KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

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BACK FROM THE PRECIPICE? A HUMAN RIGHTS ACCOUNT OF KENYA'S POST 2007 ELECTION VIOLENCE

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July 2008

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PREFACE

The Kenya National Commission on Human Rights, pursuant to 16 of the Kenya National Commission on Human Rights Act, 2002, undertook investigations of the human rights violations that took place in Kenya following the disputed December 2007 presidential election results.

Based on the investigations carried out, the Commission is issuing this special report to the President and the National Assembly under section 21 (1) of the Kenya National Commission on Human Rights Act, 2002 which provides that the Commisson may at any time submit special reports to the President and to National Assembly on any matter.

We request the President, the Prime Minister, the Minister for Justice, National Cohesion, and Constitutional Affairs, the Attorney General, Members of Parliament, state agencies, civil society, the international community, the International Criminal Court (ICC), and the Office of the High Commissioner for Human Rights to study this report, and take note of and implement its findings and recommendations.

Nairobi, 31July 2008

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Mburu Gitu, Commission Secretary .....

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ACKNOWLEDGEMENTS

The Commission gratefully acknowledges the many Kenyans who talked to us on the post election violence. It was not easy for many of them to narrate their painful experiences, but they did so with great courage.

The Commission in a special way acknowledges the technical co-peration of *No Peace Without Justice (NPWJ),* an international non-profit organization that supported the conceputalisation and implementation of the documentation and investigation work on the post election violence.

National experts supported the analysis of the information gathered; many others spent long hours filling and inputting information and data received. We are grateful to them.

The Commission appreciates the support of many development partners who supported this work through their Nairobi offices.

Lastly, we acknowledge the participation and contribution of Commissioners and staff .
The Commission takes responsibility for the contents of this report.

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MAPS

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TERMS USED

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EXECUTIVE SUMMARY

TERMS OF REFERENCE

1. The Kenya National Commission on Human rights (KNCHR) is Kenya's National Human Rights Institution with statutory mandates to protect and promote the human rights of all individuals living in Kenya.

2. Following the post-elections violence which befell Kenya after the 2007 General Elections, we determined that it was incumbent on us, the National Commission, to undertake an investigation on the character and scope of the human rights violations which happened during the perpetration of violence particularly in the period between December 2007 and the end of February 2008. The overall aim of the investigation was to document the post-election violence to ensure that there would be a comprehensive record of the violations committed during that period as a basis for enabling redress of such violations.

3. The specific aims of the investigations were threefold. Our first aim was to assess treaty-founded human rights obligations of Kenya as a state as well as the obligations of various non-state actors whose actions or omissions contributed to the violations. In this respect, the investigation would Identify breached obligations and recommend appropriate remedies for victims; it would identify state failures in the immediate context of the violence and recommend measures to prevent future failures; identify the underlying causes of the violence and recommend measures to address them; and recommend accountability measures to effectively redress these violations and to deter future violations.

4. The second aim of the investigation was to analyze the criminal responsibility of alleged perpetrators within the frameworks of international criminal law and domestic criminal law, to enable us make appropriate recommendations to national and international authorities, including on determination of culpability and enforcement of sanctions against perpetrators.

5. Third, the investigation also aimed to make other general recommendations on governance issues that would, for example, enable Kenya to undertake an effective truth, justice and reconciliation process.

6. We framed this investigation in terms of Section 16 of our constitutive Act, the KNCHR Act. Pursuant to this Act, we may investigate, on our own motion or upon a complaint, any human rights violation - Section 16(a); we may recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights or their families – Section 16(d); to ensure the Government complies with its human rights obligations – Section 16(f); and to cooperate with various institutions for the better promotion and protection of human rights – Section 16(g).

7. To undertake the investigation effectively and expeditiously, we trained and then deployed Teams of investigators to collect data from eight regions of Kenya which were the principal theatres of the post-election violence. We then used this data to prepare the findings and recommendations set out in this report.

KEY FINDINGS

Findings on patterns of the post-elections violence

8. The violence was widespread and immediate. The violence that followed the 2007 General Elections in Kenya erupted immediately (almost within minutes) following the announcement of the Presidential election results on 30 December 2007. This immediacy was apparent in most of the theatres of conflict – Nairobi, Rift Valley, Coast and Western regions. The violence eventually impacted up to 136 constituencies in six of Kenya's eight provinces.

9. Forcible evictions and mass displacements of people not indigenous to particular regions took place. A total of 350,000 Kenyans were displaced. There were multiple instances where some politicians from the Kalenjin community urged their constituents to evict non-Kalenjin communities from their midst. Some Kikuyu politicians also rhetorised and sought action on the need for the community to defend itself against attacks by other communities.

10. The ideology and infrastructure of the post-elections violence predated the 2007 General Elections. The character of the post-elections violence was akin to elections-related violence which had happened during the 1992 and 1997 General Elections. The violence which happened during these two elections was driven by political objectives. There was a clear nexus between elections and commission of violence; and the intention to perpetrate violence for political objectives was clearly discernible. Violence became a strategy for remedying political and resource grievances which the electoral process might have been unable to resolve.

11. There was organisation and method to the violence. The attacks and counter-attacks were carried out with military discipline. For example, attackers in the Rift Valley participated in oathing ceremonies, and donned a semblance of uniform; their attacks anticipated the need to mobilise reserve forces to assist the main attackers. Both the attacking Kalenjin forces and the counter-attacking Kikuyu forces were transported into areas of operation in vehicles. A strategy common throughout the theatres of conflict was the barricading of roads by young men intent on identifying, killing or otherwise injuring travellers from non-local communities. This pattern of behaviour was particularly notable in the Rift Valley, Nyanza, Western, Coast and Central regions.

12. The violence was characterized by widespread and systematic ethnically-targeted killings of people, and looting and destruction of property belonging to communities aligned with PNU by ODM aligned supporters; and counter-attacks similarly intent on killing people and destroying property owned by ODM aligned communities. We found at least 1,162 instances of deaths and 2,566 instances where buildings, property and homes were burnt down across the country. The counter-attacks, organised by the Kikuyu community particularly in Central Province and in the Central Rift against ODM-aligned communities such as the Luo, Luhya and Kalenjin, were also premeditated. Attackers were tooled and transported to strategic points such as Nakuru and Naivasha where they unleashed coordinated terror against specific communities. In this instance, violence became a strategy for avenging the fatalities and destruction of property which PNU aligned communities had sustained.

13. The infrastructure of violence was financed and sustained mainly by local politicians and business-people to support costs such as transport of attackers, weapons and other logistics.

14. The violence was largely instigated by politicians throughout the campaign period and during the violence itself via the use of incitement to hatred.

15. Sexual and gender-based violence occurred throughout the theatres of conflict. In Nairobi's informal settlements, women and children were particularly targeted for rape on account of their ethnicity, although some men too were similarly raped. A lot of opportunistic rape happened in the internally displaced persons' (IDPs') camps.

16. A number of egregious or gross human rights violations were perpetrated during the post elections violence. Key among these was the Kiambaa church burning in Eldoret where 35 Kikuyus were killed, the burning of a house in Naivasha where 19 individuals from the Luo community were killed, the forcible circumcision of Luo men in Naivasha and parts of Central, Nairobi and Rift Valley Provinces, and the rape of women and girls.

Findings on the conduct of state agencies

17. The Government's response to the post elections violence was slow and ineffectual. The rule of law nearly collapsed in large swathes of the countryside and informal settlements in urban areas. Where the Government acted, its responses tended to be unwieldy and disjointed.

18. Throughout the period of the post-elections violence, there were multiple instances where Kenya's security forces (including the Police, Administration Police and General Service Unit) used excessive and lethal force in actual or apparent endeavours to quell violence. Multiple instances of this, including in Kisumu, the Rift Valley and the Coast, may be cited.

19. The institutional integrity of Kenya's security forces was compromised in a number of instances where security officers opted either to protect individuals from such officers' ethnic groups; or in the alternative failed to protect endangered individuals from other communities.

20. At the same time, some security forces on occasion showed great restraint as they sought to manage the post-election violence. This was the case respecting a General Service officer in Nairobi who negotiated with demonstrators not to cause violence. Further, police stations were one of the first ports of call for persons fleeing the violence.

21. The character of the violence indicates either a failure on the part of the National Security Intelligence Service (NSIS) or a failure of the government to act on intelligence.

Findings on the role of non-state agencies

22. The media, and particularly local language media, incited or facilitated the incitement of communities to hatred or violence against other communities. Radio stations broadcasting in Kalenjin languages as well as in the Kikuyu language were culpable in this respect. Live phone-in programmes were particularly notorious for disseminating negative ethnic stereotypes, cultural chauvinism and the peddling of sheer untruths about the political situation or individual politicians.

23. Faith-based Organisations (FBOs) played both positive and negative roles during the post-election violence. The partisanship of some FBOs had become apparent during the 2007 election campaigns; and such Organisations lost the credibility necessary for them to be impartial arbiters of the post-election violence. Even after the violence began, some FBOs simply chose to defend the positions of the ethnic communities with which they were associated. At the same time, however, FBOs were at the heart of efforts to provide succour to the population of Kenya which became internally displaced as a direct consequence of the post-election violence.

24. The Kenya Red Cross and other humanitarian organisations performed in an exemplary manner to ameliorate the suffering of IDPs.

Findings on the criminal culpability of alleged perpetrators

25. We find that many acts constituting crimes under Kenyan domestic law were committed during the post elections violence. Crimes at issue include murder, manslaughter, attempted murder, conspiracy to murder, grievous bodily harm, robbery with violence, arson, malicious damage to property, theft and related offenses, incitement to violence, illegal oathing, illegal possession of firearms, and sexual crimes such as rape.

Findings on whether the crime of genocide was committed

26. We find that Kenya presently exhibits characteristics which are prerequisites for the commission of the crime of genocide. One such feature is the dehumanization of a community using negative labels or idioms that distinguish the target group from the rest of society. Communities such as the Kikuyu and Kisii resident in the Rift Valley were referred to by some Kalenjin politicians as "madoadoa" (stains) before and during the post-elections violence. Another characteristic present in Kenya is the impunity subsequent to witch past acts of violence in 1992, 1997 and 2005 have gone unpunished. Consequently, unless the state and Kenyans take remedial measures, the probability of genocide happening in Kenya at some future point in time is real.

Findings on whether crimes against humanity were committed

27. It is our finding that crimes against humanity as defined under international customary law did happen. Acts such as murder, deportation or forcible transfer of population; rape and other forms of sexual violence, were committed. Further ingredients for these acts to amount to crimes against humanity are that they be systematic and widespread, be in the knowledge of the victims and be pursuant to state or organizational policy. We have determined that the listed acts were not performed randomly and hence they were part of a policy.

Findings in respect of Kenya's human rights obligations

28. The post-elections violence heralded violation of fundamental human rights such as the right to life, the right not to be forcibly evicted or displaced from one's home, the right to hold opinions without interference, the right to participate in public affairs and to vote in periodic elections, the right to property, the right to education, the prohibition not to engage in incitement to discrimination, and the right to freedom of movement.

29. In view of the above, we find that at a point when Kenyans required the most protection, the Government of Kenya retrogressed in the fulfilment of its obligations under various human rights conventions, including the International Covenant of Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on Elimination of Racial Discrimination.

Findings on governance issues

30. Kenya's political leadership failed to prevail on their supporters not to perpetrate violence against other Kenyans. In instances where leaders intervened, violence did not escalate to the levels experienced elsewhere. This was the case in Narok where elders prevailed on the Maasai community not to involve themselves in violence, and Mombasa where religious leaders and the Police prevailed on local youth to desist from violence.

RECOMMENDATIONS

In respect of domestic criminal culpability

31. The Attorney General of Kenya and or the Kenya Police Force should undertake investigations in terms of Section 26 of the Constitution on the list of alleged perpetrators set out in Annex ?? of this report to determine their criminal culpability for human rights violations under Kenya's penal law.

32. Since our list of alleged perpetrators is not comprehensive, the Attorney General and the Commissioner of Police should provide concrete assurances to Kenyans that post election violations are being investigated even-handedly across all the regions of Kenya and across all ethnic communities.

33. The crimes allegedly committed by members of the Police Force should be investigated by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose. The President should cause these two special offices to be established.

34. The Minister in the Office of the President responsible for security should fulfill the pledge he made early this year that a civilian board to oversee the Police Force would be established as a matter of urgency. This Board should be established within further delay.

35. The Chief Justice should establish administratively special courts in theatres of conflict where many crimes may have been committed to expedite the determination of post-elections violence related criminal cases.

In respect of international criminal liability

36. The Prosecutor of the ICC should open investigations on Kenya to determine who bears the greatest responsibility in the commission of crimes against humanity detailed in this report.

In respect of human rights violations and governance issues

37. The Government should fast-track the establishment of a forensic laboratory to assist investigation and prosecution of sexual crimes. The Treasury, the Ministry of Health, the Ministry of Gender and the Kenya Police Force should facilitate this.

38. The Government in partnership with Civil Society Organizations should facilitate efforts to heal the country by taking deliberate steps towards enhancing coexistence. Community based systems should be established to spearhead reconciliation.

39. Parliament should enact hate speech legislation within this year. The Ministry of Information, that of Justice, National Cohesion and Constitutional Affairs, and the Attorney General are already aware of draft legislation on hate speech which the KNCHR prepared last year; this draft can be the basis for hate speech legislation.

40. Recommendations arising from the Commissions established under the Kenya National Dialogue and Reconciliation initiative, including the Commission of Inquiry on Post Election Violence, should be implemented expeditiously.

41. The constitutional review process should be finalized expeditiously as a basis for enabling the resolution of the inequalities which have been such a fundamental source of conflict.

42. The Communications Commission of Kenya should be empowered to regulate content of local language as well as other media.

43. Legislation should be passed by Parliament barring from appointive or elective offices leaders who are found liable for perpetration of gross human rights violations.

44. The Ministry of Justice, National Cohesion and Constitutional affairs and the Ministry of education should revitalize the nation-building project so as to enhance unity in diversity – the idea that Kenya's communities can live harmoniously together in one country in spite of their ethnic differences.

45. A more concerted and sustained program of human rights education should be undertaken by public institutions, CSOs and Faith Based Organizations (FBOs) to enable Kenyans to have better regard for humanity.

46. The Ministry of Special Programs should effect and communicate to Kenyans a time-bound program to resolve the IDP question. The Ministry should ensure that IDPs are fully appraised of and actively involved in making the decisions that affect them.

47. IDPs should be provided with reparations, either in the form of restitution (return of what has been taken away); or compensation (financial and moral); or satisfaction (apology); or Rehabilitation; or guarantees of non-repetition; or a combination of all or some of the above.

CHAPTER ONE

INTRODUCTION

Background

48. This chapter provides an overview of why the Kenya National Commission on Human Rights (KNCHR) set out to investigate and document the events surrounding the violence that engulfed parts of the country following the 2007 general elections. It also explains how it planned for this investigation, where the data was collected from as well as how it collected, collated and analyzed.

49. On 30 December 2007, the Electoral Commission of Kenya (ECK) declared Mwai Kibaki of the Party of National Unity (PNU) to have been re-elected as the President of Kenya in closely contested presidential elections against his main rival Raila Odinga of the Orange Democratic Movement (ODM). Even as this was happening, ODM supporters disputed the outcome of the presidential elections. Independent bodies that observed the elections, including the European Union,[1] the Commonwealth Observers Group[2] and the East African Community reported major flaws in tallying of the presidential votes. [3] Furthermore, the ECK chairman, Samuel Kivuitu's statements before and after the announcement of the results cast doubts on the credibility of the presidential tallies.

50. Following the ECK's declaration of Mwai Kibaki as the winner of the presidential contest, subsequent to which he was swiftly sworn in as President on the evening of 30 December, the country descended into chaos and violence that left around 1,500 people dead in just more than a month and 350,000 others displaced from their homes.[4] Gross violations of human rights took place in different parts of the country, particularly in Western, Nyanza, Rift Valley, Nairobi and the Coast Provinces.

51. For years, Kenya had come to be regarded by the rest of the world as perhaps that one African country that was a little different. It had managed to hold regular elections since independence, but no matter how predetermined the outcome of many of these elections might have been, violence of an unprecedented scale such as this was never envisaged. How could it have gone so wrong? How could a population, long used to electoral malpractices, now arise and reject them so violently? What happened in different parts of the country and why did this happen? Who was responsible for the violations and what could be done to address the immediate triggers and underlying causes of the violence? These are the difficult questions that the Kenya National Commission on Human Rights (KNCHR)' post election documentation and investigations activities sought to address.

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[1] Kenya Final report General Election 27 December 2007, 3 April 2008, European Union Election Observation Mission

[2] Kenya General election, 27 December 2007, The Report of the Common Wealth Observer Group, Commonwealth Secretariat

[3] The East African Community Observer Mission stated that the elections were flawed and fell short of being free and fair. It stated that the presidential votes tallying, in which Kibaki was declared the winner, was grossly mismanaged, critically undermining the credibility of the final stage of the electoral process (Jeff Otieno: "Kibaki re-election was flawed, says EAC Report.

[4] For casualties of the conflict, see for example, "Pressure for amnesty bogs down resettlement," Daily Nation, 24 June 2008

52. The various acts of violence that took place in Kenya immediately before and following the announcement of the disputed 2007 Presidential elections results were in contravention of the Constitution and Kenya's international human rights obligations that require the Government to protect the right to life, guarantee security of persons and safeguard private property and citizens to respect the rule of law. Citizens' security and that of their property is a key factor in defining Kenya as a functioning State; yet State authority collapsed in different parts of the country as unparalleled murders, wanton rape, severe injuries of citizens and pillage of their property took an ethnic character. The security forces responded sometimes with great excessive force amidst accusations that members of particular communities were violently targeted by the police.

53. Provision of security is a fundamental human rights issue and its realization is necessary for the enjoyment of practically every other right. Section 70 (a) of the Constitution of Kenya provides that every Kenyan is entitled to the right to life, liberty, security of the person and protection of the law. Article 3 of the Universal Declaration of Human Rights (UDHR) guarantees to all the right to life, liberty and security of person while Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) which Kenya acceded to in 1972 states that every human being has the inherent right to life which right shall be protected by law and that no one shall be arbitrarily deprived of his life.

54. Kenya has signed and ratified international criminal law instruments including the International Criminal Law Statute establishing the International Criminal Court which the country ratified in 2005. Whereas the 2007 International Crimes Bill is yet to be debated and passed by Parliament, Kenya would never be a safe haven for would be perpetrators of gross human rights violations and international crimes. The country is also a signatory to the Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. As a country therefore, Kenya has an obligation to prevent and respond to human rights violations and hold those responsible for such violations accountable.

55. As part of its human rights accountability mechanisms, Kenya has the Kenya National Commission on Human Rights (KNCHR) which was created by a statute of Parliament in 2002 and established the following year to among other things advise on human rights compliance while also holding government accountable for its human rights obligations and non-state actors for their duty to respect. The National Commission draws its mandate to investigate the post election violence from Section 16 of its constitutive Act, Kenya National Commission on Human Rights Act, 2002. The Act mandates the National Commission "to investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any human rights".

56. Pursuant to this mandate, on January 25 2008, the National Commission announced to Kenyans its plan to begin investigating and documenting the post-election violence with the overall objective of ensuring that there was as comprehensive as possible a record of the violations committed during that period, from the harassment of one person to the killings of hundreds of people. In undertaking this work, KNCHR sought to fulfil its mandate to promote and enhance the protection of human rights in Kenya by meeting the following objectives:

    (1) To investigate, document, map and analyze the serious human rights violations that took place surrounding the elections.

(2) To assess the responsibility of Kenya as a state and of non-state actors under various human rights treaties to which it is a party, with a view toward:
   a. Identifying the obligations breached and recommending appropriate remedies, both individual and collective, for victims (including civil and criminal remedies);
   b. Identifying failures of the state in the immediate context of the violence and recommending measures to prevent future failures;
   c. Identifying, within a human rights framework, the underlying causes of the violence and recommending the implementation of measures to address them; and
   d. Recommending accountability measures to effectively redress these violations and to deter future violations.

(3) To analyze the criminal responsibility of alleged perpetrators, including all those who in any way participated in these crimes, within the frameworks of international criminal law and domestic criminal law, with a view toward making appropriate recommendations to relevant international and Kenyan authorities.

(4) To make any other relevant (including political) analyses whose recommendations may enable Kenya to:
   a. Undertake a thorough truth, justice and reconciliation process; and
   b. Employ any other innovative solutions to redress these human rights violations.

57. Out of this, the National Commission expected this investigation to deliver the following outputs:

   ii. An analysis of the triggers of the post-election violence
   iii. A comprehensive documentation of the events that took place and a mapping of the patterns of violence wherever it occurred
   iv. A list naming the alleged perpetrators (state and non-state) of the violence
   v. A well rationalized list of policy, legal and other recommendations

58. With information that has been collected in the field and as well as secondary sources, the KNCHR has build a foundation for analysing the responsibility of the Kenyan State under international human rights law and the responsibility of individual perpetrators under domestic criminal law and international law. On the basis of these analyses, the KNCHR has pulled together the voice of Kenya, victims and alleged perpetrators, key informants and witnesses, about what happened during the post-election violence and has, based on this, made recommendations on how there might be redress for the violations suffered, with a view to bringing those responsible to justice, be they individuals or State actors, in order to contribute to the fight against impunity and help prevent future violations.

Structure of the report

59. Chapter one explains the background to the National Commission's post election investigations project, the structure of the report, and the methodology that has been used. Chapter two discusses the triggers, fuelers, and root causes of the post election violence. Chapter three presents the chronology of post election protests and violence, which ended with conclusion of a political settlement. Chapter four discusses in detail how violence occurred in the main theatres of conflict, namely the Central, Coast, Nairobi, Central Rift, South Rift, North Rift , Nyanza, and Western regions. Chapter five is an analysis of the national trends and patterns of post election violence while chapter seven discusses the applicable domestic and interntional criminal law. Chapter eight makes conclusions and recommendations.

Methodology

60. Between the months of February to June 2008, KNCHR teams comprised of Commissioners and staff undertook over 36 missions to more than 136 locations across the country and to Uganda, with an average duration of eight days per mission. During a period of four months, 1,102 statements recounting over 7,500 episodes of violence or incitement to violence were gathered from individuals with whom interviewers spoke during these missions[5]. This information was complemented by hundreds of secondary data, including media stories, reports from organizations such as the Kenya Red Cross, internet materials among other sources that have been gathered from a variety of credible sources in Kenya and abroad.

61. Since January, the KNCHR involved itself in various activities aimed at putting in place both the physical and intellectual infrastructure for the investigation and documentation of serious violations committed during the post-election violence since the end of 2007. This involved a great deal of planning and preparatory work, particularly given that violence was ongoing at the time the investigations began. In its initial stages, KNCHR staff undertook in-depth training on all aspects of investigations and analysis, with the assistance of No Peace Without Justice, an international non-profit organisation with expertise in the documentation of mass violations of international law, including in places like Kosovo, Sierra Leone and Afghanistan. This training and support was maintained throughout the duration of investigations to ensure continuous improvement and quality output. Team briefings and debriefings both while in the field and in the office constituted an important part of this learning.

62. Because of its commitment to providing this accountability service for the people of Kenya, the KNCHR prioritised these investigations within the general workplan and rearranged its offices to create a focus on the documentation work. This meant that all staff and Commissioners re-planned their work to take on investigation and documentation work as a matter of priority[6]. The investigations were supported by an operations centre that provided 24-hour support and assistance to investigative teams in the field, ensuring their logistical and other needs were met, to allow the teams to focus on the investigative work and to ensure their safety. As teams returned from the field, the information they had gathered was fed into the a professionally developed data collation and preservation system, which also stored open source and other types of information and included a fully-searchable and secure database[7]. It is from this database that our analysts have pieced together the full story of what happened during the post-election violence.

63. Dealing with the sheer amount of information gathered in the field and through open and other sources has been a major challenge faced by KNCHR in this work. Managing the information required the design and implementation of an entirely new system to allow for its easy storage and retrieval in as timely a manner as possible, to support the investigations process and the analysis work.

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[5] The Human Rights Watch HRW), the International Crisis Group (ICG), and a team from the Office of the High Commissioner for Human Rights (OHCHR) which have since issued reports on Kenya's post election violence had missions lasting no more than a couple of weeks.

[6] In normal circumstances, investigations and documentation work of the KNCHR is undertaken by its staff in the Complaints and Investigations Program.

[7] Access rights were strictly defined and guarded by assigning passwords. Once data was entered it could not be altered; this was intended to enhance the integrity of the data.

Information gathering

64. KNCHR teams, which were carefully constituted to reflect ethnic and gender diversity in order to insulate data gathering from open bias and give protection to data collectors given the hostility that had been generated by the violence, talked to victims and witnesses of the post-election violence, to those who may have been involved in the violence and to people who have a good understanding of what happened in their areas, including community and opinion leaders. Information gathered from the men and women of Kenya of all ethnicities and all walks of life, including farmers, IDPs camp managers, pastoralists, fishermen, public officials, security personnel, the provincial administration, religious and political leaders, elders, shop keepers, students and many other people. We got information from 46 senior police officers across the regions we visited, 40 members of the provincial administration (PCs, DCs, Dos and Chiefs), 33 councillors and less than 10 sitting and former Members of Parliament[8]. A key element in identifying the people with whom we spoke related to ensuring diversity of experiences, opinions and backgrounds, in order to enhance the participatory nature and impact of this work. This in itself is an important step towards accountability for the post-election violence through engagement of the people of Kenya in establishing a record of what happened and recommending how it might be prevented in the future.

65. The initial missions focused on collecting information from victims in the various IDPs camps while the subsequent missions focused on collecting information from those adversely mentioned (wherever this was possible), as well as information from sources that could corroborate or clarify what had already been collected. Teams were free to determine who was targeted in these missions given broad directions from what was available in the database and also the understanding of the areas they visited. The broad mantra of operation was that missions would follow wherever 'evidence' led them with a view to obtaining information that would clarify whether the violence was planned and organized, who the perpetrators were, where the events happened, how, as well as to reveal egregious incidents of human rights violations.

Geographic spread (areas visited)

Graphic: map (to be completed, both District and constituency based)

66. At a press briefing of January 25 2008, the KNCHR mentioned some specific areas in Kenya on which we intended to focus the investigations, as areas where serious violations were alleged to have occurred, namely Eldoret, Kericho, Molo-Kuresoi, Nyanza/Kisumu, Mombasa and other parts of the Coast province. As we gained better understanding of the violence, we visited more places. By May 2008 we had visited 136 out of the 210 constituencies in Kenya as the map indicates. These 136 constituencies were either directly affected by the violence or hosted those fleeing from it.

[8] Given that this was election related violence, the KNCHR sought to speak with all MPs and consequently wrote a letter on April 15, 2008 inviting all Members of Parliament to share their understanding of what happened following the December elections.

67. KNCHR employed objective criteria to determine which areas to visit, including the degree to which information gathered indicated a high level of violations had occurred; visiting people with information for example in IDP camps (52 had been visited by May), as well as visiting the sites of violations themselves; ensuring a representative geographic spread across those areas of the country that were affected by the post-election violence; ensuring a representative spread of alleged victims and perpetrators, including both individuals and State institutions; and considerations related to access and security.

68. As a national human rights body, the KNCHR's statutory mandate is very specific: the protection and promotion of human rights. As we travelled the country to speak with people who have suffered during the post-election violence, we witnessed first-hand the enormous humanitarian crisis wreaked by the violence. KNCHR therefore made it part of its work to liaise with organisations that have the mandate to provide for humanitarian needs, to ensure that the plight of people with whom we spoke was not overlooked and to help move Kenya as quickly as possible towards a better future for all of her people. For example, KNCHR was able to help orphaned children obtain placement in schools; provided a link between people with psychological harm and institutions that could provide specialised and expert assistance; and ensured that the humanitarian needs of people in IDP camps have been brought to the attention of those organisations and public bodies that specialise in meeting those needs[9].

69. Throughout the period of this work, the KNCHR abided by the principle of 'doing no harm' to all those who were giving us information. This also entailed protecting the information itself. For this reason, basic protocols were developed and implemented to ensure the safety, security and, where appropriate, the confidentiality of the people with whom we spoke to ensure the safety and security of the information they gave us.

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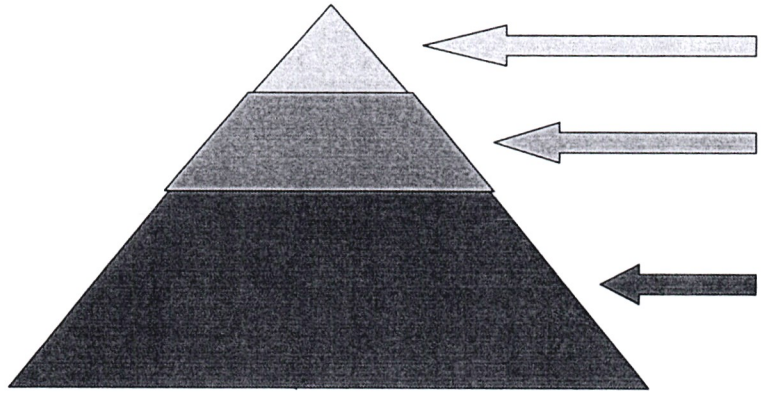
[9] On March 2nd 2008, the KNCHR met with the Minister for Special Programs, Hon Dr Naomi Shaaban and presented a number of humanitarian concerns that the Commission thought should be addressed to ease the plight of the displaced persons.

Progress towards identification of those who may bear the greatest responsibility for the violations



70. While the investigations focused on all these areas, reaching the apex of the triangle of responsibility has been a daunting challenge. Hardly do remote perpetrators anywhere leave a visible trail. Information about their involvement is usually scanty and obtainable either from insiders or from confidential sources which are also difficult to identify. However, an important goal of KNCHR's work is to ensure that violence is not rewarded: if we allow the use of violence as a political tool in this generation, we doom future generations to repetition of the same suffering that we have undergone during and after the last elections. There are many levels of responsibility, from direct perpetrators through to those who planned, instigated, financed and directed violations, as illustrated in the "violations triangle" above.

71. KNCHR gathered information about those who may be responsible for violations at all levels of the triangle. As a human rights institution committed to protecting the human rights of all people, including those accused of the most serious violations of human rights, we undertook the analysis of the information with due regard to the Kenyan criminal law and international law. As such, in addition to identifying violations committed during the post-election phase, the ensuing report on the results of these investigations names only those individuals and institutions about whom there is a threshold of credible and reliable information pointing to their potential responsibility. This threshold was constructed around the following criteria:

a. Level of information and detail describing the role the alleged person may have played
b. Existence of corroborating/verifying information on the person (including confessions)
c. Believability and credibility of the allegations
d. Subjecting 'I heard' type of allegations to criteria in (a), (b) and (c) above before admission
e. Consideration of the totality of information available, including that obtained through interviews with alleged perpetrators
f. Exclusion of outrageous, preposterous and baseless information

72. Overall the team considered whether or not we believed on a balance of probabilities, a name should be included or not based on any or all of the above criteria.

The Analysis

73. Having gathered as much credible and reliable information as possible, reflecting the diverse make-up of Kenyan society, we moved into the second phase of our investigation and documentation work: analysis of the information we had gathered, by comparing incidents of violence across time and across space, and undertaking any follow-up investigations determined as necessary to give a comprehensive picture of important incidents.

74. Consequently nine teams were constituted by staff and Commissioners who had been involved in investigations in those particular regions to begin interacting with the information in the data base. Each regional team produced a Zero draft report that was subjected to an initial peer review. This Zero draft was then given to newly constituted teams composed of staff, Commissioners and an external National Expert all interacting with such reports for the first time. This was meant to give a fresh and critical re-look at the 'story' that had been pieced together from each of the regions. In keeping with the principle of confidentiality that this investigation had adopted, all people working on the data had to sign confidentiality statements. The report analysis covered the following regions, Central Province, Coast, Nairobi, North Rift Valley, South Rift Valley, Central Rift Valley, Nyanza and Western.

75. These teams examined the information at hand to determine the extent to which the violence may have been committed pursuant to a policy to commit systematic attacks against a civilian population, and to what extent they were ordered, directed or coordinated by persons or groups of persons acting with a common purpose. This analysis also examined the extent to which the state itself may have been complicit either by way of commission of omission. The teams also provided a list of names of perpetrators who, in their view met the threshold of acceptable responsibility using the provided criteria and the domestic and international legal frameworks.

76. Further, a smaller team was constituted to condense the various reports into one coherent whole. This team drew from Commissioners and the National Experts. Finally the report was submitted to the Commission for adoption as a KNCHR report.

77. The ensuing report is the end product of this process which details what happened during the post-election violence and proffers and explanation and credible information on those who may have been responsible for the commission of serious violations of human rights as defined by Kenyan penal law and international criminal law.

Overcoming challenges

78. KNCHR faced several challenges undertaking investigations in a situation of ongoing violence of different levels of intensity in different parts of the country, in an environment of general fear and inter-ethnic suspicion. Such challenges were managed through ensuring strict yet flexible security protocols were in place, to protect both the people with whom we spoke and KNCHR staff, and through the development of a set of "frequently asked questions", which facilitated KNCHR answering the many questions that people had about our work and its purpose.

79. Another big challenge was collecting information from those who had been mentioned adversely. One, the time lapse between the occurrence of the violence and the field missions made it difficult to trace affected persons who could give valuable information. Two, there were in some cases outright hostility and refusal to cooperate while in a lot others it was not always possible to trace those who may have had corroborating information. Three, information about those who may have borne the greatest responsibility as reflected in triangle of responsibility proved difficult to gather; unlike a conventional investigation that sets out to collect evidence, in the case of KNCHR, the investigation was a human rights one that collected information with a view to recommending to the relevant authorities further investigation given the preponderance of the information the National Commission provided. This exercise was further complicated by the fact that communities felt obliged to protect their own while also engaging in revisionism. The investigation has taken note of this and has recommended further investigation in cases where we have identified inadequacy of information.

80. Be thus as it may, the National Commission took all precautions to ensure that the report presented to Kenyans would be credible and had been meticulously and analyzed.

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CHAPTER TWO

TRIGGERS, FUELERS, AND ROOT CAUSES OF POST ELECTION VIOLENCE

An overview

81. In looking at the immediate causes of the violence that engulfed parts of Kenya, we identify three analytical, although not mutually exclusive categories. These are triggers, fuelers and root causes of violence. To fully appreciate Kenya's 2007 crisis, it is important to appreciate the country's political history but also the unique and distinctive features of the 2007 general elections though these too draw their roots in this political history. This section looks at these two symbiotic aspects of Kenya but only so far as they can be said to put the 2007 post election violence in perspective.

82. The 2007 general elections returned a historic best in terms of registration of voters - 14.2 million or 82% of the total eligible voters and an overall voter turnout of 72%. It also attracted 2,547 candidates for the 210 parliamentary seats and nine presidential candidates[10]. It was also historical in that it turned out to be one in which the incumbent, unlike any incumbent before, faced a real and serious challenge. [11] This meant that on its own this election generated immense interest: Would Mwai Kibaki decide to remain the MP for Othaya were he to lose the presidency? And how would his backbencher and former president status be managed? At the same time, supposing Raila Odinga was elected president but failed to win the Lang'ata parliamentary seat? It was an election therefore that had unique dynamics and one characterized by unprecedented political mobilization. However, hardly anyone anticipated that among such dynamics would be the generation of a real 'civil war dynamic'[12] which saw heightened inter-ethnic animosity that threatened to tear apart not just security agencies but also religious, and other social institutions. First, the history.

Latent Tensions, Root Causes and Underlying Issues

83. There is agreement among most analysts that the violence that swept through Kenya following the disputed December 2007 elections was a consequence of both the mismanaged tallying process as well as underlying issues dating beyond the 2007 elections.[13]

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[10] See ECK electoral data www.eck.or.ke

[11] In the past multiparty elections, in 1992 and 1997, President Daniel Arap Moi never faced much challenge as the opposition vote was split among many candidates. In the 2002 elections, won by Mwai Kibaki, there was no incumbent Presidential candidate since former President Moi was retiring.

[12] Jacqueline M. Klopp uses these words in her article 'Kenya's Internally Displaced: Managing Civil Conflict in Democratic Transitions' in: Bekoe, Dorina Ed., East Africa and the Horn: Confronting Challenges to Good Governance, Lynne Rienner, 2006, when she argues that the clashes in Kenya in 1992 and 1997 'triggered a civil war dynamic'. Other literature on violent conflict between groups has emphasized the role of ethnic fragmentation, political-economic and religious factors as triggers of full scale civil war. All these were present in Kenya's January crisis

[13] Reports by Human Rights Watch and the United Nations Office of the High Commissioner take this approach. Indeed even the mediation process under former UN Secretary General Kofi Annan followed this approach. See generally, Human Rights Watch (HRW), *Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance* (New York: 2008); United Nations Office of the High Commissioner for Human Rights, *Report from OHCHR Fact-Finding Mission to Kenya 6-28 February 2008* (Geneva: 2008).

84. While the management of the elections and other events surrounding the process were the triggers for the violence, in many ways, years and even decades of wrong policies and failed policy implementation had already prepared the ground for the post-election violence. As Nic Cheeseman has noted, the media hyperboles of the violence aside, the events of the December 2007 elections and the post-election violence have many continuities with Kenya's recent past.[14] Broad national level socio-political and economic dynamics as well as localized state-society and community contexts interacted to generate the conditions germane to the crisis.

Historical Injustices and Land Grievances

85. Scholars and commentators on Kenya's politics and post-election violence have pointed to unresolved historical grievances, especially with regard to land allocation, as an important underlying factor in the violence.[15] The colonial government alienated most of the agriculturally productive land for settler agriculture particularly in what is present day Rift Valley Province and Central Province. This alienation generated a large number of squatters especially among the Kikuyu. At independence, the Kenyatta government created a land market of "willing seller-willing buyer" with many of the landless being encouraged to join land-buying companies. Rift Valley Province was earmarked for settlement of the landless through this scheme. However, land did not necessarily revert to those who had lost it through colonialism.[16] The resettlement scheme was also riddled with corruption with senior individuals in the Kenyatta government allocating themselves large tracts of land. Over the years, as the population of the Kalenjin who view Rift Valley as their "ancestral home" increased, the perception also grew that the post-colonial land policies had disadvantaged the community. These grievances featured prominently in the 1990s violence as well as the 2002 elections that saw the election of President Mwai Kibaki and the National Rainbow Coalition (NARC) government.

86. The failure of the Kibaki government to address the land question meant that yet again in 2007 the unresolved land question was an election agenda especially for the opposition Orange Democratic Movement. A 2004 commission of inquiry on irregular allocations of public land (Ndung'u Commission) appointed by the NARC government of President Mwai Kibaki detailed the corruption in land allocation.[17] However, even after the report was handed to the president, the government failed to act on it, dampening public hopes for land reforms.

87. Another important underlying factor in the violence is the widespread poverty and radical inequality. The Kibaki government managed to resuscitate the economy that had been ailing under the Moi government to record a respectable 6 to 7 percent growth by 2007. However, the benefits of this economic growth did not translate into improved real incomes especially for those Kenyans living in extreme poverty in urban slums. At the same time, public perceptions that the political leaders were much more interested in their own personal welfare and the pursuit of lavish lifestyles cemented the view that the government was out of touch with the economic reality of the most vulnerable. The opposition Orange Democratic Movement ran an effective campaign painting the Kibaki government as removed from the daily realities of the

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[14] Nic Cheeseman, "The Kenya Elections of 2007: An Introduction," *Journal of Eastern African Studies*, Vol 2 No. 2 (2008), 166-184: 167.

[15] See HRW, *Ballots to Bullets* (2008).

[16] See Kenya Land Alliance, "National Land Policy in Kenya: Addressing Historical Injustices". Issues Paper No. 2/2004.

[17] Republic of Kenya, *Presidential Commission of Inquiry into Illegal and/or Irregular Allocation of Public Land* (2004).

poor Kenyans. The fact that members of parliament from across the political divide had in reality voted large benefits for themselves appeared lost in the heat of political campaigns.

88. To many of the poor Kenyans who had invested hopes for a better future in the NARC government of 2002 this represented the betrayal of those hopes. Consequently the ODM message of itself as the savior from the "corruption" of the Kibaki government resonated with many of the poor- the complicity of ODM members in the profligate spending of public resources notwithstanding. In the battle of perceptions, the Kibaki government had lost.[18]

Ethnic Politics and Zero-Sum Games

89. Underlying the polarization in Kenyan politics are the modes of political organization in Kenya. While it is important to recognize some limited shifts in trends, ethnic-based political organization has bedeviled Kenyan politics since colonial times. It will be remembered that for a long time, colonial authorities did not allow for nationalist parties but encouraged ethnic based associations by Africans. One of the underpinning differences between the two independence-period political parties, Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU) was the fear by KADU that the large ethnic groups that supported KANU would trample over the interests of the smaller groups. After independence, the ability to mobilize ethnic constituencies continued to be important to politicians seeking the country's leadership. When constitutional changes allowed for multiparty politics in the 1990s, the ethnicization of politics gained an even sharper edge. All the political parties formed after the reintroduction of multiparty politics have drawn their core support from the ethnic kin of their top leadership. Kenya's political system that allows for an overwhelmingly powerful presidency contributed to the reduction of political competition into an ethnic zero-sum game. Until the post-election constitutional amendment providing for a Prime Minister, in the past, winning the Kenyan presidency has meant taking it all. Moreover, the clientilist nature of politics meant that many Kenyans have come to view the ascendancy of "one of their own" ethnic kin to presidency as the best assurance of "benefiting" as individuals and as communities.

Contending Citizenship Narratives

90. Related to the politics of "ethnic mobilization" and the clientilism is the question of citizenship rights and practical implications of the of the "outsider" and "indigenous" discourses in the multi-ethnic parts of the country. Whereas the Kenyan constitution recognizes the rights of every citizen to live and own property anywhere in the country, it co-exists with the socio-political reality that membership to an ethnic community grants access to certain rights, particularly with regard to land ownership. As Mahmood Mamdani has argued, while the post-independence African state de-racialized the sphere of civic rights, ethnic citizenship- and more specifically, clan membership- remained the only means the poor people could access land.[19]

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[18] The most damaging of the corruption allegations was the Anglo-Leasing scandal which implicated senior ministers in the Kibaki government and which became public in 2004. The scandal had its origins in the previous government of retired President Daniel Arap Moi.

[19] See Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Fountain Publishers, Kampala: 1996), various.

91. Where civic rights have opened the doors for acquisition of land, they have often come into collision with the rights granted by ethnic citizenship. This is what frames the discourses of the "foreigner-Indigenous", "outsider-indigenous" in places like the Rift Valley and the Coast Provinces. Even where the "foreigner/outsider" might be allowed to continue holding the land they might have purchased, "indigenous" sentiments have been strongly opposed to any attempts by the "foreigner/outsider" to seek political leadership.

92. In Rift Valley for instances, the failure by the Kikuyu, Kisii, Luo, Luhyia and other "foreigner/outsider" communities to support then President Daniel Arap Moi in the 1990s were perceived as an "abuse of the generosity" of the "host" Kalenjin community. In 2007-2008, it is the groups that were perceived as having gone against the political grain of support to the Orange Democratic Movement, that were the target of political violence were yet again in the Rift Valley and Coast Provinces. Retaliatory violence in Central Province on the other hand, targeted members of ethnic groups seen as ODM supporters and "aggressors" against the Kikuyu.

The Long Train of Violence and Impunity

93. To understand the post-election violence of 2007-2008, it is equally important to cast an analytical eye on Kenya's past of election-related violence. It is correct to argue that what was new about the post-2007 elections was the magnitude and level. Otherwise, Kenya has a long history of the deployment of political violence during the election periods. In particular, political violence is not new to the Rift Valley province which was the epicenter of the most recent violence.

94. Following the clamor for the restoration of multiparty politics in early 1990s, violence broke out in the Rift Valley Province targeting the Luo, Kikuyu, Luhyia and Kisii communities perceived as opposition supporters. Rift Valley is predominantly home to the Kalenjin and Maasai communities whose members in the 1990s supported then President Daniel Arap Moi. The violence was preceded by threats by politicians allied to then President Moi that members of communities seen as sympathetic to multiparty politics would be expelled from the province if the agitation for reforms did not stop.[20]

95. The violence that began in 1991 left an estimated 1500 Kenyans dead and about 300,000 internally displaced by the time it abated in 1994.[21] The violence recurred in smaller dimensions during and after the 1997 elections, this time spreading to the Coast Province. [22] As in the Rift Valley, the 1997 Coast Province violence, targeted members of ethnic communities perceived to be hostile to President Moi and his ruling party KANU.

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[20] See generally, National Christian Council of Kenya [NCCK], *The Cursed Arrow: A Report on Organized Violence Against Democracy in Kenya* (Nairobi: 1992); Africa Watch, *Divide and Rule: State-Sponsored Ethnic Violence in Kenya* (New York: 1993).

[21] Africa Watch, *Divide and Rule* (1993).

[22] Kenya Human Rights Commission (KHRC), *Kayas of Deprivation, Kayas of Blood: Violence, Ethnicity and the State in Coastal Kenya* (Nairobi: 1997); KHRC, *Killing the Vote: State Sponsored Violence and Flawed Elections in Kenya* (Nairobi: 1998).

96. A 1992 Parliamentary Select Committee, (Kiliku Committee) concluded that the violence in the Rift Valley had been planned and instigated by senior politicians in the government of President Moi.[23] A Judicial Commission of Inquiry, (Akiwumi Commission) in its report of 1999 similarly concluded that the violence was the work of senior politicians.[24] Other inquiries by civil society groups had reached a similar conclusion. Nevertheless, no one was ever prosecuted and punished for the violence.

97. Besides, entrenching a culture of impunity for political violence, the violence of the 1990s also laid in place the infrastructure of violence in many parts of the Rift Valley. The Moi government had explained away the 1990s violence as "ordinary insecurity" subsuming ordinary crime into political violence. Over the years, this "ordinary insecurity" cover has allowed violence to emerge out of the infrastructure to become almost a regular feature of daily life in certain parts of Rift Valley and Western provinces. As Nic Cheeseman has noted three months before the December 2007 elections, about 600 people had already been killed in this kind of violence.[25]

98. Well before the December 2007 elections, violence was already raging in Kuresoi constituency of Molo District. Indeed the Electoral Commission had to move polling stations to the camps hosting internally displaced persons from Kuresoi. [26] In Western Province, Mt Elgon was already engulfed in violence with the an outlawed group, the Sabaot Land Defence Force staging attacks on member of the local population perceived as hostile to their cause.[27] As in Kuresoi and in the violence of the 1990s in the Rift Valley and the Coast Provinces, the violence in Mt Elgon was wrapped up in the politics over land and electoral demographics.[28] *In all these places, there are credible reports that politicians were involved in organizing and instigating the violence.* [29]

99. Moreover, in the capital Nairobi as well as in neighboring Central Province, since 2006, the outlawed Mungiki group had been engaged in violent killings that seriously challenged the state's assumed monopoly over violence.[30] As in the case of the other militias there was evidence that politics was wrapped up in the activities of the group.

