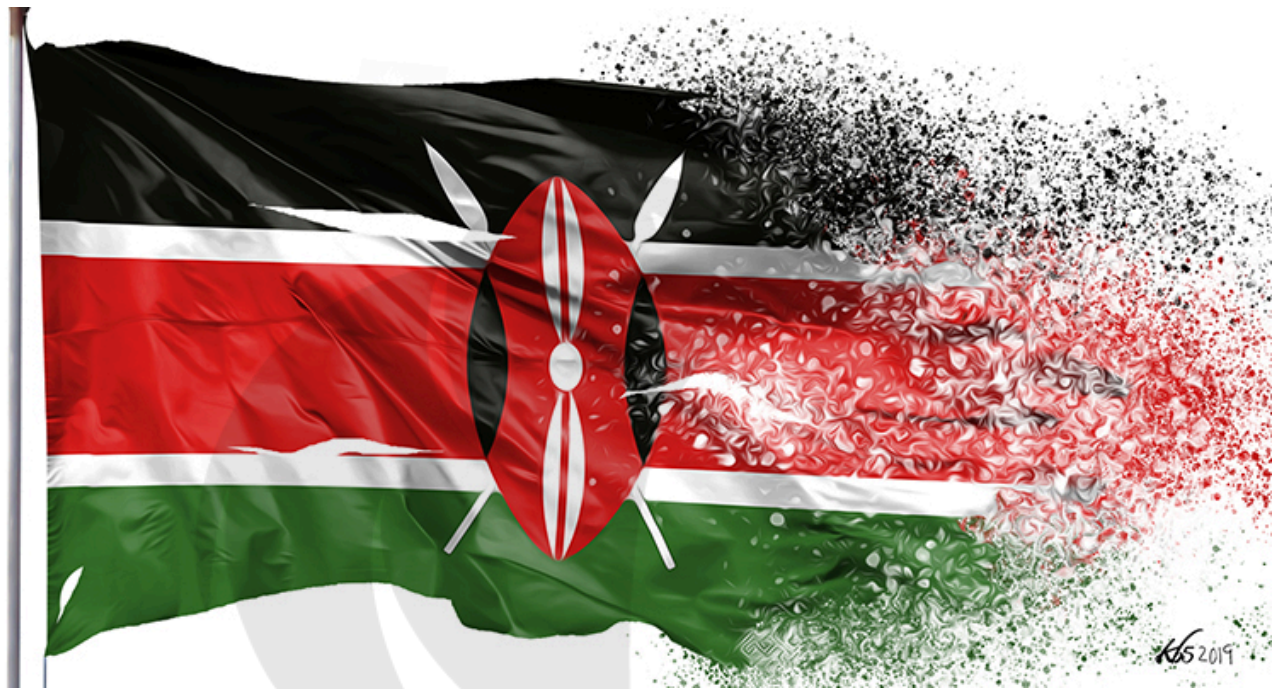




“We Have Failed Kenyans”: Lamentations for a Broken Nation

By Miriam Abraham



I rarely follow the theatrics of Gatundu Member of Parliament Moses Kuria. But I was struck by his recent [remarks](#) - widely circulated in the press - that “as Parliament we have failed. *Mea culpa*. As a member of parliament and a member of the budget committee, we have failed Kenyans . . . We have told Kenyans this romantic story that all is well . . . I want to say that we have lied to Kenyans, first of all. And the second thing is that we have failed in our oversight responsibility”

One might have dismissed Moses Kuria as that maverick known for saying ridiculous things. But then, shortly after this, there was another admission of failure from another member of the National Assembly. This time it was Senator James Orengo in response to a challenge from the youth attending an event celebrating [Prof. Yash Pal Ghai](#). Mr. Happy Olal of the Dandora Social Justice Centre had put Senator Orengo on the spot for handing the Executive a blank check and failing to play their oversight role on the debt ceiling, unemployment, extra-judicial killings of the youth, and all the many other ills plaguing Kenyans.

“I wanted to appeal here that sometimes we look for solutions where there are no solutions. Like when you are talking about parliament and looking for a solution in parliament. I think you are absolutely mistaken. . . .”, said Senator Orengo.