100. As in the 1990s, the government in the 2000s appeared reluctant or uninterested in decisively dealing with the problem of political violence. The lackadaisical response of the Kibaki government to the violence in Kuresoi and Mt Elgon for instance was the subject of constant criticism by human rights groups and institutions.[31]

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[23] Republic of Kenya, *Report of the Parliamentary Select Committee to Investigate Ethnic Clashes in Western and Other Parts of Kenya*, (Nairobi: 1992).

[24] Republic of Kenya, *Report of the Judicial Commission Appointed to Inquire into the Tribal Clashes in Kenya* (Nairobi: 1999).

[25], Cheeseman, "The Kenya Elections of 2007," (2008), 167.

[26] See Peacenet Kenya, *Elections Watch Kenya 2007*, Issue No. 4, November- December 2007 at http://peaceinkenya.net/Peacenet%20update/Election%20E-updates%20edition%204.pdf.

[27] "100,000 flee violence in Kenya as tribal conflict over land worsens," *The Independent*, September 21, 2007.

[28] Many other parts of the country have witnessed intermittent conflict between ethnic groups revolving around land.

[29] See also footnote (WK).

[30] Mungiki is a movement of mostly young Kikuyu men that has been variously defined as a cultural-religious group, a political movement and a criminal organization.

[31] "Mt Elgon: Michuki Responds to Critics," *Kenya Times*, April 10.2007.

Collapse of the NARC Coalition and Stalled Constitutional Reforms

101. At the national level, the unfinished constitution reform in a significant way underlies the events leading to the post-election violence. One of the recurring reform agenda items going back to the pro-democracy movements of the 1990s is the need for a comprehensive reform of the Kenyan constitution to ensure a balance between the various arms of the government. The National Rainbow Coalition (NARC) government led by president Mwai Kibaki was elected in 2002 on the wave of the promise of comprehensive reforms. Priority among these was the constitutional reform that had over the years become the assumed panacea to the country's problems. However, problems with the NARC coalition began with allegations by Liberal Democratic Party coalition partner that President Kibaki had failed to honour a memorandum of understanding the party had signed with Kibaki's National Alliance of Kenya before the 2002 elections.

102. When the NARC coalition effectively collapsed in 2005 constitutional reforms was one of the casualties. The defeat of the government supported draft constitution in the 2005 referendum effectively stalled any further attempts to radically reform the state with the Kibaki government fighting for political survival and the Orange Democratic Movement of Raila Odinga focused on capturing political power.[32] The collapse of the coalition and the referendum campaign also set the stage for the kind of ethnic polarization that was to characterize the 2007 campaigns. In a sense therefore, the seeds for the ethnic stereotyping and mobilization that gave birth to post-election violence were sown way back in 2005.

Electoral Commission and Administration of Elections

103. Whereas in December 2007 Kenyans were holding the fourth multiparty elections, it is important to remember that historically, the administration and management of elections had never been seen as independent of political interference. Since the Kenyatta presidency, the executive has always found the means for "fixing" the electoral machine to the benefit of preferred candidate. The most notorious instance of interference with the electoral process was the 1988 General Elections where many losing candidates were declared winners. The then sole ruling party, the Kenya African National Union (KANU) had already secured the monopoly for political power through a constitutional amendment in 1982 that made KANU the sole political party.

104. Electoral fraud did not end with the restoration of multiparty politics in 1991. The 1992 multiparty General Elections were also riddled with irregularities with some opposition candidates even physically prevented from presenting their nomination papers.[33] The incumbent, then President Daniel Arap Moi, enjoyed an unfair advantage over the opposition candidates. Where the opposition could not campaign freely all over the country, President Moi traversed the country using government resources. Moreover, he enjoyed a monopoly of media coverage from the official broadcaster, the Kenya Broadcasting Corporation. In addition, the Electoral Commission was made up of presidential appointees whose loyalty to the incumbent was never in doubt.

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[32] The No vote won by 58.12 percent against 41.88 percent for the Yes vote. Source: Electoral Commission of Kenya

[33] On the 1992 General Elections see *The Multi Party General Elections in Kenya: The Report of the National Election Monitoring Unit* (NEMU) (Nairobi: 1993).

105. The reform of the electoral environment was to become a central plank in the platform of the reforms movement of the 1990s. In response to both domestic and international pressure, an Inter-Parties Parliamentary Group (IPPG) was convened in 1997 bringing together the opposition and the government to negotiate and recommend on some of the minimum reforms to be enacted before the 1997 General Elections. Among other proposals, the IPPG reforms recommended the involvement of the opposition in the nomination of commissioners to the Electoral Commission. While the electoral environment was not even in the 1997 General Elections, it is generally agreed that this measure lent the Electoral Commission a measure of public confidence.

106. The Electoral Commission was to generally acquit itself well in the 2002 General Elections that saw the retirement of former President Moi and the defeat of his ruling party candidate, Uhuru Kenyatta by a coalition of opposition parties. In 2005, yet again the Electoral Commission's supervision of the referendum on the proposed constitution in which the government-sponsored draft was defeated further solidified the reputation of the Electoral Commission as a credible and independent electoral referee in Kenya.

107. However, in the run-up to the 2007 General Elections, the opposition and other observers began questioning the independence of the Electoral Commission after President Kibaki ignored the 1997 IPPG agreement and named new commissioners without consulting the opposition. It did not help that some of the newly appointed commissioners were perceived as friendly to the government of President Kibaki.[34] The fact that the President did not renew the tenure of Commission Chairman Samuel Kivuitu until November, barely a month before the December General Elections further heightened the perception among the opposition and other observers that the government was planning to manipulate the elections. These controversies so close to the elections took a heavy toll on the credibility of the Commission. It should therefore be remembered that even well before the elections, the events surrounding the appointments to the Electoral Commission had already sowed the seeds of suspicion among the opposition and the public over the conduct of the elections. Consequently, it was clear, (if not to the Electoral Commission, to the watchers of Kenyan politics), that anything less than a whistle-clean management of the elections by the Electoral Commission would provoke strong challenges.

A Crisis of Confidence in the Judiciary

108. When the dispute over the elections erupted, the ODM leadership was categorical that it would not petition the matter in the judiciary. In ODM's argument, the judiciary was not independent and would be expected to do the bidding of the incumbent. Critics have however noted that the ODM was ready to use the judiciary to petition parliamentary results and have criticized this a la carte approach by the ODM as subversive to the rule of law.[35] Whatever the view may be on the ODM approach however, there is little doubt that Kenya's history of judicial subservience to the executive and inefficiency precluded a strong pitch on behalf of its independence.[36] The Kenyan judiciary was complicit in the execution of the single party repression of the 1980s and many other acts of the denial of human rights in the 1990s. Moreover, there is no shortage of examples of the executive's incursions into judicial independence. In 1993 and 1994, two High Court judges on contract, Justice Edward Torgbor

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[34] *The Standard* January 9, 2007.

[35] See for instance, Africa Policy Institute, "Breaking Kenya's Impasse: Courts or Chaos? " *Africa Policy Brief No. 1,* January 2008.

[36] See generally Makau Mutua, "Justice under Siege: The Rule of Law and Judicial Subservience in Kenya", *Human Rights Quarterly,* No. 96, 2001.

and Justice A. J. Couldrey who ruled that a petition against the election of President Moi had been properly filed had their contracts terminated.[37]

109. While the Kibaki government was not known for directing judges on how to rule on specific cases, the suspicion that the judiciary was stacked with judges sympathetic to the government persisted.[38] There have also been allegations that some judges viewed as pro-Kibaki government in their decisions have remained in key positions for an inordinately long period of time in a manner reminiscent of the Moi era permanent duty judges. Moreover, owing to the inefficiency in the judiciary, election petitions in Kenya are sometimes determined well after the five years. When the ODM announced that it could not trust the courts to render justice in its course, therefore, it was striking a chord of a long history of public skepticism on judicial independence and efficiency.

110. Those were the background conditions to the post-election violence. To the cocktail of historical tensions and root causes, the divisive campaigns added the fuel which the events of the actual elections and its management triggered into the tragic violence in December 2007.

Divisive Campaigns, Fuelling Divisions and Triggering Events

111. Tensions that had started building up during the campaigns were heightened on the polling day with on polling day with rumours that marked ballots had been discovered in an office building in Nairobi. . The temperatures soared further when the ODM presidential candidate Raila Odinga could not initially find his name in the voters' register of his Old Kibera Primary School in Lang'ata Constituency. [39] In an interview on KTN Odinga described the omission as "a deliberate attempt to rig me out of Lang'ata Constituency." Though the matter was resolved and Odinga's name found in a register in a different room, , the fears that the elections would be rigged were now fully revived. While the actual voting was largely incident free, the tensions were to heighten again with the delay in the tallying and announcement of presidential election results in the next two days. As the country waited for the results, ECK chaiman Samuel Kivuitu's statements, that he could not reach some of his returning officers and his speculation that that they probably were "cooking results" irreparably damaged any confidence that those who feared rigging may have had left.

112. The tension that was building was further fueled by the on-air pronouncements of leaders disputing the results coming in from the constituencies, fanned by the live broadcast of exchanges between leaders of the two leading political parties, ODM and PNU and finally sparked off by the announcement on the evening of December 30th that Mwai Kibaki had won the 2007 election. This tension was not eased by the manner in which the presidential result was declared – on the state broadcaster, the Kenya Broadcasting Corporation alone immediately after live pictures of the ECK Commissioners filing out of the Kenyatta International Conference Centre under tight security; and the swearing in of the president a few minutes soon after. A few hours before that, in a televised press conference, the ODM leadership had rejected the results and promised the country that they were poised to form a parallel government and install Raila

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[37] Justice Couldrey's contract was not renewed in 1993 while Justice Torgbor's was terminated in 1994.

[38] Instances such as the aborted swearing in of judges who had reportedly already been appointed to their positions in July 2007 fuelled this perception. "Uproar in House Over Failed Judges' Swearing In," *The Standard*, July 25, 2007.

[39] The campaigns were themselves tense with repeated allegations of rigging. During the campaigns, there had been rumours that Raila Odinga would be rigged out of his Lang'ata seat to disqualify him as a candidate for the presidential race.

Odinga as the "peoples president".[40] The message from the leadership in Nairobi hardly gave confidence to their supporters that the country was one.

113. In the build up to the elections, the environment had been such that strong divisions had emerged between the supporters of ODM and PNU and to a lesser extent those of ODM-K. Parties ran campaigns that were heavy with grievance/victimhood nuances which exacerbated the feeling of 'us' and 'them' just as they were laden with emotionalism and subjectivity which left little room for moderate positioning of either individuals or institutions. President Kibaki's PNU was cast as a party of old men clinging onto power with the support of Mt Kenya and therefore a mono-ethnic party, while ODM was presented as the broad-based party for progressive change. The wedge issues of religion and *majimbo* added to the polarization. The decision by the ODM to enter into a Memorandum of Understanding (MOU) with National Muslim Leaders' Forum (NAMLEF) thrust religion into the center stage of politics. The close cooperation between the Kibaki government and the United States in counterterrorism initiatives had increasingly alienated a considerable population of the Kenyan Muslims from his government. On the other hand, since the 2005 referendum, the Catholic Church was seen as allied to Kibaki.

114. A few months to the elections, ODM decided to include *majimbo* in its campaign platform. At independence, *majimbo* was a response to the fears for ethnic domination of the "small" ethnic groups by "big" groups. With the Kenya African National Union (KANU) drawing its support from the populous Kikuyu and the Luo, the Kenya African Democratic Union (KADU) sought to rally "smaller" ethnic groups- the Kalenjin, Luhyia, Maasai and coastal communities- around a version of federalism (*majimbo*) that gave a measure of autonomy to ethnic regions.[41] In the 1990s, calls for *majimbo* had prefaced political violence in the Rift Valley Province. As Human Rights Watch has noted in its report on the Kenyan violence, "High-ranking politicians at the time, many of whom are still active in politics in 2008, made inflammatory speeches in support of this chauvinistic interpretation of *majimbo* that led to ethnically-based violence."[42] Consequently, calls for *majimbo* in an already polarized context added to the tensions.

115. Framing by politicians and media analysts on what the key election issues were, also played a role in animating dangerous divisiveness. For example, the 2003 sacking from government positions of some public officers from the Kalenjin community for alleged misdeeds during the President Moi's government was re-interpreted as one of the measures the 'Kikuyu dominated' government had undertaken to punish the Kalenjin. The media particularly suffered, intentionally and sometimes inadvertently from biases of commission and omission that ended up creating a sense of inevitability of defeat and/or victory for their unfavoured/favoured political parties. Street wisdom had it that the Standard was rooting for ODM while Nation Group was for PNU.

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[40] This was communicated in a December 30th , in a message read by Hon William Ntimama at Orange House (ODM's Headquarters).

[41] See generally, Y.P. Ghai and J.P.W.B. McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present* (Nairobi, Oxford University Press, 1970),

[42] Human Rights Watch, *Ballots to Bullets (2008) 16.*

116. Of particular concern was however the ethnicized campaigns that the two leading parties, the ODM and the PNU ran. Otherwise independent issues such as corruption, poverty, inequality, *Majimbo* and economic growth were reduced to a contest of ethnicities. Corruption was reduced into a "Kikuyu problem". Inequality was explained in terms of "Kikuyu dominance" while *Majimbo* was seen as a Kalenjin get-the-land -back issue. Opposition to the Kibaki government was also interpreted as a "Luo agenda". Increasingly, it became easy to establish the political positions of the analysts merely by reference to their ethnicity.

117. While Kenya's voting patterns especially since 1992 have demonstrated that ethnicity is an important predictor of electoral outcomes[43], ethnicity is hardly ever a cause of conflict, but rather a way in which people in conflict label their grievances, target the perceived 'enemy', mobilize the points of difference, support or even attack. Allusion to ethnicity in Kenyan politics camouflages the root causes of the country's problems – historical injustices relating to land distribution, impunity, exclusion, economic and social inequality, weak and under-performing public institutions, corruption, political elite wars and an electoral system that sharpens rather than mitigates the destructive effects that negative ethnicity can be mobilized to achieve.

The Media: Fanning the glowing embers[44]

"The profession (journalism) is seriously corrupt and has lost its professionalism" Frank Ojiambo of the Editors Guild[45]

118. Kenyan media is reputed as the most sophisticated in the region and has over the past 10 years grown tremendously in terms of ownership diversity and coverage[46]. It has over the years played a critically important role in the democratization process especially in relation to exposing corruption and checking government excesses as well as providing a useful platform for opposition and Civil Society Organizations (CSOs). Moreover, the growth of local language FM stations has in the past five years availed to ordinary Kenyans extra-ordinary platforms through which to air all manner of views. Some of these platforms, especially live talk shows and call-in programs have since the watershed 2005 constitutional referendum campaigns been associated with spreading dangerous propaganda and hate speech.[47] Commenting on these stations, a BBC World Service Trust Policy Briefing Paper observes that, "the crisis (post election violence) demonstrates that a free and plural media are as much an answer to Kenya's democratic deficit as they are a problem[48]".

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[43] Bratton M, and Kimenyi S. M.: Voting in Kenya: Putting Ethnicity in Perspective, *Journal of Eastern African Studies*, Vol 2, No 2, pp 272-289, July 2008.

[44] Take note of attached report from Article 19 (some of whose conclusions I disagree with by thee way).

[45] Frank Ojiambo in his opening speech at a media practitioners Round Table in Nairobi organized by among others the Editors' Guild of Kenya, Article 19, International Media Support (IMS) and Reporters Without Borders, February 2008

[46] The Communication Commission of Kenya (CCK) indicates that there are 183 FM station 'on air' in different parts of the country, 64 TV stations while there are 83 licensed broadcasters. For details see CCK website www.cck.go.ke Data from BBC monitoring service indicates that local language FM stations had by 2007 27% of the radio market share compared to 33% by English/Kiswahili radio stations.

[47] Some of these talk shows are hosted by comedians and individuals with no training in journalism and the ethics of journalism.

[48] BBC World Service Trust Policy Briefing No 1, April 2008 :The Kenyan Election and its Aftermath: The Role of Media and Communication

119. One thing that will remain memorable about the 2007 election is the role played by all manner of information from all manner of sources, unsolicited and solicited – SMS s, blogs, emails, newsletters, leaflets, not to mention the newspapers, TVs and radios sources. One scholar has described the 2007 General Elections as "an election that was characterized by misinformation."[49] In a closely contested election such as this one was, the large media outlets became contested spaces by the leading parties and in some cases it became difficult to differentiate between a particular media house's position and that of the party, politicians, or its chosen political analysts and commentators. Commenting on the conduct of the media during the 2007 elections, an analyst of the Kenyan media has concluded that "a lot of cooption happened.[50]

120. While it would be an oversimplification of issues to appear to blame the media for fanning the fires, the uncritical reproduction of careless statements by politicians may have contributed to reinforcing perceptions of political problems as community problems. Since the 2005 referendum and particularly by election time, the imagery and idioms being used by politicians in the campaigns did not merely ridicule their opponents but were aimed at entire ethnic groups. For example, Kikuyus, who circumcise their male children, profiled Raila Odinga and Luos, who do not circumsice, as unfit for leadership; and ODM aligned communities such as the Luo and Kalengjin projected the Kikuyu as assuming always the right to lead the country, as well as being arrogant, grabbers, and corrupt. While the media on occasions criticized negative ethnicity in its editorials, in its newsgathering and in its programming, it failed to aggressively hold political leaders to account for their actions and utterances. Instead, in the closing days of the election, the media covered the goings-on as they would an electrifying football match.

121. The opinion poll figures contributed to the frenzy and the verdict of the presidential election being 'too close to call' by the most respectable of the Poll Houses[51], Steadman Associates helped animate a determination by voters that saw un unprecedented turnout throughout the largely peaceful polling day on December 27th. Barely after a few polling stations completed their count in disparate constituencies TV and radio stations began reporting who was leading with only 10% of the vote in! As such, an imperfect picture was kept alive; anchors did not accompany their tallies with for example background information such as, number of registered voters in the constituencies whose results had not come in or historical voter turnout trends in those areas to help viewers and listeners make informed interpretations of what the results meant. When some stations hosted analysts who, on the morning of December 29th were talking of 'an invincible' lead for ODM's presidential candidate Raila Odinga, several constituencies in Kibaki's strongholds had still not filed in their results. When those figures began coming in and Kibaki figures started a steady climb and close-in on Raila, and the PNU side became bullish, tension began to build amongst ODM supporters and leadership. Live coverage of the exchanges between the leadership of PNU and ODM on the night of December 29th set the country on the delicate path it had to walk in the months ahead.

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[49] Ibid, pp 169 Cheeseman, Nic: The Kenya Elections 2007: An Introduction

[50] David Makali, Director Media Institute Supra Note 39.

[51] The main groups were: Info Track Harris, Consumer Insight, Steadman Associates and Strategic PR. At some point during the build up to the elections, the ownership, competence and credibility of these polling houses was questioned with some being said to be run by individuals associated with some of the candidates and other political interests.

Conclusion

122. From the foregoing, it is evident that Kenya's post-election violence had a historical preface that fed into the more immediate events and issues. Underlying causes gave the political manipulation of grievances, scapegoating of communities and appeals to ethnic chauvinism a resonance with the populace in an election year. The ideological infrastructure was already in place and only needed a refurbishment to fit the conditions of 2007. Similarly the physical infrastructure for the violence was already in place in areas such as the Rift Valley where violence had remained intermittent since the early 1990s. It is the combination of these factors and conditions with the political and electoral events in the run-up and during the December 2007 General Elections that lit the match and set the fire of political violence that engulfed the country.

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CHAPTER THREE

PROTESTS, VIOLENCE AND DIALOGUE

123. To understand or explain events in various regions of the country, it is also important to bear in mind that they were not removed from what was happening at the national level. Indeed in many instances, political developments at the national level often had an almost immediate impact on the violence in the various parts of the country. The national context was also shaped and influenced by international responses to the unfolding crisis.

124. The fiasco over the presidential results had been preceded by rumours and claims that rigging was taking place. The inordinate delay in announcing the results of the presidential count in strongholds of the incumbent Mwai Kibaki in particular, raised suspicion among the ODM leaders and their supporters that the numbers were being manipulated. The ODM leaders began challenging some of the results being announced by the ECK arguing that important accompanying documents, were missing and called for the postponement of the announcements. On December 29 as the country awaited the results from these areas, ECK Chairman Samuel Kivuitu stoked the fire when he announced that he had lost touch with some of the returning officers in the areas that had not yet sent in their results. His suggestions that the returning officers may be "cooking" the results further solidified the public suspicion that the election results were being manipulated.

125. Also on 29th December, incidences of looting, blocking of roads, and violence began to be reported across the country. At the end of the Saturday, 29th December with the anxiety intensifying, the ECK decided to invite representatives of the ODM and the PNU to scrutinize all the contentious results overnight. The overnight scrutiny led by James Orengo for ODM and Martha Karua for PNU reached an agreement on all but 47 constituencies. Having failed to reach an agreement, the parties resumed their positions at the tallying centre at the KICC on the morning of December 30.

126. As the day went on, the drama of challenges and counter challenges to the accuracy of figures as announced by the ECK was played out on live television. According to one senior politician, 'no other incentive was needed to ignite across the country'. The televised events of the confusion and disagreement between ODM, PNU and the ECK at the tallying centre at the KICC on December 30 heightened the tension in the country to an explosive point. Following protests, confrontations and verbal scuffles between the political leaders and the ECK on live television, security officers cleared the tallying centre and escorted the ECK chairman Samuel Kivuitu out of the room. The ODM leaders, led by Raila Odinga returned to the room and announced that they would not accept the results accusing the ECK of inflating the numbers in favor of Mwai Kibaki. The ODM leaders also introduced an ECK official Kipkemoi Kirui who claimed that he had witnessed the results being manipulated by ECK officials. The leaders announced that they would hold a public rally the following morning at Uhuru Park in Nairobi to announce to the country the next course of action.

127. As they addressed the media, security officers massed around the KICC and power was switched off. The media was also cleared from the KICC and the ODM leaders left the building as the police reinforced the security cordon around the area. A few minutes later, on the evening of 30 December, Kivuitu announced Mwai Kibaki as the winner of the presidential poll on the state-owned Kenya Broadcasting Corporation. Shortly afterwards, Mwai Kibaki was sworn in at State House for a second term of office. In a matter of minutes, the media started broadcasting reports of violence in various parts of the country. Other reports indicated great jubilation in parts of the country which had supported the Kibaki candidacy.

128. Arguing that it had in fact won the largest number of seats in the parliamentary election, ODM refused to recognize Kibaki's victory and called for country wide demonstrations to pressurize the president to agree to a re-run. On [***] December 2007, ODM announced their intention to hold a rally to swear in Raila Odinga as the 'peoples president'[52]. By December 31, 2007, violent streets protests and looting had broken out in many major towns around the country. The Government banned live broadcasting and banned political rallies. . Horrifying images of looting, burning and hundreds of displaced people fleeing the violence filled the media.

129. Public outrage against the violence and calls for a peaceful resolution of the disputed election mounted with the killing of 35[53] perceived PNU supporters in an arson attack on a church in Eldoret on New Year's Day, 31 December. This particular attack also transformed the political context as both parties in the conflict began to accuse each other of "ethnic cleansing" and "genocide". About a week after the election, successive atrocities triggered a full-blown humanitarian crisis in Kenya which attracted the attention of key actors in the international community, including the United Nations (UN), the African Union (AU) and the United States. On January 1st, the European Union elections observer team issued a report on the elections concluding that the process had "fallen short of key international and regional standards for democratic elections." [54]

130. The ODM kept its public campaign calling for the resignation of Mwai Kibaki and rejected the suggestions of appeal to the judiciary. On January 4, 2008, US Assistant Secretary of State, Jendayi Frazer, arrived in Nairobi to support efforts to resolve the crisis as Kibaki announced that he would accept a re-run of the disputed election only if it was ordered by a court. In the meantime he suggested the formation of a government of national unity but his offer was rejected by the ODM which continued to press for a re-run. After a meeting with Frazer, Kibaki and Odinga appeared to soften their position agreeing in principle for mediation to the crisis.

131. The decision by Kibaki to announce a"partial cabinet" on January 8 ahead of a visit by the AU chair John Kufuor of Ghana provoked further anxiety, violence and a hardening of political positions.[55] In the announcement, Kibaki named the ODM-Kenya candidate, Kalonzo Musyoka as Vice President. On its part, the ODM termed the cabinet announcement "a slap in the face" to mediation efforts and called for further protests throughout the country. Nevertheless, Kufuor managed bring Raila Odinga and Mwai Kibaki to the first face-to-face meeting since the onset of the crisis and to secure a pledge from both to accept the mediation by a a panel of prominent African leaders chaired by former UN Secretary-General Kofi Annan.

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[52] Wambui Kimathi to provide source

[53] PEV,IVR,APR,1089, KNCHR interview on April 4, 2008.

[54] "EU Observes Condemn Kenyan Election and Call for Investigations," Guardian, January 2, 2008.

[55] "Tough Task for Kenya Diplomacy," BBC, January 9, 2008

132. On January 15 Parliament reconvened with its first business being the election of the parliamentary speaker. In a day of high political drama, the ODM candidate, Kenneth Marende, won the Speaker's post against PNU's Francis Ole Kaparo with a 105-101 vote. ODM's Farah Maalim also won the Deputy Speaker's position.. Perhaps buoyed by the win in parliament, ODM defied the government's ban on public meetings and called on its supporters to attend countrywide rallies over the next few days to protest against the flawed presidential election. Again, the protesters clashed with the police leaving about 23 people dead in Kisumu and Eldoret.

133. Around 24 January 2008, there were reports of members of the *Mungiki* gang mobilizing for reprisal attacks in Nakuru and Naivasha. In Naivasha town, [19] members of the Luo community died in an arson attack allegedly by *Mungiki*. The army was deployed for the first time in Nakuru and Naivasha.

134. Formal peace talks between the PNU and the ODM started on January 28, 2008 under the chairmanship of Kofi Annan. Nevertheless, serious violence continued across the country at the same time. By the end of January, 60 more people had been killed in Nakuru and Naivasha in the Rift Valley Province. The killing of ODM parliamentarian Melitus Were on January 28 outside his house in Nairobi provoked even more violence in parts of Nairobi and the Rift Valley.

135. As violence raged in various towns and the countryside, Annan brought the PNU and the ODM parties, each with three representatives, to the negotiating table for the first time on January 29, 2008. On January 31, a second ODM parliamentarian, David Kimutai Too, was killed; triggering eruption of violence particularly in his home-town of Kericho. Political tempers flared again on February 1st when Kibaki accused the ODM of instigating the violence during an African Union Summit in Addis Ababa. Clearly angered, Odinga responded directly arguing that Kibaki's statement was proof of his non-commitment to resolving the crisis at a time when the ODM had adopted a more conciliatory approach. The talks suffered another setback when the PNU caused one of the proposed chief negotiators of Annan's mediation team, Cyril Ramaphosa of South Africa, to withdraw after alleging that he was Odinga's business associate.

136. Despite the hard-line positions, and repeated backtracking of both parties, Annan pressed on with the talks achieving a political breakthrough in mid-February under which both sides agreed to a number of reforms including an overhaul of electoral system, the enactment of a new, democratic constitution, the strengthening of human rights protections and the transformation of inter-ethnic relations. In addition, both parties agreed to the creation of a Truth, Justice and Reconciliation Commission (TJRC) that would comprise eminent persons of local and international origin.

137. By the end of February the violence had largely petered out and the mediation talks had turned to the question of power-sharing between the PNU and the ODM. Disagreements among the parties continued to persist however, especially with respect to powers of the Office of the Prime Minister which was to be created to accommodate Raila Odinga's ODM. On the one hand, the PNU pushed for the creation of a non-executive premier. On other, the ODM demanded an executive premier who would head the government. There was also discord over other key government posts; and the possibility of an early election where the envisioned power-sharing arrangement collapsed mid-term.

138. Throughout the month of February, the question of power-sharing generated greater animosity and rivalries between the two parties to the extent that Annan felt compelled to suspend the talks at the end of the month in order to engage the principal leaders, Kibaki and Odinga, directly. After a night of shuttle diplomacy coordinated by himself and Jakaya Kikwete the President of Tanzania and chairperson of the AU, a political settlement was signed between the ODM and the PNU on February 28, 2008. Under the terms of the agreement, the two leaders accepted to form a grand coalition government in which Kibaki would retain the presidency while Odinga would be the prime minister with powers to "coordinate and supervise government affairs". The agreement would also see cabinet positions shared on an equal or a 50:50 basis between the PNU and ODM.

Civil Society Initiatives

139. On its part, the Kenya civil society had remained active throughout the crisis pressing for a political settlement. In January, the National Commission and Kenyan civil society groups announced the formation of a network of organizations, Kenyans for Peace with Truth and Justice (KPTJ) to provide a unified voice on the unfolding crisis. KPTJ was instrumental in calling for intensification of international pressure on the Kenyan leadership to reach a political settlement and ensure an end to the violence.

140. In February the KPTJ petitioned the African Commission on Human and Peoples' Rights on the human rights violations in Kenya. The African Commission issued a statement calling on the Kenyan government and leaders to end the violence. The Independent Medical Legal Unit (IMLU) also released a report on post-mortems carried out on victims of the violence. In the report, IMLU concluded that a majority of the dead were killed by bullets.

141. International NGOs also added to the international attention on the violence. In February, the International Crisis Group released a report on the Kenyan crisis and calling for a quick political resolution. On its part, Human Rights Watch issued a report of its findings in March detailing the serious violations that had taken place and calling for investigations and punishment of perpetrators.

142. Humanitarian assistance to the victims of the violence was largely spearheaded by humanitarian groups with the Kenya Red Cross as a focal point for many of the initiatives. On their part, religious groups also worked to provide relief. Although they attempted to play a role in the search for a political settlement, religious groups were not seen as neutral arbiters by the key actors and their mediation efforts were largely unsuccessful.

International Diplomatic Efforts

143. As the violence continued to spiral, the international community quickly tried to secure a political settlement. The initial attempts to secure a political settlement were spearheaded by former Country Director of the World Bank, Collin Bruce who according to reports had managed to secure an agreement between the ODM and the PNU leaders. The efforts however proved futile. Nobel Laureate and South African cleric Desmond Tutu flew into the country and held talks with both the ODM leader Raila Odinga and PNU leader Mwai Kibaki who both pledged themselves as open to negotiations.[56]

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[56] "Kenya's Kibaki Open to Coalition: Tutu," Reuters , January 4, 2008.

144. The Tutu appeal for peace was echoed by the head of the Roman Catholic Churc, Pope Benedict in a letter to the Kenya Episcopal Conference called for "an immediate end to acts of violence and fratricidal conflict." At the United Nations, fourteen independent UN experts issued a joint statement on January 4th condemning the Kenyan violence and called on all parties to work for "a peaceful and rapid solution to end the violence." [57]

145. The following day, US Assistant Secretary of State, Jendayi Frazer arrived in Nairobi to press the political leaders to open the doors for mediation. Addiing to the diplomatic presence, four former presidents, Ketumile Masire of Botswana, Joachim Chisano of Mazambique, Benjamin Mkapa of Tanzania and Kenneth Kaunda of Zambia arrived in Nairobi to lend their support to the peace efforts. The diplomatic race to contain the crisis picked pace with the announcement that Ghanain President John Kufuor, the chair of the African Union would spearhead the diplomatic search for peace. This announcement was endorsed by the African Union, the EU, Britain and the United States resulted in the announcement that. [58] Kufuor's visit to the country turned out to be a ground-setting mission for a more sustained round of negotiations spearheaded by former UN Secretary General Kofi Annan. The Kofi Annan mediation team included former Tanzanian President Benjamin Mkapa and Graca Machel, the former Mozambue and South African first lady.

146. By the end of January, however, the situation in Kenya had escalated to a point where a military option was being suggested. Rwandan President Paul Kagame was the first foreign leader to call for a military solution warning that the situation could easily slide into a mass slaughter.[59] The fears of a slide into genocide were echoed at the African Union Summit, with the chair of the African Union Commission, Alpha Konare warning that a Rwanda-style genocide scenario was possible unless urgent measures were taken..[60]

147. Kofi Annan's arrival in Nairobi on January 22 injected a fresh dose of optimism that a political settlement could be reached. After setting the process of mediation in place, the Annan team visited some of the areas most afftected by the violence in Rift Valley. After the visit, Annan condemned the widespread human rights violations that had taken place and called for investigations. At the UN, the pressure on Kenyan leaders remained with the UN Special Adviser on the Prevention of Genocide, Francis Deng, announcing on January 29 that he was sending a representative to examine the Kenyan atrocities. The following day, US Assistant Secretary of State Jendayi Frazer describing the Kenyan violence as "ethnic violence" while the UN Security Council held a closed door briefing on Kenya. Humanitarian agencies reported that the humanitarian consequences of the violence were rapidly worsening.

[57] "U.N. rights investigators condemn Kenya violence," Reuters, January 4, 2008.
[58] "Kufuor to go to Kenya for Crisis Talks," Reuters, January 5, 2008.
[59] "Rwanda suggests military option for Kenya crisis," Reuters, January 30, 2008.
[60] "Africa Union Chief Warns of a Possible Genocide in Kenya," VOA, January 27, 2008.

148. The Annan-led mediation received overwhelming international support both in Africa and at the United Nations. On February 1, UN Secretary General Ban Ki- Moon arrived in Kenya to lend support to the mediation process and urged the Kenyan leaders to stop the violence.[61] At the United Nations, Kenya was placed on the UN Security agenda and on February 6, the Council issued a Presidential Statement among others, deploring the violence, calling on Mwai Kibaki and Raila Odinga to cooperate with the Kofi Annan mediation process and urging Kenyan leaders to dismantle the gangs and militias. The Council also asked the Kenyan leaders to cooperate with the UN human rights specialists in their assessment missions.[62]

149. On February 6, a team from the Office of the UN High Commissioner for Human Rights embarked on a mission to Kenya to investigate the violations that had taken place. Keeping up the pressure on Kenyan leaders, the following day the United States, announced a travel ban on ten Kenyans accused of inciting the violence. On February 8, the mediation reached a breakthrough with the PNU and ODM agreeing on a political settlement that would establish a coalition government with Raila Odinga as the Prime Minister.

150. Nevertheless, agreement on the details remained elusive for weeks with ODM and PNU accusing each other of brinksmanship. By the end of February, with fears that the agreement may not hold, Mark Malloch-Brown, the UK's Foreign Office Minister for Africa suggested that the military may have to be deployed to avert violence in the event the talks failed.[63] On its part, the United States kept up its diplomatic engagement with Secretary of State Condeleeza Rice maintaining regular contact with both Raila Odinga and Mwai Kibaki. On February 18, Rice travelled to Kenya for a meeting with the two leaders and called for a speedy resolution to the crisis.[64] The following day President George Bush on a visit to Rwanda warned that the world needed to pay attention to warning signs in the Kenyan crisis to avert a Rwanda-style genocide.[65] The EU also added to the pressure for a resolution warning on February 14 that it would suspend assistance to Kenya in the event that talks failed.[66]

151. Finally, on February 28, an agreement was signed by PNU leader Mwai Kibaki and ODM leader Raila Odinga providing among others for a position of an executive Prime Minister to be filled by Odinga in a coalition government. On March 18, parliament unanimously endorsed the agreement and on April 3, the ODM and PNU agreed on a 40-member cabinet with Mwai Kibaki and Raila Odinga sharing executive powers as president and prime minister respectively.

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[61] "UN chief calls on Kenya rivals to stop violence," AFP, February 1, 2008

[62] UN Security Council Presidential Statement, S/PRST/2008/4

[63] "As talks break down, army is Kenya's best hope," Guardian, February 27, 2008.

[64] Rice in Kenya for Crisis Talks," AFP, February 18, 2008.

[65] "Bush warns leaders on genocide," Kenya Today, 19. Feb. 2008

[66] "Kenya: EU Warns of Sanctions If Talks Fail," East African Standard, February 15, 2008.

152. Chronology

- (Reuters) - International mediators cannot afford to fail in Kenya, former U.N. Secretary General Kofi Annan said on Friday.
- Annan has been leading efforts to end violence sparked by a disputed election in Kenya. Here is a short chronology of events since the December 27 presidential and parliamentary elections.
- Dec 30, 2007 - The Electoral Commission declares Kibaki winner of the presidential election. He is hurriedly sworn in. Riots and looting break out in opposition strongholds.
- Raila Odinga's opposition Orange Democratic Movement (ODM) wins the most seats in the parliamentary election.
- Jan 1, 2008 - A mob sets fire to a church, killing about 30 villagers from Kibaki's Kikuyu tribe.
- Jan 2 - The government accuses Odinga's backers of "ethnic cleansing" as the death toll from tribal violence rises.
- Jan 4 - Kibaki says he will accept a re-run of the disputed election if a court orders it.
- Jan 5 - Kibaki says he is ready to form a government of national unity, but the opposition rejects the offer.
- Jan 7 - Odinga calls off planned protests after meeting U.S. envoy Jendayi Frazer.
- Jan 8 - Kibaki announces 17 ministers for his new cabinet. Protesters respond by building and burning barricades in Odinga's western stronghold, Kisumu.
- John Kufuor, African Union chairman and president of Ghana, arrives in Nairobi to mediate.
- Jan 10 - Kufuor leaves Kenya saying both sides have agreed to work together with an African panel headed by former U.N. Secretary-General Kofi Annan. Kibaki and Odinga, amid recriminations, have not met or agreed how to end the crisis.
- Jan 15 - Parliament is convened and the opposition gets a boost by winning the post of speaker.
- Jan 16 - Police fight hundreds of protesters throughout the country, as the opposition defies a ban on rallies.
- Jan 17 - In Nairobi and the western towns of Kisumu and Eldoret, police fire teargas and bullets during rallies called by the opposition but banned by police.
- Jan 22 - Ex-U.N. chief Kofi Annan arrives in Kenya to attempt mediation.
- Jan 24 - Kibaki and Odinga meet in a breakthrough brokered by Annan.
- Jan 25 - Annan denounces "gross and systematic" human rights abuses in Kenya after continuing post-election violence.

- Jan 28 - More than 60 people are killed in four days of ethnic fighting in the Rift Valley towns of Nakuru and Naivasha.
- Legislator Melitus Were is gunned down outside his home in Nairobi, triggering more rioting and ethnic killings.
- Jan 29 - Annan launches formal mediation between the government and ODM, each side represented by a team of three -- a mix of moderates and hardliners.
- Jan 31 - ODM member of parliament David Kimutai Too is killed in the Rift Valley town of Eldoret.
- Feb 1 - At the Africa Union summit in Ethiopia, Kibaki takes an uncompromising line repeatedly attacking the opposition and sticking to positions already rejected by Odinga.
- Feb 4 - Annan brings Kenya's rival sides together again after weekend clashes.
- South African anti-apartheid figure, Cyril Ramaphosa, proposed by Annan to lead long-term negotiations, pulls out after Nairobi complains he had business links with Odinga.
- Feb 5 - The Red Cross says that the death toll from Kenya's bloodletting has risen to at least 1,000.
- Feb 6 - The U.N. Security Council orders Kenya to immediately end violence, including ethnically motivated attacks and also to improve the humanitarian situation.
- Feb 8 - Annan says there has been signs of compromise from both sides in talks but they need to move further.

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CHAPTER FOUR

THEATRES OF VIOLENCE

153. As already indicated in chapter one of this report, the National Commission for purposes of these investigations identified eight distinct but yet entwined sub-national stories of the post-elections violence which cumulatively constitute the national story. An earlier chapter of this report has already established the root causes as well as the underlying triggers of the post-elections violence. Yet, even at the subnational levels, certain perceptions and tensions pre-existing the 2007 General Elections had positive or negative impacts on the manner in which the post-elections violence manifested itself.

NAIROB I REGION

INTRODUCTION

154. Nairobi is Kenya's capital city, the seat of Government, Parliament, and the principal commercial centre. The population of Nairobi is multi-ethnic and like many African cities, unemployment is high and a large number of people are engaged in informal activities.

155. Nairobi has always been the epicentre of political activity in Kenya. In the multi-party elections of 1992 and1997, for instance, it was the bastion of the opposition politics and voted opposition leaning members of parliament and councillors. Electoral contests in Nairobi has always been characterized by violence organized around militia such as the notorious *Jeshi la Mzee* which caused mayhem during the 1992 and 1997 elections, Jeshi Mwenje, Siafu, Mungiki, Bukhungu, Jeshi la Darajani, and Taliban among others.

156. Of the approximately four million people living in the city, over two million live in informal settlements in overcrowded overstressed environments. For instance, one out of every five Nairobians lives in Kibera which is one of the most crowded places in Africa with a population density of 3,000 people per hectare[67]. Other settlements in Nairobi with large populations include Mathare and Korogocho in Kasarani Constituency, Dandora and in Huruma in Embakasi Constituency, Kangemi in Westlands Constitency, and Mukuru in Langata Constituency.

157. Each of these areas has great significance to the politics of Nairobi area. The ethnic dynamics in the city constituencies play out in the in the informal settlements which are largely balkanised along ethnic lines. Specific ethnic communities have a dominant presence in specific areas within such settlements. For example in Langata constituency's Kibera settlement, the Luo are the majority in Kianda, Raila village, Gatwikira, and Kisumu Ndogo. Makina is mainly populated by Nubians while Kikuyus have a dominant presence in Laini Saba and Soweto. Luyhas dominate in Mashimoni and Lindi areas. This ethnic balkanization has been used for electoral and political mobilization.

[67] http.//affordablehousinhinstitute.org

105. The registered voters for 2007 general elections were as follows:

	MALE	FEMALE	TOTAL
MAKADARA	80,329	52,301	132,630
KAMUKUNJI	76,380	42,635	119,015
STAREHE	97,922	60,164	158,086
LANGATA	100,396	57,207	157,603
DAGORETTI	68,166	52,661	120,827
WESTLANDS	96,065	57,955	154,,020
KASARANI	106408	76621	183,029
EMBAKASI	143,554	106,257	249,811
	769,220	505,801	1,275,021

NB: there is an unusually high gender disparity in all these constituencies.

158. Nairobi is divided into the following eight constituencies which in 2007 elections were won as follows: Makadara (MP Dick Wathika PNU), Kamukunji (No MP), Starehe (MP Bishop Margaret Wanjiru ODM), Langata (MP Raila Odinga ODM), Dagoretti (MP Beth Mugo PNU), Westlands (MP Fred Gumo ODM), Kasarani MP (Elizabeth Ongoro ODM) and Embakasi (No MP).

159. On the presidential vote, of the three main candidates, Mwai Kibaki got 48% of the votes, Raila Odinga got 44 % while Kalonzo Musyoka obtained 8%. Overall turnout for the presidential election was 57% of the registered voters while parliamentary turnout was 52%.

160. This has become worse since the violence with people moving to what they perceive to be safe areas. In Embakasi constituency's Dandora phase 4, the majority of the residents are Luo's while the landlords are largely Kikuyus.[68] In Ghetto which is in Huruma, the village that suffered most damage is nicknamed 'Othaya' and is predominantly Kikuyu. It is separated by a valley from Kisumu Ndogo with a predominant Luo presence complete with streets and alleys named after the members of the pentagon[69]. Across the street are several blocks of high-rise buildings occupied by members of the Luo and Luyha community while in Kasarani constituency the main informal settlement of Mathare North, 4A and Gitathuro village, the residents are mainly Luo while many of the landlords are Kikuyu.[70]

161. As is the case in the rest of the country, the political inclinations of the vast majority of residents are strongly influenced by ethnicity. The Party of National Unity (PNU) was perceived as having the support of people from or whose origins are from Central Kenya or the Mount Kenya region. The Orange Democratic Movement (ODM) had the support of people whose origins can be traced to Nyanza, Western, Rift Valley and Coast provinces. However, this divide was not close and shut in favour of any one of the dominant parties making the campaigns a highly competitive and tense.

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[68] KNCHR interview with an informer from Dandora on 18th April 2008

[69] The Pentagon is constituted of six key leaders of the ODM

[70] KNCHR interview with a female victim from Mathare area III on 9th April 2008 taken at Nairobi Central business district

PATTERNS OF VIOLATIONS

162. Threats of violence as well as isolated incidents occurred prior to the election period in the city. Some accounts of the violence indicate that it started in one form or another after the actual polling on the 27th of December 2007. However, systematic violations started after the polling day. Tension gripped the city as the first results started trickling in on that same night. Media reports [source] indicate that there were a number of violent acts during the counting and tallying of the votes in most Nairobi constituency's tallying centres. Such acts of violence were recorded in Starehe constituency's tallying centre, Nairobi polytechnic hall, Kamukunji[71] at the tallying hall which necessitated cancellation of election results, and in Makadara constituency's tallying centre at the Railway Training Institute hall where the tallying was interrupted by supporters of contestants.

163. The police had to intervene with force in at least two of these instances. More and general sporadic acts of violence were reported on the 28th and the 29th of December as the presidential results were awaited thus raising anxiety among the Nairobians[72].

164. It was not however until the announcement of presidential results that widespread and more severe and methodical violence occurred. On the night of the 30th December 2007 violence broke out in Kibera, Mathare, Dandora Kariobangi and Kawangware. Following the announcement of presidential results, ODM called for protests and a rally at Uhuru Park. The rally was planned for the swearing in ceremony of ODM (Orange Democratic Movement) presidential candidate Raila Odinga as the Peoples President.

165. During the month of January 2008 and early part of February 2008, the entire city experienced series of violence including city centre. Similar or worse violence also occurred following the death of Hon. Mellitus Mugabe Were (then MP for Embakasi Constituency) who was shot dead in the early hours of 29th January 2008.

166. Violence in Nairobi wherever it happened was mostly spearheaded by illegal gangs that pre-existed before the 2007 election violence. These gangs include *Siafu, Mungiki, and Bukhungu, Jeshi la Darajani, Taliban, and Ghetto*. These gangs were associated with the leading political parties, ODM and PNU. Mungiki's membership is largely drawn from Central Province , the political base of the PNU while the rest of the other gangs draw membership from the Western region, particularly from the Luo and Luhya communities, who form part of the political base of the ODM. The exception is *Jeshi la Darajani* identified with the Kibera's Nubian community. [73]

Killings, Forced Circumcision and Physical attacks

167. The violence saw a great deal of deaths and bloodshed in the informal settlements of Nairobi. These illegal organized groups, armed with, clubs, , machetes, stones and other crude weapons barricaded roads and violently attacked those they perceived to have voted for rival candidates.

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[71] The people Daily of 29th December 2007, Nairobi

[72] KNCHR interview with a female victim from Dandora on 12th February 2008
KNCHR interview with a victim at Jamhuri park on 7th February 2008

[73] For a fuller discussion on the various gangs, see the section on planning and organisation. See also http://libraryfes.de/pdf-files/bueros/kenia/01399.pdf accessed on 19 July 2008.

168. Between December 27th 2007 and 30th January 2008, City Hospitals and other medical centers treated many cases of injuries caused by post election violence[74]. Close to 50 people are estimated to have been killed the night presidential results were announced in Kibera alone[75].

169. Genital mutilation was one particular form of violence visited on male members of Luo community mainly by alleged members of the Mungiki sect. As one witness recounted:

"One night soon after the announcement of the presidential results members of the Mungiki cell moved around the houses in the area calling on all male members of the Kikuyu community to come out and defend their people. They claimed that our women and children were being raped and killed while we slept. I was forced out of the house and joined them ....That night I personally witnessed the members of this group led by their commander forcefully and crudely cut the foreskins of eight male adults, mainly Luos. They would stop matatus and force them to alight – some of the matatu drivers helped them identify the Luo passengers. The Mungiki then ripped the trousers and underwear of the person using sharp pangas, exposing the person's private parts. If the person was found to be uncircumcised, they crudely pulled out and cut the foreskin". [76] http://www.wambui.org/

170. The forced circumcision which targeted Luo males was also particularly atrocious. Some of the victims are reported to have bled to death.[77]

171. There were many other reports of forced circumcision. For example, the local dailies reported of a fifteen year old boy who was attacked beaten and forcefully circumcised during fighting in the Kiamaiko in Nairobi on January 1st 08, and eight Luo men who had their private parts cut off on the 21st of January 2008[78]. Young boys under the age of 11 and some under the age of five had their genitalia crudely cut with blunt objects such as broken glass. [79]

172. The forced circumcision of members of the Luo community by people perceived to be members of the *Mungiki* appears to have been aimed to punish them for their support of the ODM.

Arson, Destruction of Property and Looting

173. Arson, destruction of property, and looting occurred mainly in the informal settlements and the contiguous areas. While violence may have been sparked off by the announcement of the presidential results, witness after witness informed the KNCHR that the youth took advantage of the situation to loot.

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[74] Report from Masaba Hospital, Nairobi on 8th February 2008

[75] International Crisis Group- Kenya in Crisis

[76] KNCHR interview with a male resident of Kariobangi South on 30th April 2008 at Nairobi Central Business district

[77] Report by Crisis Group Africa dated 21st February 2008 and KNCHR interview with a resident of Kariobangi South on 30th April 2008 at Nairobi Central Business District.

[78] Daily Nation article dated 3rd January 2008 by Patrick Githinji, Nairobi

[79] KNCHR interview with a resident of Kariobangi South on 30th April 2008 at Nairobi Central Business District.

174. In virtually all the areas affected by the violence, residential and commercial houses/property were broken into, looted, before being razed. According to interviewees in Kibera for example, gangs bragged that they were going "shopping". Where they were not looted or razed, the residential houses were taken over by illegal occupants.[80]

175. In the midst of squalor in Nairobi's informal settlements, o there are thousands of thriving micro and small enterprises. While other establishments including churches were not spared, these bore the brunt of the violence.

176. The worst of the looting and chaos went on from the 31st of December 2007 to the 2nd of January 2008 . It started dying down on the 6th of January 2008[81].

177. In Langata constituency, Makina area, largely inhabited by Nubians, more than 3,000 stalls in Toi market were destroyed and property worth millions of shillings lost. Before being razed to the ground, Toi market housed over 3,000 traders. A similar or bigger number of people were employed by the traders, and many others depended on the market as suppliers or customers. The chairman of Toi market traders association Ezekiel Rema estimates that besides property worth millions of shillings that was destroyed, the destruction of the market affected over 200,000 people.

178. In Makina village , at least 100 metres of food kiosks, hardware shops, wood workshops business along the main road to Toi market were torched, and two supermarkets razed down.[82]

179. Since the violence ended, Toi market has been rebuilt. There are reports that members of the Kikuyu community who previously had stalls at the market have, unlike other communities, been excluded from re-establishing their businesses by the Nubian community which has claimed the market as part of their land.[83]

180. Along the Mugo Kibiru Road near Ayany Estate, approximately 90 kiosks selling groceries were destroyed, permanent structures were broken into and property looted. The nearby Patrick Njiru Petrol Station was torched.[84] At Ayany shopping centre, 12 business premises were razed as was a 200 metre stretch of Kiosks.

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[80] KNCHR interview with a male victim from Kijiji Cha Chewa in Mathare on 10th April 2008 taken at Nairobi Central Business District, A list of alleged perpetrators given to KNCHR by an informer from Mathare 4A on 2nd May 2008, KNCHR interview with a female victim from Kibera Slum on 9th April 2008 at Three Wheels hotel, KNCHR interview with a female victim from Mathare area III on 9th April 2008 at Nairobi Central Business District, KNCHR group interview with 4 males and 1 female victims in Kibera slums taken on 12th February 2008 at Jamhuri park IDP camp

[81] KNCHR interview with a male victim of Mathare slum on 9th April 2008 at PCEA Mathare North IDP camp.

[82] KNCHR interview with a male victim from Kibera slum on 9th April 2008 at Three Wheels hotel and KNCHR interview with a female victim from Mathare area III on 9th April 2008 at Nairobi central business district

[83] Interview with [omotto Josiah] of Umande Trust on [21 July 2008].

[84] KNCHR interview with a male victim from Kibera slum on 9th April 2008 at Three Wheels hotel and KNCHR interview with a female victim from Mathare area III on 9th April 2008 at Nairobi central business district.

181. In another Kibera settlement , Mashimoni, 32 houses and business properties were looted, broken into and burnt to ashes. In Soweto village a shopping complex housing a supermarket, butcheries, food restaurants bars salons and small retail shops was burned down.[85] A long Karanja Road all semi permanent kiosks along the road to Olympic were looted vandalised and burnt while permanent residential houses off Karanja - Olympic road were vandalised, looted and invaded by illegal tenants[86].

182. Other forms of destruction of property included destruction of the railaway line. On 18th of January 2008 protesters in Kibera uprooted about 2km of the railway line which passes through the slum. The youth involved also looted wheat containers. Unlike in previous electoral related violence, places of worship were targeted. For example in Langata constituency, the Kibera Catholic Church and a Presbyterian Church of East Africa church.[87]

183. In Kasarani constituency, Kijiji cha Chewa village in the neighbourhood of Mathare 4A was burnt to ashes. Members of the Kikuyu community bore the brunt of the violence. The village used to be home for over 3,000 people. Its residents were violently evicted and suffered serious violations. They moved to an IDP camp across the valley. Victims of the burning down of Kijiji cha Chewa alleged that the newly elected area MP for Kasarani supplied perpetrators of post election violence with petrol to burn their property/houses.[88] Recent attempts by some to move back or rebuild have been violently resisted by a local gang.[89]

184. In Huruma's Ghetto Village, 62 residential and community structures were destroyed, three churches were burnt and a community toilet made of concrete torched. In seven blocks of high-rise flats next to the village, all property belonging largely to Luos and Luhyas was looted. In Mathare North Phase 4, 15 to 20 kiosks at the Matatu stage were burnt down. Looting of household goods was rampant. Kijiji Cha Chewa village, home to more than 500 poor families was gutted down[90].

185. In Embakasi constituency's Dandora Phase 4, Kinyago Church together with all kiosks over a distance of 300 meters were all destroyed with fire as were two plots with both commercial and residential permanent structures .[91] In Fuata Nyayo Slums (South B) 30 kiosks were destroyed by fire.

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[85] KNCHR group interview with 4 males and 1 female victims from Kibera on 12th February 2008 at Jamhuri park IDP camp

[86] KNCHR group interview with 4 males and 1 female victims from Kibera on 12th February 2008 at Jamhuri park IDP camp

[87] KNCHR interview with a resident of Mosop on 10th April 2008 taken at Kibienit village

[88] KNCHR with an informer taken on 26th May 2008 at PCEA Mathare North IDP camp

[89] KNCHR interview with a male victim from Kijiji cha Chewa in Mathare on 10th April 2008 taken at the Central Business District

[90] KNCHR group interview with a delegation of IDPs from Kijiji Cha Chewa taken at the commission on 27th May 2008

[91] List of alleged perpetrators given by KNCHR by an informer from Mathare 4A on 2nd May 2008

186. These two areas, Toi market and Kijiji cha Chewa marked particularly notorious looting and burning of houses and property and where the livelihoods and in some cases life time savings and investments of many were shattered. [92] Overall in Nairobi, many of the victims were able to identify some of their attackers. Some claimed they even know individuals who stole and continue to keep their property. However some of the names they gave are what may be referred to as street names or nick-names.[93]

187. The arson, destruction property, and looting described above had a decidedly ethnic dimension. The victims were invariably those perceived to have voted against the wishes of the majority population in a particular settlement or area.

Forced Displacement and Evictions

188. The violence was also characterised by widespread forced evictions and displacement of people. By 10th January 2008, there were about 75,000 internally displaced people in Nairobi. The Kenya Red Cross for example reported distributing emergency relief services to over 72,000 affected people in Kibera, Mathare, Korogocho, Dandora and Huruma informal Settlements[94].

189. In Kibera, Langata constituency, for example, an estimated 5,000 people were displaced. In Silanga Village, in [constituency] there was extensive displacement of all landlords who are mainly from the Kikuyu community and invasion of houses by new and illegal tenants.

190. In Dandora phase 4, Embakasi constituency, tenants who were mainly from the Luo community violently evicted landlords and other residents from the Kikuyu community.

191. Many victims fled their houses on their own volition to escape violence and threats to violence while some fled to IDP camps, others shifted to more friendly neighbourhoods in other parts of the city and in some cases, to rural areas.

192. In areas such as Kibera, Dandora and Mathare North deep seated resentment over rent has festered for a long time. In December 2001, Kibera faced one of the most violent periods following fights between landlords and tenants after President Moi, on the request of Raila Odinga had directed that rents in Kibera be reduced[95]. Again, this resentment erupted as part of the violence mainly occurring between December 30th December 2007 and Mid February 2008.

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[92] KNCHR interview with a male victim from Kijiji cha Chewa in Mathare on 10th April 2008 taken at the Central Business District, KNCHR group interview with 4 males and 1 female victims from Kibera slum on 12th February 2008 taken at Jamhuri park IDP camp, KNCHR interview with a female victim from Mathare area III on 9th April 2008 taken at Nairobi Central Business District, KNCHR interview with a male victim from Kibera slum on 9th April 2008 taken at Three Wheels hotel, List of alleged perpetrators given to KNCHR by an informer from Mathare 4A on 2nd May 2008

[93] KNCHR interview with a female victim from Mathare area III on 9th April 2008 taken at Nairobi Central Business District, KNCHR interview with a male victim from Kibera slum on 9th April 2008 taken at Three Wheels hotel, Daily Nation Newspaper article of 19th January 2008 in Nairobi, Daily Nation Newspaper article of 7th December 2007 by the people team in Nairobi

[94] Kenya Red Cross Society, Information Bulletin, 10 January 2008.

[95] See Kibera Interfaith Peace Initiative Committee Press Release on December 5th 2001.

193. In Mathare North, for instance, and according to one witness, over 90% of the landlords are Kikuyu. First, the perception of the tenants (Luo and other ethnic communities) is that they are overcharged- e.g. Kshs 2500 for a single room which would go for Kshs 1000 in other similar neighbourhoods. The living conditions are deplorable. For example being a vertical slum, they hardly get water in the house beyond the second floor. The land lords were also alleged to discriminate along ethnic lines in choosing tenants. Asking potential tenants for their ID cards in order to determine the tribe from which they come from is reported to be common practice. The tenants also complain of degrading treatment- e.g. the landlords switch off electricity during the day. Similar situations are found in Dandora phase 4.

194. Once the violence broke out, tenants from some ... ethnic communities forcefully evicted landlords and other tenants from other communities and took over the houses and in some cases, started charging reduced rents. A witness in Kibera told the Commission how he could not access his 80 rental houses which had been illegally taken over[96]. This situation precipitated another round of violence as the owners hired gangs to reclaim their property.

195. Although the disputes appear to have been about rent, there is an ethnic dimension as well – in most of the informal settlements where this violence occurred, the majority of landlords appeared to be Kikuyu.

Gender Based Violence

196. There was widespread rape in the city's informal settlements during the election violence. Women, men, boys, and girls were sexually assaulted as part of the unrest. According to one Doctor interviewed, between the 29th and 30th December 2007 he received about 45 victims of sexual assault in his clinic in Mathare. A lot of these were cases of gang rape. He reported of Kikuyu women being targeted by Luo and Luhya men and Luo women targeted by Kikuyu men[97].

197. From 30th December 2007 to 2nd February 2008 two hundred and thirty sexual assault patients (230) were admitted at the Nairobi Women's Hospital. Between 44 and 48 of the victims were children below the age of 18years. About 90 of these cases were as a result of gang rape carried out by between 2 and 11 men. Rape victims were not only women and girls, several cases of men and boys who were raped were also reported. For example, in one day in the first week of violence the Nairobi Women's Hospital received 19 cases of men, women, boys and girls who had been raped In Mathare hospital the rape was also indiscriminate[98].

198. The Commission also heard reports of rapes in the "Kisumu Ndogo" area of Mathare North where the victims were predominantly women of Kikuyu and Kamba origin, working in the Export Processing Zones in the Baba Ndogo area.

199. KNCHR was informed of a particular case in Dandora phase 4 where a woman and her two daughters were gang raped by a group of over 20 men.[99]

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[96] KNCHR interview with a male victim from Kibera slum on 9th April 2008 taken at Three Wheels hotel, KNCHR interview with a male victim from Kibera slum on 9th April 2008 at Three Wheels hotel, KNCHR interview with a woman victim from Mathare area III on 9th April 2008 at Central business district

[97] Associated Press article of 13th February 2008

[98] Associated Press article of 13th February 2008

[99] KNCHR interview with a female victim from Mathare area III on 9th April 2008 at CBD, KNCHR interview with a male victim from Kibera slum on 9th April 2008 at 3 wheels hotel

200. These incidents of rape appear to have been targeted to punish the victims for their perceived political positions based on their ethnic identities.

PLANNING AND ORGANISATION

201. The magnitude of the attacks, looting and destruction of property and lives, the resources used, the swiftness with which the attackers moved and the deployment of reinforcements occasioned by prevailing situations point to a good level of planning, coordination and organization, monitoring, communication networking, financing, provision of transport services and facilities, medical treatment/services.[100] Indeed, it is alleged that local politicians and business people financed the violence.[101]

Illegal Organized Gangs

202. Criminal gangs have become part of urban settlement reality. These gangs are mostly organized around ethnic identities and while they normally engage in self-serving activities, during elections politicians have been known to use them for political activities including unleashing violence on their opponents. In the 2007 elections period, the gangs associated themselves with the PNU and ODM.

203. Perhaps the strongest indication that the violence was planned and organised is the fact that much of the violence in Nairobi was perpetrated by these organised illegal gangs. As mentioned earlier, many informal settlements areas are balkanised and have such gangs that operate in each region at will.

204. In Langata constituency's Kibera area, organised gangs are common and have operated in there for a long time. They control economic as well as political activities in this area.[102] They are hired by politicians and even other organizations who wish to hold events in the area and they charge for use of grounds such as the open spaces. The gangs that were reported to have actively engaged in attacks were Siafu, Bukhungu, Jeshi la Darajani, Ghetto, and Mungiki. The Siafu gang operates from Gatwikira/Olympic area and is suspected to be the one that usually initiates and oversees violence and other forms of protests. Throughout the time that violence and protests occurred, witness accounts reported seeing the gang members armed with pangas and other crude weapons engaging the security forces, barricading roads, looting and burning.[103] They are said to have coordinated their activities through mobile phones. Some reports indicated that the gang received logistical support from some councillors – reports indicate there was a pick–up within the area that was transporting gang members around and was also involved in the transporting of those injured to hospitals. The owner of the vehicle was said to be a person associated with KFF and Gor Mahia[104].

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[100] List of alleged perpetrators given to KNCHR by an informer from Mathare 4A on 2nd May 2008, KNCHR group interview with 2 men victims from Kijiji cha Chewa in Mathare on 25th April 2008

[101] KNCHR with a male victim from Kijiji Cha Chewa in Mathare on 10th April 2008 at CBD, List of alleged perpetrators given to KNCHR by an informer of Mathare 4A on 2nd May 2008,

[102] KNCHR interview with a male victim from Kibera slum on 9th April 2008 at 3 wheels hotel
KNCHR interview with a female victim from Mathare area III on 9th April 2008 at CBD
Daily Nation Newspaper of 19th January 2008
People Daily Newspaper of 7th December 2007

[103] KNCHR interview with a male resident of Maili Saba in Kibera on 16th April 2008 at Umande offices, Kibera

[104] See PEV/IVR/***/*** [Mutuaruhiu to provide details}.

205. **The** Bukhungu gang is said to operate in the areas of Lindi, Kichinjio where people from the Luhya community are the majority. It is reported to have been largely responsible for the mayhem in this part of Kibera. It consists mainly of Luyha youth and operates from an open area bearing the same name and which also serves as a venue for political rallies. It is engaged in various extortionist practises e.g. it was reported that one has to pay a fee to the group to be allowed to conduct business in the area .The group was reported to control and collect rent from the houses that were owned by evicted Kikuyus. Its leaders including one John Paul or "JP", Tom and Sammy are well known in the area.[105] *Jeshi la Darajani* gang allegedly operates in the Makina area and is composed largely of Nubians.[106] It is suspected to have been responsible for much of the violence in areas such as Toi market which Nubians have over time claimed as part of their settlement and which they subsequently occupied after this violence.[107]

206. In Mathare, in Starehe Constituency, the gang known as the Taliban targeted the Kikuyu in parts of that area. [108]. The gang consisting mainly of Luo youth has in the past been associated with various extortionist practises in Mathare, Huruma, Kariobangi and Baba Ndogo. It was outlawed and its leaders jailed in 2002. The group was also reported to have perpetrated violence in parts of Kibera.

207. In the Ghetto area, in Kasarani constituency, witnesses reported that most of the attackers belonged to a group of youths who do garbage business and meet at a place called "Jah Post" .They call themselves the Huruma Youth Group and are a registered Community Based Organizaton (CBO).[109] Apart from the garbage collection business they also run communal toilets and bathrooms. Several witnesses said that they are organized criminals and were seen participating in the violence and killings.[110] Witness accounts indicate that this gang organized and executed most of the attacks, looting and destruction in this area. They held meetings at Jah Post were armed with bows and arrows and were even using petrol bombs to burn houses belonging to Kikuyus. An informed source informed the Commissions that the group received support from civic candidates in the area. On the afternoon of 31st December 2007, a resident of Ghetto village reported witnessing a Nissan matatu owned by a local Luo businessman transporting petrol in jerry cans and pangas to a building near where he lived. The same van, a Nissan Matatu, was seen transporting youth (who were not from the area,) to Jah Post where these items were then distributed to youths[111].

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[105] KNCHR interview with a female victim from Mathare area III on 9th April 2008 at CBD

[106] Daily Nation Newspaper of 19th January 2008
People Daily Newspaper of 7th December 2007

[107] KNCHR interview with a male resident of Kibera on 7th February 2008 taken at Jamhuri park IDP camp

[108] KNCHR with a female Victim from Kibera taken on 7th February 2008 at Jamhuri park IDP camp
KNCHR interview with a male victim from Mathare taken on 7th February at PCEA church Mathare IDP camp
Internet article by IRIN dated 22nd January 2008
KNCHR interview with a female victim from Mathare area III on 9th April 2008 at the CBD

[109] KNCHR interview with a male victim of Mathare slum on 9th April 2008 at PCEA Mathere North IDP camp

[110] KNCHR interview with a male victim of Mathare slum on 9th April 2008 at PCEA Mathere North IDP camp
KNCHR interview with male resident of Mathare 4A taken at PCEA Mathare North IDP camp on 7th February 2008
KNCHR interview with a female victim from Mathare area III on 9th April 2008 at the CBD
KNCHR group interview with Mathare residents on 9th April 2008 at Mathare area III

[111] KNCHR interview with a male victim of Mathare slum on 9th April 2008 at PCEA Mathere North IDP camp

208. An interviewee reported seeing youth who had been campaigning for a civic candidate being armed with bows and arrows, metal bars and pangas at the same place. He observed that the attackers organised themselves into two groups- the first attacked while the other looted the houses and set them on fire. The looted property was then stored in a house before being ferried away by the same van mentioned above. Reports also indicate that the attackers were paid Ksh500 per day by a local councillor and civic aspirant[112].

209. In Embakasi constituency, Dandora Phase 4, the attacks were organised by a group consisting mainly of Luo youth. The group meets at a place in the Awendo area called the Pentagon. The place also doubles as the local ODM office many witnesses reported that attacks and protests were organised from there[113]. As recently as early May 08, Kikuyus who wanted to return and rebuild in Dandora were being required to seek the permission of a leader of this gang known as Chairman. One Kikuyu woman who has lived in the area for over 15 years attempted to rebuild her kiosk which was quickly demolished by the gang[114].

210. The Mungiki, said to be the most organised of the gangs, is reported to have a presence throughout Nairobi. Aattacks and atrocities such as forced circumcision particularly against Luos in parts of Kibera (Laini Saba and Soweto), Mathare, Kariobangi and Dandora were alleged to have been committed by members of the gang. t. Mungiki has operated in these areas for quite a while. In Kariobangi for example the local Mungiki cell charges residents for security, claiming that it is part of community policing- among other extortionist practises. They know the residents well and can identify the ethnic community from which they come from. A key interviewee informed investigators that this cell rounded up Kikuyus in the area to attack and forcefully circumcised Luos.[115]

211. Mungiki is also alleged to have been hired by landlords whose houses had been illegally taken over to evict the illegal occupants. It is also thought to have been behind the forceful eviction of non Gema communities and the marking of non- Kikuyu houses in High Rise and parts of Upper hill area in early February 2008.[116]

212. According to interviewees, a number of meetings were held during the months of January, February and March 2008 at Kenyatta International Conference Centre, Land Mark Hotel and the Marble Arch Hotel to ostensibly discuss the plight of internally displaced persons but they took a sinister turn and organised retaliation, raised funds and sourced weapons[117].

213. The following information also suggest that the violence may have planned and organised. In many cases, some of attackers were not residents of the area in which the attacks took place though they colluded with locals to identify victims and property for looting. This suggests that they were transported or deliberately moved from their areas of residence to mete out violence elsewhere[118]. (A white pick up registration number KAQ 417Y)

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[112] KNCHR interview with a female victim from Kibera on 7th February 2008 at Jamhuri park IDP camp
KNCHR post mission report for Nairobi region done on 9th April 2008

[113] KNCHR post mission report for Dandora, Nairobi done on 18th April 2008

[114] KNCHR group interview with a delegation of IDPs from Kijiji Cha Chewa taken at the commission on 27th May 2008

[115] KNCHR interview with a male resident of Kariobangi South on 30th April 2008 at CBD

[116] KNCHR interview with a male resident of Kariobangi South on 30th April 2008 at CBD

[117] KNCHR follow up done on 24th April 2008 in Nairobi area

[118] KNCHR interview with a male victim in Mathare slum on 9th April 2008 taken at PCEA Mathare North IDP camp

214. Once the initial violence broke-out and information spread that particular ethnic groups were being targeted in certain areas, people mobilized their tribesmen for retaliation or defence. In Dandora for example when word spread that Kikuyus in phase 4 were being killed, Kikuyus in Phase 2, 3 and 5 reacted by arming themselves so as to go assist those in Phase 4. A large group of them met at the Tom Mboya Grounds but were dispersed by the police. At the same time Luos from, Ngomongo and Korogocho areas were moving towards Phase 4 to assist their tribesmen.[119]

215. A man who was forcefully evicted from the his house in Ndumbuini in Kabete around the 10th of January 2008 was informed that there had been a meeting at the Kawangware CDF offices where Kikuyu youths were organised and paid Kshs. 1500 to cause violence and evict Luos[120].

216. The levels of involvement of illegal gangs in the violence as well as the scale of mobilization suggests sophisticated levels of planning and organization of the violence in Nairobi that evidently used the pre-existing infrastructure of violence which was easily recalled during the post election violence.

Conclusion

217. The factors of ethnicity, political affiliation and location largely dictated on the patterns of violence. You were at great risk of violence if say you were Kikuyu/Luo/Kamba living or with property in an area predominately occupied by a 'rival' community

THE ROLE OF THE STATE

218. Police used excessive force in attempts to contain the demonstrators. They used tear gas and live ammunition on unarmed protesters[121].

219. The security agencies appear to have been singularly determined to contain the violence particularly within and to Nairobi's informal settlements. . For instance, they cordoned them off and often resorted to brute force to ensure protesters did not go beyond the informal settlements to the city centre and Uhuru Park where the ODM had called protest rallies. There have been allegations that the police used live ammunition on demonstrators. According to Human Rights Watch for example, nine people were shot dead and 19 others injured by police in Kibera between 27th Dec.07 and 10th Jan. 2008[122]. The same report cites IMLU as having reported around 50 bodies in Nairobi mortuaries in the first half of January, dead from gunshot wounds, most likely killed by the police.

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[119] KNCHR interview with a male resident of Kariobangi South on 30th April 2008 at CBD

[120] KNCHR interview with a victim from Ndumbuini in Kabete on 7th February 2008

[121] KNCHR report by Maina Kiai dated 6th January 2008
New York Times internet article by Gentleman Jeffrey dated 2nd January 2008

[122] Human Rights Watch- Ballots to Bullets

220. Information gathered from other groups commends police for their intervention as they feel that the situation would have become worse without their help. The Commission heard interviewees recount cases where the police just stood by and watched the looting and burning and sometimes even the hacking of people.

221. For instance, in Dandora, Mathare 4A and Ghetto residents reported that police watched helplessly as their houses were torched and property looted[123]. Some interviewees claimed that some police officers supported and participated in the violence. On the 29th or the 30th of December 2007 a resident of Mathare North saw General Service Unit officers who were patrolling the area actively take part in the looting of a supermarket called "Super Kanny".

222. It is also evident that the police force was divided with police officers taking sides with their tribesmen. Victims confessed to having received assistance from police officers from their ethnic community while facing hostility from officers from outside their tribe. We were told for example that police officers from the Kikuyu community at a police station near Ghetto village greatly assisted the Kikuyu who are the main residents of Othaya village. Some officers from the Kalenjin and Luo community when asked to stop the looting are reported to have told the victims- "Wacha kazi iendelee[124]". Some police officers also took advantage of the situation to charge victims for safe passage. This was fairly widespread in Dandora phase 4, Mathare and Ghetto. Police officers demanded money from people who wanted to escape hostile environments or who had fled and were returning to retrieve their property. One witness reported having paid Ksh2000 while another paid Kshs 1000.

223. A major frustration expressed by many victims is the inaction of the police following their recording statements and identifying their attackers. IDPs at the Police depot in Mathare in particular expressed frustration with indifference by police officers at Muthaiga police station.

224. Some interviewees did report that the police force did a commendable job in circumstances where they were overwhelmed by the scale of the violence. Journalists whom we interviewed reported that they found police officers friendly and they worked well together. TV stations also aired footage showing police officers negotiating with protesters.

COPY

[123] A Crisis Group Africa report of 21st February 2006
[124] KNCHR post mission report for Nairobi area

THE SOUTH RIFT REGION

INTRODUCTION

225. The South Rift region covers six administrative districts of Kericho, Bureti, Bomet, Transmara, Kipkelion and Sotik. The registered voters as per the old Districts are Kericho (234,285), Bureti (114,149), Bomet (202,150), and Transmara (73,310). There are nine constituencies in the South Rift Region; these are Ainamoi, Belgut, Konoin, Bureti, Bomet, Sotik, Chepalungu, Kipkelion, and Kilgoris Constituencies. The seats were won by ODM or its affiliate parties; in Transmara, results were not announced.[125]

226. The region hosts various thnic communities with the majority of the population being the Kalenjin community (mainly the Kipsigis).The other predominant communities in the area include the Maasai, Kikuyu, Kisii, Luhya, Kamba, and Luo. The areas' main economic mainstay is farming. Politically, the region has in the past been predominantly a 'KANU[126] zone' due to the influence of the former President Daniel Toroitich Arap Moi and his loyalists most of whom are influential local businessmen or Kalenjin elders. However, in the run up to the 2007 General Election the majority of the people in this region changed political loyalty and joined the Orange Democratic Movement (ODM) with a small number of people remaining in KANU while others supported the Party of National Unity (PNU).

227. The South Rift Region is one of those regions of the Rift Valley that was settled by migrant Kikuyus working in the European farms in the 1950s. European authorities in Kenya relaxed entry regulations into Nandi Hills in Tinderet, and into Songhor and Lubwa because the Kikuyus "were regarded as providing better quality labour than other tribes."[127] With this movement of Kikuyus into what was regarded as Kipsigis ancestral land, the Kipkelion and Londiani Divisions have been cosmopolitan and did not experience any significant conflicts until the early 1990s on the verge of multipartyism in the country.[128] Harmonious inter-ethnic relations between the Kipsigis, Kikuyu and Kisii were ruptured by calls for majimboism by KANU politicians who also sought to evict non-Kalenjins from the area.[129]

228. This resulted in violent tribal clashes particularly in Kipkelion in which the Kipsigis sought to evict the Kikuyu, the Kisii, the Luo, the Kamba and the Luhya from the area.[130] Like in the 2007 post election violence, the role of councilors in the area was correlated to the occurrence of violence in the sense that their visit to a particular location was followed by forceful evictions of non-Kipsigis communities.[131] Further, retaliatory burnings of houses by non-Kalenjin communities occurred in the 1991/1992 period as in the 2007/8 period.[132]

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[125] Repeat elections for Transmara were held on 11 June 2008, and won by PNU.

[126] Kenya African National Union (KANU) is the political party that led Kenya to Independence and ruled Kenya for 40 years till December 2002 when Kenyan replaced the KANU government with the National Rainbow Coalition (NARC) government.

[127] Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, (Akiwumi Report), 31st July 1999 at 84-85.

[128] Ibid at 85-86.

[129] Ibid at 86-87.

[130] Ibid at 87.

[131] Ibid at 88.

[132] Ibid at 89.

229. Just like in the 1991/92 period, membership in political parties was on tribal basis. The Kalenjin communities of the South Rift were predominantly in KANU in 1991/2 period and ODM in the 2007/8 period. Similarly, Kikuyus were in the opposition in the 1991/2 period and in PNU in the 2007/8 period. As such, the Kalenjins and the Kikuyus saw each other through the prism of their political parties and the differences between these political parties fueled intense campaigns that naturally gravitated towards ethnic mobilization. In a sense therefore, the violence that followed these two periods could be consider inevitable given the highly inflammatory speeches and incitement by politicians. The Akiwumi Report made the following observation in relation to the 1991/2 clashes in relation to the South Rift:

> "The clashes in Chirchila, Kipkelion and Londiani Divisions started almost without notice and ended abruptly. We were told that the causes were basically the reintroduction of multiparty politics into the country and demonic influences. However, a careful examination of the evidence that we received, revealed that the well known Kalenjin aversion to strangers living in their midst particularly on their ancestral land which had in colonial times, been set aside for European settlement, was exploited for political objectives. This took the form of attacks on, and the destruction of property and senseless killing of innocent non-Kalenjin who were seen as non-supporters of KANU so as to drive them away and make the Rift Valley Province overwhelmingly KANU and to make it possible, come the December 1992 general and presidential elections, for the Kalenjin to vote as a bloc for KANU."[133]

230. The inter-ethnic violence experienced both in 1992 and 1997 in the South Rift Region and other parts of the country established what has now come to be known as the election related cycle of ethnic violence. This meant that come 2007 with a high stakes presidential election, there was still experience and a pre-existing infrastructure of violence that could be easily mobilized. .

231. The bitterness expressed by locals, that the NARC administration targeted theirs sons and daughters for removal from senior public jobs and the polarization resulted from the November 2005 referendum also exposed the people to ethnic mobilization by leaders of bad will. Lastly, grievances that relate to land ownership also meant that the people were vulnerable to ethnic mobilization by their leaders.

[133] Ibid at 89

Box: In Magwagwa (Kisii), there was the killing of an 18 year old boy whom Kalenjin warriors cut using a Somali sword and speared him on the chest, placed by the roadside, went bought petrol and burnt his body[134].

232. The South Rift suffered serious violence particularly in Kericho Township and its surroundings that include Kipkelion, Sotik and Borabu areas. The violence was the climax of a tension packed electoral campaign during which various players used language that mobilized ethnic resentment and that on the whole made it clear that non-Kalenjin inhabitants of the region had to leave and return back to their ancestral lands. The campaign to evict non-Kalenjins from the region by political leaders – mainly parliamentary and civic aspirants- used idioms such as "*kuondoa madoadoa*" – Swahili for "removing the stains or spots". This was the phrase used in the region to refer to people from the other communities that were considered "foreigners" in the region[135].

233. Violence erupted on different days in the different districts of the South Rift Region. In Kericho, Bomet, Bureti and Sotik it began on the 29th of December 2007 due to the delay in announcing the presidential results when youths begun to barricade roads. On the 30th of December 2007 when the presidential results were announced declaring President Mwai Kibaki the winner., Thereafter violence intensified resulting in forced evictions of other communities from the region and the destruction of homes, crops in the field and stored harvests. The evicted people sought refuge in the police stations churches and the provincial administration offices[136].

234. Transmara district is mainly inhabited by the Maasai and Kipsigis communities. The Maasai have three major clans- Moitanik Maasai in the west, Siria Maasai in the South and Uasin Gishu Maasai in the North. In Trans Mara the skirmishes began on the 28th of December 2007 at the tallying centre in Kilgoris when it emerged that a Kalenjin was taking the lead in the parliamentary vote in an area that is predominantly Maasai. The area has periodically experienced inter-ethnic clashes related to cattle rustling among the different communities mainly between the Maasai, Kipsigis (a sub-group of the Kalenjin) and the Kisii[137].

235. The Maasai argument was that they had given the Kalenjins land and therefore couldn't give them leadership too hence the disruption during the tallying of votes leading to clashes between the Kipsigis and the Maasai. It is evident that there is struggle for supremacy among the different Maasai clans and the Kipsigis in Transmara. To date the two communities are still fighting. Recent reports from the region indicate that the Maasai are evicting the Kalenjins out of their land before the forthcoming by-elections[138].

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[134] KNCHR interview with a victim resident of Magwagwa, Kisii on 15th February 2008 (PEV/IVR/FEB/152)

[135] KNCHR interview with a male victim in Kericho on 13th February 2008 (PEV/IVR/FEB/186), see also KNCHR interview with a female victim in Kericho on 13th February 2008 (PEV/IVR/FEB/170)

[136] KNCHR interview with a female victim in Kericho on 13th February 2008 (PEV/IVR/FEB/193), see also picture by KNCHR taken in Kericho Church IDP camp on 3rd January 2008 (PEV/PICT/APR/007)

[137] KNCHR interview with an informer from Kiridon village Trans-Mara on 25th February 2008 (PEV/IVR/MAR/573) see also KNCHR interview with a male resident from Kilgoris on 3rd March 2008 (PEV/IVR/MAR/827)

[138] KNCHR interview with a male resident in Kilgoris on 3rd March 2008 (PEV/IVR/MAR/827)

236. In addition to cattle rustling, there is also a problem of land distribution in the area. At the moment the Uasin Gishu Maasai clan and Moitanik Maasai are fighting the Kipsigis over land. Land in this region is still under adjudication and demarcation and therefore the fighting is supposed to lay claim to territory before the title deeds are issued to ensure that outsiders do not get title to land in the area.

237. In Kipkelion the violence begun on the 30th of December after the presidential results were announced. Soon after the announcement, some of the Kikuyu and the Kisii people started to celebrate the Kibaki win to the chagrin of the mainly ODM leaning Kalenjins whose view was that the election had been stolen.. The two groups, Kalenjins on one side and the Kisiis and Kikuyus on the other, started attacking each other. Source. Eight people were killed in the area including 4 people from the Kisii community who had been arrested by a group of youths and set ablaze. Of the 8 people killed, the remaining 4 were killed by the police.[139]

238. In January the Monastery at Kipkelion was under siege for two days as Kalenjin youths who were said to be in large numbers attempted severally to attack the monastery that was hosting IDPs from the area. The people suffered great anguish as the Officers guarding the IDPs feared they will be overpowered by the youths that outnumbered them by the hundreds. The GSU were later deployed in the area and managed to forestall an attack.[140]

239. In Kericho district, the violence took place in two phases; the first followed the announcement of election results. The second phase took place towards the end of January after the killing of the Ainamoi Member of Parliament, the late Hon. David Kimutai Too on 31st of January 2008,. Enraged citizens raided the Ainamoi Divisional Headquarters and killed an administrative police officer whom they cut into pieces and set him alight and watched as his body burnt into ashes. On the same day, seventeen (17) people were killed by the police. Seven of them were killed by the police after being found looting stage mart supermarket in Kericho Town[141]. The constituents laid blame on the government and retaliated by attacking the D.O's office in Ainamoi division. Rioters broke into the armory and shot dead one administrative police officer and burnt his body to ashes[142].

240. In Chebilat, the violence began on the 30th of December following the announcement of the Presidential Election results after which the Kisii began to celebrate. The celebrations by the Kisii sparked off the violent demonstrations that soon became a full fledged war between the Kisii and the Kispisigis. Businesses and houses belonging to members of the Kisii community were burnt down.[143] In response, the Kisii Community mobilized youths to defend themselves led by local councilors.[144] The youths, who included the infamous *chinkororo* militia, began targeting homes that belonged to Kispisigis. .

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[139] Supra note 6.

[140] See KNCHR interview with a senior government officer on 28th February 2008 (PEV, PMR, MAR, 012)and KNCHR interview with a female victim from Kipkelion on 26th February 2006 (PEV/IVR/MAR/575)

[141] KNCHR interview with an informer in Kericho on 10th April 2008 (PEV/IVR/APR/999)

[142] KNCHR interview with an informer in Kericho on 9th April 2008 (PEV/IVR/APR/1091)

[143] KNCHR interview by Amy Cox with a male victim from Soy B on 1st March 2008 at Eldoret show ground(PEV, IVR, MAR 699); KNCHR post election violence investigation report of 18th February 2008 in Kisii (PEV, PMR, MARCH, 017a)

[144] KNCHR interview by Amy Cox with a male victim from Soy B on 1st March 2008 at Eldoret show ground(PEV, IVR, MAR 699)

Box: "My 9 year old daughter carried my 1 year old son. My daughter ran away and was exhausted and she dropped the baby, who was trampled upon by the attackers and died." [145]

241. It is estimated that in Chebilat and Keboy 89 residential houses, 36 shops and 42 kiosks were burnt down. 8 people are reported to have been Killed, 4 from the Kisii community who were captured by Kipsigis youth and set ablaze. The remaining four were alleged to have been killed by the police.[146]

242. In Bureti, Litein Town, two high school teachers were shot dead by the police on the 5th of February 2008 as they were looking for a vehicle to board on their way home.[147]

243. The violence whose intensity peaked after the announcement of presidential results led to looting, rapes, arson and destruction of business premises and government houses, killings, and barricading of roads. This lead to massive displacement of the Kisii and Kikuyu communities[148].

244. There were two types of IDPs in the South Rift Region: the outgoing and the incoming IDPs. The outgoing IDPs were mainly the Kikuyu and Kisii communities. These IDPs were forcefully evicted from their homes, work places and business locations in various towns that experienced an explosion of post-election violence. Thousands of IDPs took refuge in police stations, religious and public amenities. Others were hosted by families and few relocated to their ancestral homes for safety. The South Rift had hosted several thousands of IDPs in camps in Kericho Green Gardens, Londiani town, Londiani Catholic Church, Kipkelion town, Kipkelion monastery and Sotik police station among others.[149]

245. The incoming IDPs were the Kipsigis who had been displaced from places like Transmara, Laikipia and Nyandarua by the Kikuyu and Maasai communities. Some Kalenjin communities were also displaced from the Sotik/Borabu boarder area. The Kipsigis who were evicted from the various regions went back to their ancestral homes while others were hosted by their relatives and friends.

246. The pattern of the violence in the different districts was similar. In all the districts, the information gathered showed that the attacks were done by raiders who came in large numbers from different directions.[150] The attacks targeted specific communities and the violence took the form of forceful evictions, killings, looting, burning of properties and food granaries.

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[145] See KNCHR interview with a male victim in Ekerenyo, Kebabe on 15th January 2008 (PEV, IVR, FEB, 188.)

[146] See KNCHR interview with a senior government officer on 28th February 2008 (PEV, PMR, MAR, 012); also KNCHR interview with a District Commissioner, Sotik on 28th February 2008 (PEV, IVR, MAR, 822)

[147] See KNCHR interview with a female resident of Litein on 1st March 2008 (PEV, IVR, MAR, 830)and Daily Nation Newspaper article by Nation correspondent dated 7th February 2008 (PEV, NWP, FEB, 042)

[148] KNCHR interview with a male victim in Kericho on 13th February 2008 (PEV/IVR/FEB/161) see also KNCHR interview with a female victim in Kericho on 13th February 2008 (PEV/IVR/FEB/177)

[149] KNCHR Post Mission Report for South Rift region dated 4th April 2008 (PEV/PMR/MAR/012)

[150] In some places the youths were said to be as many as 2000 or even 3000. KNCHR post election violence investigation report of 18th February 2008 in Kisii (PEV, PMR, MARCH, 017a)

247. There was method to the attacks pointing to some good level of coordination and organization. For example, there were days for evicting non-Kalenjins from the area. Looting property would be done on a different day. The same applied to burning (cases of arson) of business premises and residential houses. On other days they only blocked the roads.

248. Those targeted for the attacks were members of non-Kalenjin communities mainly members of the Kikuyu and Kisii Communities. The attackers took time to identify specific homes and premises for attack.[151] In addition, PNU supporters, and some government officers were also targeted for the attacks.[152] For example, in almost all the districts in the region the chiefs were being targeted because they were seen as PNU supporters and were forced to offer food or money to the attackers or their property would be destroyed.[153]

249. The attackers moved in groups that would comprise an average of 100 young men in any given episode. There were reports of training of the youths by former and retired local security officers from the community in the region's forests and the forms of well known leaders from the region.[154] In all the attacks, majority of youths involved mainly belonged to the Kaplelach age group of the Kalenjin. In certain areas for instance in Kipkelion, Kericho Tea Estates and Chebilat the attackers were smearing their faces white so as to hide their identity when they carried out the attacks.[155] "The attacking youths would come in big groups of hundreds about 300 and would divide themselves moving silently before attacking hence we were caught unawares."[156]

. See also KNCHR interview with an informer at Sirikwa farm on 12th April 2008 (PEV, IVR, APR, 1055), KNCHR interview with a Chief in Kapkatet, Bureti on 29th February 2008 (PEV, IVR, MAR, 855.), KNCHR Follow up group interview, Sotik on 14th April 2008 (PEV, IVR, APR, 1003) A senior Police Officer is also said to have reported that in one instance attacking youths numbered about 1000. The Standard Newspaper article dated 20th February 2008 (PEV, NWP, FEB, 016).

[151] Ibid.

[152] This included some of the region's elite that were in one way or another were perceived as having a connection with the government. (See for example, KNCHR interview with a Chief in Kapkatet, Bureti on 29th February 2008 (PEV, IVR, MAR, 855) where youths are said to have burnt the house of a former Permanent Secretary and the Chief of Chebilat Location.

[153] KNCHR interview with a Medical Doctor, Kapkatet on 29th February 2008 (PEV/IVR/MAR/824)

[154] The oathing is said to have began in August. See KNCHR interview in the region on February 8th 2008; KNCHR interview with a senior government officer serving in one of the region's districts on the 28 of March 2008; Email report by an informer in Nairobi on 11th February 2008 (PEV/EM/FEB/010a); KNCHR interview with an informer at Sirikwa farm on 12th April 2008 (PEV, IVR, APR, 1055)); KNCHR interview with a witness at Magusi, Bureti on 14th February 2008 (PEV, IVR, FEB 191); and KNCHR interview with an informer at Kericho on 26th February 2008 (PEV, IVR, MAR, 836).

[155] See KNCHR interview with a male victim from Sotik Borabu border on 28th February 2008 (PEV, IVR, MAR, 837)

[156]). This story is repeated numerous times in the South Rift Region where various numbers are citied: 200, 500, 100, 1000, 2000 and 3000. The picture is therefore clear that the attacking youths moved in large numbers and well organized. See also supra note 7. See KNCHR interview with a male victim from Londiani done on 7th Ferbruary 2008 at Limuru Deliverance church (PEV, IVR, FEB, 108); KNCHR interview with a female victim from Nyamira at Kericho on 15th February 2008 (PEV, IVR, FEB, 183); (PEV, IVR, FEB,196); KNCHR interview with a male victim from Kipkelion on 26th February 2008 (PEV, IVR, MAR, 568); KNCHR interview with a female victim from Kipkelion taken at Koru Police station on 14th March 2008 (PEV, IVR, MAR, 774); KNCHR follow up group report dated 14th April 2008 (PEV, IVR, APR, 1004); (PEV, NWP, MAR, 094); (PEV,IVR, FEB 154); KNCHR interview with a female victim from Kisii on 15th February 2008 (PEV, IVR, FEB 146); (PEV, IVR, FEB, 311); KNCHR interview with a female victim at Kisii Catholic Cathedral church on 13th February 2008 (PEV, IVR, FEB, 151); KNCHR interview with a female victim at Kisii Catholic Cathedral church on 13th February 2008 (PEV, IVR, FEB, 157); KNCHR interview with a resident of Londiani on 8th March 2008 (PEV, IVR, MAR, 783); KNCHR interview with a male victim (tea farm worker) in Limuru on 6th February, 2008 at Tigoni Police station (PEV,

250. In all the attacks, the raiders were armed with weapons like bows and arrows, rungus (clubs), swords, knives, pangas (machetes) and other crude weapons.[157] In areas where there were many incidents of arson the attackers used petrol bombs packed into small bottles and tied with flammable materials to burn all types of structures and buildings.

251. The Members of parliament and Civic seat aspirants from the region were also alleged to have participated either directly or indirectly. Some of the MPs utterances during the campaigns and after elections may have greatly contributed to the incitement of the people to violence. One of the local MPs was quoted in confidence to have said that " he did not have apologies to make for the violence and that he informed the youths to fight the government until *'wapewe haki yao'* (They be given their right). Another of the local MPs was quoted to have said to the youths that "when we inform you to block the roads do so, when we tell you to remove road blocks do so". There was also information that some councilors would be heard making phone calls to the Members of parliament asking them to send money to facilitate the youths in carrying out the "the operations". In Sotik the Members of parliament were alleged to have incited the youths. In one of the occasions, two MPs from the region had a meeting with around 500 to 700 youths from the Kalenjin side at Sotik Tea Estate and immediately they left the youths begun to attack the Kisii community and burnt down their houses.