I can hardly recall a time in our political history when political stalwarts such as Senator Orengo openly admitted to us that they had failed in their legislative and oversight responsibilities. This is the country that produced firebrands like George Anyona, Chelagat Mutai, Martin Shikuku, Jean-Marie Seroney, and JM Kariuki during the repressive regime of Jomo Kenyatta. And in the infamous Nyayo era, Orengo was one of the “Seven Bearded Sisters” (along with Abuya Abuya, Chelagat Mutai, Onyango Midika, Mwashengu wa Mwachofi, Lawrence Sifuna, Chibule wa Tsuma, and Koigi wa Wamwere), who gave Daniel Arap Moi’s regime sleepless nights.

It is the members of this very same National Assembly that had defied single party autocracy and made the regime quiver with rage whenever they spoke, while the public cheered them on knowing that they were the “people’s watchman”. They braved detention without trial, police harassment and economic sabotage to play their oversight role. And yet here was one of the “Bearded Sisters” now telling young people to look elsewhere for leadership - not to him or to the National Assembly, extinguishing any little glimmer of hope among the youth that those who had fought for the political and socio-economic rights of the people would provide leadership in the struggle for social justice.

This blow might have been less painful had the country not been witnessing sustained assaults on another arm of government - the Judiciary. On 4 November, in a [widely televised statement](#), Chief Justice David Maraga lamented efforts to undermine the judiciary, including through budget cuts. In an unprecedented hour-long speech, the Chief Justice described the ways in which powerful Cabinet Secretaries and Permanent Secretaries were trying to control the Judiciary.

“Kumbe hii nchi iko na wenyewe” (so this country has its owners) . . . People are trying to cripple the Judiciary . . . They want to control the Judiciary. They want to make the Judiciary a puppet”, said the Chief Justice.

Those were profound words coming from the man who made history by nullifying the results of the election of the incumbent president, triggering a return to the ballot. For those who know the Chief Justice well, it took a lot of courage to speak up and defend the judiciary. What was not lost in his long-winded speech was that he was fed up of trying to appease the Executive and yet having his judges attacked and the Judiciary financially crippled.

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Nothing infuriates a descendant of Mogusii more than open disrespect and it was clear that he was incensed when the Chief Justice deviated from his prepared speech to denounce the abuse endured by his office. His conclusion that he would not go to anybody to beg for money for the judiciary evoked a Kisii saying which, loosely translated, means, “I don’t eat at yours”. It was a statement of defiance. It is no wonder that the budget cuts were reversed a few days later.

But the onslaught on the judiciary is unrelenting. There are moves to remove both the Chief Justice and his Deputy from office. The promised [“revisiting”](#) is taking various forms ranging from budget cuts to personal attacks against judges. Further constraining the functioning of the Judiciary, the President has refused to gazette newly appointed or promoted judges. This confirms the statement from the Chief Justice that the Executive is seeking to make the judiciary its puppet. With an Executive that is out of touch with the people and a legislature that has been castrated by the Executive, the Judiciary remains our last line of defence. But for how long?

The Executive has openly shown its inability to lead the country. There are endless speeches from the President asking us, *“jameni mnataka nifanye nini?”* (surely, what do you want me to do?). This

has become the standard refrain from the President, whether in response to the rampant corruption or to questions on delivery of basic services. Lucia Ayela, a young woman living in Nairobi, very eloquently expressed the frustration of many In video clips that have since gone viral.

“Sir, do you even live in this country? . . . are you even aware of what is going on in your government . . . you do not relate to your subjects [sic] at all”, Ms. Ayela lamented.

Ms. Ayela joins a number of Kenyans who have been responding to the President’s questions to his cabinet about why the country is broke. In an interesting twist, these questions seem to be emerging even from media houses reportedly owned by the Kenyatta family. In her strongly worded [Punchline](#) in October, Ms. Ann Kiguta castigated the President for being uninspiring and claiming to be tired of his job. She reminded him that he had asked for the job (three times) and he needed to roll up his sleeves and perform it as energetically as when he was going around the country seeking the presidency. This was followed by an even more hard-hitting piece by [Ms. Yvonne Okwara-Matole](#) on *Citizen TV*. The courage we are seeing from the men and women who are directly calling the Executive to order should not be taken for granted. As we know all too well, in our country, such courage can cost careers and, sometimes, lives.