252. Given the extent of the burning that took place in the area one concludes that there was a sustainable supply of petrol that points to a source of finances that is not obviously the youths that carried out such the attacks.

PLANNING AND ORGANIZATION

253. The Violence in the South Rift region was organized and well resourced. All those interviewed and information gathered pointed towards mobilization and reinforcement of youths/attackers from across the region's districts. There were reported incidents of simultaneous and parallel attacks from all directions by well organized and coordinated warriors/groups. For instance, in Kipkelion settlements, the Kalenjin attackers marked or placed traditional calabash in front of all dwellings that belonged to members of their community[158]. In the subsequent days, attacks of settlements were done from all directions and at the same time with clear direction and mission[159].

IVR, FEB, 001A) and KNCHR interview with a male resident of Transmara done on 3rd March 2008 (PEV, IVR, MAR 827).

[157] See KNCHR interview with a senior government officer in the region on 28th February 2008 (PEV, PMR, MAR, 012);

[158] KNCHR interview with a female victim from Kipkelion done at Kisii Cathedral Catholic Church on 15th February 2008 (PEV/IVR/FEB/143)

[159] Ibid

254. In Transmara where the attacks would begin in the afternoon, the signal for the other attackers to join the raids was by a war cry. After sounding the war cry all other groups of attackers would join from all directions[160]. In Chebilat the attackers were fighting in shifts. Some would attack in the morning and others in the afternoon. "During the fighting, around 7 A.M, a new group would come and the group that was fighting would go. The new group would fight up to around 1.00 P.M, when another group would come. At around 6.00 the three groups would attack us together and thus would defeat us. During the course of the fighting (during the day) we would see vehicles, Land Cruisers, carrying food and water to our opponents."[161] There were occasions on which the attackers were dropped by vehicles[162].

255. In some occasions, the attackers would come in large groups from one direction and before reaching their target of attack; they would sit down and have a meeting then divide themselves into small groups of about 20 members each. Each group was allocated its role and the area to attack. Roles included chasing away property owners, looting and burning down the empty houses[163].

256. Further, the magnitude of the destruction that the attackers caused in the area and the swiftness with which they moved points to a good level of organization, financing and provision of transport.[164] It is alleged that local politicians and business people financed the violence. The local community also provided support by providing food, transport to ferry the attackers and provision of out of pocket allowances. There were reports that the attackers were promised huge pay after a successful execution of the operation. Further evidence of external financing is that for example in Kipkelion, some attackers were arrested and were found in possession of very clean fifty shillings notes[165].

257. In Kericho, Bureti and Londiani the attackers were sending signals before raiding certain people's homes by telephoning them and giving notices to those who were alleged to be supporting the Party of National Unity and belonged to non-Kalenjin communities[166]. There was therefore the intent to forcibly evict the victims from the region as the perpetrators duly notified the victims of the imminent attackers and eviction.

258. Further evidence that the victims knew that they would be attacked is that in some areas like Burnt Forest, information gathered revealed that the Kikuyu and the Kisii in readiness or in anticipation of the violence stored their maize in the houses and dug bunkers in the compound. Maize is normally kept in open stores[167].

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[160] KNCHR post Mission report for Nyanza region dated 18th March 2008 (PEV/PMR/MAR/017a)

[161] See KNCHR interview with a youth from Sotik/Burabu border on 28th February 2008 PEV, IVR, MAR, 837

[162] KNCHR interview with a male resident from Chebilat on 4th February 2008 (PEV/IVR/MAR/699)

[163] Ibid

[164] Some of the vehicles used to transport attackers are know to the local people and some have names such as Eagle, Zion, Lion, KAQ 17 K, KAP 422Q, A Red RAV4 amongst others and at least one vehicle owner identified by the people as Umoja1. The owners of these vehicles and Umoja1 should be investigated and made to take responsibility for their role in organizing the violence if any (PEV/IVR/MAR/699)

[165] KNCHR interview with a female victim in Kipkelion on 26th February 2008 (PEV/IVR/MAR/575)

[166] KNCHR interview with a male victim in Kericho on 13th February 2008 (PEV/IVR/FEB/154)

[167] KNCHR interview with a male resident of Burnt Forest on 11th April 2008 (PEV/IVR/APR/942), see also Post Mission report on Lower North Rift dated 4th April 2008 (PEV/PMR/MARCH/009)

259. The KHCHR team was told of training and oathing in camps that took place in preparation for the attacks.[168] The training took place in the farms of senior leaders in the area or in the region's forests.[169] The attackers were well equipped with weapons and materials that they would need to conduct some of their activities such as power saws used in cutting down huge trees that were used to block the roads.[170]

260. There is the question of the supply of the weapons used to execute the violence. It is clear that someone supplied the weaponry and other materials such petrol. The weapons used, though on the face of it crude, it is claimed that some were of a type that might have been manufactured by a factory not just the work of a local smith.[171] This charge needs to be investigated in order to establish the full extent of the participation of business people in the supply of weapons for the execution of the violence.[172] Business people should also be held to account if found to have profited from the violence and having supplied political leaders with weaponry. Some of the attackers were armed with guns. An investigation into the source of these guns[173] is also necessary to establish those behind the arming of local youth.

261. There were repeated allegations that the attackers wore black uniform in the form of black shorts and black shirts.[174] Where they did not have the full uniform, they wore black tops. This is in addition to face painting in black or white or with cow dung.[175] This allegations needs to be further investigated to confirm whether this uniform was meant for identification as combatants or it was only meant to serve as camouflage for the young men so that they would not be identified by their neighbours.

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[168] Some of the farms in which training and oathing was taking place are know to local people. The police need to investigate this further to establish the facts about the training, how long it took place, who was financed and it and hold those responsible to account for their role in organizing the violence. Supra note 4. Email report by an informer in Nairobi on 11th February 2008 (PEV/EM/FEB/010a); Internet extract of happenings in Kericho on 11th February 2008 (PEV/INT/APRIL/086)

[169] See supra note 4 and Email report by an informer in Nairobi on 11th February 2008 (PEV/EM/FEB/010a

[170] KNCHR interview with an informer in Kericho on 26th February 2008 (PEV/IVR/MAR/836)

[171] Newspaper report on Borabu, Bureti, Sotik and Bomet borders dated 9th February 2008 (PEV/NWP/MARCH/090)

[172] See KHNCHR interview with a senior government officer in Borabu Sotik border on 20th February 2008 (PEV/NWP/FEB/016)

[173] Newspaper report on Borabu, Bureti, Sotik and Bomet borders dated 9th February 2008 (PEV/NWP/MARCH/090)

[174] KNCHR interview with a female victim from Kongasis, Naivasha on 13th March 2008 (PEV/IVR/MARCH/715); KNCHR interview with a former male councilor in Molo on 16th march 2008 (PEV/IVR/APRIL/883); KNCHR interview with a male victim at Ekerenyo DO's camp in Kisii on 15th February 2008 (PEV/IVR/FEB/114); KNCHR hate speech captured by the election monitoring team on 29th November 2007 (PEV/EM/APR/025); KNCHR interview with a former male councilor in Molo on 16th march 2008 (PEV/IVR/APRIL/883) and KNCHR interview with a male victim in Keroka, Kisii on 16th February 2008 (PEV/IVR/FEB/442)

[175] In some cases the faces were painted in mud. See KNCHR interview with a female victim at Charles Lwanga Cathedral church in Kisii on 15th January 2008 (PEV/IVR/FEB/150)

262. In addition, they had some signs and symbols that made it possible to prevent attacks on members of their ethnic group. For example the owners of the houses could do some signs to identify themselves as members of the attackers' community thus getting spared the looting and torching of homes that was happening to neighbours who belonged to other communities[176]. In all the areas visited by the KNCHR team the communities were reported to have provided food and cash to sustain the attacks and self-defense where necessary[177].

ROLE OF STATE AGENCIES

263. Generally the Security agencies responded well but were overstretched given the spread of violence in the country. There were incidents where some security officers were reported to have been reluctant to repress the violence and protect the affected communities and individuals. In Kericho, Bureti, and Londiani the police were alleged to have used excessive force to contain the situation and as a result, many innocent lives were lost.[178] One of the senior police officers in Kericho and another in Londiani, both of the rank of Officer Commanding Station (OCS), were adversely mentioned in the killings of several civilians in cases that amounted to excessive use of force[179].

264. On the Kericho-Kisii Road, an OCS is reported to have shot dead a male taxi driver who was taking a client to hospital. There was also an incident at Kapsuser where a boy was shot by a senior police officer from Kericho as he was heading home from work from a nearby tea estate. In Kericho, there were reports that about 17 civilians were shot by the OCS and a team of police officers during a major riot in Londiani. Most of those shot were alleged to have been shot from behind while running away to escape the violence.[180] In Londiani it was alleged that innocent young boys were killed by the OCS and his team of police officers. An old man who was not feeling well and was seated outside his house was allegedly shot dead by the OCS londiani[181].

265. In Bureti, there was also excessive use of force as indicated by information gathered illustrated by an incident where two teachers were allegedly shot dead by police in Litein as they were awaiting to board a vehicle. It was further alleged that three youths were shot dead as they were looting a Kikuyu and Asian shop in Litein shopping centre[182].

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[176] KNCHR interview with a male victim from Eldoret at Nakuru Show Ground on 17th February 2008 (PEV/IVR/FEB/478)

[177] KNCHR interview with a male victim from Kericho taken at Kisii Catholic Cathedral on 13th February 2008 (PEV/IVR/FEB/154)

[178] See The People Daily Newspaper pictorial dated 30th December 2007 the People Team (PEV/NWP/APR/211); KNCHR interview with a senior principal officer in Kericho on 27th February 2008 (PEV/IVR/MAR/833); KNCHR interview with a Doctor in Litein Hospital on 29th February 2008 (PEV/IVR/MAR/829); KNCHR interview with a female resident of Litein on 1st March 2008 (PEV/IVR/MAR/830)

[179] KNCHR interview with a male victim from Kericho taken at Kisii Catholic Cathedral on 13th February 2008 (PEV/IVR/MAR/857)

[180] See KNCHR interview with a medical officer on 24th February 2008 at Kipkelion (PEV, PMR, MAR, 012).

[181] KNCHR interview with 3 male residents of Londiani on 12th March 2008 (PEV/IVR/MAR/778)

[182] KNCHR interview with a male resident in Bureti n 29th February 2008 (PEV/OVR/MAR/818)

266. In Kericho and Transmara most informants stated that a majority of the police officers were Kalenjins and that they deliberately neglected and or failed to offer protection to non-Kalenjins.[183] In Londiani information gathered showed that some police officers sided with the Kikuyus and did not offer protection to the Kipsigis. In another incident a Luo police was accused of blocking the Kipsigis from reaching the road in their bid to escape and instead redirecting them back to their homes only for them to be attacked by the Kikuyus[184]. It was further alleged that a house was burnt few meters from Londiani police station but this was in spite of early warning and pleas to the police who failed to offer security[185].

267. In Bureti, it was alleged that the police from Litein Police Station participated in looting of shops[186]. For example, they shot at a padlock at the door of a shop that was dealing with mobile phones and took away the phones. The police ferried the stolen property to the police station using their government vehicles. Some police officers were paying the youths to transport looted goods to their houses[187].

268. In Chebilat information gathered revealed that the police chased away Kalenjin fighters thereby giving way to the Kisii fighters to loot and burn property belonging to the Kalenjins[188].

269. Information gathered from other groups commends police for their intervention without which the situation would have become worse. In some regions like Kipkelion the police officers were overstretched and they needed more resources and tools to operate effectively. Meanwhile the police are facing a challenge in gathering evidence neither are they getting witnesses that are willing to give testimony as to who financed or organized the violence. They have a problem with politicians interfering with their work whenever they arrest suspected perpetrators where the politicians move with a large crowd to the police station to demand their release or give them bond[189].

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[183] These allegations of police partiality are repeated across the region. This could perhaps be explained by the fact that police officers failed to rise above the demands to side with their respective communities and protect all citizens and live up to the motto of the Kenyan Police: Utumishi kwa Wote (Service to All.) See KNCHR monitoring group report on South Rift Valley on 24th February 2008 (PEV/MR/MAR/012); KNCHR interview with a female resident of Kisii on 15th february 2008 (PEV/IVR/FEB/146); KNCHR interview with an informer taken at Sotik on 14th April 2008 (PEV/IVR/APR/1002); KNCHR interview with a business man in Londiani on 12th March 2008 (PEV/IVR/MAR/773); KNCHR interview with a female resident of Kipkelion on 26th February 2008 (PEV/IVR/MAR/575); KNCHR interview with a squatter from Kipkelion on 18th February 2008 (PEV/IVR/FEB/477); KNCHR interview with a female victim in Kericho Cathedral (PEV/IVR/FEB/185); KNCHR interview with School committee elders in Sotik on 15th March 2008 (PEV/IVR/MAR/840); and KNCHR Post Mission report of Londiani taken at Londiani catholic church on 12th March 2008 (PEV/PMR/MAR/006).

[184] KNCHR interview with a male resident of Londiani on 12th March 2008 (PEV/IVR/MAR/773)

[185] Ibid

[186] KNCHR post mission report for Rift valley region dated 24th February 2008 (PEV/PMR/MAR/012)

[187] Ibid

[188] KNCHR post mission report for Rift valley region dated 24th February 2008 (PEV/PMR/MAR/012)

[189] Ibid

270. "In some cases, Kikuyu men were hacked to death and their women raped in full view of the police. Some of the police told the Kikuyu in Swahili "*wacheni kazi iendelee.*"[190] [A mockery of the PNU clarion call of "Let (my) the work of rebuilding the economy and progress continue by re-electing President Mwai Kibaki.] (*Translation mine.)*

ROLE OF OTHER ACTORS

271. In as much as violence dominated the South Rift, there are other special actors that moved in different ways to preach peace to the people while others contributed in a negative way. Some of them were Non-governmental organizations, political leaders, the local administration, religious leaders, opinion leaders and elders.

272. The media contributed negatively by inviting elders and callers in some of the vernacular radio stations that specialized in peddling hate speech against Kikuyus and other non-Kalenjin Communities such as the Kisii. *KASS F.M* and *Radio Injili* have been mentioned in this regard.[191]

273. Information gathered revealed that one of the councilors in Kipkelion took the initiative to go to *Kass F.M* and *Radio Injili* to preach tolerance but other local leaders accused him of betrayal. His area suffered only one death and the burning of three houses due to his efforts to preach peace compared to the other areas where over 20 people were killed and approximately 2,563 houses torched in the district.[192]

274. The elders from different communities in the region have also begun to coordinate reconciliatory meetings with a view to permanently ending the tribal clashes in the region. The District Officers (D.Os) and the District Commissioners (D.Cs) in the area have also embarked on peace meetings to bring the warring communities in the region together.[193]

275. There were several organizations that offered humanitarian assistance to the displaced people. This included the Kenya Red Cross Society, the World Vision, ADRA, Churches, the Catholic Justice and Peace Commission (CJPC) and the Tea Companies like Finlays Ltd.

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[190] See Internet Article titled "Kenya Genocide" dated 11th February 2008 (PEV/INT/APR/086) and Email article titled "Mumiat Oathing" dated 11th February 2008 (PEV/EM/FEB/010a)
[191] KNCHR interview with a male victim in Kericho on 4th March 2008 (PEV/IVR/MAR/838)
[192] KNCHR interview with an informer at Kipkelion on 16th April 2008 (PEV/IVR/APR/1072)
[193] KNCHR interview with an informer at Kipkelion on 16th April 2008 (PEV/IVR/APR/1072)

NORTH RIFT REGION

INTRODUCTION

276. The North Rift region comprises districts of the Rift Valley to the North of Nakuru District. This review focuses on the districts of Uasin Gishu, Trans Nzoia, Nandi North and South, Marakwet, Koibatek, Keiyo North and South, Baringo North and South. All the selected districts are ancestral lands of the supra-ethnic group, the Kalenjin, i.e. the Nandi, Keiyo, Pokot, Tugen, Marakwet and Kipsigis.[194] Among these, the districts most seriously affected by post-election violence are Uasin Gishu and Trans Nzoia. This report mainly covers events that took place in the two districts with a greater emphasis on Uasin Gishu where investigations revealed a greater scale of the violence as is evident in the sections below on patterns of the violence. The two districts are both cosmopolitan in population and high potential agricultural areas that share a common history of colonial settler occupation and simmering unresolved tensions over ownership of land that find expression in competition for political control among the various ethnic groups in the region.

277. Uasin Gishu has a mixed populations with majority being the Kalenjin with others being Kikuyu, Luhya, Kisii and Luo while Trans Nzoia has majority being the Luhya, with others being Kalenjin, Turkana Pokot, Kikuyu and Kisii people.[195] In other districts of the North Rift that have been considered in this report, including the greater Nandi districts, Koibatek, the greater Baringo districts and Marakwet , the scale of violence was less and was mainly confined to urban areas, again corresponding to the ethnic population patterns where the non-Kalenjin residents were mainly found in towns conducting business or in employment.[196]

278. The Region carries nineteen (19) electoral constituencies. In Uasin Gishu district has Eldoret North, East and South Constituencies; Trans Nzoia district has Kwanza, Saboti and Cherengany constituencies; Keiyo district has Keiyo North and South Constituencies; Marakwet district has Marakwet East and West constituencies; Nandi district has Mosop and Emgwen Constituencies; Nandi South has Aldai and Tinderet Constituencies, Baringo has Baringo East, West and South Constituencies; and, Koibatek district has Mogotio and Eldama Ravine constituencies.

PATTERNS OF THE VIOLENCE

279. The worst episode of violence occurred from the evening of 30th December 2007 when the announcement of the Presidential results was made. The main theatre of the violence was Eldoret town and the surrounding Burnt Forest and other farming areas. The Burnt Forest area is one of the places where violence flared up on the evening of 30th Dec 2007, immediately after the announcement of the presidential election results pitting Kalenjin against Kikuyu. Before that time there was calm, though there was apparent anticipation of violence.

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[194] Etymology of geographical names in the North Rift region such as Uasin Gishu, Eldoret, Sirikwa, and Kipkaren that are all Maasai shows that the Maasai also once lived here. See A Short History of Land Settlements in the Rift Valley, May 13, 2008, http://www.pambazuka.org.

[196] A senior officer with the KNCHR from the North Rift explained that the districts of the North Rift outside the Trans Nzia and Uashin Gisgu should be considered as peripheral theatres in post-election violence. They have relatively small numbers of non-Kalenjin people and many of them were abel to move out quickly when violence broke out.

280. This is indicated by members of the Kikuyu community allegedly having dug bunkers to store property. These preparations were made well before the elections. On 30th Dec 2007 houses were burnt and people killed or injured, during attacks and counter attacks, resulting in mass exodus of members of the Kikuyu community from the area. Bows and arrows were the weapons of choice in this violence. In this area, at least seven people were allegedly killed, an estimated 3000 homes burnt and 80 business premises destroyed.[197]

281. People from outside Burnt Forest are said to have participated in the attacks. This is alleged by the members of the Kikuyu Community and not denied by members of the Kalenjin community. The attackers are alleged to have come from outside the Burnt Forest area.[198] This indicates a possibility of attackers being ferried from elsewhere something indicative of planning and organization of the violence. During KNCHR's interview with Hon Ruto, he confirmed that some raiders were coming from villages other than the ones they were attacking. He gave the example of Muchemi,[199] who lived not far from Hon Ruto's own Eldoret home. "I was informed that his property was destroyed by youths from far off.200'

282. This fact of raiders arriving from elsewhere is of critical importance as it indicates that, granted the initial violence may have been a spontaneous expression of discontent, later acts were organized and purposeful.

283. **In** Eldoret Town violence mainly affected the residents of the low-end residential areas. The first instances of violence in the town were experienced on the 26th Dec, 2007 where vehicles were burnt and premises attacked on suspicion of respectively ferrying ballot papers or having in them ballot papers. More intense violence occurred from 30th Dec 2007 between members of the Luo community and members of the Kikuyu community. Subsequent to that the members of the Kalenjin community are said to have come from their farms and joined the Luos in attacking members of the Kikuyu community. Again the characteristics of the raiding gangs mirrored that of the farms in terms of weapons and the estimated numbers of the attackers.[201] Several names have been given in the statements of persons suspected of funding and directing the attacks.[202]

284. In the Yamumbi area, raiders attacked Kikuyu homes from the nearby Kalenjin areas. The attackers burnt houses and destroyed property. Two deaths were reported with one person said to have been killed in the presence of two policemen who had accompanied him to ward away attackers who had invaded his home.

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[197] Daily Nation Newspaper article for 29th January 2008 (PEV/NWP/JAN/0021)

[198] See KNCHR interview with a male victim from Eldoret on 7th February 2008 at Kirathimo IDP camp in Limuru (PEV,IVR,FEB,128) for a description of how raiders were dropped off in lorries

[199] Duncan Muchemi was a wealthy farmer in Eldoret whose property was extensively destroyed in the post-election violence. He was interviewed by the KNCHR on April 12, 2008

[200] KNCHR interview with Hon William Ruto, February, 28th 2008

[201] Raiders were said to come in groups of 50, 100, 200, 500, etc. Some estimates saying 1000. KNCHR interview with a male victim of Burnt Forest on 7th February at Kirathimo IDP camp (PEV,IVR,FEB,112), KNCHR interview with an informer in Eldoret on 11th April 2008 (PEV,IVR,APR,922)

[202] See attached list of suspected perpetrators

285. In the Munyaka Estate in Eldoret town, an international athlete Lucas Sang was killed. Accounts indicated that Lukas Sang had led group of youths[203] to attack the Munyaka Estate which is predominantly Kikuyu. The attack was repulsed and Mr Sang killed.[204] The other area that had a more or less similar pattern with Munyaka was the Silas Area in Eldoret Town. Here the Kikuyu community form the majority and therefore it witnessed Kikuyu aggression against other communities especially members of the Luo Community. A key suspected organiser of the violence in the area is given as one Mr Shaaban Mbugua.[205] Violence in Langas estate initially pitted the Kikuyu against the Luo. Witnesses recounted that on the night of the 30th December, 2007, members of the Luo Community were beheaded by Kikuyu attackers at Kisumu Ndogo area. Members of the Kikuyu community were overwhelmed by attacks by members of the Kalenjin community who are said to have come from the villages.

286. The epicentre of the violence in the Nandi districts was Kapsabet town. The raiders targeted Kapsabet Town where businesses were looted and burnt. This departure from farm-based attacks introduces a new dimension to the violence which has largely been explained as land related. In Kangema and Nyakio farms owned by members of the Kikuyu community, raiders attacked burnt homes and looted property and left three people dead on January 8, 2008, forcing people to seek refuge at Nandi police station. A witness estimated that the number of displaced people who camped in a nearby field reached 32,000 people.[206] Notably too was that from the statements received members of the Kalenjin community perceived to have had leanings towards the PNU were targeted and their houses burnt down and property destroyed.

287. Violence in Trans Nzoia began before the presidential election results were announced on December 30, 2008. An estimated 2000 youths from Soi and Ziwa areas attacked and burnt Kikuyu business premises in Soi. Some of the worst violence in the district occurred at Gituamba where it was reported that an unspecified number of people were killed at Gituamba Farm in Cherangany by suspected armed SLDF[207] youth from Kabolet Forest in late February 2008. The majority of those affected were allegedly Kisii.[208] Several people were abducted and women, including school girls, raped. Homes were burnt down and the trading centre reduced to a ghost town by mass exodus of residents.[209] In this constituency, more than 20,000 people were displaced.[210]

288. The violence in Trans Nzoia District mainly targeted members of the Luhya, Kikuyu and Kisii communities. In Trans Nzoia the post-election violence overlapped with violence perpetrated by the Sabaot Land Defence Force (SLDF)[211] neighbouring Mt Elgon that was ongoing before and continued even after post-election violence ended in other affected North Rift areas. One of the most fatal of the attacks occurred in early March, 2008 at Embakasi in Saboti when 13 people, including a family of five were killed by suspected SLDF members.

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[203] See KNCHR interview with an informer on 15th April 2008 in Eldoret (PEV/IVR/APR/994), KNCHR interview with an informer on 16th April in Eldoret (PEV/IVR/APR/918) and KNCHR interview with a female resident of Kisii on 16th February 2008 at Keroka IDP camp (PEV/IVR/FEB/432)

[204] Reuters News report of 30th January 2008 (PEV/NWP/MARCH/001)

[205] KNCHR interview with a male resident of Eldoret on 27th February 2008 (PEV/IVR/FEB/538)

[206] See KNCHR interview with a female victim from Burnt Forest on 7th February 2008 (PEV/IVR/FEB/123)

[207] The SLDF was active in the border between Mt Elgon and Trans Nzoia districts. See Humanitarian update by OCHA dated 28th February to 3rd March 2008 (PEV/IVR/ORG/MARCH/041)

[208] See KNCHR interview with an informer in Eldoret on 14th April 2008 (PEV/IVR/APR/1029)

[209] See Reuters News report of 30th January 2008 (PEV/NWP/MARCH/001)

[210] See PEV,IVR,FEB,011. In Saboti Constituency 3,000 were displaced. See PEV,ORG,FEB,029.

[211] See KNHCR interview with an informer in Kitale on 14th April 2008 (PEV/IVR/APR/1032)

289. Eight people, including six children were seriously injured.[212] The SLDF is also suspected to have made an attack at a police station harbouring 3000 displaced persons, leaving six people dead.

290. The Sabaots allegedly lay historical territorial claims and want Luhya people out of trans Nzoia.[213] In a pointer to potential for escalation of violence with Sabaots on one side and the Luhya on the other, police detectives discovered a training base for youth at the home of former Luhya Saboti MP, David Nakitare.[214] 200 youths who were allegedly undergoing military training were arrested on January 25, 2008.[215] On Wednesday, March 19, 2008 Mr Nakitare was charged with training suspected militia[216] on his on the 200 acre Delta Crescent Sanctuary and farm in Endebess and set free on bond. Widespread atrocities by the SLDF in Mt Elgon and surrounding areas[217] prompted a military operation that has restored relative peace in the area.

291. In the greater Baringo district, the violence mainly involved intimidation of non-ODM voters and attempted mass expulsions of Kikuyu and Kisii people in the area. Killings, rapes or serious injury were rare and isolated here according to available information and people were in most places afforded a chance to flee to safety. In Mogotio Constituency, in Koibatek, for instance, no information on deaths or rapes in the post-election violence was reported to KNCHR investigators. But homes were torched and the Kikuyu people forced to flee to Nakuru and other places of safety like police stations.

292. In Eldama Ravine Constituency, a Catholic Priest, Father Michael Kamau was killed on his way to Nairobi when a gang of youths stopped his car at Muserechi Trading Centre in mid-January 2008. Youths who were armed with crude weapons set upon him and two other passengers in his car. They killed the priest while the second passenger was seriously injured. The third passenger escaped unhurt. A contingent of security personnel deployed in the area after the incident allegedly shot dead one person.

293. In the area around Makutano trading centre the violence was intense with groups of Kalenjin youths armed with bows, arrows and petrol bombs attacking Kikuyu homes, and eliciting retaliatory attacks. At least three deaths were reported, an unknown number of houses torched and hundreds of people forced to flee the area for their lives.[218] The death of at least one person was reported in Marakwet East, at Kapsoya, the son of Harun Chege who had gone out to buy telephone credit for his dad. He was killed by gangs of Kalenjin youth who were allegedly dropped by lorries in the area.

294. Houses and businesses belonging to Kikuyu people were torched in the area, forcing them to flee for their lives to places of safety. The main reason for hostility to Kikuyu was that they did not vote for ODM. The provincial administration in the area was partly compromised into taking political sides and at least one chief at Kamoi trading centre sent away people who sough refuge at his camp, saying they had refused to heed his advice and vote for ODM.

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[212] Standard Newspaper article dated 4th March 2008 by Osinde Obare (PEV/NWP/MARCH/004)
[213] KNCHR interview with a male resident of Eldoret on 2nd April 2008 (PEV/IVR/APR/896))
[214] KNCHR interview with a male pastor in Nakuru on 26th January 2008 (PEV/IVR/,FEB/,489)
[215] Ibid
[216] See Peacenet Kenya Report dated 25th -31st march 2008 (PEV/ORG/MAR/049)
[217] The Standard Newspaper article dated 4th March 2008 by Osinde Obare (PEV/NWP/MARCH/004)

[218] UNON weekly security advisory dated 8th – 14th February 2008 (PEV,ORG,FEB,025)

295. The violence in Marakwet East and West was not as widespread or vicious relative to other Rift Valley areas.[219] At the Marakwet border, 12 youths were shot dead as police tried to separate Marakwet and a neighbouring clan in Cherangany in January 2008.[220]The main target of attack was the Kikuyu and Kisii for allegedly supporting president Kibaki. It is reported that an unspecified number of youth were killed by GSU during a raid in Kapcherop area targeting Kisii people. In the attacks, Kalenjin youth allegedly drove stolen livestock into the Kerio Valley, while others were driven to Pokot by youths who had been recruited from that area to assist Kalenjins raiders.

296. Investigators were told that the members of the Kalenjin community who were perceived to have supported the PNU during the elections were targeted for attacks by the Kalenjin raiders. Their property was destroyed and in some cases they were asked to pay money or donate food among other items for the upkeep of the raiders.

PLANNING AND ORGANISATION

297. The following information suggests that the post-2007 election violence in parts of the North Rift region was pre-planned, [221] largely targeting Kikuyu[222] (who in turn are also accused of planning and executing violence against others)[223] and other communities in that region and local people whose political loyalties went against the grain in the area. The information also suggests that after December 30, 2007, the violence had a character that suggests it was planned, organised and coordinated.[224]

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[219] A senior officer with the KNCHR from the North Rift explained that the districts of the North Rift outside the Trans Nzia and Uashin Gisgu should be considered as peripheral theatres in post-election violence. They have relatively small numbers of non-Kalenjin people and many of them were able to move out quickly when violence broke out. Marakwet East fell in this category.

[220] KNCHR interview with a male victim of Kapsabet on 14th February 2008 at Nyeri Ruringu stadium (PEV,IVR,FEB,199)

[221] Daily Nation Newspaper article dated 18th March 2008 by Sam Kiplagat (PEV,NWP,APR,212), KNCHR interview with a male victim from Kondoo farm in Eldoret on 27th February 2008 (PEV,IVR,FEB,507), KNCHR interview with a male victim from Langas in Eldoret on 26th February 2008 (PEV,IVR,FEB,514), KNCHR interview with a male victim in Timboroa IDP camp on 2nd March 2008 (PEV,IVR,MAR,609), KNCHR interview with a female victim of Nandi hills in Limuru on 7th February 2008 (PEV,IVR,FEB,052) KNCHR interview with an informer on 13th April 2008 in Eldoret (PEV,IVR,APR,924), KNCHR interview with a male victim from Free Area in Eldoret on 26th February 2008 (PEV,IVR,FEB,487), KNCHR interview with a male victim of Tigoni on 6th February 2008 at Tigoni Police Station (PEV,IVR,FEB,005), KNCHR interview with a female victim of Molo on 6th February 2008 at Ruiru Police Station (PEV,IVR,FEB,009)

[222] See Human Rights Watch report dated 17th March 2008 (PEV,ORG,APR,067) and Report by Crisis Group Africa dated 21st February 2008 (PEV,ORG,MARCH,035)

[223] See KNCHR interview with a male victim from Kondoo farm in Eldoret on 27th February 2008 (PEV,IVR,FEB,507, KNCHR interview with a male victim from Langas in Eldoret on 26th February 2008 (PEV,IVR,FEB,514, KNCHR interview with a male victim from Burnt Forest on 28th February 2008 (PEV,IVR,MAR,595) , KNCHR interview with a male victim from Kiambaa on 26th February 2008 (PEV,IVR,FEB,512)

[224] See KNCHR interview with an informer in Eldoret on 15th April 2008 (PEV,IVR,APR,912), KNCHR interview with an informer in Kitale catholic church on 14th April 2008 (PEV,IVR,APR,1032), KNCHR interview with an informer in Eldoret on 15th April 2008 (PEV,IVR,APR,1028)

298. According to witness accounts,[225] in the run up to the December 2005 referendum, and in the build up to the 2007 elections, meetings were held by elders in parts of the region, in particular the Burnt Forest/Tarakwa and Timboroa regions, during which a decision was taken to evict Kikuyu from the region. At a meeting held at the home of one Paul [Mitree] of Cheberor village, before the 2005 referendum, bringing together leaders from the region, and chaired by one Mr Tabora, a former councillor, the welfare of the Kalenjin community was discussed. One of the issues discussed was that Kikuyu had taken over the leadership of the areas and this needed to be changed. It was felt that local leadership should be left to the local Kalenjin community, and that there should be a ceiling to selling of land to the Kikuyu. In a follow up meeting held at the home of one Paul Kurgat immediately after the 'No' Referendum vote, all the reports of the previous meetings were consolidated. Local chiefs and councillors attended this meeting. There was also a meeting held at Gilbert Limo's house in 2006 at Kitigin Village chaired by the host. Similar issues were discussed. Another meeting took place at Stanley Biwott's house. These accounts come from witnesses who attended a number of these meetings.226

299. In the period immediately prior to the elections of December 2007, witness accounts indicate that a meeting was held at Assis Hotel in Eldoret on [1 December 2007] under the umbrella of IMO/EMO Foundation,[227] during which the eviction of the enemy (Kikuyu) was discussed.228 The meeting was attended by about 15 representatives drawn from Eldoret North, East, and South constituencies. It was chaired by [Katwa Kigen alias 'Simba'], who is a wealthy businessman in the area and [also a lawyer]. At the meeting, participants were reminded of the things that people should do or not do during the 'war'. At the meeting, it was decided that youths should be told to restock their bows and arrows.[229]

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[225] See particularly KNCHR interview with an informer on 13th April 2008 in Eldoret (PEV,IVR,APR,924),for a detailed account of meetings that resolved to use violence against the kikuyu and other non-Kalenjin people in the Eldoret area "to clean the community."

[226] Stanley Biwott is an assistant Chief, Chereber Village. The main source is a Kalenjin man who was opposed to the violence. He said he was thrown out of the meetings later when he continued pleading against violence.

[227] See KNCHR interview with an informer on 13th April 2008 in Eldoret (PEV,IVR,APR,924),, IMO/EMO is short for EMOSTO - We are missing each other. It is a Foundation (A membership club where MPs pay Ksh 10,000) and all Kalenjins are eligible members. A witness in the referenced report alleged that there was a common understanding among Kalenjins that" ODM was to win the election through the IMO Foundation and KASS FM" (KASS FM as the policy mouthpiece). In witness accounts, the IMO/EMO Foundation held meetings where they also called themselves ODM meetings. See, for instance, KNCHR interview with a female victim in Cherangani police station on 29th February 2008 (PEV,IVR,MAR,679). The Foundation's chairman Rev Kosgey is allegedly a preacher on regular programs of KASS FM. See KNCHR interview with a female victim in Cherangani police station on 29th February 2008 (PEV,IVR,MAR,679).

[228] IMO is short form for the Kalenjin word 'IMOSTO' meaning 'we are missing each other,' as translated by a KNCHR staff member. It is a membership organization where any Kalenjin person can join. Sources wishing to remain anonymous told a KNCHR team at Kipkelion that every Kalenjin MP pays Sh10, 000 a month to the Foundation.

[229] See KNCHR interview with an informer on 13th April 2008 in Eldoret (PEV,IVR,APR,924),, where at meeting in Assis Hotel Eldoret, elders were allegedly charged with ensuring the restocking with, and if necessary the purchase of, arrows from outside the district. See also PEV,INT,FEB,005 for allegations of arrow manufacturing

300. There are various witness accounts of political actors, (especially ODM)[230] in the run-up to the elections, using language that clearly sent the message that people who are not originally from the North Rift (especially Kikuyu, Kisii) were not welcome in the region.[231] Interviews with a key official of the Catholic Justice and Peace Commission, Eldoret informed the KNCHR that in the period immediately after violence began, many local people were heard saying that all PNU people must go 'kwa nini walipiga kura nje?' (Why did they vote for 'outsiders'?), and 'iko adui', (there is an enemy) referring to the presence of non-Kalenjins. The level of hostility towards the Kikuyu community was expressed by a Kalenjin Elder Jackson Kibor during an interview with the BBC in which he said:

> '...We will not sit down and see one ethnic group lead Kenya. This is a war, we will start a war. One ethnic group cannot lead the other 41 ethnic groups232'

301. Large groups of Kalenjin youth—numbering hundreds—quickly assembled during the hours immediately after announcement of results. In some cases, the youths would be dropped by lorries.[233] Before proceeding to attack, the youth would gather at particular assembly points.

302. There are accounts of raiders being mostly young men around the ages of 18-25 years.234 They had applied soot[235] or mud[236] on their faces. Some had red-cloths around their shoulders. They had bows and arrows ands small axes237. The raiders' weapons of choice were bows, arrows and sharpened sticks. These are traditional Kalenjin weapons that every male child is trained to use upon circumcision. Use of other sophisticated weaponry such as petrol bombs may suggest prior planning and organisation because such weapons are not commonly held by a civilian population.

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[230] KNCHR interview with an informer on 13th April 2008 in Eldoret (PEV,IVR,APR,924),

[231] A leaflet spread in Burnt Forest area in early January 2008, for instance, read in part "...we have decided that we will not live with the Kikuyu tribe again. The last word is that any person who will return will be killed one by one. Rift-Valley is our land which we were given by god, as you were given Central region. When you come back to Rift-Valley bid your families fare well. We will not fear any Police. DEATH DEATH IS HERE!" See KNCHR interview with an informer in Burnt forest on 13th april 2008 (PEV,IVR,APR,911)

[232] Transcript from BBC 'On Assignment' interview of Mzee Jackson Kibor on February 1, 2008. Mr Kibor is a wealthy political actor in the region. Our interviewees confirmed that he was key in organizing the ODM campaigns. One interviewee said that Mzee Kibor's word holds sway. In the Akiwumi report that investigated the 1992 and 1997 'tribal clashes' Jackson Kibor is listed as one of the persons that the Inquiry recommended for investigation for what had then happened in the area. He was one time KANU chairman for Uasin Gishu

[233] KNCHR interview with a male victim from Chemgoror area on 7th February 2008 (PEV/IVR/FEB/128)

[234] KNCHR interview with a female victim from Langas Estate in Eldoret on 8th February 2008 (PEV/FEB/IVR/110), KNCHR interview with a female victim from Yamumbi villagei in Eldoret on 25th February 2008 (PEV/IVR/FEB/ 547), KNCHR interview with a male victim in Nakuru show ground on 17th February 2008 (PEV/IVR/FEB/478) and KNCHR interview with a male resident of Timboroa on 17th February 2008 at Nakuru show ground (PEV/IVR/FEB/473),

[235] KNCHR interview with a female victim from Langas Estate in Eldoret on 8th February 2008 (PEV/FEB/IVR/110).

[236] KNCHR interview with a female victim from Likuyani division on 3rd March 2008 (PEV/IVR/MAR/694) KNCHR interview with a male victim from Kondoo farm on 13th April 2008 (PEV/IVR/APR/908).

[237] Similar descriptions of raiders/warriors were used to describe attackers in parts of Rift Valley during the 1992 and 1997 politically instigated clashes. See Republic of Kenya, Report of Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, July 31st, 1999 p119

303. There were allegations from different areas of guns[238] and even grenades[239] being used and allegations of plans being made to acquire guns[240] in a rally held on January 4, 2008, at Ziwa[241] and attended by Jackson Kibor and Mt Elgon MP Kapondi, among other leaders.[242]

304. In the North Rift, following declaration of presidential results, there were reports of guns being fired in the Burnt Forest area by some members of the Kikuyu community on 30 and 31 December 2007. The guns were reportedly home made243. For example, there are reports of one 'Kiarie' also known as 'Baba Kariuki', a local businessman who used to operate a kiosk, being in possession of a gun, and shooting one Paul Ngetich, a member of the Kalenjin community, in the Burnt Forest area on 30 December 2007[244]. He was reportedly in a group of Kikuyu burning houses in the Boror area of Burnt Forest.245. Other members of the Kikuyu community, such as one 'George Gichene', 'Kibutu Ngichu', and others also reportedly had guns.246 There was also information that some Kalenjin raiders used petrol or petrol bombs to burn houses.247

305. On 30 December 2007 after announcement of presidential results, road blocks manned by some Kalenjin youth were set up in Eldoret Town,248 Cheplaskei,249 Ya Mumbi,250 Kondoo Farm in Burnt Forest,251 and Cheptiret, among other areas. At the the roadblocks, vehicles were inspected for non-Kalenjins. In the days following the declaration of results, roadblocks were erected by immobilising trucks on the road; deflating their tyres; draining out fuel; stopping vehicles; and, stealing ignition keys.252 In some roads within Eldoret town, roadblocks were established within distances of less than one hundred metres. In previous violence in the region, in 1992 and 1997, there was no use of roadblocks.253

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[238] See KNCHR interview with a male resident of Kondoo farm in Eldoret on 27th February 2008 (PEV/IVR/FEB/499), KNCHR post mission report of Upper North Rift dated 24th March 2008 (PEV,PMR,MAR,002), UNON weekly security advisory dated 22nd -28th February 2008 (PEV,ORG,MARCH,054A), KNCHR with an informer in Eldoret on 16th April 2008 (PEV,IVR,APR,918), KNCHR with an informer in Eldoret on 16th April 2008 (PEV,IVR,APR,916), KNCHR interview with a male victim on 28th February at Endebess DO camp (PEV,IVR,MAR,666), KNCHR interview with a male victim at Emdebess DO IDP on 28th February 2008 (PEV,IVR,MAR,690)

[239] See UNON report on weekly security advisory dated 8th-14th February 2008 (PEV,ORG,FEB,025)

[240] See KNCHR with an informer in Eldoret on 16th April 2008 (PEV,IVR,APR,916)and KNCHR interview with an informer in Eldoret on 15th April 2008 (PEV,IVR,APR,1028) for how plans to acquire guns aborted.

[241] See KNCHR interview with with a male resident of Eldoret on 2nd April 2008 (PEV,IVR,APRIL,896)

[242] See The Standard Newspaper article dated 4th March 2008 by Oside Obare (PEV,NWP,MARCH,004), KNCHR interview with a male resident of Kitale on 8th February 2008 at Endebess Gatatha farm (PEV,IVR,MAR,691), KNCHR interview with an assistant chief at Cherangani DO office on 1st march 2008 (PEV,IVR,MAR,674)

[243] Ref.KNCHR interview with a male resident of Kondoo farm in Burnt forest on 27th February 2008 (PEV/IVR/FEB/517).

[244] KNCHR interview with a female resident of Burnt Forest on 27th February 2008 (PEV,IVR,FEB,516)

[245] Ref. KNCHR interview with a male resident from Kondoo village on 27th February 2008 (PEV/IVR/FEB/500), 506, 509, 507,

[246] KNCHR interview with a female victim of Kondoo farm on 27th february at Boror primary school (PEV/IVR/FEB/523)

[247] See KNCHR interview with a male victim from Timboroa on 8th march 2008 (PEV/IVR/MAR/614), KNCHR interview with a male resident of Endebess on 29th February 2008 (PEV/IVR/MAR/678) KNCHR interview with a male resident of Kapsowar on 26th February 2008 (PEV/IVR/FEB/556).

[248] KNCHR interview with a male victim at Nakuru Section 58 on 17th February 2008 (PEV/IVR/FEB/449).

[249] KNCHR interview with a male resident of Eldoret on 26th February 2008 (PEV/IVR/FEB/512).

[250] KNCHR interview with a female resident of Langas on 25th February 2008 at Eldoret Show ground (PEV/IVR/FEB/547)

[251] KNCHR interview with a male resident of burnt forest on 8th February 2008 (PEV/IVR/MAR/620)

[252] Ref. Times newspaper article dated 18th February 2008 by Times Team (PEV/NWP/JAN/11)

[253] KNCHR Interview with Duncan Muchemi, a wealthy farmer in Eldoret on April 12, 2008

ROLE OF THE MEDIA

306. The mass media, the short message service in mobile phones and the internet were used to propagate haste speech and in some instances, to incite acts of violence. The role of vernacular radio stations, especially that of *KASS FM* in this region, contributed in fanning the violence by the spread of such hate messages. According to a former senior public administration official in the area also confirmed the same saying political utterances before election and the media, singling out KASS FM interviewee guests, "may have prepared people for violence."254 Leaflets were also used to spread the hate message and to intimidate.[255]

307. Interviewees mentioned one Joshua Sanga *of KASS* FM as having called on young men to come out to the road 'vita imetokea (the war has begun) and asking them what they were doing at home.[256]

EGREGIOUS VIOLATIONS

308. The Kenya Assemblies of God Church burning at Kiambaa in Eldoret on New Year's Day 2008 is one of the most tragic post-election incidents in the North Rift region and possibly in the entire country.[257] Kiambaa farm is situated on the outskirts of Eldoret town, off the Nairobi-Nakuru highway. It is a settlement scheme predominantly inhabited by the Kikuyu community which bought the land there from the colonial white settlers before their exit after independence.

309. Accounts received from interviewees during our investigations reveal that attacks in the region began on 30th December 2007, following the announcement of the presidential elections results. On this day, Kimuri village which neighbours Kiambaa was raided and houses torched forcing its residents to seek refuge at the Kiambaa Kenya Assemblies of God Church. On 31st December 2007, when it became clear that the violence was spreading fast and the raiders drawing nearer, residents of Kiambaa were also advised to seek refuge in the church in order to save their lives.[258] The men kept vigil around the church compound and there were no incidents on that night. The attackers however struck on the fateful New Year's morning of 2008, between 10 and 11 a.m. in broad daylight.

310. Witnesses report having seen a large gang of Kalenjin warriors/youths, armed with bows, arrows, clubs and pangas, with their faces masked in mud approaching the village. There are conflicting figures on the approximate number of the warriors ranging from 200 to 3,500 and the residents stated that they came in three to four different groups and emerged from different directions.

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[254] KNCHR interview with a former senior public administration official, April 16, 2008

[255] See KNCHR follow up group interview with an informer at Burnt Forest on 13th April 2008 (PEV/IVR/APR/911)

[256] KNCHR interview with a Senior politician in the area on 11th April, 2008.

[257] There are different versions of why the church was torched. The version one gets depends on who one talks to. The explanation that the women and children were sheltering from the violence in a place of worship is the common version. A report published by Human Rights Watch in March, 2008, observed that: "On January 1, (2008), a mob set fire to a church where terrified Kikuyu residents were seeking refuge, soaking mattresses the victims had brought with them with petrol and stacking them against the building....." See KNCHR interview with a male resident of Eldoret on 26th February 2008 (PEV,IVR,FEB,512) for an account that alleged that kikuyu had assembled at the church to prepare to go and attack the Kalenjins at Kimuri

[258] See Saturday Nation newspaper article dated 1st march 2008 by Kipchumba (PEV,NWP,MARCH,021)

311. After torching houses in the neighbourhood the raiders surrounded the church compound, doused blankets and mattresses with petrol and set the church ablaze. The few men who were at the scene attempted to defend the victims but they were overpowered by the raiders who hacked them to death and shot others with arrows. Another group of the youth pursued those who tried to escape from the burning church and hacked them to death in cold blood. An estimated 35[259] people were burnt to death in the church, most of whom were women and children260. 50 were injured and hospitalised. From our investigation there is corroborating evidence of seven deaths resulting from panga and arrow wounds. Our investigation teams also had opportunity to visit the Kijabe Hospital where victims who suffered serious burns are still undergoing treatment.

312. The church built of mud and wood was burnt to ashes and a visit to the site depicted a gruesome incident that one can barely fathom. There was evidence of burnt bicycles, grains, clothes and the remains of a wheelchair. Further on the site, there were bits and pieces of photos, possibly of families who lost their loved ones in the ugly incident, never to reunite again. Some members of the Kalenjin community investigators spoke to alleged that the burning of the church was provoked by rumours that the Mungiki were being harboured in the church. These rumours are said to have emanated from Kaptien area where it is alleged that the raiders came from. Further reports also assert that the attack was provoked by the killing of a Kalenjin boy at Kiambaa but these allegations remain unconfirmed.

313. The witnesses state that they actually saw some of the perpetrators hacking people to death and conducting the attacks including[261] Emmanuel Lamai Bor and Clement Kipkemei Lamai who are both sons of a Mr Bor; Stephen K. Leting (Chemalan) a civic seat aspirant; and "Brown" a butcher proprietor at Cheplaskei. The first three alleged perpetrators have since been arrested and arraigned in court on charges of murder.

314. In the BBC 'On Assignment' interviews, a youth, Duncan from the Kiambaa area, had this to say in relation to this grave incident:

> "...We want to send a very a very strong message to Kibaki. Because we cannot get him we are going to work on his ethnic group, the Kikuyu."

315. Another interviewee in the same broadcast had this to say upon being asked why they burnt the church: 'They were happy because Kibaki won and we did not want these people to be happy (referring to the Kikuyu) ...that is why we decided to chase them, when we chased them they went to hide in the church; so we decided to burn the church."262

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[259] KNCHR interview with an informer in Kiambaa, Eldoret on 29th April 2008 (PEV,IVR,APR,1089),

[260] This is the same number given by a former senior public administration official in the region during an interview with KNCHR April 16, 2008

[261] See KNCHR interview with an informer in Kiambaa, Eldoret on 29th April 2008 (PEV,IVR,APR,1086), KNCHR interview with an informer in Eldoret on 10th April 2008 (PEV,IVR,APR,1060)

[262] Above BBC interview

316. The investigations revealed that an incident in which 14-25 young men were hacked to death occurred at Matunda centre at the border of Uasin Gishu and Lugari Districts on in January 2008. The information received was that the young men had been mobilized to raid businesses at Matunda but were overpowered by the locals who, in the presence of the security personnel-GSU- hacked them one by one. This incident was not reported in the press. The investigators got this information from about four witnesses. It was however not possible to get the exact number of those killed in this incident or the identity of those who lynched them. It was also not possible to ascertain the ethnicity of the dead youth.[263]

THE ROLE OF STATE AGENCIES

317. The violence that rocked the North Rift region in the period before, during and after elections had various dimensions one of them being the role of the security agencies. The North Rift region was reported to have witnessed wrong doings by the state agencies during the violence. The state is charged with the primary responsibility of providing security to the citizenry and even in the midst of all the violence, the state was expected to rise up and provide security and safety to the public. However, in the course of carrying out this duty, the state excesses or wrongs manifested in three main ways; firstly there was inaction by the police; this is where the police were supposed to act but did not,[264] secondly the use of excessive force by state agents, this especially being the police and in some areas the military, against persons who were found breaking the law. There are reports of instances where the security agencies were in possible collusion with perpetrators to carry out unlawful acts during this period.[265]Lastly, there were reports of police being overwhelmed[266] or being the target of attacks.[267]

318. Whereas the wrongs by the state were manifested in the above mentioned ways, there are other situations that may probably explain actions by the police. First, there were large numbers of attackers who were pitted against a handful of security/ police officers and use of force may have been considered necessary; in a number of instances, the large numbers of attackers were armed and could defy police orders to retreat. The destruction of places such as schools and churches which are used as places of refuge during times of violence demonstrates the scale and direction of violence which state security agents had to deal with in the region.

[263] KNCHR investigators were told that the youth were suspected to have come from Lugari, an ethnically mixed area.

[264] See KNCHR interview with a female resident of Langas on 25th February 2008 at Eldoret show ground (PEV,IVR,FEB,547), KNCHR interview with a male victim from Ainabkoi in Uashin Gishu on 2nd March 2008 (PEV/IVR/MAR/602), KNCHR interview with an informer at KItale catholic church on 14th April 2008 (PEV,IVR,APR,1032)

[265] See KNCHR interview with a male victim from Ainabkoi in Uashin Gishu on 2nd March 2008 (PEV/IVR/MAR/602), KNCHR interview with a male victim from Cherangani on 28th February 2008 (PEV/IVR/MAR/685, KNCHR interview with a male resident of Eldoret on 2nd April 2008 (PEV,IVR,APR,896)

[266] Saturday Nation newspaper article dated 1st march 2008 by Kipchumba (PEV,NWP,MARCH,021), KNCHR interview with an informer in Eldoret on 12th April 2008 (PEV,NWP,APR,1035)

[267] See The People Newspaper article dated 30th January 2008 by Peter Kahare (PEV,NWP,APR,182)

Police Excesses[268]

319. There are several reported cases where the police shot and injured or killed persons in circumstances that should be investigated to determine whether they were justifiable. The KNCHR team visited the Eldoret Moi Teaching and Referral Hospital and interviewed 4 victims269 who had gunshot wounds, three of these claimed to have been shot by police men attached to the Langas police station in Eldoret; two of these claim to have been shot by the OCS in charge of Langas police station. One of the victims270 said that he was in the company of other youth in Kasarani area of Langas, Eldoret on the night of 29th January 2008 and they found a contingent of police from the Langas Police station. The police chased the group of boys and were shot from behind, the victim fell down and got injured. The officer whom the victim identified as the OCS of Langas came and shot him on his left thigh at close range..[271]

320. The police in Langas are alleged to have shot the highest number of victims in and around Eldoret town. There are conflicting reports on the role of the police in the violence. Whereas persons from the Kikuyu community in the area praise the then OCS Langas police station for having been effective and only frustrated by his junior officers, members of other communities that clashed with the Kikuyu blame the OCS for having carried out and authorized killings in the region. The residents further note that most of the junior officers attached to Langas Police Station were members of the Kalenjin community.272 In Eldoret the then OCS at Langas Police Station is alleged to have killed 23 people alone.[273]

321. There are incidents that may have further spurred police reactions in the region and one such incident is the killing of the DO of Kesses Division in Uasin Gishu District and an Administration Police officer.[274] This and other similar incidents of attacks on state agents could have provoked police use of excessive force.

322. At Moi Teaching and Referral Hospital in Eldoret in January 2008, five workers were injured when police fired tear gas canisters at the compound.[275] In Cherangany, 14 youths[276] were shot dead as police tried to separate warring Marakwet clans. Thorough investigations on the circumstances on the ground are needed unearth how justified or otherwise these killings were. At Chagaya area in Nandi in January 2008, police shot dead nine youths who had allegedly come from Tinderet to loot property.[277]

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[268] See KNCHR interview with an informer at KItale catholic church on 14th April 2008 (PEV,IVR,APR,1032, East Africa Weekly newspaper article dated 18th-24th February 2008 by Kantai (PEV,NWP,FEB,015)

[269] KNCHR interview with an informer from Kasarani in Eldoret on 3rd march 2008 (PEV/IVR/MAR/682), KNCHR interview with a male victim from Langas in Eldoret on 3rd march 2008 (PEV/IVR/MAR/670, KNCHR interview with a male victim from Kasarani in Eldoret on 3rd march 2008 (PEV/IVR/MAR/646)
, KNCHR interview with a female victim from Kimondo, Endebes on 28th February 2008 (PEV/IVR/MAR/686)

[270] KNCHR interview with an informer from Kasarani in Eldoret on 3rd march 2008 (PEV/IVR/MAR/682)

[271] KNCHR interview with a male resident of Eldoret on 26th February 2008 (PEV,IVR,FEB,514)

[272] KNCHR interview with an informer in Eldoret on 11th April 2008 (PEV/IVR/APR/943) and also discussions with members of the public at Mwiruti shopping centre, Yamumbi on 11th April 2008

[273] KNCHR interview with an informer from Kasarani in Eldoret on 3rd march 2008 (PEV/IVR/MAR/682), KNCHR interview with an informer in Eldoret on 12th April 2008 (PEV,NWP,APR,1035), KNCHR with a male resident of Eldoret on 27th February 2008 (PEV,IVR,FEB,542)

[274] KNCHR interview with with a female resident of Kisii on 16th February 2008 at Keroka IDP camp (PEV,IVR,FEB,432)

[275] Daily Nation 18th January 2008, Peter Ng'etich, Watoro Kamau & Jared Nyataya

[276] Daily Nation article dated 3rd January 2008 by David Mugonyi (PEV,NWP,JAN,003)

[277] KNCHR interview with an informer at Tinderet on 8th April 2008 (PEV,IVR,APR,1022)

Failure to Protect: Security Agents' Crimes of Omission

323. There were accounts of police inaction despite having received reports on pending or planned attacks in some areas. In Mwiruti shopping centre in the Yamumbi area of Langas, the residents told of how the police failed to act to save property during attacks by members of the Kalenjin community from Kapteldon area. The youths attacked between the 30th December 2007 and January 1st 2008. .Residents further reported that junior officers who were sent from the nearby Langas police station took too long to reach the place during attacks. Allegedly, the junior officers deliberately took longer routes to reach the area.

324. In some cases, the police were outnumbered by the large numbers of the attackers This was the case in the Tinderet region where a tea factory was invaded by attackers targeting other communities working in the factory mainly from the Kisii and Kikuyu communities. In another case, at Matunda shopping centre, it was alleged that the police were unable to act and watched helplessly as residents of the shopping centre cornered and hacked to death a group of youth who had invaded the centre to burn and loot property belonging to the Kisii and Kikuyu..

325. In some areas, police inaction was evident from the closeness of destruction from the police stations. For instance, while Soy town in Uasin Gishu district is located barely 200 metres from Soy police station, the town was razed down at the height of the violence in the region. In Timboroa, some houses adjacent to the police station were burnt with unconfirmed reports that police officers attached to Timboroa Police station were involved in burning of some of the houses.

Collusion of Security Agents with Perpetrators

326. Some reports from the region alleged that security agencies colluded with the attackers to commit the atrocities that occurred in the region. In Yamumbi, residents reported that administration police officers attached to the local chief's camp were seen providing armed guard to a compound that is said to have housed warriors that attacked and burnt houses in the area on 30th and 31st December278. Further, interviewees recounted how the same officers watched the burning of houses in Muiruti shopping centre without taking any action. Some junior police officers reportedly openly supported attacks by telling the victims, "si mlisema kazi iendelee, wacha basi iendelee!" 279 A witness in Maili Nne area of Eldoret gave an account of how police appeared to be negotiating with arsonists who burnt the area, the police later left the attackers to carry out the destruction. The witness identified the police officers as those from the Eldoret central Police station. An informant from the Toboo area of Endebess in Trans-Nzoia district alleged that police officers from Endebess police station who were on patrol in the area in the company of some Kikuyus on the morning of 6th January 2008 shot and injured him on his thigh. The informant said that one of the persons in the company of the policemen took out a knife and cut his throat inflicting a deep wound. In another case, a GSU officer attached to Nabkoi GSU camp shot and killed one James Tuikong on 31st December 2007 for allegedly being a PNU activist. The deceased passed away while on his way to the hospital.280

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[278] KNCHR interview with an informer on 11th April 2008 in Eldoret (PEV/IVR/APR/930), KNCHR interview with an informer on 11th April 2008 in Eldoret (PEV/IVR/APR/929)

[279] KNCHR interview with an informer on 11th April 2008 in Eldoret (PEV/IVR/APR/922)

[280] KNCHR interview with an informer on 13th April 2008 in Eldoret (PEV/IVR/APR/942)

CENTRAL RIFT REGION

INTRODUCTION

327. Being cosmopolitan and a strategic region geographically, economically and politically, the Central Rift region attracted unprecedented focus by the contending political parties during the 2007 general.

328. The region has been a theater of cyclic ethnic-based violence that first erupted in 1991 upon the reintroduction of multiparty democracy. Although the violence intensifies during elections, it has its roots in historical socio-economic grievances, insidious impunity and flawed governance that run deeper than electoral politics. Below is a brief overview of the violence conditions prior to the 2007 election.

329. For purposes of this report, Central Rift Valley region comprises greater Nakuru district (includingMolo and Naivasha districts) and Narok. Greater Nakuru had a total of 657,219 registered voters while Narok District had 170,244 registerd voters. There are six constituencies in Nakuru district. These are Naivasha, Nakuru Town, Subukia, Kuresoi, Molo and Rongai. In the 2007 General Elections, PNU won four of the six seats while ODM won two of the seats. Narok district has Narok North and South constituencies both of which were won by ODM.

330. The region is host to the Maasai who are the majority community. The Kalenjin, Kikuyu, Luo and Kisii communities are also found in the Central Rift. Most of the land in the region is highly productive with a large fraction of its inhabitants being farmers, both large and small scale. The Maasai in Narok and Naivasha are mainly dependent on livestock for their livelihood.`The main economic activity in Naivasha is horticultural farming around Lake Naivasha whose workforce mostly comprises of people from the Luo and Luhya communities.

331. The Central Rift had witnessed violence even before the violence preceding and following the 2007 elections. In the 1991 clashes, for example, non-Kalenjin and non-Maasai ethnic groups were "attacked, their houses set on fire, their properties looted and in certain instances, some of them were killed or severely injured with traditional weapons like bows and arrows, spears, pangas, swords and clubs."[281] In its investigations, witnesses told the Kenya National Commission on Human Rights, (KNCHR), that violent clashes between the Kalenjin, on the one hand, and the Kikuyu and Kisii on the other, began in 1992.[282] These clashes pitted these groups along ethnic lines as well as on political lines.

332. In 1992, the Kalenjin were overwhelmingly members of the then ruling party, the Kenya African National Union, (KANU). President Daniel Arap Moi, a member of the Kalenjin community, was the President of KANU and the country. He was opposed to the introduction of multi-party politics in the country and the existence of opposition political parties particularly in the Rift Valley. Many non-Kalenjin and non-Maasai communities in the Rift Valley supported the then budding political parties.

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[281] Report of the Judicial Commission of Appointed to Inquire into Tribal Clashes in Kenya, 31st July, 1999 at page 59

[282] KNCHR with a female victim in Kisii on 15th February 2008; KNCHR interview with a male victim in Kuresoi on 30th March 2008

333. The Akiwumi report on the 1992 clashes reported that the provincial administration was partisan in its support of the then KANU government and against those considered to be opposed to KANU in the Rift Valley.[283] In 1992 the provincial administration also showed open partisanship in favor of KANU. In the 2007 post election violence however, the provincial administration and the police showed partisanship by their inaction as various ethnic groups were forcefully and violently evicted from their homes in various parts of the Central Rift including in Kuresoi, Narok, Molo, Nakuru and Naivasha.[284]

334. It is important to note that inter ethnic clashes occurred in the Central Rift in 1997 as well. 1997 like 1992 was a General Election year. Thus the ethnic clashes in 1992, 1997 and 2008 had the common feature of having occurred following a General Election.[285] The pattern of attacks particularly in Molo in 1997/1998 showed that Kalenjin warriors first attacked and killed Kikuyus before burning their homes. In retaliation, Kikuyus organized themselves and launched counter attacks in which they killed Kalenjins and burnt their homes.[286]

335. In Narok, clashes between the Maasai and Kikuyus emerged in 1992. The Maasai complained that the Kikuyu who lived in the upstream areas of the Enoosupukia water catchment area were diverting the water and preventing it from reaching downstream to their (Maasai) detriment.[287] William Ole Ntimama at the time warned non-Maasais that they would be evicted from Enoosupukia as it was a water catchment area and the interests of these non-indigenous communities were subordinate to those of the indigenous Maasai community.[288] At the time, Ole Ntimama was a powerful government Minister in the ruling party KANU which was in a fierce competition for voters with the opposition FORD ASILI party. It was therefore not surprising that in October 1993 Maasais armed with bows, arrows and other weapons were able to freely attack with little interference from the police and provincial administration.[289]

336. Clashes broke out in Kuresoi following the referendum that split the country between supporters of the Kibaki government's NARC party and the breakaway opposition movement, the Orange Democratic Movement, ODM. These clashes involved the expulsion of Kikuyus and Kisii from Kuresoi.[290]

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[283] Report of the Judicial Commission of Appointed to Inquire into Tribal Clashes in Kenya, 31st July, 1999 at page 59

[284] It is notable that after the 1992 clashes in those areas where Kikuyus were afraid to return, Kissis bought land and in the post election violence in 2008, they were subject to the same kind of attacks that had characterized the 1992 clashes, KNCHR interview with a male councilor in Kuresoi on 16th March 2008.

[285] Report of the Judicial Commission of Appointed to Inquire into Tribal Clashes in Kenya, 31st July, 1999 at page 59

[286] Report of the Judicial Commission of Appointed to Inquire into Tribal Clashes in Kenya, 31st July, 1999 at page 151

[287] Report of the Judicial Commission of Appointed to Inquire into Tribal Clashes in Kenya, 31st July, 1999 at page 166-167

[288] Report of the Judicial Commission of Appointed to Inquire into Tribal Clashes in Kenya, 31st July, 1999 at page 167

[289] Report of the Judicial Commission of Appointed to Inquire into Tribal Clashes in Kenya, 31st July, 1999 at page 172-2

[290] KNCHR interview with a male victim in Kuresoi on 18th February 2008

337. A 2006 Internal Displacement Monitoring Center report noted that 431,153 people had been forcefully displaced from their homes.[291] This is consistent with information received by the KNCHR in its interviews. For example, on 9th November 2006, attackers from Ogilge burnt houses in Mwaragania not far from Kuresoi and killed a businessman in the area. Police did nothing to stop the attack.[292] A witness also told the KNCHR that the 2007 post election violence was related to the 2006 clashes during which leading politicians in the area including the former Member of Parliament said Kikuyus would be evicted from the area.[293]

338. Interviwees also told the KNCHR several times that in 2006, there were several meetings of leading Kalenjin leaders during the case for the eviction of non-Kalenjin communities from the Rift Valley was openly discussed and supported by leader after leader. In addition, ceremonies such as those commemorating the death of respected Kalenjin cultural and political leaders such as Tegantony Somoei were used as occasions for preaching Kalenjin nationalism and the ownership of the Rift Valley to the Kalenjin to the exclusion of other communities.[294]

339. On the basis of the interethnic nimosity in the Central Rift that had resulted in violent clashes between them in 1991/2, 1997 and 2006, it can be surmised that the violence following the 2007 elections was not as spontaneous as it initially appeared. In other words, the conditions that had sparked the previous incidents of violence remained intact and it was therefore predictable that with the stoking of the flames of ethnic hatred in the 2007 election campaigns similar violence would result only this time with a new vengeance.

340. Some of the flashpoints of violence in the Central Rift have been characterized by claims by the Maasai and Kalenjin of Kikuyu encroachment of their land; Kikuyu monopolization of businesses including retail and transport businesses in the Rift Valley as well as the choice by Kikuyus to belong to political parties that were not those of the people of the Rift Valley had chosen to belong to. Political meetings during election time in the Central Rift particularly those attended by Kalenjin politicians often became venues for preaching ethnic hatred against the Kikuyu particularly through the long held debate on Majimboism that leaders in the Rift Valley have adopted. Majimboism for these leaders was supported particularly in the run-up to the 2005 referendum on a new Constitution to refer to the policy of ethnic exclusivity of the Kalenjin and Maasai in the Rift Valley and the eviction of the Kikuyus, Kisii and other non-indigenous groups from the Rift Valley.

PATTERNS OF VIOLENCE

341. There are three striking features of the violence preceding and following the 2007 elections that distinguish it from previous incidents of violence. First, unlike in previous incidents of violence, a lot of the violence that took place in the Central Rift included urban areas such as Nakuru and Naivasha as well as towns in Molo and Kuresoi. In addition, there were widespread reports of looting and burning of business premises in the 2007/2008 violence.[295] However, the 1991/2 violence did not include such incidents of looting and burning of business premises.

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[291] Reuters News report of 30th January 2008

[292] KNCHR interview with a male victim in Molo on 20th March 2008

[293] KNCHR follow up group interview with a male victim in Kuresoi on 18th April 2008.
. Some witnesses also said Kikuyu theft of Kalenjin cattle was a cause of clashes in the area, see KNCHR interview with an informer in Kuresoi on 16th April 2008. In fact, cattle rustling in the area has been a flashpoint of violence in the area, see KNCHR follow up group interview with a male victim in Molo on 14th April 2008

[294] KNCHR follow up group interview with a male victim in Eldoret North on 15th April 2008

[295] Daily Nation Newspaper of 2nd January 2008 by J. N Nyataya

342. Previous incidents of violence had been largely confined to rural areas. Second, unlike in previous rounds of violence where the Maasai and Kalenjin joined in common cause against Kikuyus and other non-indigenous groups, in the violence preceding and following the 2007 elections, the Maasai did not join cause with the violent cause of the Kalenjin communities in the generalized violence that followed the 2007 elections. The most significant exception of this was that on the 30th and 31st of December, 2007 as well as on the 1st of January, 2008, the Maasai mobilized against the Kikuyu on the Narok/Bomet border in the same way that the Kalenjins had done so.[296]

343. The third distinguishing feature of the violence preceding and particularly that following the 2007 elections was the extent to which roads were blocked in such an organized manner.[297] This evidenced a rather high level of organization and the mass mobilization of large segments of the youth among those who were attacking and simultaneously preventing those attacked from having much in the way of an escape route. Previous incidents of violence were not accompanied by such organized blockages of the road transport network.

344. However, in both periods of violence, strong intra-tribal pressure on young men to defend their communities and to engage in the fighting against other communities was especially high. This pressure certainly contributed to the high occurrence of violence since young men often had little choice in deciding whether to participate or not participate in the violence. Even among the business community there was very strong pressure to conform to the ethnic agenda. In Naivasha for example, those business people who refused to support the cause of the Kikuyu violence against Luos and Kalenjins had their buildings slated for burning.[298] Further, in both contexts of violence, widespread information on oathing ceremonies particularly among the Kalenjins was used. In Molo the Kalenjin circumcision ritual was moved up to early November instead of late December so that the newly initiated youth could be available to participate in defending Kalenjin interests with violence if necessary.

345. In places like Olenguruone and Keringet there were reports reminiscent of those in earlier periods of violence that Kalenjin youth from outside those areas were brought in lorries before violence broke out and they were kept and fed in homes of well known Kalenjin personalities. This is consistent with the pattern of violence in 2006, 1997 and 1992 particularly because Molo unlike other areas of the Rift Valley is predominantly Kikuyu.

346. Lastly, the violence experienced in the Central Rift in the 2007/8 period was not localized. It was connected to the violence in other parts of the country and in particular the Rift Valley in the same period. It was connected with the violence in the rest of the Rift Valley because of the large number of Kalenjins in the entire Rift Valley and manner in which they all rose against the Kikuyu and Kisii communities in particular. As such the mass mobilization, blockades of roads, burning of houses and mass eviction of non-Kalenjins was similar in the Central, South and North Rifts.

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[296] KNCHR interview with a female victim in Narok on 16th February 2008; KNCHR interview with a male victim in Narok on 4th March 2008
; KNCHR interview with a male victim in Narok on 12th March 2008

[297] Representative incidents include: Daily Nation Newspaper article of 14th January 2008 by Agweni Gichara and G. Rono

[298] Report titled " Smoke Sunday" by a Red Cross official in Naivasha on 28th January 2008

347. Further, like in other parts of the country, the election was a significant triggering event. This is particularly evidenced by the fact that the mass evacuation of non-Kalenjin communities from the North Rift in particular and their arrival in the Central Rift in turn caused a significant backlash against Luos and Kalenjins. Even when there was no ongoing violence, rumours contributed to the heightening of the anxiety and the mass displacement of people from their homes anticipating attacks that were rumored to be ongoing or planned.[299] As such, one cannot see the violence in the Central Rift in isolation of the violence in the rest of the country.

348. In this region, post election violence was most intense in Molo particularly in Kuresoi where the Kalenjin communities ganged up against Kikuyus and Kissis and initiated large scale attacks against them immediately following the announcement of the Presidential election results on 30th December, 2007. Kikuyus organized counter attacks against the Kalenjins as a consequence. Following these attacks, the displacement of Kikuyus by the Kalenjin into neighboring Nakuru and Naivasha resulted in a new wave of violence. This time, the violence was meted out mainly by the Kikuyu against Luos and Kalenjins first in Nakuru and then in Naivasha from the middle to the end of January 2007. Like in Kuresoi, the attacks involved burning of houses and evictions of Luos and Kalenjins. However, the Mungiki inspired attacks in Nakuru and Naivasha also included killings and forced circumcisions of the Luo. In Narok, there were brief skirmishes between the Maasai and the Kikuyu on the Bomet/Narok border from 30th of December, 2007 but this violence fizzed out by the 2nd of January 2008 after elders from the two communities met and struck a peace deal.

349. Prior to the announcement of Presidential election results on 30th December 2007 there had been numerous incidences of violence in several areas particularly in Kuresoi constituency. By the Election Day, at least twenty (20) people had been killed and thousands displaced[300]. The investigation team established that a sizable number of voters from Kuresoi Constituency cast their votes at specially established polling centers in the neighboring Molo Constituency where they had fled to after being forced to leave their homes in Kuresoi constituency.[301]

350. From the statements given by the interviewees, violence in this region fell into four main categories. The first category was spontaneous uprisings of mobs protesting the delay in releasing the presidential results and sporadic reactions after the controversial declaration of President Kibaki as the winner on 30/12/07. These mobs attacked their opponents, looted, and burnt down buildings. However, these seeming spontaneous uprisings must be understood against the preexisting violence climate in the Central Rift that had already witnessed similar violence episodes in 1991/2, 1997 and 2006 as observed above. The second category was violence organized by ODM-supporting militia (mainly Kalenjins) aimed at perceived PNU supporters; mainly Kikuyus and Kisiis. This type of violence was witnessed in all the districts in the region but most dramatically in Molo District. The initial militia action attracted organized counter-violence from PNU supporters. The third category was organized revenge attacks by PNU allied supporters. Local militia in pro-PNU areas, particularly the Kikuyu, on receiving the fleeing internally displaced persons (IDPs), mobilized in sympathy and turned on perceived ODM supporters, killing them, forcefully circumcising them and burning their houses. This mainly happened in Molo, Nakuru and Naivasha districts.

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[299] KNCHR interview with a male victim in Limuru on 8th February 2008; KNCHR interview with a male victim in Molo on 15th March 2008

[300] KNCHR interview with a man and his wife from Molo south, Kuresoi division on 28th February 2008

[301] For example, see "EU condemns pre-election violence in Kenya", Reuters, December 21 2007

351. The fourth category was excessive use of force by the security agencies in their bid to contain the violence. This category of violence was experienced in the entire region. The statements from interviewees reveal that scores of people were shot dead and many others injured after being shot by police and prison warders[302]. Sections of the police have been accused of looting and taking sides in the conflict. In some ODM stronghold areas, the police shot to kill, while when confronted with pro-PNU militia, they opted to negotiate with the groups. Some police officers were accused of being sympathetic to ODM and taunted the PNU allied victims telling them that they were paying for voting for PNU[303].

Molo and Kuresoi

352. Molo has been the epicenter of intermittent violence since early 1990s. According to the interviews conducted by the KNCHR, violence in the region was planned long before the elections and pitted the Kalenjins against the Kikuyus and the Kisiis who are the dominant communities[304]. The communities live in neighboring farms which are either mixed or homogeneous.

353. Kuresoi was the worst hit area where violence had been recurring particularly after the 2005 referendum. Investigation statements suggest that there was a ploy to evict the Kikuyus and Kisiis who were perceived to be anti-ODM. Numerous interviewees[305] from Kuresoi recounted monthly attacks albeit on a lesser scale throughout 2006 and 2007. The violence began rising in November 2007 and reached its peak on 30/12/07 after the announcement of the presidential results and quickly spread to other constituencies.

354. By the time the violence subsided in March 2008, large sections of communities, mainly Kikuyus and Kisiis, had fled their farms. Their property was burnt, damaged or looted by the raiders. An unknown number of people had been killed and scores of others maimed. The violence was executed by organized Kalenjin militia and was targeted at Kikuyu and Kisii settlements[306].

355. In response, the Kikuyu and the Kisii staged counter attacks against their assailants. There are credible allegations that a significant number of raiders were from outside the region to buttress the local militias. It is alleged that they came from Bomet, Transmara, Kipkelion and Eldama Ravine. These areas were largely ODM zones and as such there were few 'enemies' to fight. As such, the youths in the areas went to bolster their colleagues in Molo and other similar regions, which had a high concentration of the 'anti-ODM' Kikuyus and Kisiis. Majority of the raiders donned conspicuous apparel that varied in colour and make. Some wore shorts and T-shirts while others wore shukas/lesos. The apparels were either blue, red or white. Their faces were either painted red or white. They were mainly armed with machetes, bows and arrows. Before deployment to scenes of attacks, the raiders were cleansed and oathed by spiritual

[302] KNCHR interview with amale resident of Naivasha on 12th March 2008 at Naivasha Municipal council (PEV/IVR/MAR/724), KNCHR interview with a female victim of Naivasha on 12th March 2008 at Naivasha Municipal Council (PEV/IVR/MAR/762)

[303] KNCHR interview with a male victim from Muiruti shoping centre in Eldoret on 12th April 2008 (PEV/IVR/APR/929)

[304] KNCHR interview with a male victim on 15th March2008 at Muriduko farm, Kuresoi (PEV/IVR/MAR/849)

[305] KNCHR interview in Kuresoi on 20/3/08 (PEV/IVR/APRIL/864a), KNCHR interview in Kuresoi on 20/3/08 (PEV/IVR/APRIL/882), KNCHR interview in Kuresoi on 20/3/08 (PEV/IVR/APRIL/862), KNCHR interview in Molo on 14/4/08 (PEV/IVR/APRIL/1064), KNCHR interview in Molo on 14/4/08 (PEV/IVR/APRIL/1113), KNCHR interview in Kuresoi on 14/4/08 (PEV/IVR/APRIL/1065), KNCHR interview in Molo on 15/4/08 (PEV/IVR/APRIL/1116)

[306] KNCHR interview with a priest on 18th March 2008 at Kamwaura Catholic Parish (PEV/IVR/APR/865)

leaders and elders whose names were revealed to the investigation team. They attacked in contingents of at least 50 raiders[307].

356. To signal an attack, the raiders howled war cries to alert each other and the community. The raiders employed multiple strategies and exhibited such tact, skill and audacity as to suggest that the attacks were properly organized and well coordinated. The raiders attacked in several platoons. The lead platoon which usually had fewer raiders would pretend to be attacking but in reality, this was meant to distract the attention of the unsuspecting victims. As the victims engaged them, they (raiders) would retreat as if they had been overpowered. The target communities would then be surrounded by the other groups who had positioned themselves strategically.

357. After subduing those under attack, the raiders would scour the houses for valuables before setting them ablaze. The raiders then looted any livestock left behind by the fleeing victims. The raiders carried with them the injured and dead colleagues. The investigating team heard that scores of raiders died during the violence while many sustained injuries. The casualties were taken to either Olenguruone, Tenwek, Bomet and Kericho hospitals. The KNCHR team interviewed several police officers in Molo who confirmed that several of the raiders who died during the attacks came from outside the district. This was verified through their identification documents[308].

358. The raiders were transported in vehicles provided by politicians and wealthy businesspersons from the region. The KNCHR investigation team obtained several registration numbers of the alleged vehicles. The vehicles were fueled using funds provided by leaders and businesspersons and through fundraising from ordinary Wananchi from the Kalenjin community. The vehicles were also used to ferry the injured to hospital and to transport food and other supplies to scenes of attacks. Women were mobilized to prepare and deliver food for the raiders at strategic points where the raiders would stop and eat on their way to and from the raids. The stolen livestock was either sold to raise funds or slaughtered for consumption by the raiders. The investigation team was told that the raiders were paid varying amounts of money for the burning and killings. It was not possible to establish the exact amounts paid but it varied from Kenya Shillings 200 to Kenya Shillings 5000. The investigation team heard that there were particular days for massive burning houses and farms, stealing of livestock and fighting[309].

359. The displaced people fled to IDP camps in major towns like Molo, Kisii, Elburgon, Nakuru, Naivasha, Nyeri, Limuru and Muranga while others sought refuge from their relatives and friends in these towns or in Central province and Kisii. In this region, displaced Kikuyus camped at the Show Ground in Nakuru and in the Municipal Stadium in Naivasha. The Luos camped at the Afraha Stadium in Nakuru and in Kedong in Naivasha.

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[307] KNCHR interview with a female victim from Kuresoi on 15th February 2008 in Kisii (PEV/IVR/FEB/180)
[308] KNCHR interview with a male victim from Molo on 8th February 2008 at Limuru, Word of Faith Church (PEV/IVR/FEB/090) see also KNCHR interview with an informer in Kuresoi on 10th April 2008 (PEV/IVR/APR/1058)
[309] KNCHR interview with an informer in Olenguruone on 8th April 2008 (PEV/IVR/APRIL/1106b)

Nakuru

360. Nakuru town has been ethnically heterogeneous. Its ethnic composition includes Luos, Kikuyus and Kalenjins especially in the Kaptembwa, Mwariki and Mbaruti areas. This ethnic composition has in many ways defined electoral politics in the area. For example, in the 2007 Parliamentary Election, Mike Brawan, of ODM was pitted against PNU's Lee Kinyanjui,.[310] The fact that Nakuru is also strongly associated with the presence of Mungiki adherents further accentuated ethnic fears there. In addition, Nakuru's proximity to Ol Kalou and Subukia which are Mungiki strongholds and sources of Mungiki raiders in Nakuru's post 2007 election violence.

361. Mungiki has a foothold in Nakuru in terms of the number of activities and strength of membership.[311] It is also notable that a former Nakuru Member of Parliament, David Manyara was charged with murder together with 12 suspected Mungiki members. However, a court found there was insufficient evidence to convict him.[312] Several Central Province politicians are alleged to have met or supported Mungiki prior to the 2007 elections and during the post election violence.[313]

362. Recently some senior politicians from Central Province called for the release of Maina Njenga.[314] In sum, the presence of Mungiki in Nakuru and the close ethnic contestation in the area in parliamentary and presidential elections contributed to the climate of insecurity.

363. In Nakuru town, tension started rising on 28 December 2007, when Orange Democratic Movement, (ODM), supporters stormed the Nakuru Town Council, which was the tallying station for Nakuru town. They demanded the release of the presidential results. On 29 December 2007, violence erupted in the residential estates whereby Luo ODM supporters in Pondamali took to the streets demanding for the release of presidential results. They were met by the ODM parliamentary candidate who urged them to continue with the protests. The youths started stoning vehicles and businesses belonging to Kikuyus[315].

364. The Kikuyus in response ganged up and engaged the youths. The police arrived and separated the warring groups and created a buffer zone between Pondamali (Luo stronghold) and Langalanga (Kikuyu stronghold). On 30 December 2007, chaos erupted again in town and in Langalanga estate paralyzing public transport. Seven people (four Luos and three Kikuyus) were killed while scores of others were injured in revenge attacks. Club Lules, a major restaurant that reportedly belongs to a Luo was set ablaze by Kikuyus. Summerland Club, another famous restaurant situated next to Lules, also caught fire. Houses and businesses belonging to Kikuyus were burnt in Kaptembwa by Kalenjins. The provincial commissioner declared a temporary curfew in the town effective 7.00pm – 6.00am[316].

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[310] The 2006 by election after the death of Mirugi Kariuki produced a similar fracture.

[311] "Mungiki Builds Up in the Rift Valley," East African Standard, June 27,2004. Also see, Sunday Nation Correspondent, "Kenya Back to the Shrine: How Peasant Son and His Sons Created a Violent Cult," Sunday Nation, June 10, 2007

[312] "Joy as Fomer MP is Freed After 23 Months of Agony," The East African Standard, December 15,2004.

[313] The East African Standard, "Mungiki Members Speak Out," The East African Standard, April 18, 2008 available at http://www.eastandard.net/news/?id=1143985037

[314] Rose Wanjiku, "Lets Talk to Mungiki, but About What?" May 14th 2008, East African Standard online available at http://www.eastandard.net/politicalbarometer/?id=1143986522

[315] The people daily newpaper article dated 30th December 2007 by people team (PEV/NWP/APR/211)

[316] KNCHR telephone conversation with its monitors and staff in the field Nakuru on 1st January 2008 (PEV/ORG/JAN/001)

365. An uneasy calm returned on 2/1/08 but a fresh orgy of violence erupted on 25 January 2008. Members of the Kikuyu Community were enraged by the brutal stories of Kikuyu and Kisii IDPs who were trickling in the town in multitudes after fleeing from the escalating violence in the countryside. The KNCHR investigating team heard that local leaders and influential businesspeople in the town began holding meetings and raising funds for revenge attacks against the Luos, Luhyas and Kalenjins. Kikuyu militias were assembled and deployed to the estates to flush out the enemy communities. Contingents of Kikuyu youths armed with new pangas, knives, petrol bombs and other crude weapons viciously attacked their enemies leading to numerous deaths and fatal injuries. Luo men were rounded up and forcefully circumcised using pangas and broken bottles.

366. Those who resisted were hacked to death often culminating with dismembering of their heads. The investigating team was told that the Kikuyu militia comprised members of the outlawed Mungiki sect and angry youths who had fled to the town from the violence in the countryside. The Kalenjins living around Nakuru immediately retaliated and attacked Kikuyu strongholds of Kaptembwa, Mwariki and Githima where they burnt houses and premises and killed several people. The KNCHR team heard that the Kalenjins raiders had been mobilized and paid to fight the Kikuyus. The police were overwhelmed by the sheer numbers of the marauding gangs and the army was called in to assist. By the time the violence came to a halt, over one hundred people had died, and thousands displaced from their homes. According to the Human Rights Watch the Rift Valley Provincial Hospital morgue reported 56 deaths, while the municipal morgue recorded 105 separate deaths since the beginning of the revenge attacks on January 25 2008, an official total of 161 for Nakuru district alone[317].

Naivasha

367. Naivasha was one of the major areas where Kikuyus who fled the violence-stricken regions sought refuge. Like in Nakuru, the local Kikuyus (who are the majority in the town) were incensed by the harrowing accounts narrated by the incoming Kikuyu IDPS. The KNCHR teams were informed that subsequently Kikuyu business persons and politicians in the town began holding meetings to raise money towards revenge attacks against the Luos, Kalenjins, Luhyas and any community believed to have been behind the onslaught on their ethnic colleagues.

368. Some informants told investigators that the local organizers received support from Kikuyu businesspersons and politicians who did not reside in Naivasha town. Several interviewees said that leaflets warning the Luos, kalenjins and their allies were distributed in the estates prior to the violence[318]. The said communities were required to vacate the area or face dire consequences but they did not take them seriously. The leaders mobilized local jobless youths who were reportedly bolstered by Mungiki followers from the neighboring Central Province and Nairobi. According to the information gathered, there were two planning meetings reportedly held on 23rd and 26th January 2008, in a hotel in Naivasha town attended by numerous youths and influential local wealthy people and leaders. The youths were reportedly paid between Kenya Shillings 100-200 for participating in the attacks. A further and better payment was reportedly made for every Luo killed.

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[317] Daily Nation Newspaper article of 18th march 2008 by Sam Kiplagat (PEV/NWP/APR/212)

[318] KNCHR interview in Naivasha on 13/2/08 (PEV/IVR/FEB/402), KNCHR interview in Naivasha on 12/3/08 (PEV/IVR/MAR/742), KNCHR interview in Naivasha on 12/3/08 (PEV/IVR/MAR/762), KNCHR interview in Naivasha on 8/3/08 (PEV/IVR/MAR/643), KNCHR interview in Naivasha on 12/2/08 (PEV/IVR/FEB/401)

369. The immediate former area MP, Jayne Kihara reportedly bought pangas from a local supermarket called B-Kubwa which were used by the attackers.[319] On the night of 26 January 2008, lorries were spotted in town and in the estates ferrying youths believed to be Mungiki members. They were taken to Karagita and Mirera where majority of the Luos employed in the flower industry reside.

370. Violence broke out on 27 January 2008 morning when bands of youths took strategic positions and barricaded all roads paralyzing transport within Naivasha town and along the Nairobi Nakuru highway. Every Kikuyu youth was required to join in the violence at the pain of being labeled an enemy. The youths then began a wave of terror targeted mainly at members of the Luo community. They destroyed and/or burnt business premises belonging to ODM-supporters in town. Elementaita Chemist which belongs to a Mr. Komen (a Kalenjin) was vandalized and completely destroyed[320]. They went to Kabati estate where they hunted down Luos and forcefully circumcised them before brutally hacking them to death. They then conducted a door-to-door search of the Luos in a manner suggesting that they knew where they lived. In one ghastly incident, the youths set on fire a house where nineteen people were hiding. They all burnt to death.

371. The KNCHR spoke to Mr Bernard Orinda Ndege who lost eleven members of his family. He said: 'On 27th January 2008 (Sunday), I woke up at 7:30 am to watch Pastor Pius Muiru programme. My son aged 20 years told me that Mungiki had been planning to attack. I saw groups of Mungiki about 500 meters away. The police came and we told them that there were Mungiki in the area. The police did not do anything but told us to disperse. When we went back to the house the Mungiki attacked us immediately. The Mungiki who attacked us were aided by the police as they went away and the Mungiki attacked hardly 3 minutes after the police left. We obeyed police orders to disperse. My wife, my children and my neighbours all in total 19 people perished in my house when the Mungiki sprinkled petrol which consumed (burnt) my 2 wives and 9 children. My elder wife was pregnant and due to deliver in 6 days time at the time of her death'[321].

372. When they were done with Kabati they moved to other estates particularly where Luo workers are concentrated. This orgy was repeated in Kihoto, Municipal Council, and Site estates with very little resistance. They burnt houses and business premises, circumcised and killed the Luos[322]. The police were clearly overwhelmed. During the attacks KNCHR staff were contacted by some residents of Naivasha and they in turn contacted the Naivasha OCPD who said they were in control of the situation which in reality was not the case. The violence continued unabated until the army was called in the next day. By the time the violence was stopped, at least forty (40) people had been killed, scores injured and thousands displaced[323].

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[319] KNCHR interview in Kisumu on 12/3/08 (PEV/IVR/MAR/760)

[320] Report titled "The smoke Sunday" by a Red Cross official in Naivasha on 28th January 2008 (PEV/ORG/APR/055)

[321] KNCHR interview in Kisumu on 12/3/08 (PEV/IVR/MAR/760)

[322] Report titled "The smoke Sunday" by a Red Cross official in Naivasha on 28th January 2008 (PEV/ORG/APR/055)

[323] Kenya Times article dated 28th January 2008 by Victor Obure (PEV/NWP/MAR/119)

Narok

373. The violence in Narok region is said to have erupted on 30th December 2007 immediately after the announcement of the presidential results. The Kalenjin and Masaai communities ganged up against the Kikuyu and Kisiis who they accused of having stolen the victory from Raila Odinga, burning houses and other property.. The violence was reportedly instigated by local politicians and business persons. However, unlike other areas, the violence fizzled out soon reportedly after Maasai elders prevailed upon the youths to stop the violence[324]. The violence nevertheless claimed lives and led to considerable displacement of Kikuyus and Kisiis[325].

PLANNING AND ORGANIZATION

374. The tactful and audacious manner in which the violence was executed suggests that it was well designed, coordinated and financed. Witnesses narrated to the investigation team how politicians, local leaders, and community elders planned, and galvanized the Kalenjin Community towards large-scale violence targeted at anti-ODM communities[326]. The 2007 General Elections were seized as an opportunity to pursue the land grievances, which has bedeviled the region for many years. The Kalenjins accused the Kikuyus of voting against the wishes of the locals and hence justifying their eviction from the region and and a call for them to return to their ancestral land in Central province. The investigating team heard that several meetings were convened in Kuresoi to plan the violence and galvanize the Kalenjins into war[327].

375. On or around mid May 2007, several prominent Kalenjin leaders including William Ruto, ODM pentagon member reportedly held a 'prayer' meeting at Chepkabulot in Ndoinet forest settlement scheme, Kuresoi constituency. Other leaders present included Moses Cheboi, Franklin Bett, Ezekiel Kesendany, Councillor Joshua Cheruiyot of Salgaa and Lina Jebii Kilimo. The meeting was exclusively attended by members of the Kalenjin community. Journalists were also present. The meeting was attended by about 5000 people. Moses Cheboi reportedly told the Kalenjins to re-elect him so that he can work with them to evict the Kikuyus from their land. Franklin Bett told the gathering that they shall fight the Kikuyus until they leave Molo region. Ezekiel Kesendany an aspirant for Kuresoi Constituency said that that the Kalenjins should fight and evict the Kikuyus from Nyota farm. There were more than thirteen (13) pastors in the meeting including civic leaders. The proceedings were captured by the journalists on audio and video.[328]

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[324] KNCHR interview with a female victim on 17th February at Kongasis (PEV/IVR/APR/874)
[325] KNCHR interview with a male victim from Narok on 12th March 2008 (PEV/IVR/APR/890)
[326] KNCHR interview with a male victim in Kuresoi on 28th february 2008 (PEV/IVR/FEB/252)
[327] KNCHR interview with an informer from Molo on 17th April 2008 (PEV/IVR/APR/1052)
[328] KNCHR interview in Molo town on 17/4/08 (PEV/IVR/APRIL/1114a); and KNCHR interview with an informer in Kuresoi on 10th April 2008 (PEV/IVR/APR/1058) .

376. There was another meeting held at Chepkinoiyo near Sitoito after nominations which was financed by Moses Cheboi. Among those in attendance were a former MP James Koskey and Mr Joseph Kebenei both of whom were parliamentary aspirants for the Kuresoi seat. Moses Cheboi facilitated food and transport. During the meeting, it was resolved that Kikuyus should be evicted so that they don't vote for the Kikuyu aspirant[329]. Other interviewees also made reference to Cheboi's incitement to violence against Kikuyu's and Kisii's and also alluding to his role in provision of transport to attackers. [330]

377. Another meeting was held in Keringet on 22 December 2007, which declared total war on the Kikuyus and the Kisii.[331] All the Kalenjin leaders in the constituency were invited. The meeting was held at the residence a Mr. Arap Sang (nicknamed LW). He is a prominent businessman who deals in timber. He has a big compound which is conducive for large meetings. This meeting was attended by about sixty (60) leaders whose names are available.