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Observing how the Executive, the National Assembly, county governments and the Judiciary have been operating over the past two years, it is evident that they have, for various reasons, failed to live up to the spirit and the letter of the Constitution. Chapter one of the Constitution bestows “all sovereign power” on the people of Kenya. The organs of State have power vested in them only so that they may act on behalf of the people. In the event that all these organs fail the people, what recourse do we have?

When a seasoned Senator tells young people not to look to the National Assembly, the Executive or the Judiciary for answers to the spiraling debt, the closure of businesses, the extra-judicial killings of young people and the run-away unemployment, where else should they look? When the organs delegated to exercise the will of the people, prove their inability to carry out their mandate, what recourse do the people have? Well, one could think of three possible options for bringing about political change before the 2022 General Election.

First, and as the Katiba Institute has been educating us, we have the option of firing our members of parliament. The Constitution (Article 104) and the Elections Act 2011, provide for a procedure for recalling Members of the National Assembly. There has been no successful bid so far, although there are reports of a [petition filed](#) against the Member of Parliament for Molo, Francis Kuria Kimani. In any case, if discontent is with the entire legislature, there seems to be no easy path towards their mass recall.

In the same manner, although article 145 of the Constitution provides for the impeachment of a president, it requires at least a “third of all members” moving a motion for the impeachment, “supported by at least two-thirds of all the members of the National Assembly.” As the ongoing impeachment process of the President of the United States has demonstrated, loyalty to the party trumps fidelity to the Constitution. With our National Assembly completely in the control of the Executive, impeachment is not a word you will be hearing in the corridors of parliament any time soon.

Second, the Executive and the National Assembly, having recognised that they have failed to fulfill

their social contract with the voters, could resign. Prime Minister Hailemariam Desalegn of Ethiopia set a precedent in the region when [he resigned](#) in February after coming to terms with his inability to govern following violent crackdowns on protesters and a spiraling economy. However, there are no signs at all that this is an option that the Kenyan government is even taking under its considering.

Rather than seeking to renegotiate the broken social contract, the [President is aggressively pushing](#) for a change to the Constitution in what some have called a [Ka-Putin](#) attempt to return to power in an as yet to be created position of prime minister, at the end of his current term. Some political leaders, including [Hon. Martha Karua](#), have warned the President not to attempt any such manoeuvre. The next few weeks will be critical in evaluating how far he intends to go in his bid to remain in power.

It would seem that the President is deaf to the cries of voters bewailing unemployment, increasing debt, business closures, lack of affordable health care and education, among a myriad grievances. The Building Bridges Initiative (BBI) that he has crafted together with his elder brother Rt. Hon. Raila Odinga, is mere horse trading between elites, an initiative meant to help an illegitimate President to govern, and an opposition leader who has betrayed millions of his supporters by turning his back on electoral justice, to save face

Third and last, the people - who hold sovereign power - could organise themselves to usher in political change. As [David Ndiu argues](#), this change could either be through internal realignment as was the case in Ethiopia or through popular mobilisation leading to the toppling of the regime Sudan-style. Whichever mode of change the people choose to use to exercise their sovereign power, it is clear that, like in Sudan and Ethiopia, the young people will have a critical role to play.

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There are already young people like Happy Olal of the Dandora Social Justice Center, who are showing the power of community organising. Phenomenal women like Jerotich Seii and the Energy 6 (E6) in the [#SwitchoffKPLC](#) campaign who are leading the charge. Small-scale traders in Mombasa holding "Black Monday" protests to raise their concerns on the effect of the Standard Railway Gauge (SGR) on their businesses. Students braving police brutality to demonstrate against insecurity around their campuses, very likely caused by the tough economic conditions facing workers who have been laid off, and graduates without jobs.

The Executive and the Legislature have an opportunity to listen to these diverse voices calling for change across the country. Rather than impose the BBI report and a referendum on Kenyans, they need to find ways of addressing the grievances from across the country. Signs that a people is demanding to exercise its sovereign power are apparent all over social media and it is clear that Kenya is a time bomb waiting only for a trigger to explode. It is in our power to either choose a peaceful path or to choose a painful and chaotic one. Time is not on our side.

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