378. Among those who attended include:

- Kenya (nickname) - James Koskey's agent.
- Bernard Langat- James Koskey's agent.
- Julius Sigei (former councilor, Nyota ward)-Cheboi's campaigner. He was a key perpetrator of violence. He lives in Muchorwe farm.
- Wesley 'Chagau'(currently a nominated councilor)- he was Zakayo Cheruiyot's key campaigner. He owns a butchery in Keringet and was involved in the theft of 99 cows at Egerton University.
- 'Torch' (nickname) - he is a former councilor for Kiptagich ward. He was a key perpetrator of violence.
- Joel Kimetto- he is a mason and was an agent of Zakayo Cheruiyot.
- Pastors: Saul Kirui (faith church), Abraham Langat (PAG church) and Stephen Kilela (Deliverance church). There were many other pastors.

379. The meeting took place from 11.00 am – 1.00 pm. It was resolved that there must be war to save the Kuresoi parliamentary seat from going to the Kikuyus. Secondly that the Kalenjins must obtain and defend their land from the Kikuyus and Kisii. The chairman of the meeting was Joseph Koromecha Mamoen, an 80-year old respected elder. He is a unifying symbol of the kalenjins in Kuresoi. He is the one who presides over traditional ceremonies and cleansing/blessing the youths for the war. He is like the overall commander. He gets instructions from the political and community leaders. He lives in Saptet on the way to Olenguruone. He is the only one who can stop violence once it is declared.

380. The meeting was sponsored by politicians who included Joseph Kebenei, Ezekiel Kesendany and Moses Cheboi who was the main financier. Wesley 'Chagau' was the person disbursing funds for transport and food. One interviewee confirmed receiving reimbursement for transportation from him[332].

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[329] KNCHR interview in Molo town on 17/4/08 (PEV/IVR/APRIL/1114a)

[330] KNCHR interview with an administration official from Lulukwet sub-location in Molo on 16th March 2008 (PEV/IVR/MAR/847), KNCHR interview with a male coucilor in Kuresoi on 16th March 2008 (PEV/IVR/MAR/845); KNCHR interview with a male resident of Kuresoi on 18th February 2008 (PEV/IVR/APR/869),KNCHR with a male resident of Kuresoi on 20th March 2008 (PEV/IVR/APR/864), KNCHR interview on 11th April 2008 at Kamwaura (PEV/IVR/APR/1101) and KNCHR interview with an informer in Molo on 17th April 2008 (PEV/IVR/1052).

[331] KNCHR interview in Molo town on 17/4/08 (PEV/IVR/APRIL/1114a)

[332] KNCHR interview in Molo Town on 17/4/08 (PEV/IVR/APRIL/1114a)

381. The planners of this meeting did not want Zakayo and the Kikuyu aspirant to win the seat. The Kikuyus voted overwhelmingly for Zakayo during the nominations and during the election campaigns, he preached peace[333] and promised to bring peace between the Kikuyu and Kalenjin.[334] This was a factor, in the overwhelming support that he received from non-Kalenjin communities. By contrast, Moses Cheboi who ran for the same seat often threatened the eviction of non-Kalenjin communities from the Rift Valley after the election.[335] As such Kalenjins supported Cheboi rather than Cheruiyot. The 22nd December, 2007 meeting discussed broad war strategies. The politicians who attended the meeting said that attacks would be launched simultaneously so that it would be difficult for the police to take control. Richard Soi, a former police officer, made this proposal. He lives in Sachangwan, past Keringet.

382. When the national presidential results were announced on 30/12/07, the Kalenjins stopped fighting amongst themselves and decided to unite against the Kikuyus and Kisiis who they accused of rigging the presidential elections. War cries were made all over the area to signal the youths who came out in large numbers armed and clad in traditional apparel. They met in different designated spots and in homes of influential people where they were cleansed and oathed by elders. Some contingents reportedly used to meet at Wilson Leitich's residence in Muchorwe farm. Leitich is a former powerful KANU Chairman for Nakuru. He commands a lot of influence. He used to feed them before they raided Chadera, Denderu and Ngenia farms. This is reportedly the group that killed a local prominent kikuyu businessman Mr. G.G. Ngengi at Ngenia farm. After two days, they attacked Ngenia farm again and killed eight more Kikuyus bringing the total killed to twenty one (21). They also stole many cows. Most of the dead were buried in a mass funeral at Molo Public cemetery[336].

383. In Olenguruone, the attackers gathered on a daily basis at the town center behind Buffalo hotel. This is despite the fact that Olenguruone police station and Olengurone Divisional headquarters are situated just a few meters away. One witness said that the raiders would then go to the residence of former MP, Moses Cheboi's where they received instructions of how to shoot and organize themselves on how to execute the attacks[337].

384. In Kamwaura area, the raiders were meeting at several settlement schemes, which are exclusively inhabited by kalenjins. The settlements schemes were allocated to members of the Kalenjin community following excision of the Mau forest by the both Moi and Kibaki regimes. The schemes include Kiptagich, Kabongoi, Ndoinet, Saino, Sotik, Karao, and Taita. The people settled in these schemes were mainly from Transmara, Baringo and Bomet. The schemes have been notorious dens for the attackers since 1992. Before violence erupted, the former MP, Mr Moses Cheboi is reported to have routinely held meetings in the settlement schemes ostensibly to plan the violence[338].

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[333] KNCHR interview with a pastor (witness) in Molo on 29th February 2008(PEV,IVR,FEB,237)

[334] KNCHR interview with an informer in Molo on 17th April 2008 (PEV/IVR/1052).

[335] KNCHR interview with a male coucilor in Kuresoi on 16th March 2008 (PEV/IVR/MAR/845)and KNCHR interview with a male resident of Kuresoi on 18th February 2008 (PEV/IVR/APR/869)

[336] KNCHR interview with an informer from Molo on 17th April 2008 (PEV/IVR/APR/1052), see also KNCHR interview with a female victim taken at Kiambu deliverance church IDP camp on 14th February 2008 (PEV/IVR/FEB/200)

[337] KNCHR interview in Njoro on 16/3/08 (PEV/IVR/APRIL/861)

[338] KNCHR interview in Kamwaura on 11/4/08 (PEV/IVR/APRIL/1101, KNCHR interview in Kamwaura on 12/4/08 (PEV/IVR/APRIL/1102a)

385. Attackers also routinely met at the residences of influential local leaders[339] that include: :

- David Chumba alias Siagi - Prominent businessman (Giticha and Kariba farms),
- Josiah Langat – Prominent businessman, Kabongoi settlement scheme.
- Joel Langat – former OCPD, Nakuru, Angurwe farm.
- Stephen Ngetich a.k.a Alexander - Assistant. Chief, Tulwet Location, Sundu-River farm

These group launched attacks in Langwenda, Karirikania, Mung'etho and Kwa Mateme.

386. In Kuresoi division, the raiders used to meet in Kongoi farm and the adjacent Kio, Ogilge, Haraka, Set Kobor and Kipkewa farms. The raiders used to gather at residences of known influential and wealthy people[340]. Some of the people who hosted the raiders are Mr. Mathayo Sang (Kongoi farm), Former councilor Francis Kenduiywo (Kongoi farm), former councilor John Maritim (Ogilge farm), parliamentary aspirant Wesley Ruto (Ogilge farm), Mr. Paul Kenduiywo (Kio farm), Kuresoi ward civic aspirant Geoffrey Koskey (Kio farm), Mr Elijah (Kongoi farm), Mr Mathias (Haraka farm), Mr Tuitoek alias Tito (Haraka farm), Hilary (Set Kobor farm), Benjamin Chirchir (Set Kobor farm), Joseph Mutai (Sundu river farm), Mr Richard Kirui , a teacher at Sundu river primary school (Sundu River farm), Soi Saina (Set Kobor farm), Joel Toweet (Set Kobor). These groups attacked Murinduko, Tegea, Central, Mwaragania, Githima, and Kuresoi among other farms. These particular groups comprised of very many raiders.

387. In Kamara Division, the raiders used to meet at a place called Kapsinendet. This group operated with the support of Kalenjin youths from Eldama Ravine constituency. The leader of this group is nicknamed DC. He is a prominent farmer at Kapsinendet. He vied for the Kamara Civic ward on ODM ticket but lost during the nominations. He was among the group that burnt Total Trading Center[341]. In Mau Summit area, the attackers converged at the home of Mr Wilfred Bii at Sinendet farm. He is a retired primary school teacher and is a board member at Mau Summit Secondary School. He used to teach at Mau Summit and Pele primary schools[342]. The raiders also frequently gathered at Leopard Park Hotel within Total Trading Center where they used to receive their pay. They were paid by a Mr Ben, who is also the manager of the hotel. In Molo/Sirikwa area, the raiders converged at residences of some prominent people/elders who include Ng'eno, Masharubu (nickname), Koskey, honorable Kipkalya Kones (Bomet MP), Stephen Soi (former Ass. Commissioner of Police), Peter Belsoi and Thomas Belsoi[343]. These contingents launched attacks in settlements around Mau Summit, Nyakinyua, Sirkwa, Haraka, Jogoo and Molo.

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[339] KNCHR interview in Kamwaura on 11/4/08 (PEV/IVR/APRIL/1101, KNCHR interview in Kamwaura on 12/4/08 (PEV/IVR/APRIL/1102a)

[340] KNCHR interview in Kuresoi on 20/3/08 (PEV/IVR/APRIL/864a), KNCHR interview in Kuresoi on 20/3/08 (PEV/IVR/APRIL/882), KNCHR interview in Kuresoi on 20/3/08 (PEV/IVR/APRIL/862), KNCHR interview in Molo on 14/4/08 (PEV/IVR/APRIL/1064), KNCHR interview in Molo on 14/4/08 (PEV/IVR/APRIL/1113), KNCHR interview in Kuresoi on 14/4/08 (PEV/IVR/APRIL/1065), KNCHR interview in Molo on 15/4/08 (PEV/IVR/APRIL/1116)

[341] KNCHR interview in Molo Town on 17/4/08 (PEV/IVR/APRIL/1114a)

[342] KNCHR interview in Molo Town on 17/3/08 (PEV/IVR/APRIL/866)

[343] KNCHR interview in Molo Town on 16/3/08 (PEV/IVR/APRIL/883), PEV/IVR/MAR/316

388. The raiders were transported to various scenes of attack in vehicles donated by politicians and businesspeople whose names were availed by the interviewees. The following is an excerpt from an interview with a witness:

box

'I remember witnessing an incidence in January when raiders were ferried in three Lorries from Keringet and Olenguruone to go and attack Mariashoni in Elburgon, Mauche, Ngenia and Muchorwe. One lorry a cream, Mitsubishi Fuso belongs to Moses Cheboi. Another one a white, Mitsubishi Fuso belongs to Bidii arap Too (former councilor) and the other one a cream, Mitsubishi Fuso belongs to Joshua Sang. Joshua Sang is a driver to an Asian called Spinni who is a milk dealer. But he owns a lorry. He is a very influencial person and lives in Olenguruone.

Wesley 'Chagau' (nominated councilor, Keringet has a light blue Datsun 1200 which was used to ferry food to various scenes of attacks. He owns a big butchery in Keringet and used to supply cooked meat to the raiders.

Another person is Dyma who owns a wholesale shop and a Petrol station in Olenguruone. He is a son to Bidii Arap Too and is related to Moses Cheboi. Dyma is married to Cheboi's sister. He sponsored the violence through supply of food, fuel and money. He also has a green pick-up truck, Toyota which he used to take fuel and food supplies to the forest. I personally witnessed this throughout the duration of the violence.'[344]

389. This information was echoed in an interviewee with a senior government official in Olenguruone who said that:

'Youths came from areas such as Bomet and Transmara and assembled in Olenguruone. They used to come in large numbers and converge at Olenguruone trading center. The youths were then transported using trucks to scenes of attacks..

390. Some Lorries reportedly belongs to Mr Moses Cheboi, the immediate former area MP. This happened almost on a daily basis beginning 30/12/07 and lasted about two weeks. The Lorries were fuelled daily at Dyma Petrol Station. The owner also owns a wholesale shop (called Dyma) and a lorry, which was used to ferry the raiders. Another lorry belongs to Bidii Arap Too a former councilor. Has was a civic aspirant during the 2007 elections but lost'[345]

391. Several other interviewees corroborated this information[346]. The raiders painted their faces either red or white and wore traditional attire of different colours for ease of identification. Adorning themselves in this manner after taking the oath meant that the raiders were prepared to fight and kill. The attacks were executed simultaneously across the vast district and were executed by hundreds of raiders who were well regimented. Accounts by local security agencies indicate that due to the nature of the attacks, it was extremely difficult for them to respond effectively.

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[344] KNCHR interview in Molo Town on 17/4/08 (PEV/IVR/APRIL/1114a)
[345] KNCHR interview in Olenguruone on 14/4/08 PEV/IVR/APRIL/1115
[346] KNCHR interview in Njoro on 16/3/08 (PEV/IVR/APRIL/861), KNCHR interview in Nakuru on 13/4/08 (PEV/IVR/APRIL/1100)

392. In early January 2008, a Kalenjin spiritual leader Mochogorop Oyonge (meaning a grandson of Oyonge) was brought from Transmara by leaders and elders to administer oaths to the youths in readiness for the attacks. One of the elders who brought him is called Joseph Koromicha The ceremony reportedly took place at a place called Taita in Kamwaura. An interviewee said he informed the police of the ceremony. The police reportedly went to the area and dispersed the gathering[347].

393. The investigation team was told of a certain councilor James Tuwei of Cheptuech ward in Olenguruone who was a key mobilizer[348] of the violence. He was said to be always very inflammatory during the campaigns. In one major meeting after the party nominations, he reportedly said that the Kalenjins must fight and liberate the rest of the region like they did in Chepakundi in 1992. Notably, Chepakundi farm was formerly inhabited by Kikuyus and Kisiis but they were all evicted during the 1992 clashes. The land has since been taken over by the Kalenjins. Mr Pius Koech, a former chief and teacher used to conduct briefings for raiders in Olenguruone town before they were dispatched to various scenes of attack. He was seen severally boarding vehicles while armed together with the youths[349].

394. Mr Simeon Rabwet, the headmaster of Amaro Secondary School was a key organizer of violence. His main role was mobilizing the raiders and coordinating transport to various scenes of attack. Several politicians had given their trucks for use in the attacks. He used to coordinate the fueling of vehicles which was done at a Petrol Station at Olenguruone Trading Center near the main bus stop opposite DEB primary school. This happened daily between 4th and 20th January 2008. Many students from Amaro Secondary School participated in the attacks. He used to pay the raiders between Kshs 200 and Kshs 500. He was present during the training sessions for the raiders and used to accompany the raiders in a white saloon car. He also used to take the injured raiders to Tenwek Hospital in Kericho through the Olenguruone-Silibwet route (which passes through the forest to avoid being noticed)[350].

395. According to the accounts by interviewees, the violence that occurred in Nakuru town around the polling, tallying and announcement of voting results was largely spontaneous pitting mainly the supporters of ODM and PNU. However, some interviewees alleged, albeit without substantiation, that an ODM parliamentary aspirant, Mr Mike Brawan mobilized and issued instructions to ODM supporters to attack their rivals.

396. The information gathered in respect of the violence that erupted in Nakuru on 25 January 2008 suggests that it was well organized and funded. The investigation team was told that local Kikuyu politicians and business persons held meetings in hotels and raised funds to bankroll Kikuyu militias to avenge the onslaught against fellow Kikuyus who were by then camping in thousands within the town. The local organizers reportedly received massive financial support from Kikuyu business persons in Nairobi, Eastern and Central province. They used the funds to procure weapons which included pangas and guns. One businessperson told the investigation team that he sent his workers to Isiolo to buy AK 47 rifles and ammunition.

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[347] KNCHR interview with an informer from Molo, Kuresoi on 17th April 2008 (PEV/IVR/APR/1052)

[348] KNCHR interview in Molo Town on 17/4/08 (PEV/IVR/APRIL/1114a), KNCHR interview in Njoro on 16/3/08 (PEV/IVR/APRIL/861), KNCHR interview in Nakuru on 13/4/08 (PEV/IVR/APRIL/1100)

[349] KNCHR interview in Molo Town on 17/4/08 (PEV/IVR/APRIL/1114a), KNCHR interview in Njoro on 16/3/08 (PEV/IVR/APRIL/861), KNCHR interview in Nakuru on 13/4/08 (PEV/IVR/APRIL/1100)

[350] KNCHR interview in Njoro on 16/3/08 (PEV/IVR/APRIL/861), KNCHR interview in Nakuru on 13/4/08 (PEV/IVR/APRIL/1100)

397. A state agent said that their investigations revealed that the businesspersons organized for the purchase of 60 firearms from Pokot area and the funding of members for the outlawed *Mungiki* sect from Central Province. [CANNOT GET THE SOURCE FROM THE DATABASE]

398. Several Luo interviewees reported that they were warned by their Kikuyu friends of an imminent major assault particularly against the Luo. There were several accounts of an influx of bands of Mungiki militia on the eve of the attacks. The militia reportedly came from Subukia, Nyahururu and Engashura. When the militia struck, they brandished new pangas, which were uniformly sharpened. They attacked in a well-organized and regimented manner and communicated in oblique Kikuyu. They mutilated their victims in an analogous manner that included forced circumcision and dismembering of heads. Other reports indicate that in some instances the militia shot their victims using guns and then mutilated their bodies to conceal the gunshot wounds. This was reported in Kaptembwa, Sewage, Ponda Mali, Barut and Kapkures. The youths were reportedly paid according to their performance an amount that ranged from Kenya Shillings 200 upwards.

399. Reports also indicate that the Kalenjins were equally organized as they came in large numbers from afar and were all armed with guns, bows and arrows. Evidence from one State agent confirms that while holding an operation in Kapkures on 25 January 2008, the said officers found a gang of about 400 Kalenjin youths, all armed with bows and arrows and bare-chested with painted faces. The said officers engaged the youths in dialogue and the youths confessed that they were organizing themselves to fight back the Mungiki raiders who had threatened to attack.

400. The planning and execution of violence in Naivasha was similar to Nakuru. The investigation team heard that local kikuyu businesspersons and politicians mobilized funds and recruited local youths to avenge the brutality of meted against fellow Kikuyus in the countryside.

401. As mentioned elsewhere in this report, KNCHR heard that leaflets had been circulated prior to the violence warning Luos, Kalenjins and allied communities to vacate the area or face dire consequences.. A number of interviewees[351] named the immediate former Naivasha MP, Jayne Kihara as being one the key masterminds of violence in the area. Kihara is said to have been angered by the Luo and the Kalenjins who she accused of having failed to vote for her during the elections as a result of which she lost to John Mututho of KANU. One interviewee told KNCHR that Jayne Kihara went to Keroche industries after she lost the elections and gave money (Kshs 3000) to be distributed amongst Kikuyu youths so that they could attack members of the Luo community[352].

[351] KNCHR interview in Naivasha on 15/2/08 (PEV/IVR/FEB/334), KNCHR interview in Naivasha on 14/2/08 (PEV/IVR/FEB/375), KNCHR interview in Naivasha on 15/2/08 (PEV/IVR/FEB/325), KNCHR interview in Naivasha on 15/2/08 (PEV/IVR/FEB/337), KNCHR interview in Naivasha on 12/2/08 (PEV/IVR/FEB/401), KNCHR interview in Naivasha on 12/2/08 (PEV/IVR/FEB/368), KNCHR interview in Naivasha on 2/3/08 (PEV/IVR/FEB/645), KNCHR interview in Naivasha on 1/3/08 (PEV/IVR/FEB/253), KNCHR interview in Naivasha on 12/3/08 (PEV/IVR/MAR/739), KNCHR interview in Naivasha on 12/3/08 (PEV/IVR/MAR/742)

[352] KNCHR interview in Naivasha on 15/2/08 (PEV/IVR/FEB/334)

402. Several planning meetings were reportedly held in hotels and residences of influential people in the town. The KNCHR heard of two key planning meetings reportedly held on 23rd and 26th January 2008 in a local hotel attended by numerous youths and influential local wealthy people and leaders[353] An employee of one of the flower farms in Naivasha gave the following account of one of the meetings.

403. Several other meetings were held at the La Belle Inn, which is owned by a Mr Mark Kariuki. These meetings were reportedly attended by Jane Kihara and prominent local businesspersons among them Pharis Ndung'u Chege (former Naivasha mayor), Kigoshi and Timothy Kamau. On the day the attacks began, 27 January 2008, Timothy went round Naivasha town and the estates asking Kikuyus to come out and join the war. Prominent Matatu proprietors also played a key role in organizing and mobilizing for the violence. They were led by Messrs. Munderu, Wajulia, Pharis Ndungu Chege and Lucky Boy. The Matatu proprietors also organized for the transportation of Kikuyu youths from the neighboring central province.[354]

404. One interviewee who witnessed the violence on 27th January 2008:

"Three of the gang leaders who were smartly dressed and commanding a lot of authority and respect excused themselves from the gangs operations. Before they could leave, they called me aside and enquired how they could get means of transport to Silver Hotel or Kenvash Hotel all within Naivasha town. I told them it was very difficult to get some means of transport given that no businesses were operating in town. They enquired further the distance from where we were to Silver Hotel and Kenvash Hotel just in case they went there on foot. As I was explaining the distance, one of the gang's phone rang and I was ordered to pause a bit. The meeting was shifted from Silver Hotel and Kenvash Hotel to Hotel Belle Inn also within Naivasha. I directed them easiest route to belle INN and they hurriedly went off fro the special emergency meeting"[355]

405. The youths were reportedly paid between Kenya Shillings 100-200 for participating in the attacks. They were promised heftier payments for every Luo killed. On the night of 26 January 2008, lorries were reportedly spotted in town and in the estates ferrying youths believed to be Mungiki members. They were taken to Karagita and Mirera where majority of the Luos employed in the flower industry reside.

406. In Narok, the violence mirrored that of the neighbouring regions and pitted the Maasai and Kalenjin against the Kikuyu and Kisii who were perceived to be against ODM. According to several interviewees, Hon William Ole Ntimama, a senior ODM politician severally threatened the eviction of Kikuyus and Kisiis during the campaign period. One interviewee said that he personally heard the Politician on 24 December 2007 saying that if the Kikuyus did not vote for him, they would move out. He reportedly reminded the Kikuyus that Narok was not their home. The politician is said to have organized and paid Maasai youths to unleash violence in Narok town and its environs. Kalenjin elders and politicians and civil servants also reportedly mobilized their youths to unleash terror on Kisiis and Kikuyus.[356]

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[353] Human Rights Watch (HRW), Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance (New York: 2008), pg 46

[354] KNCHR interview in Naivasha on 2/3/08 (PEV/IVR/FEB/645)

[355] Report titled "The smoke Sunday" by a Red Cross official in Naivasha on 28th January 2008

[356] PEV/IVR/FEB/198, 115; PEV/IVR/MAR/631, 641; PEV/IVR/APR/890.

THE ROLE OF STATE AGENCIES AND SPECIAL SECTORS OF SOCIETY

407. The provincial administration, particularly the chiefs and assistant chiefs has been mentioned significantly regarding involvement in the violence in the Central Rift region. The local administration officers were reportedly involved through instigating the violence, use of inflammatory remarks, being partisan in the dispensation of their duties and in some instances directly taking part in the violence. The investigating team heard that several chiefs and assistant chiefs are notorious and have previously been involved in the violence in the past. Some have, in the past, been interdicted but later reinstated under controversial circumstances. It is the belief of the locals that the culture of impunity has been encouraged among these leaders such that they engage in crime without fear of repercussions[357].

408. The police were on numerous occasions accused of complacency and at times complicity in the violence. Witnesses told the investigation team that some police officers were seen in the company of the raiders during the violence. Several officers were also accused of conniving with the militias in looting of property left behind by those who fled the violence. The interviewees from the Kikuyu and Kisii communities told the investigating team that the police officers derided them that they were paying the price of voting for *"kazi iendelee'* (let the work continue). They reportedly told them to let work continue. On the other hand, the police in places like Naivasha simply stood aside and watched as members of the Luo community were mercilessly killed by the Kikuyu Militias.

409. During the campaign period, politicians from both sides of the political divide employed hate speech and inflammatory remarks that stoked hatred and disdain amongst the communities. Further, the politicians reportedly mobilized other local leaders and business persons through numerous meetings and galvanized their communities in readiness for violence against the enemy communities. The politicians contributed money, vehicles and other resources to facilitate the violence. The investigation team was told that the militias were hosted in residences and/or premises of known politicians and leaders before and after raid missions. However, some leaders also appealed for calm both during the election campaigns as well as after the emergence of violence following the elections.[358]

410. Numerous serving and retired civil servants were adversely mentioned by interviewees, for having played varied roles in the violence. Owing to their status in the society, these persons are perceived as enlightened and resourceful and as such command significant influence amongst their communities. Through this influence, the civil servants, working in league with the politicians, mobilized their respective communities and acted as local agents in concretizing the violence. They provided and distributed money, donated their vehicles and at times directly supervised the attacks. The civil servants were diverse but the teachers were the most often mentioned.

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[357] KNCHR interview with a male victim in Molo on 16th March 2008 see also Kenya Times Newspaper dated 21st January 2008 article by Dan Nyakundi

[358] For example, KNCHR interview with a male victim in Molo on 16th March 2008 (PEV,IVR,MAR,845); KNCHR follow up group interview in Molo on 17th April 2008 (PEV,IVR,APR,1052); Daily Nation Newspaper article for 29th January 2008
(PEV,NWP,JAN,0021) Nakuru Town MP Lee Kinyanjui and Eldama Ravine MP Musa Sirma calling for peace in Nakuru town on 28th of January, 2008

411. Owing to their financial clout, the business community continues to enjoy the attention of politicians. Local communities also tend to look up to members of the business community. Working intimately with the politicians and other leaders, the business community in the region marshaled their resources and facilitated the militias in execution of violence. In Molo district, the investigation team heard that, the Kalenjin business community supplied vehicles to transport the raiders to scenes of attacks. Others supplied fuel, money and food while others hosted the raiders in their residences and business premises.[359] The business people also facilitated transportation of the injured raiders for treatment and supported funerals of the raiders who died in the attacks.[360] In Nakuru, Naivasha and Molo town, the business people justified their actions by citing the failure by the government to guarantee security for them and their premises. They claimed that because of the security situation and fear of attack, they had to organize their own security. Further, the investigation team gathered that the business community organized for the procurement of firearms and ammunition from North-Eastern province, the North-Rift and upper-eastern. They also supplied petrol that was used in making of petrol bombs.

412. A common feature in all the clash areas (particularly at the initial stages) was the laxity, late arrival at scenes of attacks and failure by the security agencies to deal firmly with those caught red-handed in taking part in the violence. This would suggest that they were either overwhelmed, did not want to stop the violence or were under orders not to do so. The raiders/militias must also have either had prior reassurance in this regard or having observed that the police were simply shooting into the air carried on their attacks undeterred.

413. Many interviewees told the investigation team that they always alerted the police of impending attacks but the police callously failed to pre-empt the attacks. When the raiders struck the police inordinately delayed in intervening. In the few incidences where the police arrived, they were awfully outnumbered by the militias and merely shot in the air as the attackers wreaked havoc.

414. Witnesses told the KNCHR disturbing stories in the Keringet and Olenguruone areas. According to numerous witnesses, the Kalenjin militias gathered (at the height of the violence) in the two areas on a daily basis where they were fed and briefed before boarding vehicles to scenes of attacks. Despite the fact that the two towns are Divisional headquarters and the fact that there is a police station at Olenguruone town, the militias went on with their missions without any hindrance. Local security officers who spoke to the investigation team said that they were overwhelmed and that they always informed their seniors about the presence of the raiders. The investigation team observed that Olenguruone Police Station has no patrol vehicle and as such the police were unable to effectively respond to the situation. Also disturbing is the

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[359] KNCHR interview with a male victim in Molo on 16th March 2008 (PEV/IVR/MAR/846) (businessman S.P. Siele a wholesale trader in Molo at the Total Trading Center allegedly financed raiders; Similarly Wilson Leitich was alleged to have done the same, PEV/IVR/APR/114a as well as Jane Kihara former Naivasha MP, KNCHR interview in Naivasha on 15/2/08 (PEV/IVR/FEB/334; KNCHR interview with a male victim from Naivasha on 15th February 2008 at Kendong IDP camp (PEV/IVR/FEB/331); KNCHR interview with a male victim at Kedong camp, Naivasha on 11th February 2008 (PEV/IVR/MAR/761)

[360] For example, Mr. Dickson a.k.a. 'Dyma' of Olenguruone has a Mitsubishi lorry and a green Toyota Pick Up Truck that was used to ferry raiders to scenes of attacks, see KNCHR interview with Catholic priest from Olenguruone on 16th March 2008 at Njoro (PEV/IVR/APRIL/861); PEV/IVR/APRIL/1110; PEV/IVR/APRIL/114A; PEV/IVR/APRIL/1115. Matayo, a resident of Ambusket in Olengurone reportedly donated a ten wheel grey truck for use during the violence, KNCHR interview with an informer in Kuresoi on 13th April 2008 (PEV/IVR/APR/1100)

fact that although many of the local security authorities said that they have information on the organizers of the violence, the culprits have not been held accountable. The police argued that they were still investigating the suspects.

415. Curiously, the investigating team learnt that there are no intelligence officers in Kuresoi division despite the region being one of the epicenters of violence since early 1990s[361].

416. The attacks in Narok, Naivasha and Nakuru towns are also astonishing given that they occurred at district headquarters and provincial headquarters respectively. The militias unleashed terror and maimed their victims with little assistance from the police who were unable to promptly contain the mayhem. The violence only subsided after the military intervened albeit after the militias had already inflicted severe damage and loss.

417. As indicated elsewhere in this report, there were several reports of partiality by some security officers who either directly supported their respective communities or were complicit in the attacks. Across the region, Kikuyu and Kisiis said that Luo and Kalenjin officers repeatedly ridiculed them and told them that they should stop lamenting and let the violence continue since they are the ones who voted for Kazi Inendelee (PNU slogan). Some police officers were reportedly spotted in the midst of raiders providing back up while armed.

418. In Kaptembwa Police Station (Nakuru) for example, it was reported that the police officers were so divided that they almost fought amongst themselves[362]. An officer based at the station said that the Kenya Army had to intervene in the violence since the police were unable. On 30th December 2007, it is reported that during skirmishes in Kaptembwa, Police officers were involved in the looting of goods from a local supermarket, while their seniors watched. Reports received from some local administration officials in Elburgon confirm that in Kapsita area, the Administration Police Officers were predominantly from the Kalenjin community and that they were partial in the dispensation of their duties leading to tension among the Kalenjin and Kikuyu communities. On the other hand, it is alleged that on 2nd January 2008, some Administration Police officers deployed to Segut area (Elburgon) were predominantly from the Kikuyu community. The officers reportedly shot eight Kalenjin youths and then asked Kikuyu youths to mutilate the bodies with pangas to conceal the evidence of gunshot wounds.

419. In Naivasha, prison officers deployed to contain the violence reportedly terrorized the residents through beatings, arbitrary arrests, extortion and sexual harassment. This led to a demonstration by the residents and subsequently the prison officers were withdrawn.

420. The investigation team heard that the OCS for Mau Summit Police station together with his officers were seen sometime in January 2008, shooting in the air ostensibly to give way to the Kikuyu youths to burn houses belonging to members of the Kalenjin community[363].

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[361] KNCHR interview with an informer (senior police officer) in Kuresoi on 14th April 2008 (PEV/IVR/APR/1115)
[362] KNCHR interview with an informer in Nakuru on 13th April 2008 (PEV/IVR/APR/1063)
[363] KNCHR interview with a male victim in Kuresoi on 17th March 2008 (PEV/IVR/APR/866)

421. The OCS, Kuresoi Police Station was massively accused of gross negligence and complicity in violence, which lead to scores of killings, damage to property and massive displacements of Kisiis and Kikuyus. The investigation team heard from the residents that, he never responded to distress calls and when confronted by the victims, he told them that the violence was beyond his control. The OCS was reportedly a supporter of ODM and sided with the Kalenjin community. One witness told the investigation team that on 31 December 2007, he met the OCS, Kuresoi Police Station, Mr. Osewe who had visited Gacharage farm which had been attacked and houses were burning. The witness asked him what measures he had put in place to stop the escalating violence. The OCS told him that 'vile nimeona, hiyo imenishinda. Kila mtu ajisaidie' (From what I have seen, I can't manage the situation; everyone should take care of themselves). He then reportedly drove off and left the area burning[364].

422. On several occasions, the teachers of Mwaragania primary school requested the OCS to deploy security officers to the school after receiving information of an impending attack. The teachers said that the OCS ignored their pleas and the school was vandalized and burnt down 29 February 2008.

423. During the investigation missions, the team interacted with a range of other specials sectors of the society that included humanitarian groups, civil society, community based organizations, community elders, professional groups and religious leaders and organizations. Although numerous elders were regrettably involved in perpetuating the violence as stated elsewhere in this report, the team was impressed by the relentless efforts of other actors to mitigate and obviate the violence against a myriad of militating factors.

424. These sectors alerted the authorities of impending attacks, organized emergency rescue missions and reached out to the warring groups to stop the violence. They were tremendously involved in addressing the humanitarian needs of the displaced persons.

425. Notable among such groups included the Kenya Red Cross, Catholic Justice and Peace Commission (CJPC), National Council of Churches of Kenya (NCCK), National IDP Network and the Evangelical Alliance of Kenya.

426. In Kuresoi, two respected elders/spiritual leaders presided over traditional ceremonies involving cleansings and blessings of Kalenjin youth in the period before the election. These were Joseph Koromecha[365] and Mochogorop Oyonge.[366] In the Central Rift, the KNHRC team interviewed at least one witness who stated that Radio KAS was inciting Kalenjins.[367] One witness told the team that in terms of incitement, Radio Injili was 'actually the worst.'[368] Other witnesses told the team that vernacular music on Kikuyu stations such as Kameme and Inoro played music that intensified feelings of ethnic hatred.[369]

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[364] KNCHR interview with an informer in Molo on 14th April 2008 (PEV/IVR/APR/1113)
[365] KNCHR interview with an informer in Molo on 13th April 2008 (PEV/IVR/APRIL/1114a)
[366] KNCHR interview with an informer in Molo on 13th April 2008 (PEV/IVR/APRIL/1114a)
[367] KNCHR follow up group interview with a male victim in Molo on 11th April 2008 (PEV,IVR,APR,1056)
[368] KNCHR follow up group interview with a male victim in Molo on 17th April 2008 (PEV,IVR,APR,1071); Crisis Group Africa countrywide report on 21st February 2008 (PEV,ORG,MARCH,035)
[369] United Nations Office for Cordination of Humanitarian affairs country wide report on 22nd January 2008 (PEV,EM,MAR,013)

427. One witness told the team: "Many of the ethnic hate messages and much of the ethnic stereotyping appeared on live phone-in programs. It was common to hear descriptions on Kass FM before the elections of the Kikuyu as greedy, land-hungry, domineering and unscrupulous, as well as thinly-veiled threats, like 'the time has come for us to reclaim our ancestral land', or 'people of the milk' (Kalenjin) must 'clear the weed' (Kikuyu). Kikuyu FM stations like Inooro, Coro and Kameme are also accused of waging an ethnic propaganda campaign, though a more subtle one, against ODM and the Kalenjin."[370]

428. Kenya has 42 ethnic radio stations stations. Many of these radio stations as well as the TV stations in the country helped to frame the election as a two horse race between Kibaki the Kikuyu candidate and Raila, the Luo candidate. The media undoubtedly played a role in hyping the election in a manner that contributed to the tensions that became the background to the violence that preceded and followed the 2007 Presidential elections.[371]

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[370] Crisis Group Africa countrywide report on 21st February 2008 (PEV,ORG,MARCH,035)
[371] The Wilson Center, Kenya: A Post Election Assessment, available at http://www.wilsoncenter.org/index.cfm?event_id=347121&fuseaction=events.event_summary

NYANZA REGION

INTRODUCTION

429. Nyanza Province lies to the western part of the country and borders Western Province and parts of the Rift Valley Province. The upper part of the province is predominantly inhabited by the Luo community, while in the south we have the Kisii, the Kuria and the Luhya.

430. The provincial headquarters of the province are in Kisumu. There are 31 constituencies in the province, 21 of which were won by ODM and are represented by parliamentarians from the Luo community. By November 2007, a total of 2,041,680 persons had been registered by the Electoral Commission of Kenya (ECK) to vote in the region[372].

431. Nyanza province has a rich history within the Kenyan political context. The province is the home of several reknown leaders in Kenyan political history. They include, the late Jaramogi Oginga Odinga who is regarded as the father of opposition politics. He was also Kenya's first vice president and the father to ODM presidential candidate Raila Odinga. Other major figures include the late Tom Mboya, widely considered the father of the trade union movement in the country and the late Achieng Oneko who, together with the founding president of the country and others, was imprisoned for opposing colonial rule.

432. Upper Nyanza's association with opposition politics began with the formation of the Kenya People's Union in 1966, a leftist opposition party led by Jaramogi Oginga Odinga, a former vice president. The party was banned in 1969 and Jaramogi detained after political unrest related to Kenyatta's visit to Nyanza province in that year. Since the year 1966, the province's politicians have been active in political parties associated with the opposition such as the Forum for Restoration of Democracy (FORD), FORD Kenya, National Democratic Party (NDP) the Liberal Democratic Party (LDP) and the Orange Democratic Movement Party (ODM). Currently, all the members of parliament from Luo Nyanza province are ODM members. By contrast, Southern Nyanza is inhabited by the Kisii, Luhyia and Kuria who have a more mixed history of political party affiliations.

433. The 2007 elections in Upper Nyanza were characterized by strong support for one of the key presidential candidates, Raila Amolo Odinga. Although representing the Lang'ata constituency in Nairobi, Odinga's ancestry is in Bondo district of Nyanza province. The region has been one of his political strongholds.

434. Parts of Upper Nyanza and in particular, Kisumu city are cosmopolitan bringing together people from different ethnic and racial backgrounds. This complexity was also reflected in the electoral politics. Outside Kisumu city, Kisii Nyanza supported both ODM and PNU candidates at the parliamentary level. The presidential vote however was largely in support of PNU.

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[372] Source: www.eck.or.ke/downloads/Registeredvoterscomparative.pdf

PATTERNS OF VIOLENCE

435. Nyanza province witnessed violence in the months of December 2007, January, February and March 2008. Initial violence occurred around 29th December 2007 and was linked to the delay in announcing the results of the presidential poll, and further catalysed by the announcement of the result in favour of President Kibaki, which was rejected by many people from the region. There was widespread looting and destruction of property belonging to persons perceived not to be indigenous to the region ("foreign communities"), and their eviction, as well as excessive use of force by the security agencies.There were reported cases of sexual and gender-based violence reported at IDP camps in Koru and Ekerenyo following displacement.informationn gathered by KNCHR appear to suggest that these violations were committed at the places of origin of the IDPs prior to their settlement in various camps.

436. There were also reported cases of men taking advantage of vulnerable women and girls who seemed not to know their original rural homes as a result of which most ended up entering into forced marriages, a factor which is likely to contribute to the spread of HIV/ AIDS. Migori registered a high incidence of child abuse and abduction with some children being trafficked internally and others across the border to Tanzania.

437. Violence was reported in Nyanza well before the December 27 elections[373]. Nevertheless, this died out and peaceful elections were held on the voting day. The delay in announcement of the presidential elections results as well as widespread rumours of election rigging heightened the tension in the region. In Kisumu city, towns and trading centres, anxious youthful supporters of ODM awaited the results in groups. The controversial declaration of Mwai Kibaki as the winner of the presidential vote on December 30 2007 sparked off violence throughout the region. The worst hit areas in terms of the violence witnessed in the province were Kisumu city, Migori and Homa Bay towns. The violence in the province occurred in three phases.

438. The first phase of violence was precipitated by delay in announcement of the presidential results as well as the announcement of Mwai Kibaki a the President and this was largely between 29th December 2007 and 10 January 2008[374];

439. The second phase of violence was between 15th and 17th January 2008 which is also the period when ODM called for mass protests. The mass protests had been declared illegal by the police.

440. The third phase of violence was catalysed by external factors such as the influx of IDPs from areas including Naivasha and Central Province, who recounted harrowing stories of their ordeal in the hands of murderous gangs, as well as the deaths of ODM politicians Mugabe Were the MP for Embakasi and David Kimutai Too the MP for Ainamoi.

441. The information collected by the KNCHR suggests that the first phase of violence had a relatively lower level of organization as compared to the second and third phases of violence, which appeared to have had a fairly high level of planning and organization.

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[373] See The People Newspaper article dated 27th December 2007 by People team (PEV,NWP,APR/203)

[374] There however was sporadic violence related to the elections even before the elections themselves. For example, according to interviewee accounts, 2 police officers were killed on 26th December 2007 in Sori, Migori. There was also violence perpetrated against political aspirants not supporting the ODM party during the nomination and campaign period, prior to the elections.

442. Numerous persons interviewed said that the violence was catalysed by the fact that political leaders had made inciting statements and expressed anti-ethnic sentiments against several communities not considered indigenous to the area in the run-up to the elections, with politicians vowing that people from the so-called "foreign communities" would be evicted from their habitual residences once ODM came to power. Interviewees blamed the violence on irregularities during the tallying process and attributed fraud on the Electoral Commission of Kenya, which they said resulted in a win for President Kibaki. A Kibaki win was therefore seen within a wider context as unacceptable within this region, which was an ODM stronghold, and hostility was then expressed against persons considered to be "foreign", and, by extension, Kibaki supporters[375]. The general view in the region was that the ODM presidential candidate, Mr. Odinga, had won the elections[376].

443. Rural Kisii was not a target of attacks, the reason being that it is almost homogeneously dominated by the Abagusii. However, attacks were experienced at the areas bordering the Kalenjin communities, specifically, the Sotik, Borabu and Chebilat borders. Reports indicate that on 6th March 2008, at least five people were injured at the Borabu/Sotik border when villagers struck at Ikorongo and Manga villages of Borabu District. At Mwembe (along the Kisii-Kilgoris road), vehicles were burnt and several people were injured .Demonstrators broke into shops and looted, overwhelming the police who were present. Roads leading in and out of Kisii town were blocked for four days, leading to shortage of petrol and food in Kisii town itself, as well as in Migori and Kuria[377].

444. The Chinkororo vigilante group[378] organised itself in response to the post-election violence and in apparent defence of the Abagusii community and undertook retaliatory attacks whenever there were raids in Kisii areas. Members of the vigilante group engaged in clashes with Kalenjin youths from the neighbouring Sotik district in the Rift Valley province, and they were reported to use weapons such as machetes, spears, clubs, bows and arrows[379].

445. Kisii was a hub for IDPs, with camps being set up to shelter them. Most of the IDPs were received in the area between the 31st December 2007 and 10th January 2008[380]. Some of the camps include, the Ekerenyo District Officer's office, Keroka Police Station, Riategenya and St. Lwanga Cathedral Church. The Kisii District Commissioner reported that over 20,000 IDPs had registered their presence in his office to various places, including to their homes and to the different camps set up in the region. The IDPs mainly came from Kericho, Nandi Hills, Homa Bay and Migori[381].

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[375] See,KNCHR interview with a male resident of Kisumu on 17th March 2008 (PEV,IVR,MAR/764) and KNCHR interview with an informer in Kisumu on 10th April 2008 (PEV,IVR,APR/1080)

[376] See KNCHR interview with an informer in Kisumu on 15th april 2008 (PEV,IVR,APR/965) and KNCHR interview with an informer in Kisumu on 10th April 2008 (PEV,IVR,APR/1080)

[377] A video clip captured by NTV Patrick Amimo on 31st December 2007 (PEV/VID/APRIL/035)

[378] The Chinkororo is a Kisii vigilante group that was outlawed in 1990s. It arrogated itself the role of the armed wing of the Abagusii community. Traditionally, Chinkororo was recognized by a significant portion of the Abagusii as a community defence force, guarding territories against cattle rustlers and other perceived enemies.

[379] Internet article by IRIN dated 22nd February 2008 (PEV/INT/MARCH/051B)

[380] KNCHR post mission report for Kisii Nyanza region dated 18th February 2008 (PEV/PMR/MARCH/017a)

[381] Daily Nation Newspaper dated 24th March 2008 by Sammy Kiboi (PEV/NWP/MARCH/047)

Looting and Destruction Of Property

446. Looting and destruction of property was mainly perpetrated against members of so-called "foreign communities" including Kikuyus, Kisiis and Asians. Nevertheless, members of the local community were also affected in areas where they were deemed to have supported the PNU for instance, Rongo and Migori.[382]. During the second and third phases of the violence, some affluent Luos also had their property looted and destroyed in what was seen as a class battle[383].

447. Both men and women participated in the looting and destruction of property in the region[384] and persons who lost property in the process were both male and female. According to the provincial administration officers in the region, the looters were criminals taking advantage of the breakdown of law and order in the region. Some interviewees contended that the security agencies were also involved in looting property. One such high ranking officer was investigated by officers from Nairobi for allegedly participating in looting. Efforts by the KNCHR team to obtain the report of the investigation undertaken from the Nyanza Provincial Police Officer were however not successful.

448. Interviewees in Kisumu city alleged that the worst hit Asian companies, namely Ukwala Supermarkets Ltd and Ndugu Transport Co. Ltd had poor relations with their employees and the same was to blame for the attacks meted out against them. Asians who lost property were alleged to have failed to integrate themselves into the local community. This allegation was also alluded to by government officers as well as politicians from the province interviewed by the KNCHR. The management of these companies on being conducted however disputed the allegations[385]. Ndugu Transport Co. Ltd is alleged to have been attacked because some of its employees were not from the local community.

449. Several properties belonging to persons of Kikuyu origin were looted and destroyed and these included Crater Automobiles, Classic Hotel in Dunga[386] and Heritage Hotel, among others. Residential property belonging to individuals residing in Nyalenda, Manyatta, Migosi and Obunga estates of Kisumu were also destroyed.

450. Members from the Meru community in Kisumu city, a community perceived to strongly support President Kibaki and his PNU party, also lost commercial and residential property worth thousands of shillings. One businessman lost three hotels in the ensuing violence to arsonists.[387] The hotels were vandalized and extensively damaged. Some of the egregious violations of human rights witnessed in the region are highlighted below.

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[382] KNCHR interview with an informer in Migori on 15th April 2004 (PEV,IVR,APR/1079)

[383] Ibid., note 14

[384] KNCHR interview with FIDA Kenya Kisumu branch on 10th April 2008 (PEV,IVR,APR/1083)

[385] KNCHR interview with one of the managing directors of Ukwala supermarket kisumu on 17th April 2008 (PEV,IVR,APR/1076) and KNCHR interview with an informer in Kisumu on 12th april 2008 (PEV,IVR,APR/966)

[386] The owners of this hotel, a mixed community couple, the wife being a Kikuyu and the husband a Luo, were able to save another property, Classic Guest House, in Kisumu's Milimani area through the intervention of the Officer in charge of Central Police Station, Kisumu, a Mr. Wanyama.

[387] These are hotels going by the name Kimwa Hotels which were based in Kondele area and Kisumu Town Central Business District

Ukwala Supermarket

451. The mention of Ukwala Supermarket evokes images of badly destroyed and burnt property in Kisumu town. The event was widely publicised in local and international media and has come to represent the damage that was occasioned to property perpetrated against so-called "foreign communities". The business suffered an estimated loss of about Kshs. 150 million. The police and members of the provincial administration interviewed claimed that the destruction of Ukwala Supermarket was the work of former employees of the chain. The supermarket's management however disputed the allegations claiming that most of the looting was encouraged by the police who also engaged in the looting. The management alleged that the police watched as property was destroyed.[388]

452. Several reasons were advanced for the massive destruction of the property. It was claimed that the premises housing the supermarket were burnt when police threw teargas canisters into the supermarket which exploded causing the fire to spread. It was also alleged that the burning was occasioned when police shot at gas cylinders causing explosion. The KNCHR was unable to determine the exact number of victims burnt inside the building. The police nevertheless indicated that approximately 7 people lost their lives in the fire.[389]

Kibuye Market

453. The burning of Kibuye market was seen as an act of retaliation. It was alleged that the individual who burnt down the said market was of Kikuyu origin. Interviewees contended that the suspects parents ran a business establishment in the area which was burnt by the local community. It was further alleged that the man, identified only as "Boi", threatened to exact revenge against other proprietors for allegedly destroying his parent's property. Though it was claimed that the young man was escorted by police to carry out the act, these allegations were refuted by the provincial administration. Attempts by the KNCHR to confirm whether these allegations were true or not were not successful, and according to sources, "Boi" could no longer be located within Kisumu[390].

Ndugu Transport Company Limited

454. This company, which began operations in Kisumu sometime in the 1970s, has its core business as transportation of goods and for that reason it has at its disposal a fleet of lorries. The company is also involved in other business ventures including manufacturing molasses among other business concerns. In addition to profitable business, the company is also involved in various development projects and the KNCHR officers noted that the company provides water to residents living near its factory in Kajulu estate free of charge. Most of the company's employees are drawn from the Luo community. However, there were also employees drawn from non-Luo ethnic communities. In particular, the company's manager was from the Meru community. Interviewees alleged that the company was targeted due to its association with people from non-Luo communities[391]. In that regard therefore the company's property was looted and burnt by a gang of about 100 and property worth millions of shillings destroyed.

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[388] KNCHR interview with one of the managing directors of Ukwala supermarket kisumu on 17th April 2008 (PEV,IVR,APR/1076)

[389] KNCHR interview with the OCS Central Police Station on 17th April 2008

[390] KNCHR interview with an informer in Kisumu on 11th April 2008 (PEV/IVR/APR/974)

[391] KNCHR with an informer in Kisumu on 12th April 2008 (PEV/IVR/APR/966)

KIMWA Hotels

455. Kimwa, a popular nightspot in Kisumu area was owned by a gentleman of Meru origin. The hotels were three in number and were located in Kondele estate and the Central Business District. The property in Kondele estate was destroyed immediately after announcement of presidential results. Looters vandalized the property and thereafter burnt it. The other properties in the CBD were burnt and property stolen. The KNCHR was unable to secure an interview with the owner of the hotel chain who was said to be hospitalised at Nkubu Mission Hospital in Meru[392].

KIWASCO

456. On 31st December 2007 about 17 vehicles and other property belonging to the Kisumu Water and Sewerage Company were burnt and severely damaged by rioting crowds. Interviewees alleged that destruction of the company's property was a means used by the locals to express anger at what was seen as fraudulent election results[393]. Other interviewees said that government property was targeted due to the premises and vehicles being allegedly used to accommodate and transport security officers who were perpetuating a reign of terror in the town. However, the KNCHR was unable to verify the truth of these allegations.

Eviction of Non-Luo Communities

457. A large part of Nyanza Province thus Kisumu, Siaya, Bondo, Nyando, Migori, Suba and Rachuonyo districts is predominantly occupied by members of the Luo community. However, some of the urban areas such as Migori town and Rongo towns and Kisumu city. Evictions mostly took place in the cosmopolitan areas. Eviction of so-called "foreign communities" in Nyanza province occurred in two phases.

458. The communities targeted for eviction during the first phase of the violence between 29th December 2007 and 30 January 2008, were the Kikuyu, Meru and the Kisii. The reason advanced by interviewees for the attacks against those communities included the perception or belief that they voted for the PNU and Kibaki. One interviewee recounted how her family was singled out for eviction on the basis that they voted for PNU. The interviewee recounted her ordeal. "There were four votes for PNU in a polling station in Kisumu town west constituency and these were apportioned to me, my son and my husband. It was that perception that we voted for Kibaki that caused our eviction from our residence in Kiboswa"[394].

459. Later, in the second phase, members of the Kamba community were targeted for eviction on account of the fact that Kalonzo Musyoka had accepted a presidential appointment as the country's 10th Vice President. Members of the Kisii community were also targeted allegedly for voting for the PNU. The forcible eviction of the Kisii allegedly stopped when the ODM leader, Raila Odinga, asked the Luo community to cease attacking members of the Kisii community. During a public rally held on 23rd February 2008 Raila asked the community to stop the attacks on the Kisii "as they are our brothers".[395] The KNCHR's officers were able to confirm during a subsequent visit to Kisumu between 8th and 17th April 2008 that members of the Kisii community had indeed resumed residence and business operations in the town.

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[392] KNCHR interview with an informer in Kisumu on 9th april 2008 (PEV/IVR/APR/1077)
[393] Ibid.
[394] KNCHR interview with interviewee in Kondele Police Station on 12 February 2008
[395] KNCHR interview with a male victim of Kisumu on 14th February 2008 (PEV/IVR/FEB/420)

Incitement

460. There were reports of forced eviction and personal attacks on people from so-called "foreign communities" in Migori town. There was also information to the effect that after party nominations in the run-up to the General Elections, John Pesa, who is the current Member of Parliament for Migori, had said at a campaign rally that "visitors" had taken away the businesses of the local people. Pesa is said to have gone on to name the "visitors" as "'Oriah' (understood to mean Somalis), Kikuyus, Kisiis...". He is further alleged to have said that if he won, he would "remove the visitors and make Luos own the businesses"[396]. Interviewee accounts were that on 29th December 2007, non-Luos in Migori were attacked, and shops looted. There were reported cases of destruction of property belonging to members of non-Luo communities even in situations where the occupiers had vacated their properties. A visit to the area by the KNCHR in April 2008 confirmed that members of non-Luo communities were returning to the area.

461. Interviewees alleged that some senior politicians were responsible for inciting locals to violence during campaign rallies before the elections and also during the period after 29th December 2007, particularly at public rallies held by the ODM party during which ODM leaders asked their members to participate in three days of mass action.

462. During the pre-election period, Raila Odinga is quoted as having incited people in Migori at a political rally by uttering the words: "we do not want madoadoa". This was a phrase which was understood to mean that other communities were unwanted in Migori[397]. After violence erupted in Luo Nyanza following the controversial results of the presidential elections, Mr. Odinga is reported to have singled out the Kisii community at a gathering of mourners in Kisumu as a community which ODM supporters should stop attacking. As a result of this directive attacks on Kisii community ceased immediately whereas attacks against the other communities went on[398].

463. The KNCHR also received information regarding incitement and co-ordination of demonstrations by local politicians[399]. In this regard, two Kisumu Town MPs, Shakeel Shabbir and Olago Aluoch, are said to have incited people and subsequently led people in demonstrations[400]. The MP for Nyatike, Mr. Eric Omondi Anyanga, together with John Kanyores, Morris Opere, Fores Ogunda, Ogeyo Oruath, Jared Ogiro, Daniel Oyoo, Otturu Osodo, Jones Otingo, Samuel Odinga and Elius Odinga, were reported as having plotted deaths, funded the violence, looted property and hired lorries to ferry attackers[401]. The KNCHR also ascertained that other local politicians were called upon to lead the protests but there were inconclusive reports as to the role, if any, played by the said politicians in inciting people to violence during those protests.

ROLE OF STATE AGENTS

464. The role of security agencies in the violence was in terms of inaction and excesses. On one hand security agencies are blamed for contributing to the escalated and widespread violence witnessed in the area by failing to take action to stop the same and on the other hand they are blamed for utilizing unnecessary force to quell protesters which unnecessary force resulted in the death of hundreds of people.

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[396] KNCHR interview with a male resident of Migori on 17th March 2008 (PEV/IVR/MAR/784)
[397] Ibid
[398] KNCHR interview with a male victim from Kisumu on 14th February 2008 at Manyata (PEV/ IVR/FEB/374)
[399] KNCHR interviews with interviewees in March 2008
[400] KNCHR with an informer in Kisumu on 12th April 2008 (PEV/IVR/APR/966).
[401] KNCHR interview with a male victim in Migori on 17th March 2008 (PEV/IVR/MAR/788)

Inaction by Security Agencies

465. Several interviewees indicated that the looting and destruction of property that occurred during the first phase of violence proceeded unabated under the watchful eye of the police. Interviewees alleged that police officers watched as Ukwala Supermarket was looted by locals. It was also contended by interviewees that in some instances police abdicated their duty to protect property by demanding bribes.

466. The Provincial Commissioner Nyanza Province blamed the escalated violence in Nyanza region on the fact that most security agents posted to the area were locals and/ or originated from communities perceived to be sympathetic to the opposition ODM party. He claimed that for that reason they were unwilling to take up arms against "their people". It was only when reinforcements were called in that those security officers began performing their duties. This inaction may be seen within the context of a simmering insurrection by the security agents, but falls short of a mutiny by reason of the fact that it was seemingly neither an organized insurrection nor did it have a widespread character within the security forces.

Use of Excessive Force by Security Agencies

467. The presence of the armed security officers and the rising number of deaths by shooting was also seen as a key factor that contributed to the escalation of violence in the region. During the first phase of violence until the 29th December 2007, police exercised restraint in dealing with protesters and used rubber bullets and lobbed teargas canisters to disperse riotous crowds. However, on the 30th December 2007 and thereafter, security agencies did use live bullets to quell riots[402]. With regard to the second and third phases of violence, security agencies did not exercise restraint and resorted to brute force which led to the deaths of scores of people in the region. Interviewees allege that on the 30th December 2007 and during the second and third phases of violence, the security agencies did not attempt to shoot in the air to disperse crowds but actually shot into crowds injuring and killing scores of protesters[403].

468. In addition, although the police stated that they resorted to use of live bullets to prevent further looting within the city centre, information obtained by the KNCHR suggested that most victims were shot while in the comfort of their homes[404] in areas such as Manyatta, Obunga, Kondele and Nyalenda estates. Other victims were from Bandani, Migori Town and Homa Bay. Many of the injured and dead victims were shot from the the back, while some victims were shot in the leg and others in the hand[405]. It appeared that most victims may have been fleeing when they were shot. Statistics from the Provincial General Hospital in Kisumu alone indicate that between 29 December 2007 and 8 January 2008, approximately 52 people had died as a result of being shot by security agents.

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[402] KNCHR interview with an informer in Kisumu on 9th april 2008 (PEV/IVR/APR/1077)
[403] KNCHR interview with an informer in Kisumu on 11th April 2008 (PEV/IVR/APR/974)
, and KNCHR interview with an informer in Kisumu on 14th April 2008 (PEV/IVR/APR/975)
[404] KNCHR interview with a female victim from Kondele Kisumu on 14th February 2008 taken at Kisii (PEV/IVR/FEB/397)
[405] KNCHR interview with a female doctor of New Nyanza general hospital on 17th February 2008 (PEV/IVR/FEB/427)

469. A total of 15 people from Migori were shot and killed by police[406]. There were no accounts of killings by the police in Siaya although there were several people who were shot and injured. No deaths were recorded in Rongo District[407] while at least 4 people were shot by security agents in Koru and Muhoroni. One interviewee claimed that on 30th December 2007, his son was shot in the stomach by a General Service Unit Officer while leaving his mother's salon[408]. Another claimed that a police officer shot him in the leg on 31st December 2007 while visiting the site where his friend's body lay after being shot dead on the previous day. He alleges witnessing the killing by the police of another of his friends during this latter incident[409]. In another incident, an interviewee claimed that he sustained severe gunshot wounds at the back of his head just beneath the neck after he was shot by police on his way home from the city centre where he was shopping[410]. Yet another interviewee in Migori claimed that on 29 December 2007 while at his place of work, a police officer known as Ndegwa accosted him and shot him on the right side of his forehead. The bullet exited at the back[411].

470. Several interviewees alleged that the Officer-in-charge, Central Police Station, Kisumu, Chief Inspector Wanyama, participated in looting and destruction of property[412]. A team from the CID Headquarters in Nairobi was constituted to investigate him and a report issued, but despite efforts to obtain a copy of the report, this was not made available to the KNCHR.

471. There was evidence that members of the Provincial Security Committee comprising Paul Olando (PC), Grace Kaindi (PPO), Scaver Mbogo (PCIO), and a Mr. Omwanga (NSIS), held a meeting on 30th December 2008 at which a decision to use live bullets to quell riots was arrived at[413]. As a result up to 100 people died[414] and hundreds were injured during the protests.

472. Information received by the KNCHR indicates that the AP Commandant sanctioned the posting of the Rapid Deployment Unit (RDU) to the region which is alleged to have committed serious human rights violations. The Provincial Commissioner informed the KNCHR that his office called for reinforcements when the violence in Kisumu escalated, and these reinforcements came in from Nairobi and members included the RDU. It was the RDU officers who were perceived to be foreign officers from Uganda on account of their uniform which was not familiar to the local population. Several low ranking officers were directly associated with the violence, mainly through excess of actions. One of these officers is Police Constable Dennis who was attached to Kondele Police Station. He is said to have killed and injured several civilians[415]. A police officer known as Ndegwa from Migori Police station is also reported to have been responsible for injuries sustained by an interviewee while at his place of work[416].

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[406] KNCHR interview with Red Cross officials in Migori on 15 April 2008
[407] KNCHR interview with the D.O. Rukwaro Division Rongo District on 15 April 2008
[408] See KNCHR interview with a male resident in Kisumu on 14th February 2008 (PEV/IVR/FEB/417)
[409] See KNCHR interview with a male resident in Kisumu on 14th February 2008 (PEV/IVR/FEB/362)
[410] See KNCHR interview with a male resident in Kisumu on 14th February 2008 (PEV/ IVR/ FEB/ 364)
[411] See KNCHR interview with an informer in Kisumu on 15th April 2008 (PEV/ IVR/ APR/ 964)

[412] See KNCHR interview with an informer in Kisumu on 10th April 2008 (PEV/IVR/APR/1080
[413] KNCHR interview with an informer in Kisumu on 9th April 2008 (PEV/IVR/APR/1077)
[414] There are conflicting reports as to how many people died, with some sources placing the figure at 100, and more conservative sources at about 50.
[415] KNCHR interview with a female resident in Kisumu on 15th March 2008 (PEV/IVR/MAR/770), KNCHR interview with a female resident in Kisumu on 17th March 2008 (PEV/IVR/MAR/771) and KNCHR interview with a female resident in Kisumu on 17th March 2008 (PEV/IVR/MAR/741)
[416] KNCHR interview with an informer in Migori on 15th April 2008 (PEV/IVR/APR/964)

473. Finally, there is the case of Police Constable Kirui, whose case was prominently covered in the electronic media, when he shot and killed a demonstrator who was fleeing away . Constable Kirui is currently facing a murder charge for shooting to death a civilian.

PLANNING AND ORGANISATION

474. Information gathered on the following points at possible planning and organization of the violence that occurred in the region;

Looting and destruction or property

475. Information gathered indicates that the first phase of violence in Kisumu had a low level of planning and co-ordination and was sparked by the delay in the announcement of presidential election results. This situation was further catalysed by a pronouncement which was seen to be unfavourable to the candidate of choice for the region. Interviewee accounts strongly suggest that destruction of property which occurred during subsequent phases of violence was well planned and coordinated.

476. Youths who were attacking, looting and destroying property were very particular as to the people to be attacked, and these were members of "foreign communities". The relative proportionate scale of the destruction, as well as the number of members from "foreign communities" that were affected, are other factors from which the planning and co-ordination may be inferred. Evidence in the hands of the Commission is to the effect that the youth who looted and destroyed property were drawn from the neighbourhoods where members of "foreign communities" resided, and the latter were therefore easily recognized. Interviewees allege that the attackers appeared to have some organized form of leadership, and that the gang leaders kept checking off names from books in their possession. There were also claims that the violence was financed.

Eviction of members of non-Luo communities

477. The KNCHR interviewed IDPs in the region, most of whom sought refuge in police stations. The IDPs interviewed were mainly from the Kikuyu, Meru, Kamba and Kisii communities. The attacks against the "foreign communities" appeared to have been planned, as they were focused against members of specific ethnic communities. Again, some of the interviewees indicated that the evictions were carried out by groups of youth who seemed to have some form of leadership. In one instance, the KNCHR received evidence of the evicting youth referring to a book in their possession, from which names of people targeted for eviction would be read out[417]. The KNCHR was further informed that the evicting youth would flash out from individual homes members of "foreign communities" forcing them to seek refuge at places of safety. The youth appeared to know places of residence of persons from the "foreign communities". In Migori, a businesswoman by the name Mama Atoti is reported to have led looters to mobile shop[418]. A disc jockey at the Resort Club, Migori identified only by one name, Zebii, is said to have led people in looting and destructing property of non Luos[419].

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[417] KNCHR interview with an interviewee from the targeted ethnic communities who was evicted from one of the estates in Kisumu bordering Manyatta Estate on 14 April 2008

[418] KNCHR with a male resident in Migori on 17th March 2008 (PEV/IVR/ MAR/784)

[419] Ibid

478. The KNCHR was however unable to gather conclusive evidence -in terms of systematic planning and co-ordination -to fortify a case of organized attacks in relation to the evictions that were effected between 29th December 2007 and 10 January 2008. The evidence from interviewees indicates that the violence that occurred between the said dates did not have a high level of planning and organization, and was largely fed by pre-election incitement coupled firstly with the delay in announcing the presidential poll results, and subsequently by discontent following the announcement of presidential results in President Kibaki's favour. The perception in the region was that the ODM party was slated to win the elections overwhelmingly against the PNU. Party supporters who thronged the streets protesting the President's win would be seen chanting pro-ODM party slogans and nothing could assuage their anger.

479. There was circumstantial evidence pointing at more organized planning and organization during the violence that occurred subsequently.

Use of Excessive force by security agencies

480. According to one high ranking government officer in the region, members of the Provincial Security Committee (PSC) anticipated that violence was unavoidable in the region whether the opposition won or lost. At the meeting, it is said that the PSC members sanctioned the use of force (live bullets) to quell the protests.

481. There were claims by some interviewees that prior to elections, "foreign" security agents were imported to the region for unclear reasons. These interviewees further claimed that those imported security agents were residing in Gulf Hotel and Brookside Dairies premises. Those interviewed said that the selection of those premises was sinister since they were owned by members of "foreign communities".

482. These claims about security agents having been accommodated in private establishments were however not verified at all, but they may nevertheless have provided an emotional medium for the lawlessness that occurred from 29th December 2007 onwards. It is claimed that these foreign security agents were responsible for the deaths of countless unarmed civilians. In an interview with the KNCHR, provincial officers indicated that most of the officers in the area were from communities that were perceived to be sympathetic to the opposition ODM party. The administrators indicated that the same police officers were not helpful in quelling the riots when they began on the 29th December 2008 prompting the PSC to call for reinforcements. From this information, one can allude that the reinforcements were on stand-by to avert possible total collapse of the security situation in the region.

ROLE OF SPECIAL SECTORS OF THE SOCIETY

483. St. Stephen's ACK Church played a critical role in providing shelter to returnee IDPs from Central Province and the Rift Valley (Naivasha and Nakuru). The church indicated that its intervention was deemed necessary because of the failure by the Kenya Red Cross Society to make provision for the said returnee IDPs. The Red Cross intervened much later when they pitched camp at the Moi Stadium and provided refuge to returnee IDPs from the said areas. The church facilitated transport for the returnee IDPs from Kisumu town to their rural homes. The church was also instrumental in facilitating provision of food and clothing for the returnee IDPs.

484. St. Teresa's Catholic Church in Kibuye was useful in gathering information on the number of persons whose rights had been violated and providing a forum for the KNCHR and other actors to meet with affected individuals during interviews. Various business men and women provided

transport that was used to repatriate returnee IDPs from Naivasha, Nakuru, and Thika to Kisumu from where they were relocated to their rural homes. They also provided food to the returnee IDPs.

485. In addition to speaking out against the violence, the Kisumu branch of the Law Society of Kenya was useful in gathering information from persons who had been affected by the violence. The society indicated that the information collected would be used to inform court cases against persons found to have participated in the violence. The Kisumu office of FIDA Kenya was also useful in providing logistical support, in particular provision of vehicles in order to access IDP camps, as well in being itself a source of information.

CONFIDENTIAL

WESTERN REGION

INTRODUCTION

486. Western Province is bordered by Uganda to the west, Nyanza province to the south and the Rift Valley to the east. The province is predominantly inhabited by people of the Luhyia ethnic group. However, parts of the province in particular Lugari district have large settlement schemes that are composed of people from diverse ethnic groups.

487. The administrative headquarters of Western Provinces is Kakamega town. The other important towns being Bungoma, Mumias and Webuye. As at 5th Novemeber 2007, the Western Province had 1,648,888 registered voters.

488. In terms of political affiliation, Western province has always been a mixed bag since Kenya's 1991 return to multi-party politics. In the 2007 general elections, the province largely supported the ODM in both the parliamentary and presidential elections. However the traditional Ford-Kenya strongholds of Bungoma gave substantial votes to the PNU presidential candidate and also elected some MPs on the ticket. Among the MPs who made it to parliament under the PNU umbrella are Bonny Khalwale, Wakoli Bifwoli, Noah Wekesa, Soita Shitanda and Moses Wetangula.

PATTERNS OF VIOLENCE

489. Violence in Western Province took the form of:

- Burning, looting and vandalising of property primarily owned by Kikuyus.
- Displacement of persons of Kikuyu origin and in some places, of Kisiis.
- Evictions of individuals from communities that supported the PNU primarily the Kikuyu but also the Kisii.
- Excessive use of force by the police

490. Violence was experienced in Western province well before the voting day. During the campaigns in December, Ikolomani MP Bonny Khalwale, had his car burnt down in Kakamega. In the ensuing demonstrations, the police shot 6 demonstrators dead.[420] There was also widespread tension following the killing of 3 Administration Policemen [APs] on the 26th December 2007 in Lugari.Three Administration policemen were killed on 26th December 2007 as a state of tension engulfed various parts of the country ahead of the 27th December 2007 general election amid claims of intended rigging. This happened even as security organs led by the police intensified their operations in reaction to fears earlier expressed by Orange Democratic Movement (ODM) amid counter-claims by both Orange Democratic Movement Kenya (ODM-K) and Party of National Unity (PNU).)[421]

[420] See Sunday Standard Newspaper dated 30th December 2007 by Peter Ochieng and 4 others (PEV, NWP, DEC, 003)

[421] See The People Newspaper dated 27th December 2007 by People Team (PEV,NWP,APR,203)

491. In Mumias, on the 27th December 2007 a 1,000-people crowd surrounded a trader known as Macho at his shop alleging that he had stored boxes of ballot papers to be used for rigging.[422] While the claim was not substantiated after a search, the police had to use tear gas to disperse the crowd, an action that provoked *boda boda* (bicycle taxi) operators to erupt into an orgy of looting. The crowd also threatened the Kikuyus with eviction whether or not ODM won or lost the presidency.

492. By January 30th 2008, Kakamega police station was reportedly accommodating 1,000 internally displaced persons [IDPs]. On the 31st December 2007, the police reportedly killed a pregnant woman and two children as a gang of 20 youths was looting and burning property. By February 2008, the violence had turned serious enough to force the closure of schools. Public transport on the Kakamega/Turbo highway was also paralyzed with a large trench dug at Jua Kali (Turbo).In Kakamega town, 10 houses were burnt alongside some WECO university hostels.

493. On 1st January 2008, in Likuyani, Lugari, people returned from New years celebration in churches to find 30 houses burned under the command of Reuben Shihulu alias 'Saddam' who was apparently walking around with a list of of names of Kikuyus and their residence identification and seemed to control and finance the group of 300 Luhya and Luo youths.[423] The Assistant Chief helped victims who eventually took refuge at the Likuyani DO's office. The violence continued for the next 3 days up to January 4th 2008 with 50 youths in balaclavas (This are the masks that usually worn that cover the whole head but have the eyes provisions cut out) trying to block victims' access to the DO's office. 'Toll stations' were erected on the roads which however, the area Chief removed.

494. Violence in Budalangi was first reported on 29th December 2007 when armed supporters of the PNU candidate Raphael Wanjala shot one civilian in the area dead. Supporters of the ODM candidate, Ababu Namwamba counter- attacked. Eventually the police chased Namwamba's attackers out of town.[424] By the 30th December 2007 announcement of the presidential results, the violence now targeted the property of the Kikuyu population leading to massive evictions. The violence was partially explained in terms of the combative mood of youths during the circumcision season.[425]

495. In neighbouring Nambale, violence was first reported on 30th December 2007. It was also suggested that the barricading of roads by youths was a response to provocation or instructions received via FM stations. Some of the stations that were part of the incitement exercise include the Kalenjin-language station Kass, the Kikuyu stations Inooro and Kameme and the Luo station, Lake Victoria. [426] Fearing destruction of property, the police allowed vehicles to cross the border into Uganda without subjecting them to the normal inspection.[427] By the 31stDecember 2007, it was obvious that the civilian violence was targeted at the Kikuyu while police targeted the Luos and Tesos. It appears that the motive of the violence was to loot and burn property rather than to kill. Some Kikuyu's and Bukusu's crossed the border and went to Uganda. They were settled at Mulanda camp in Tororo. The KNCHR information indicated that this was a transit camp and it

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[422] See KNCHR post mission report of western region dated 18th March 2008 (PEV,PMR,APRIL,016).
[423] See KNCHR interview with a male victim in Lugari on 27th February 2008 (PEV,IVR,MAR,655)
[424] See KNCHR interview with a male resident of Bunyala on 15th March 2008 (PEV,IVR,MAR,797).
[425] See KNCHR interview with an informer in Lugari on 14th April 2008 at Likuyani IDP camp (PEV,IVR,APR,1033).
[426] See Email report by UN OCHA dated 26th January 2008 (PEV,EM,MAR,013).
[427] See KNCHR post mission report of western region dated 18th March 2008 (PEV,PMR,APRIL,016).and The People newspaper pictorial dated 30th December 2007 by People Team (PEV,NWP,APR,211).

was a home to about 5400 refugees.[428] The DC Busia is quoted saying that some rape cases had been reported from the Mulanda transit camp.[429]

496. The demonstrations were often accompanied by attacks against Kikuyus. In Kakamega, Mumias and Busia, the demonstrators targeted property and businesses belonging to Kikuyus, burning, looting and vandalizing them. In Lugari district, it is reported that violence began in areas neighbouring Uasin Gishu district and spread into Lugari with the attackers targeting and burning property belonging to Kikuyus. It is reported that the attackers, who were wearing black balaclavas and were painted white on the faces, were armed with pangas and arrows and used matches to burn grass thatched houses and petrol to burn the more permanent structures.

497. By the beginning of April 2008, calm had returned to many parts of the province. The KNCHR investigation team noted that the displaced people in Kakamega, Mumias and Busia had returned to their premises and reopened their businesses. Those whose property had been burnt were already reconstructing. In Lugari however, only a few people had returned to their farms and many remained in the IDP camps. Those who had returned however only went to their farms by day and returned to the camp at night for fear that their security was still threatened.

ROLE OF STATE AGENCIES

498. Overall, the police responded with overwhelming force against the demonstrators with many deaths attributed to police shootings. In Kakamega, Busia and Mumias for instance, all deaths reported in connection with the violence occurred as a result of gun shots. The police in many cases alleged that they shot the demonstrators because they felt overwhelmed and could not contain the violence. Lugari was a unique case however as it is the only district in the province where it is reported that demonstrators (often referred to as raiders in many reports) were armed. However, it is also the only district where demonstrators were not shot by the police. Wester province reported a total of 293 deaths.

499. Many informants also reported that the police took measures to protect people under threat, repulsing demonstrators and looters and generally trying to restore law and order. Public Administrators are also cited as having taken measures to restore order, notable among them Assistant Chief Diana Awino's actions The area assistant chief and some elders tried to stop the youth from attacking in Lugari on the 30th December.[430] A chief in Sango sub-location was mentioned by several witnesses as having attempted to prevent the violence in Likuyani, division of Lugari. On receiving information that Kikuyus were being attacked by raiders coming from Soy and Turbo, he immediately got in touch with the area DO and AP commander who gave him officers to counter the attacks. With his team of a few APs, they were able to counter attackers from the Soy direction and in the process rescued a number of targeted persons from the attackers. They were however not able to counter attackers from Turbo direction. Many displaced persons at the IDP camps cited this Chief as having rescued them from the attackers. The Chief has subsequently been threatened severally for allegedly assisting Kikuyus.

[428] See Daily Nation Newspaper dated 5th January 2008 by Gedieon Maundu and others (PEV,NWP,JAN.005)
[429] KNCHR post mission report of western region dated 18th March 2008 (PEV,PMR,APRIL,016).
[430] See KNCHR interview with a male victim of Lugari on 27th February 2008 at Lukuyani DO IDP camp (PEV,IVR ,FEB,537).

500. On the other hand, Lukuyani Assistant Chief Luseno Lusaba was cited as having commanded the squad of 400 youths who raided Lugari on the 31st December while Lukuyani Chief Charles Mbanda refused to respond to pleas of help.[431]

501. However, there were reports of the use of excessive force by the police in Kakamega, Busia and Mumias districts where they reportedly shot demonstrators and even persons who were reportedly not taking part in the demonstrations. Between 30th December 2007 and 3rd January 2008, hospital records in these districts indicate that all bodies (12 bodies) brought to the mortuary involved deaths resulting from gun shot wounds.[432] These deaths are ascribed to the police to the extent there was never any instance where the police reported armed civilians on the rampage, or indeed arrested any such persons. The single report citing armed civilians was the 28th December 2007 incident in Nambale where supporters of PNU candidate Raphael Wanjala confronted the celebrating supporters of ODM candidate Ababu Namwamba killing one of them.[433]

502. In Bungoma police shot dead 3 people on December 31st 2007 following a protest against the announcement of the presidential election results. Another 10 people were admitted to hospital in critical condition.[434] A police station in Sabatia was razed to the ground while some 100 people became internally displaced. On the same day the police shot dead one man identified to be a driver with Malava Health Centre. There was also a report that a policeman had shot dead a woman as she was taking things from a shop owned by a Kikuyu Businessman at Kamlon.[435]

503. On the 2nd January 2008, police killed 2 people, a petrol station and a vehicle were also burnt in Ikolomani. Two other people were killed by the police in Butula on January 3rd. On 4th January police at Malava police station turned away Luo IDPs who had walked from Eldoret, telling them that the station was only sheltering Kikuyus. On the 30th of January in Kakamega police claiming to be repulsing looters killed 5 persons including a 14-year old schoolboy, and injured another 13 who were admitted to hospital with gun-shot wounds.[436]

504. Violence was most intense in Lugari than other parts of the province yet not even a single person was arrested. There are also indications that the local Catholic priest warned of the impending violence yet no action was taken by security forces to prevent it.[437] The police reportedly told people seeking refuge: *"Si mliiba kura!"* ("You are paying for stealing the presidential votes!")[438] There are also many people from the area mentioned in connection with the violence none of whom was arrested.

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[431] See KNCHR interview with a male victim of Lugari on 29th February 2008 at Lukuyani DO IDP camp (PEV,IVR,MAR,676)
[432] See KNCHR interview with a male victim in Kakamega Provincial Hospital on 13th March 2008 (PEV,IVR,MAR,737)
[433] See KNCHR interview with a male resident of Bunyala dated 15th March 2008 (PEV,IVR,MAR,797)
[434] See Daily Nation Article dated 2nd January 2008 by Jared Nyataya (PEV,NWP,JAN,002)
[435] See KNCHR interview with a male victim in Mumias on 14th march 2008 at Mumias Police Station IDP camp (PEV,IVR,MAR,789)
[436] See Daily Nation Article dated 1st January 2008 by Nation Team (PEV,NWP,JAN,001)
[437] See KNCHR interview with a male victim from Lugari on 28th January 2008 at Likuyani DO IDP camp (PEV,IVR,FEB,534).
[438] See KNCHR interview with a male resident of Kakamega on 7th February 2008 taken at Kirathimo IDP camp (PEV,IVR,FEB,122)

505. A large number of informants apparently had the mobile phone numbers of senior police officers whom they called at the height of the crisis. That such callers were Kikuyus suggests they might have retained such numbers in anticipation of just such occurrences. In early January 2008 in Mumias for example, it was reported that there was a clear divide in the police force with lower-ranking police officers supporting the ODM while their seniors apparently rooted for PNU. In one incident in Mumias, the police are reported to have encouraged demonstrators to loot but not injure or kill their victims.

PLANNING AND ORGANISATION

506. Save for Lugari, there is no evidence of planning or organization of violence in Western Province. Information from Busia, Mumias and Bungoma District Security teams indicate that the violence in the region was spontaneous.[439] Indeed, the Busia District Commissioner [DC] who chairs the District Security Committee ascribed the violence to "mob psychology" rather intentional pre-planning.[440]

507. Interviews across Western Province show that there were some underlying tensions dating back to the 2005 referendum. However, interviewees, even among IDPs, emphasise that campaigns leading up to the December 2007 general elections were largely peaceful save for the isolated incidents such as the burning of outgoing parliamentarian Bonny Khalwale's car, and the inflammatory remarks directed at Kikuyus.[441] The interviewees predominantly identified the disputed presidential elections as the trigger of the violence.

508. The interviewees have however speculated that there could have been some limited planning or organisation. Some pointed to actions such as the targeted burning and looting of Kikuyu property and reports of ring-leaders walking with lists as evidence of planning.[442] The interviewees also speculated that to the extent that all attackers were in black with painted faces, they must have organised themselves ahead of the operation.

509. There is also a report that on 2nd January 2008 Reuben Shihulu alias 'Saddam' was seen distributing money in Lugari. The source of the money was unclear and there are suggestions that he was acting on behalf of some wealthy person(s).[443] There were further reports from Likuyani division in Lugari that some people were seen supervising the attacks and moving around in new 4x4 vehicles. However, no clear details of this group have emerged.

510. The picture is however different in Lugari district where there appears to be evidence that the violence was planned and organised in light of the manner in which it was conducted. Moreover, immediately after the November 2005 referendum, certain Lugari individuals declared that the Kikuyu "could not continue to dominate the country as they had done and should return to Central Province".[444]

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[439] See KNCHR post mission report on West Region dated 18th March 2008 (PEV,PMR, APRIL,106).
[440] See Ibid.
[441] Okemo for instance declared he did not want votes from Kikuyus who retard development among the Luhya.
[442] KNCHR interview with a male victim in Lugari on 27th February 2008 at Likuyani DO IDP camp (PEV,IVR,MAR,655)
[443] Ibid
[444] See KNCHR interview with a male victim in Lugari on 27th February 2008 (PEV,IVR,FEB,537) and KNCHR interview with a male victim in Lugari on 28th February 2008 at Likuyani DO IDP camp (PEV,IVR,MAR,692)

511. In Lugari, the attackers came from the direction of neighboring Uasin Gishu district in an organised manner, wore identical black balaclavas and white paint on their faces and conducted the attacks in a manner to suggest preparation and coordination. The suggestion is that the attackers were not from Lugari district. They attacked from various directions and divided themselves into smaller groups once they entered a targeted area and seemed to be getting directions from a designated leader. They also seemed to know specifically which homes to attack. Retired army officer, James Tororei of Lukiyani division was cited as a sponsor of the January violence as was an ex-Special Branch officer a Mr. Maloba. [445].

512. Many of the interviewed victims alleged that they had been threatened with eviction even prior to the voting day. They had been told that whether Kibaki won or lost, they would be evicted from the area of occupation. This suggests that it was the intention of some people to displace Kikuyus from their farms in Lugari district.

513. Whereas a religious leader, pastor Isaiah Nyongesa, has been cited as one of the key organizers of the violence in Lugari,[446] churches generally assisted the victims. In particular, the Catholic Church Parish has been mentioned as having assisted displaced persons during the violence and rescued others by ferrying them to the Catholic Church for shelter. The Red Cross on the other was instrumental in distributing relief to IDPs.

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[445] See KNCHR interview with a male victim in Lugari on 28th February 2008 at Likuyani DO IDP camp (PEV,IVR,MAR,692)
[446] See Ibid.

COAST REGION

INTRODUCTION

514. The Coast Province is situated along the Indian Ocean, and comprises one of Kenya's eight administrative provinces. It has its administration headquarters in Mombasa. The Coast Province is inhabited by members of the Mijikenda communities (Digo, Chonyi, Kambe, Duruma, Kauma, Ribe, Rabai, Jibana and Giriama) as well as other communities including the Swahili speaking tribe, people of Arab descent, Pokomo, Orma, Taita, Bajuni among others. Other smaller ethic communities commonly referred to as the residents from upcountry or *'wabara'* found in the coast include the Kamba, Kikuyu, Embu, Meru, Luo and Luhya.

515. According to the Electoral Commission of Kenya (ECK), the Coast Province had a total number of 1,083,839 registered voters out of a total voting age population of 1,580,515 in the 2007 general elections[447]. Coast province was predominantly an Orange Democratic Movement (ODM) stronghold as was evidenced by the election results of the 21 constituencies in the Coast Province, which are Changamwe, Kisauni, Likoni and Mvita in Mombasa District; Msambweni, Matuga and Kinango in Kwale District; Bahari, Kaloleni and Ganze in Kilifi District; Malindi and Magarini in Malindi District, Garsen, Galole and Bura in Tana River District, Lamu East and Lamu West in Lamu District and Taveta, Wundanyi, Mwatate and Voi in Taita District. The ECK results indicated that in the presidential race the three main candidates fared as follows: Raila Odinga received 353,773 or 59% while Mwai Kibaki received 197,354 or 33% of the vote while Kalonzo Musyoka got 38,881 or 7% of the vote. In the parliamentary race ODM obtained 12[448] of the 21 parliamentary seats, in Coast Province, while PNU together with its affiliate parties obtained 7 seats[449].

516. Election related violence is not a new phenomenon in the Coast province and while the focus of this report is based upon the 2007/2008 post election violence, it is worthwhile to draw upon past incidences of violence particularly in 1997 which was also an election year.

517. In August 1997, the Kenyan coast was engulfed in violence that lasted for about two months emanating from Likoni Division (Mombasa District) and spreading to Kwale District. According to the report of the Akiwumi Commission, the clashes were between members of the Digo community versus the Luo, Kikuyu and members of other upcountry communities. The Akiwumi Commission refereed to the clashes as "traumatic and well organized"[450]. A militia group known as the *'Kaya Bombo'* which comprised of youths from the Digo community were reported to have attacked Likoni targeting people who were from up country commonly referred to as *'watu wa bara.'* In a daring show of defiance to state authority, the youth invaded a police station, stole weapons and freed suspects. The *Kaya Bombo* not only killed but also stole and destroyed property while also freeing those in police custody.

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[447] Statistics obtained from the Electoral Commission of Kenya website http://www.eck.or.ke/elections2007 (Accessed 19 June 2008).

[448] These include Bahari, Changamwe, Galole, Kisauni, Likoni, Malindi, Magarini, Msambweni, Mvita, Mwatate, Wundanyi and Voi constituencies. Accessible at http://www.eck.or.ke/elections2007 (Accessed 19 June 2008)

[449] http://www.eck.or.ke/elections2007

[450] Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, pages 25 and 256

518. Because the Coast province is characterised by land disputes, landlessness, big numbers of squatters and issues relating to the distribution of resources, political contests usually mobilize around these related grievances. The general perception of the local communities, the Mijikenda and the Swahili, is that people who are from other communities, otherwise referred to as the 'people from up country' have taken up what was communal land through individualized title deeds. A senior public official confirmed this sentiment but explained that a lot of land had also changed hands on a 'willing seller willing buyer' basis but that even those recently resettled and issued with title deeds are known to be selling land.[451]

519. Other Government officials based in the region interviewed confirmed that the main grievance of the local people is that large tracts of land are held by 'non-coastal' people, some who are absentee landlords. Successive governments have not done enough to provide land to locals many of whom are squatters. They also noted that there have also been incidences of mismanagement of settlement schemes by government officials and local leaders (Committees, Councillors and Members of Parliament), who conspire with officers from the Ministry of Lands to have undeserving people benefit from the schemes. They said that the government has had to nullify allocations in certain cases where there has been gross unfairness[452].

520. Land has also been used by politicians as a campaign tool to stoke tension and anger. Talks on *Majimboism* (federal government) in the Coast have also beenwidely used to imply a system of Government that would give the locals 'their' land back as indicated in various leaflets circulated in the region in 1997, which stated "*Majimbo juu, pwani kwa Mijikenda,*"[453] *(long live Federalism, the Coast is for the Mijikenda*).

521. During the 2007 election campaigns, presidential and parliamentary aspirants of the ODM party, highlighting their manifesto, made mention of a system of devolution of power or majimbo in Kiswahili to denote "the transfer of political, administrative and legal authority, power and responsibility from the centre to the lower levels of government"[454]. Some interviewees told the investigation team that talks on *Majimbo* seem to have been either misinterpreted or misunderstood by the Coastal people because many of them thought that if a system of *Majimbo* was implemented the landless would obtain land since the Coastal land and other properties would revert to the locals[455].

[451] KNCHR interview with a senior public official in Kwale District on 20th March 2008
[452] KNCHR interview with a senior chief inspector of police in Ukunda South Coast on 20th March 2008
[453] Daily Nation dated 25th August 1997
[454] ODM Manifesto Chapter 15 on Devolving Power accessible at http://www.kenyavotes.org/node/107
[455] KNCHR interview with a senior chief inspector of police in Ukunda South Coast on 20th March 2008

PATTERNS OF VIOLENCE

522. Interviewees confirmed that in the months leading up to the general elections, there was tension in the Coast region due to the uncertainty as to who was to win the presidential polls. On 29th December 2007, two days after the polling day, the tension was very high both in the North and South Coast areas as people waited in bated breath for the release of the results of the general elections. People stood in clusters discussing the possible reasons for the delays in the announcement of the results. The tension was also evident on the morning of the 30th December 2007 and the chaos began immediately the presidential results were announced in the afternoon of the 30th December 2007.[456]

523. The reaction to the presidential results were characterized by demonstrations and barricading of the roads; looting, property destruction and arson; killings; forceful displacement and evictions targeting specific communities and generally unrest amongst the youths who also took advantage of the situation to settle scores. The pattern of violence was similar across the two Coasts[457] however what differed was the magnitude of the violence.

Demonstrations and Barricading of roads

524. In both the North and the South Coast the youth barricaded roads and stoned cars. Interviewees told the Commission that the youths stopped cars and spoke to passengers in a 'coastal language' and if one could not respond in that language they would be attacked. The interviewees further stated that the police intervened control and were forced to fire teargas to dispel demonstrators. The police were no doubt overwhelmed by the skirmishes considering the scale of the violence and many of the statements indicated that the police were forced to watch as the looting occurred. However they pleaded with the youths and other members of the public involved in the skirmishes 'to loot but not to kill or beat people'[458].

525. On the allegations from those interviewed that he had been involved in the violence, the team interviewed Ramadhan Kajembe, MP for Changamwe, who denied any involvement in the violence and informed the Commission that he had taken proactive measures to stop the violence. He stated that on 31st December 2007 he had met members of the Luo community and persuaded them not to cause havoc in Coast. He said that he had also later met people from Central Province and urged them not to revenge the destruction that had taken place on 30/12/2007 which had affected them more as a community[459]. The MP also asserted that he told the warring gangs from the two communities that they should not bring their violence to the coastal people as they themselves did not belong to the Coast and if they wanted to fight they should go and fight in their indigenous areas. He said he had been affected by the violence as one of his business premises had been destroyed because it housed a supermarket owned by a member of the Kikuyu community.

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[456] KNCHR interview with a male resident of Mombasa on 15th February 2008 at Changamwe, and a victim at Mishomoroni dog unit police station on 16th February 2008

[457] KNCHR interview with an administration police commander in Mombasa on 19th March 2008

[458] KNCHR interview with a male resident of Mombasa taken on 16th February 2008 at Mishomoroni Dog Section police station IDP camp

[459] KNCHR interview with a Member of Parliament on 18th February 2008 in Magongo Mombasa

526. The team also met Ali Hassan Joho, MP for [Kisauni] on 29th February 2008 and inquired from him among other issues the allegations that he had paid lawyers to represent persons who had been detained at Shimo La Tewa prison. The MP stated that he was aware of this group of people and when one called him to ask for assistance, he called his brother who was in coast and instructed him to get them some legal assistance as they are members of his constituency and deserved legal representation. He further told the team that the way he assisted these inmates was the same way he had assisted in paying a hospital bill of Ksh. 90,000 for a young man who had been shot in the electoral violence. He noted that he did all that as the Member of Parliament of that constituency. [source].

527. In Likoni Division groups of youths blocked roads, lit tyres and stoned cars. On the Mombasa - Malindi highway, public transport was brought to a standstill as police battled protestors who were demonstrating and shouting ODM slogans "No Raila, No Pace, No ODM no Peace."[460] Interviewees attributed the demonstrations to the disappointment of their expectation that Raila Odinga would become the president. The indigenous people of the coast were disappointed that President Kibaki's win would deter implementation of the majimbo system, which as they perceived, was aimed at ensuring the landless obtained land. To the locals therefore, the win meant that they had lost the chance to repossess their 'ancestral' land.

Looting and Destruction of property

528. In Magongo (Changamwe) a building housing different business premises was burnt by mobs chanting ODM slogans on 31st December 2007[461]. The youths used rungus (clubs), paraffin and tyres to destroy and burn the kiosks at Magongo Mwisho. As they were burning the kiosks, the youth kept shouting "*tunataka haki itendeke Kenya*" (we want justice). One of the interviewees advised that the kiosks burnt belonged to Kikuyus and Kambas. He noted that the kiosks were closely built and that he and other members used the kiosks to sell clothes and shoes.[462]

529. A witness noted that in Changamwe constituency, a group of youth attacked and looted the Total Petrol Station[463]. He reported that two police officers arrived at the petrol station when he called for assistance, however they were overpowered by the crowd and could only watch and request the crowd to take anything they wanted but not to injure or kill anybody.

530. In Malindi, the situation was generally much calmer and the tension much less, than other parts of the Coast province. However, the Commission was informed of the eruption of violence in Malindi's Kisumu Ndogo area. There, a Kikuyu was arrested by police for allegedly informing the residents that the Kikuyu were arming themselves in preparation for war against the perceived members of ODM[464].

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[460] KNCHR interview with a female resident of Mishomoroni on 16th February 2008 at Mishomoroni Dog Unit police unit IDP camp and KNCHR interview with a male resident taken at Changamwe on 15th February 2008

[461] KNCHR interview with a female resident of Magongo on 15th February 2008 and Daily Nation Newspaper article by Nation team dated 1st January 2008

[462] KNCHR interview with a female victim of Mombasa on 15th February 2008 at Magongo

[463] KNCHR interview with a male victim from Mombasa taken on 18th February 2008 at Likoni Police Station IDP camp

[464] Daily Nation newspaper article dated 1st January 2008 by Nation team

531. In the South Coast, destruction of property was experienced in various parts of Kwale District. When the presidential results were announced, hawkers' kiosks mainly belonging to Kikuyus were burnt in Diani. A grass thatched (makuti) church was also burnt[465]. Subsequently, anonymous threats continued to be received by members of the Kikuyu and Meru Communities that more damage was to be expected. The Provincial administration also confirmed that most of the violence occurred following the announcement of the presidential results whereby shops were looted[466].

532. At Migadini stage in Mvita Constituency, a group of people were chanting such slogans as "No peace without Raila", and "Kikuyu property is our property"[467] while at the same time bringing down and burning kiosks, lighting fires and throwing bottles.

533. Witnesses alleged that the initiators of all the violence and destruction were members of the Luo community and their Digo counterparts.[468] The rowdy mobs broke into stores and homes, and looted, and burnt down the structures.

534. Other interviewees including members from international and non-governmental organizations also corroborated this information noting that the looting mostly targeted businesses of persons from upcountry and especially the Kikuyu and Meru communities. [source]. Officials of the provincial administration interviewed were of the view that property destruction and violence was not targeted at any specific community, except for an incident in Miritini where property belonging to a businessman of the Meru ethnic group was razed to the ground. The provincial administration advised that the people of Coast Province live in mixed neighbourhoods; hence the destruction of property was random as the looters would not know what property belonged to whom[469].

535. According to a newspaper report, in Diani, Kwale District, a 58 year old man by the name of Peter Ngaithe Chege, had been killed on 19th January 2008 and his family members injured. His house was also torched and household items stolen. The OCPD Mr. Stanley Lamai confirmed this and noted that the killers were armed with machete and rungus.[470]

536. According to interviewees, some of the statements made by the politicians especially during the campaign period incited the local community to commit violent acts following the outcome of the election results. One of the witnesses averred that some politicians paid youths to destroy private properties however the witness declined to give names of the particular politicians. In other statements, a member of the ODM pentagon, Najib Balala, was named as an inciter and was said to have paid youths Ksh. 500 to cause violence. [source, and words of incitement used].

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[465] KNCHR post mission report of 19th February 2008
[466] KNCHR interview with a senior government official at Ukunda South coast on 20th March 2008
[467] KNCHR interview with a male victim on 15th February 2008 at Changamwe Holy Cross Catholic church
[468] KNCHR interview with a male victim from Likoni on 14th February 2008 at Consolata Catholic Church
[469] KNCHR report by the monitoring team in Mombasa on 1st January 2008
[470] Report by Standard Newspaper of 20th January 2008

537. Witnesses confirmed that in incidences where violence manifested itself into looting and destruction of property the targets were mostly Merus, Kambas and Kikuyus. The team interviewed victims of the violence and from the statements it was clear that many of those interviewed whose properties had been destroyed or looted were members of the GEMA - Kikuyu, Meru, Embu or Kamba communities[471]. Some of the interviewees also noted that the violence also targeted those known to have been supporters of the Party of National Unity (PNU).

Eviction and displacement

538. Displaced persons sought refuge at various police stations and churches, including Bamburi Police Station, the Catholic Church in Mombasa town and the police 'Dog' Section. In Likoni, the first point of call for the victims of the post election violence was the Likoni Catholic Church, before they were later transferred to the Young Women Catholic Action (YWCA) by the Kenya Red Cross after about 15 days[472]. Other victims fled directly to the YWCA while others fled to Mshomoroni police station in Likoni. The Kenya Red Cross statistics revealed that as of 31st December 2007, there were 110 women, 70 men and 80 children at Mshomoroni police station and 80 women and children in Likoni[473]. The KNCHR team visited Likoni Catholic Church and were advised that approximately between 500 – 600 displaced persons had been received at the church, and were mostly from the Kikuyu and Meru communities.

539. At St. Stephen Church in Magongo, the Commission learnt that 40 families had been received at the Church by 31st December 2007 before the Kenya Red Cross took them to the airport grounds. The Commission also learnt that the people to arrive at the Church were from the Kamba and Kikuyu communities; however they were later joined by members of the Luo and Luhya communities. The interviewee also noted that both groups antagonized each other in the church with the Kikuyu and Kambas asking their Luo and Luhya counterparts why they too were at the camp after having attacked them[474].

540. The Commission captured photographic images and obtained leaflets evidencing that the evictions were targeted at specific communities. Spray paints such as on the picture below was used to identify property to be vandalized. It reads '*Kikuya Vanja*' understood to be read as '*Kikuyu Vunja*" meaning that the property belongs to a Kikuyu hence is or can be destroyed.

541. The above sample reads: *Onyo kali nyinyi wakikuyu wakamba muliofika tayari na wale ambao tuko na habari wanakuja tutawauwa nyote. Hayo magari mlioleta tutayachoma yote. Kwahivyo tunawapa masaa sabini na mbili muondoke. Muondoee magari yenu kabla ya muda kumalizika. Ama damu na majivu ya mali yenu itamwagika from Kaya Revolution Councel. Similani Midzichenda.* Translation: 'You Kikuyu's, Kamba's, who have already arrived here and those we have information are coming we shall kill all of you. Those vehicles you have brought we shall burn all of them. Therefore we are giving you 72 hours to leave. Get your vehicles out of here before this time runs out. Or your blood and ashes of your property will be poured. From Kaya Revolution Councel. Similani Midzichenda (sic)'.

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[471] KNCHR team mission report of 19th February 2008
[472] KNCHR interview with a priest (witness) on 19th February 2008 in Mombasa
[473] YMCA assessment report dated 16th January 2008 in Mombasa
[474] KNCHR interview with a male victim on 19th February 2008 at Magongo Mombasa

Murder and infliction of bodily harm

542. In Miritini in Changamwe constituency, property belonging to a man from the Ameru ethnic community was razed down, killing 6 tenants from unspecified communities.[475]. In Magongo area in Changamwe a member of the Luo community was said to have broken into the house, burnt it, and as a result, eight family members in the house were killed from Kikuyu community[476].

543. The media further reported the likely death of 11 people, most of them from one family, [from which community] who were killed when a murderous mob locked them in a house and set it ablaze in Malindi.[477]

544. The Coast Provincial Hospital received approximately 70 people suffering from gun shot wounds and burns especially between the 31st of December 2007 and 3rd January 2008. The total number of patients admitted were 19. Those with gunshots were six, one was shot with an arrow and two had burns. According to information, the hospital received 24 bodies. Eight bodies were burnt beyond recognition. Of these, eight were identified by the relatives and 16 were not identified. The ages of the dead was estimated to be between 18 to 35 years. [478]

545. At the meeting with the OCPD who was heading Mombasa district police force, the Commission was informed that the number of deaths in police records were 26, two of whom had died of bullet wounds, six had been burnt alive in Miritini, one died from a poisoned arrow, and others died of injuries out of blunt objects such as machetes or in stampedes[479].

Gender based violence

546. According to the Nairobi Women's Hospital, there were reports of a total of 18 women having been subjected to physical and/or sexual attacks in the Coast Province. Nine of these cases were reported to Mshomoroni Police Unit in Kisauni constituency, seven at Likoni police station in Likoni Constituency, and two to Nyali police station in Kisauni constituency[480].

PLANNING AND ORGANIZATION

547. Unlike other parts of the country, Coast province stood out in that violence was contained by mid January 2008[481]. Interviewees reported that violence in the region did not spiral out of control as there were peace initiatives such as Kaya elders, church leaders, and the council of Imams.[482]

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[475] The medical report obtained from Coast Province General Hospital indicated that those who had died were from various communities and KNCHR interview with a Standard Newspaper reporter in Mombasa on 16th April 2008

[476] KNCHR interview with a female victim on 15th February 2008 in Mogongo Mombasa

[477] Daily Nation report of 2nd January 2008 and Daily Nation report of 1st January 2008

[478] YMCA assessment report of March 2008 and Interview with a Doctor of Coast provincial hospital on 13th January 2008

[479] KNCHR team mission report dated 15th May 2008

[480] YMCA assessment report of 16th January 2008

[481] Standard Newspaper report of 23rd January 2008 and KNCHR post mission report done on 23rd March 2008

[482] KNCHR post mission report done on 23rd March 2008 and interview with an official of YWCA.

548. The youths constituted the majority of the demonstrators in different parts of the Coast Province. The youths were mostly men said to move in large numbers of about 200[483] or more when they were looting and destroying property damage. They were armed with [rungus, pangas, stones, talimbos (claw bar)[484], and hammers, the latter of which were used when breaking into properties.[485]

549. Members of specific communities perceived to be from outside the region were issued with threats and leaflets, urging them to vacate the Coast Province[486]. Most of the property that was destroyed in the Coast belonged to these same communities. There are also reports of prior identification of Kikuyu and Meru property for destruction.[487]

550. Interviewees from local non-governmental organizations reported there appeared to be some form of planning because it was too coincidental that the violence erupted simultaneously in different areas with members of the Kikuyu and Meru communities being the main targets of the violence in all parts of the Coast. They mentioned politicians as possible organisers of the violence. One of the interviewees noted that the messages that were being passed out by the politicians during the campaign period had played a big role in creating anger and sparking the violence in the area[488].

551. Interviewees reported that there was no element of planning but that the violence was merely a reaction to the poll results. This later degenerated into theft and property destruction with some people taking advantage of the situation to settle scores with their enemies[489]. Other sources from the Government and officials from the Council of Imams reported that the violence was not organized, but was spontaneous. According to an interviewee from the Council of Imams, the violence was mainly triggered by anger and frustration following the announcement of the elections results[490].

ROLE OF THE STATE

The police

552. Some interviewees reported that the Police appeared to have been overwhelmed by the violence[491]. Others reported that the police focussed on protecting life while ignoring looters and those destroying property. There were allegations that the police had told members of the public to 'loot but not to kill'[492]. However, police officers interviewed denied these allegations.[493]

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[483] KNCHR interview with a male victim taken on 15th February 2008 at Changamwe Holy Cross Catholic church
[484] KNCHR interview with a male victim in Tudor Mishomoroni on 16th February 2008
[485] KNCHR interview with a male victim in Tudor Mishomoroni on 16th February 2008
[486] Copy of leaflet threatening Kikuyus to leave the Coast Province by 20th January 2008
[487] KNCHR interview with a male viction in Mishomoroni Mombasa on 16th February 2008
[488] Hate speech by a senior politician at a public rally in Kisauni Mombasa on 13th November 2008
[489] KNCHR interview with a male resident of Mishomoroni on 16th February 2008
[490] KNCHR post mission report in Mombasa on 19th February 2008
[491] KNCHR interview with a male victim on 8th February 2008 in Mombasa
[492] KNCHR interview with a male victim on 15th February 2008 in Changamwe and an interview on 16th February 2008 in Mishomoroni
[493] Interview with OCS Likoni and an OCPD in Kwale District

The Commission was informed that in one incident in Likoni, General Service Unit officers sat in the vehicles and watched as the crowd sang and looted responding only to protect tourists[494].

553. According to reports by the Coast Province General Hospital, six patients were admitted with gunshots wounds.[495] Two civil society protestors converging for a meeting at Kengeleni in Mombasa were hospitalised at Aga Khan Hospital Mombasa suffering from multiple fractures allegedly caused by the police.[496]

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[494] KNCHR interview with a priest (witness) on 19th February 2008 at Likoni MombasaPEV/IVR/FEB/280
[495] YMCA assessment report of March 2008 and KNCHR interview with a doctor at Coast Provincila Hospital on 13th January 2008
[496] Nation Newspaper report of 17th January 2008

CENTRAL REGION

INTRODUCTION

554. According to the 1999 population census, the population of Central Province is 3,724,159 people. Central Province had a total number of 2,186,315 registered voters in 2007 divided amongst 29 constituencies. In the 2007 General Elections, voter turn-out for the presidential elections was 82% while the parliamentary turn-out was 81%.

555. Central Province is home to the Kikuyu community which over the years has invariably given bulk electoral backing to presidential candidates from the community. In 2007, for example, the PNU presidential candidate, Mwai Kibaki, who hails from the community, garnered 97% of the total presidential vote; while the other key presidential candidates, Raila Odinga of ODM and Kalonzo Musyoka of ODM-Kenya, garnered 2% and 1% of the vote respectively.[497]

PATTERNS OF VIOLATIONS

556. Central Province was characterized by relative calm during the election campaigns, the voting and counting period and for almost a month after the announcement of the results. The exception to this calm was in relation to the usual incidents which occur during campaign periods in Kenya. One case in point prior to the polls was of a civil servant from the Luo community in Nyeri who was caught up in a brawl in a bar for using disparaging words against the Kikuyu community during the campaign period.[498] Further, there were instances where members of the Kikuyu community who supported Raila Odinga and the ODM party were harassed and isolated. In districts such as Nyeri, supporters of the ODM became targets of such harassments and threats from supporters of PNU. Targeted were people perceived to support ODM including fellow Kikuyu people. The Luo, Luhya and the Kalenjin communities were in the most the targets of this harrassment. At the same time, some members of these communities said that if their man (Raila Odinga) took over, they would rape Kikuyu women.[499] Such were the utterances that caused the Nyeri bar brawl. Most of these threats were verbal and never involved physical confrontations or attacks. They were also not coordinated but rather isolated and mostly at the personal level.

557. Residents of Central Province had almost conceded the possible loss of Mwai Kibaki to Raila Odinga once the initial presidential results had began to trickle in. However, things changed as more results began to show Kibaki was catching up with Odinga. When the election results were finally released on 30 December 2007, there were celebrations throughout the province as Mwai Kibaki was declared the winner. Residents, mostly Kikuyu, thronged the streets and social places to celebrate his re-election.

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[497] Toni Weis, "The Results of the 2007 Kenya General Elections", Journal of East African Studies, Vol.2 No 2, July 2008, 1-41

[498] KNCHR interview with an interviwee in Nyeri on 12 April 2008

[499] KNCHR interview with a business man in Nyeri on 12th April 2008

558. Tension started to grip Central Province once Kikuyu people started to be attacked in Rift Valley. This escalated on 1 January 2008 after the burning of the church in Kiambaa, Eldoret. A cross-section of Kikuyu leaders from Rift valley, Central and Nairobi provinces, and mostly newly elected MPs, made public statements calling for an end to the violence on their people. Members of the Kikuyu community were also pressurizing the government to intervene and stop the violence visited on their people once and for all. When the government did not respond quickly enough to stop the violence, some elements of the Kikuyu people in Central Province started to mobilise against killings, maimings and destruction of property and evictions of Kikuyu people, and the government's ineffectual response. This situation ultimately triggered violence in Central Province with non-Kikuyu residents as the targets.

559. The violence in the province can especially be attributed to several factors. First, was the influx of displaced Kikuyu people from other Regions. The first indication that the situation in Central Province was becoming fluid and could explode into violence occurred in Kikuyu division, Kiambu West district, on 2[8] January 2008. A group mostly of youth staged a demonstration from Kiambaa and Nderi areas to the DO's office in Kikuyu town, demanding among other things, the immediate stoppage of the Rift valley killings, evictions and destructions targeting their people; immediate evacuation of the Kikuyu people to safer havens by the Government and guarantee of their security wherever they were. The demonstrators also demanded that the government issues them with vehicles to transport their brothers and sisters back to Central Province away from the conflict areas. They blocked roads and harassed motorists. The situation would have turned chaotic but for the swift reaction of theDO, Police and area MP, all of who assured the demonstrators that everything was being done to help their fellow Kikuyu in the violence torn areas. They also requested the group not to engage in any acts of violence against non-Kikuyu people in the division.[500] The main reason why Kiambaa in Kikuyu became the first epicenter of violence in Kikuyu is that it has a connection of kin with Kiambaa in Eldoret where many people were killed when the church in which they were sheltering was torched by attackers.[501]

560. Second, there were mixed reactions by local residents to the inflow of IDPs. Some residents empathized with the incomers and provided food and shelter. In areas such as Kikuyu, local residents engaged what they termed as the 'adopt a family' approach, whereby the in-coming displaced persons were absorbed into the society. As such there were no major camps in Kikuyu and other areas of the province such as Murang'a North. Unfortunately, too, there was evidence of neglect of incoming IDPs. Some were transported to Nyeri town and left to fend for themselves while many more were hosted by individuals .

561. The case of a woman who hosted around 90 IDPs in her 2 bedroomed house in Othaya exemplifies this.[502] In Nyeri Town, the IDPs camped at Ruringu stadium. The plight of these IDPs and their harrowing stories infuriated residents of Central Province who in turn reacted by threatening members of other communities who resided in Central Province. The threats were either verbal or through posters and leaflets aimed at scaring away non-Kikuyu people. Consequently, non-Kikuyu people sought refuge in police stations and at offices of government administration officers before they found their way back to their rural homes.

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[500] KNCHR interview with senior Government officer in Kiambu Town on 9 April 2008

[501] KNCHR group interview at Kiambaa Cooperative society in Eldoret on 19 January 2008; KNCHR interview with male interviwee at Nandi Gaa farm, Eldoret, on 26 February 2008.

[502] KNCHR interview with interviwee in Othaya, Nyeri, on 14 February 2008; New York Times, 15 February 2008

562. Third, unemployed youths within Central Province took advantage of the unrest to engage in theft and other unlawful practices. They threatened and evicted non-Kikuyu employees working in various companies in order to secure employment for themselves in those companies. Such companies include Universal Corporation Limited (UCL) and Steel Rolling Mills, both in Kikuyu; KARI and KEFRI and other research institutions also in Kikuyu; Tea Estates and Bata Shoe Company in Limuru; BIDCO and other industries in Thika; and Flower Farms in Ol Kalau . A consequence of this conflict was that some companies, institutions and farms reported that their production levels had declined due to the tensions and violence resulting in temporary closures and loss of skilled labour.[503]

563. The violence took several forms. It started with a demonstration in Kikuyu on 28 January, 2008, and was subsequently followed by a series of violence related incidents in Limuru, Thika, Nyahururu, Olkalau and other smaller towns. These demonstrations targeted the government for its perceived failure to protect the Kikuyu community in the Rift Valley and its slow action in evacuating victims of the violence. They were characterized by blocking of highways and harassment of motorists.

564. These demonstrations eventually gave way to actual threats and evictions of non-Kikuyu people. For example, early in February 2008, unsigned notices were circulated in Nyeri town and estates occupied by non-Kikuyu people such as Majengo ordering non-Kikuyu people to leave. When the deadline reached, groups of youths were seen in various places ostensibly ready to evict those who had not left. Out of fear of attack, non-Kikuyu people moved out of Nyeri town. One of the leaflets read "No more clashes but war. Luo, Luhya, and Nandi we give you 24 hrs you pack and go- failure to that we need 200 heads before peace hold once more."[504] By 31 January 2008 non-kikuyu people had moved to police stations in readiness to go to their rural homes.

565. Leaflets were also left at the gate of the Kikuyu Police Station stating that the Kikuyu community did not want the Luo, Kalenjin and Luhya communities in the area. At the Steel Rolling Mills ltd in Kikuyu town, where Luo and Luhya people were employed, they left when workers and employers were threatened.[505] In Kikuyu, the African Inland Church that had housed some non-Kikuyu IDPs was threatened with burning if it continued to host the IDPs. The IDPs had to leave. In Limuru constituency, non-Kikuyu people were threatened that Mungiki militia needed 400 human heads.[506] Employers were also threatened with arson should they continue to house non-Kikuyu employees. The non-Kikuyu left for IDP camps. Over 7000 IDPs camped at the police station in Tigoni.[507]

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[503] KNCHR interview with a factory worker at Limuru on 10 April 2008; KNCHR interview with a male interviwee at Kedong IDP Camp in Naivasha on 15 February 2008; KNCHR group interview with workers from KARI on 9 April 2008

[504] Crimes against Humanity report on political situation in Kenya published on 17th March, 2008; KNCHR interview with interviwee originally from Fort Jesus Estate in Ruiru but then resident at Moi Stadium in Kisumu on 13 February 2008

[505] KNCHR interview with workers of Kikuyu Steel rolling mills on 9th April 2008

[506] KNCHR interview with interviwee originally from Fort Jesus Estate in Ruiru but then resident in Moi Stadium IDP Camp in Kisumu on 13 February 2008

[507] OCHA countrywide report on the violence in Kenya on 31st January 2008; KNCHR interview with a factory worker at Limuru on 10th April, 2008

566. Cases of arson happened, for example, where 30 acres of hay of the Kenya Agricultural Research Institute was burnt down. There was also an attempt to burn down the neighbouring trypanosomiasis research centre at Kabete, but this was repulsed by security forces. Some non-Kikuyu residential houses at the Steel Rolling area were set ablaze on 28 February, 2008 during the demonstration in Kikuyu.

567. Limuru, Thika and Kikuyu areas not only experienced the first wave of violence against non-Kikuyu communities but were also the most affected areas in Central Province, mainly because of the relatively large number of non-Kikuyu people residing and working in various sectors including big tea and coffee estates, industries, institutions and the jua kali sector. At the Unilever farm near Githiga town, non-Kikuyu people were asked to leave the farm. Leaflets were circulated stating that Luo people were sub-human because they were uncircumcised; and some were forcefully circumcised.

568. Approximately 15 people were killed in the province on account of the post election violence. A Teso watchman at a petrol station in Kikuyu was beaten to death by a mob comprising young Kikuyu men.[508] 10 people were killed in Limuru.[509] One Luhya died after being taken to the Tigoni Police Station with all his intestines hanging outside his stomach.[510] Two people were short dead and a police officer injured in mid January.[511] A Kalenjin man was killed at Miti Mingi in Limuru.[512] A Luo man was killed in Limuru when he was found hiding in a lodging.[513]

569. Around 7 February2008, non-Kikuyu people were evicted from their houses by groups of youth and they ran to Kikuyu police station. In Thika and Kikuyu town, non-Kikuyu communities were given notice to leave the areas. In some instances landlords were also threatened with dire consequences if they continued hosting non-Kikuyu people.[514]

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[508] KNCHR group interview with casual workers from Nderi village / KARI at Kikuyu Police Station camp on 10 February 2008

[509] KNCHR interview with a male tea farm worker at Tigoni police station camp, in Limuru on 6 February 2008; KNCHR interview with a male flower farm worker at Tigoni police station camp, in Limuru on 6th February 2008; Standard Newspaper report of 24th January 2008; KNCHR interview with a male tea farm worker in Limuru at Tigoni Police station Camp on 6 February 2008

[510] KNCHR interview with a male flower farm worker at Tigoni police station in Limuru on 6 February, 2008

[511] KNCHR interview with a factory worker on 10th April, 2008 at Limuru

[512] KNCHR interview with a factory worker on 10th April, 2008 at Limuru

[513] KNCHR interview with a factory worker on 10th April, 2008 at Limuru

[514] KNCHR interview with a resident of Thika's Makongeni estate on 5th February, 2008 at Jamhuri park IDP camp in Nairobi.
KNCHR interview with a group of IDPs on 5th February 2008 at Thika Municipal stadium camp

570. There were several incidents of discrimination, dehumanization, humiliation, intolerance and prejudice.[515] There were forced circumcisions of people, reference to non-Kikuyu people as 'nduriri' (an often demeaning term referring to non-Kikuyu people), reference of Luo people as sub-human and denial of services to non-Kikuyu people. In Juja, for example, a water vendor refused to sell water to non-Kikuyu people.[516] Other victims told of calls for businesses not to sell to non-Kikuyu people. The former MP for Limuru, George Nyanja, said that the Kikuyu cannot be led by a 'Kihii' (uncircumcised man in the Kikuyu language), in reference to Raila Odinga.[517]

571. Cases were reported in Kikuyu where small businesses owned by non-Kikuyu communities were targeted and looted. In one such case, a caretaker of a premise was seen selling stock of a fleeing non-Kikuyu person.[518] Many IDPs lost their household goods. Employees of various firms fled in fear, leaving their jobs without proper release by their employers. This led to loss of income. In the case of companies like BIDCO and Kikuyu Steel Rolling Mills, there was heavy loss in terms of human resource and profits. Landlords also became targets of the attackers. They were forced to give notices to their non-Kikuyu tenants.

572. Generally, there were few cases of sexual violence in Central Province. Nonetheless, reports of sexual violence included that of a group of people fleeing from the violence in Central Kenya whose bus was intercepted, the men injured, women raped and the bus burnt.[519] The other case was that of a woman gang raped in Kabete.[520]

Planning and Organisation of the Post-elections Violence

573. People from Luo, Luhya, Kalenjin and to a lesser extent the Kisii communities living in Central Province were targeted during the post election violence. Circulation of leaflets ordering non-Kikuyu people to leave Central Province was done with precision. The perpetrators of these evictions appeared to have known exactly where non-Kikuyu people lived. The leaflets were ordinarily dropped on the door steps of non-Kikuyu residents giving them an ultimatum within which they should have left.

574. The main perpetrators of these evictions were young men of between 10 and 200 people. It was never quite clear to victims of violence where their attackers came from. While some of the alleged perpetrators were known by their victims, others were not, suggesting that some of the youth had been hired from outside the localities where the violence took place. In areas such as Kikuyu and Limuru, local youth that threatened non-Kikuyu residents are said to have been joined by youth who had been evicted from the Rift Valley.

575. Short Messaging Services (SMS) and e-mail messages were used to organize, rally and galvanize the Kikuyu community against other communities.

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[515] KNCHR interview on 13th February, 2008 at Moi Stadium Kisumu, IDP camp with a resident originally from Fort Jesus estate in Ruiru.

[516] KNCHR interview with a male interviwee from Ruiru on 6th February 2006 at Ruiru Police station

[517] KNCHR interview with a male interviwee from Ndeiya in Limuru on 8th February 2008 at Kirathimo IDP camp, Senior Politician hate speech at a meeting in Mukurweini on 13th October 2007

[518] KNCHR interview with a male interviwee on 6th February 2008 at Kikuyu police station

[519] IRIN news bulletin of 25th February 2008

[520] KNCHR interview with senior Government officer on 9th April 2008 at Kiambu.

576. Attackers targeted establishments such as tea and coffee estates, flower farms and factories. It appears this targeting was first aimed to avenge the attacks on the Kikuyu community who had been targeted in the Rift Valley. Second, the intention was to cause fear and intimidation amongst employers so that they would fire non-Kikuyu employees as a consequence of which Kikuyu youth would be employed in their place. Furthermore, landlords were threatened that their properties would be burnt down if their non-Kikuyu tenants did not leave.

577. Certain individuals within PNU allegedly raised funds and organised militia to perpetuate the post-election violence in Central Province. A number of meetings were in Nairobi by some leaders from Central Province where the plight of Kikuyu IDPs was discussed.[521] The meetings started to take a sinister turn when retaliation against non-Kikuyu communities was discussed and organised.[522] A number of these meetings were held in January, February and March 2008, during which time these leaders met at Kenyatta International Conference Centre (KICC), Landmark Hotel and Marble Hotel. Leaders who attended these meetings included Njenga Karume, the immediate former MP of Kiamba. Other participants of the meetings were Stanley Githunguri, MP for Kiambaa, who allegedly organised fund raising; Kabando wa Kabando, MP for Mukurweini, who organised the delivery of weapons; Uhuru Kenyatta, Deputy Prime Minister and MP for Gatundu South, who organised finances to fund pro-Kikuyu militias; and Mary Wambui, a PNU activist, who allegedly organised finances and arranged for arms to be delivered from Ethiopia via Moyale and Marsabit.[523] Another politician mentioned adversely in relation to whipping ethnic tensions is Peter Mungai Mwathi, Lari MP, who uttered inciting statements at Kirathimo camp when he asked Mungiki to arm itself to defend Kikuyu people in the Rift Valley.[524]

578. The extent to which businesspeople financed perpetration of violence against non-Kikuyu communities was not quite clear. A group of business persons met on 26 January 2008 at Kikuyu Country Club to fundraise for eviction of non-Kikuyu residents. The meeting was attended by a Mr Bob of the Kikuyu Matatu Welfare Association and a Mr Wa Babu, owner of Makutano Bar in Kikuyu Town.[525] Individuals said to have supplied weapons for use in raids were Mburu Gituya and John Nice.[526] Small businesses such as Buba Hardware, Kimiti Hardware and Menrose hardware, all in Kikuyu, supplied weapons such as machetes.[527]

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[521] KNCHR interview with an informant in Nairobi on 24th April 2008

[522] Ibid.

[523] Ibid

[524] KNCHR interview with a Herbalist from Ndeiya on 8th February 2008 at Kirathimo IDP camp.

[525] Ibid

[526] KNCHR interview with businesspersons in Langas centre at Klique Hotel in Eldoret on 3 March 2008

[527] Ibid

579. Religious leaders in areas such as Limuru and Nyeri used the pulpit to convey messages amounting to hate speech against non-Kikuyu communities, ODM and genrally rallying the Kikuyu to protect 'our community'. These leaders uttered phrases such as 'Ciaigana ni Ciaigana' ('enough is enough'), suggesting that the Kikuyu community should no longer simply stand by while attacks against them continued. In Kirathimo IDP camp in Limuru which hosted Kikuyu returnees from other provinces, One religious leader urged the people that "The Kikuyu should be armed the way I am armed with a Bible". Finally, gospel artistes, including Miuga Njoroge, performed in Limuru at rallies attended by the local community where hate messages were disseminated.[528]

580. Local language media also disseminated hate speech to Kikuyu audiences in Central Province and in the diaspora. Call-in shows on radio stations enabled individuals to make unregulated hateful statements. Inooro FM put on air highly emotional and distraught victims of the violence, a factor that tended to whip the emotions of its audience. Music in the Kikuyu language played on Kameme and Inooro radio stations also engendered or raised ethnic tensions. One such song, by Miuga Njoroge, variously played by Inooro FM, lyricised about Raila Odinga and the Luo community in very negative terms.[529]

581. Non-Kikuyu IDPs alleged that militia, and specifically Mungiki, played a role in their eviction. Eviction notices used by the youth seeking to evict non-Kikuyu communities from Central Province bore the 'signature' Mungiki. The nature of killings in some places like Limuru bore the semblance of known Mungiki killings.[530] The nature of threats received by non-Kikuyu residents, particularly those that made reference to the number of heads needed, attests to the possibility of Mungiki involvement. However, many Kikuyu residents of Central Province as well as the Provincial Administration downplayed Mungiki's involvement in the conflict. It was far more likely that individuals masqueraded as the Mungiki militia to frighten non-Kikuyu communities into leaving.

THE ROLE OF STATE AGENCIES

582. Security agencies, including the regular and administration police, played various roles during the period of the violence. The sequence of events leading up to and during the post election violence in Central Province suggests that security intelligence agents should at least have been privy to some relevant information gleaned while in the ordinary course of intelligence gathering. It is a matter of conjecture then whether or the extent to which gathered intelligence was acted upon.

583. The regular and administration police responded to various situations and levels of violence. Distress calls from victims were responded to by the Police. For example, when the first demonstration was held in Kikuyu on 28 January, 2008, the police responded to ensure that the demonstrators maintained law and order. A splinter group of demonstrators which ran towards the Steel Rolling area with the aim of attacking some Luo residents was quickly thwarted from their goal by the Police. In the same constituency, they swiftly contained a group of youth who

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[528] IRIN news bulletin documentary of 22nd January 2008 concerning use of hate speech and derogatory music by vernacular broadcasting stations.

[529] Ibid; Report by Kenya in Crisis Africa Report N°TK – 21 February 2008 about Embargoed Draft for Media in Kenya.

[530] Mungiki behead their victims and skin the heads which they then display.

were going round homes in areas of Gitaru and Rungiri looking for non-Kikuyu people to either attack or order them to leave. The same trend was reported in Limuru and Nyeri.

584. However, at one point the situation in Limuru almost overwhelmed them when larger groups of youth attacked workers in the Bata Shoe Company. Around the same time the area DC peace entourage was almost attacked and the police shot one youth dead.

585. The Police also played a very crucial role in the evacuation of victims trapped in their houses and workplaces such as government offices and research institutions to safer places such as police stations. They would move in armed convoys ahead and behind of cars and buses ferrying victims. They provided 24 hour surveillance to IDPs in various police camps to ensure the IDPs security. In Thika and Kikuyu camps, for example, rumours were going round that there were groups of youth who intended to enter the camps and attack the IDPs; but no ugly incidents were reported in the camps.

586. DOs and DCs from various districts in the Province carried out activities such as planning, organizing and addressing peace meetings together with other government officers and MPs. They also helped to coordinate humanitarian responses in liaison with humanitarian agencies as well as coordinating assessments of both incoming and outgoing IDPs. There were instances where the provincial administration came under attack for what was perceived as the Government's slow response to the plight of the Kikuyu community in the Rift Valley.

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CHAPTER FIVE

AN ANALYSIS OF THE NATIONAL TRENDS AND PATTERNS OF THE VIOLENCE

Introduction

587. At the core of our national and international human rights obligations as a country are the values of respect for human dignity and the political equality of all persons. Modern understandings of human rights protections assure individuals their equal worth and dignity in standing up for their rights against intrusion both by government and by individuals. This part (etc)first shows the trends and patterns of the violence and the violations of human rights. The chapter then focuses on the impact of this violence on human rights and other related governance indicators. It also focuses on the extent to which the violence constituted violations prohibited by the Statute of the International Criminal Court as well as Kenya's own criminal law. This Chapter proceeds as follows examines trends and patterns under the following headings and order: Indicators of preplanning and coordination of violence; the role of mass media; the role of faith based institutions; barricading of roads and demonstrations; killing, looting and destruction of property; gender and sex factors in the violence; mass displacement of non-indigenous communities and government failure to prevent the violence.

Trends and Patterns of the Violence

Indicators of Preplanning and Coordination of the Violence

588. A prominent feature of the violence that followed the 2007 General Elections in Kenya was its immediacy following the announcement of the Presidential election results on 30th December, 2007. For example, in the Rift Valley particularly in the North and South Rifts as well as parts of the Central Rift as well as in Western and Coast provinces, the first major spurt of violence occurred immediately after the announcement of the Presidential election results on December 30th, 2007. This violence was characterized by the burning, looting and destruction of properties belonging to communities aligned with PNU. The violence was meted out in this first major phase of violence by ODM aligned supporters and primarily involved demonstrations citing irregularities with the Presidential election results. In the Kibera area of Nairobi, as well as in Kisumu and Mombasa violence was reported no sooner than the results were announced. In this initial phase of violence in the cities, heavily armed military and police personnel used tear gas and water canons to disperse demonstrators.

589. In most of the Rift Valley, the pattern of violence that occurred immediately before and after the 2007 elections was similar to the violence that erupted in these regions in the 1991/2, 1997 and 2006 periods particularly in its apparent spontaneity. Here, the elements of the violence particularly in the 1991/2 period, on the one hand, and the violence following the 2007 elections on the other, were eerily similar. As such, the latest round of violence immediately and following the 2007 elections was unlikely to have began on the spur of the moment. In particular, it is notable we gathered a lot of information that showed preparations were underway particularly among the Kalenjin community to participate in violence as in prior election periods.

590. There was an existing expectation that election time was a time to engage in violence to defend the Rift Valley as the land of the Kalenjin community not only in terms of institutional memory among those that instigated it and participated in it, but also in the preexisting infrastructure created in prior rounds of violence. This infrastructure included the preparation of young men in advance of the elections by oathings, circumcision ceremonies held much earlier than usual such as in the Central Rift, the making of arrows in a manner that suggested once violence was triggered, mass mobilization and participation would have been possible because the preparations had already taken place.

591. Similarly, at the Coast, the battle lines for the violence was drawn in earlier conflicts where the people of the region sought to defend the Coast from the invasion of inlanders who were taking what they perceived to be their jobs and resources. Such a pattern of violence in the Coast had been witnessed in 1997 which was an election year as well. The violence in August 1997 at the Coast had erupted in Likoni Division of Mombasa before spreading to Kwale district.[531] It lasted at least two months and like the violence following the 2007 election period, it took the character of targeting upcountry communities such as the Kikuyu and Kamba who were accused of squatting on ancestral land or buying it to the detriment of coastal communities. Like in the period following the 2007 elections, the divisions during the 2005 referendum were drawn along political and ethnic lines – in the Coast indigenous communities voted against the draft Constitution while non-indigenous communities voted primarily in favor of the draft Constitution. In the Rift Valley, ODM opposition to the draft Constitution was embraced by the Kalenjin communities while the non-indigenous communities such as the Kikuyu primarily supported the draft Constitution. In other words, the battle lines for the violence were drawn up in earlier periods.

592. In some places, clashes broke out in 2006 following the referendum on the draft Constitution in November, 2005. For example, in Kuresoi, clashes broke out between the supporters of the Kibaki government's NARC party and those of ODM. These clashes involved the expulsion of Kikuyu and Kisii people from Kuresoi.[532] A 2006 Internal Displacement Monitoring Center report noted that 431,153 people had been forcefully displaced from their homes.[533] The violence that followed the 2007 elections followed a similar pattern.

593. In terms of similarity between earlier episodes of violence and the violence that followed the 2007 elections, the apparent sudden initiation and ending of the violence was similar to that in the 1991/2 period. The Akiwumi Report on the violence in the 1991/2 period noted for example that "the clashes in Chirchila, Kipkelion and Londiani Divisions started almost without notice and ended abruptly" [534]

594. In Western province evidence that the violence following the 2007 elections was preplanned was in the manner in which the only property that was destroyed, burnt or looted was exclusively that belonging to Kikuyu people while leaving neighboring property belonging to indigenous communities intact. For example in Soi, Kikuyu owned property was razed to the ground, according to one government interviwee, in less than ten minutes.[535] Examples of similar attacks from the Rift Valley point to preplanning and coordination.

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[531] On the violence in the Coast in the 1997 period, see the Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya pp. 25 and 256.
[532] PEV, IVR, FEB, 493
[533] PEV, INT, FEB, 001
[534] Ibid at 89
[535] PEV, IVR,MAR,655

595. Another indicator of preplanning and coordination of attacks are the numerous statements of interviwees from the communities who were victimized by the violence that before the violence started, they were threatened with violent evictions whichever way the election results came through. There were leaflets that were distributed ahead of the elections warning of evictions in many parts of the country including in the Coast, Central and Rift Valley provinces. The fact the distribution of leaflets is found in Western province where the violence was not as extensive as in the Rift Valley, shows that in regions with an overwhelming number of ODM supporters, it was very likely that they galvanized an anti-PNU sentiment which often translated into violence against the Kikuyu and the Kissii communities living outside Central and Nyanza provinces respectively. In the Coast province, we photographed a spray painted hate message that read "Kikuyu Vunja" which translates into incitement for the destruction of property belonging to Kikuyus. We also obtained leaflets with similar messages.

596. A similar pattern occurred when a second round of violence was unleashed particularly in Central province and in the Central Rift by Kikuyu people against ODM supporters from late January into early February of 2008. This time the attacks were mainly against Luo and Kalenjin communities showing again the attacks were not sporadic but premeditated and executed with ruthlessness. In some instances, violence were unleashed in response to celebrations of Kibaki's victory by PNU supporters. For example, in Chebilat, the celebrations of Kibaki's victory by members of the Kissi community on the 30th of December, 2007 sparked off the violent demonstrations that soon became a full fledged war between the Kisii and the Kispsigis. Businesses and houses belonging to members of the Kisii community were burnt down.[536] In response, the Kisii Community mobilized youths to defend themselves led by local councilors.[537] The youths, who included the infamous *chinkororo* militia began targeting homes that belonged to Kispsigis.

597. We were told in various parts of the country that there were plans to engage in violence before it erupted. In the Coast province, the 'Mulungunipa' group which can be activated on short notice to engage in violent conduct. This group is said to have set up a combatant training camp in Mulungunipa forest in Kwale District. This group is claimed to have members of the Kaya Bombo group which undertook similar activities in the area in 2005. Some interviewees told the investigation team that the election was simply an occasion to express the real grievances of the Miji Kenda which include deprivation, inequitable distribution and lack of access to resources. In this, as in other areas, politicians were said to have fanned the flames of violence either by funding those that took part in the violence or making statements that were regarded as either condoning or supporting violence. Violence in this area therefore appears to have been embraced to support such grievances or perhaps as a way of resolving their grievances.

598. In the Rift Valley, politicians are said to have incited the violence in political campaigns by asking local communities to evict non-Kalenjin people. These politicians used idioms such as 'Kuondoa madoadoa' which translates into removing dark stains or spots. Such idioms were used throughout the Rift Valley by Kalenjin politicians. This idiom was understood to refer to the necessity of evicting from the Rift Valley people considered to be non-indigenous to the region. This idiom had become the signal for similar violent evictions of non-Kalenjin communities from the Rift Valley in 1991. The use of the term 'madoadoa' in the run up to the 2007 election created an atmosphere of fear among non-Kalenjin people in the Rift Valley. This together with

[536] (PEV, IVR, MAR 699); (PEV, PMR, MARCH, 017a)

[537] (PEV, IVR, MAR 699)

their violent evictions and expulsions after the elections resulted in a snowballing of displacements among people who had not been reached by the violence but who did not want to get engulfed in it as the violence encroached on them from every direction.

599. There were other indicators that the violence was planned. For example, in the Rift Valley the information gathered showed that violent attacks were mounted by raiders who came in groups of 50 or 100 and even more in other cases. They came from different directions overwhelming those they attacked. The attacks would constitute forceful evictions, killings, looting, burning of properties and food granaries. In the Central Rift, the information received by the investigators showed a high level of organization and coordination. There were particular days for evicting non-Kalenjin communities from the area. Looting property would then be undertaken on a different day. The same applied to burning business premises and residential houses. On other days the raiders would focus only on blocking roads.

600. In the Rift Valley, raiders were more often than not armed with bows and arrows, rungus (clubs), swords, knives, and pangas (machetes). In areas where there were many incidents of arson the attackers used petrol bombs packed into small bottles and tied with flammable materials to burn all types of structures and buildings. The extensive burning of houses in the Rift Valley shows that there was a predictable and sustainable supply of petrol and perhaps a source of funding.

601. A further element that shows the violence was organized and not sporadic or random in the Rift Valley was that the information gathered pointed towards mobilization and reinforcement of youths/attackers from across the region's districts. There were reported incidents of simultaneous and parallel attacks from all directions by well organized and coordinated warriors/groups. For instance, in Kipkelion, the Kalenjin attackers placed traditional calabashes in front of all dwellings that belonged to members of their community. In the days that followed, attacks of settlements were done from all directions and at the same time with clear direction and mission.

602. In Transmara,attacks would begin in the afternoon and on the signal of a war cry,other attackers would join the raids. All other groups of attackers would join from different directions. In Chebilat the attackers were alleged to have been fighting in shifts. Some would attack in the morning and others in the afternoon. There were occasions on which the attackers were ferried in vehicles.

603. Further, the magnitude of the destruction that the attackers caused in the Rift Valley in particular and the swiftness with which they moved pointed to a high level of organization, financing and provision of transport.[538] It is alleged that local politicians and business people financed the violence. The local community also provided support by providing food, transport to ferry the attackers and provisions of out of pocket allowances. There were reports that the attackers were promised pay after successful execution of an operation. In Kipkelion, there was information that some attackers were arrested and found in possession of crisp fifty shillings notes. Allegations of payments being made to attackers were however not restricted to the Rift Valley. There were similar allegations in Central province as well.

[538] Some of the vehicles used to transport attackers are know to the local people and some have names such as Eagle, Zion, Lion, KAQ 17 K, KAP 422Q, A Red RAV4 amongst others and at least one vehicle owner identified by the people as Umoja1. The owners of these vehicles and Umoja1 should be investigated and made to take responsibility for their role in organizing the violence.

604. We were told of training and oathing in camps that took place in preparation for the attacks.[539] The training allegedly took place in the farms of senior leaders in the area or in the region's forests.[540] Mr. Jackson Kibor, who has since been charged with election violence related offences, is alleged to have hosted 300 young men in his house on December 30th, 2007. These young men are said to have later burnt a students' hostel at Kimumu Junction as well as several Kikuyu owned homes as well as a supermarket in a nearby shopping center. Then on February 25th, 2008, 205 armed men were arrested on the farm of former Member of Parliament, David Nakitare allegedly undergoing training. These allegations of training gain credence when one thinks of how well equipped the attackers were with weapons and materials that they needed to undertake their various tasks. For example, some attackers carried power saws which they used to cut down huge trees that were then used to block roads.

605. Further information that the attacks were not random is that in various areas the attackers wore some form of uniform. For example in the South Rift, attackers were said to have worn black uniforms in the form of black shorts and black shirts.[541] Where they did not have black shorts and shirts, they are alleged to have worn black tops. This is in addition to face painting in black or white or with cow dung.[542]

The Role of the Media

606. The role of local language radio stations is also a notable feature in Kenya's post election violence. There are 42 ethnic radio stations stations in the country. Many of these radio stations as well as the TV stations in the country are alleged to have helped to frame the election as an extremely tight two horse race between Kibaki the Kikuyu candidate and Raila, the Luo candidate.

607. Interviwees throughout the country told the investigators that these local language FM radio stations played an important role in the incitement that preceded the violence. KASS FM was inciting Kalenjin people.[543] Radio Injili'[544]as well as Kikuyu FM radio stations such as Kameme and Inoro played music that intensified feelings of ethnic hatred.[545] One interviwee told the team:

608. "Many of the ethnic hate messages and much of the ethnic stereotyping appeared on live phone-in programs. It was common to hear descriptions on Kass FM before the elections of the Kikuyu as greedy, land-hungry, domineering and unscrupulous, as well as thinly-veiled threats, like 'the time has come for us to reclaim our ancestral land', or 'people of the milk' (Kalenjin) must 'clear the weed' (Kikuyu). Kikuyu FM stations like Inooro, Coro and Kameme are also accused of waging an ethnic propaganda campaign, though a more subtle one, against ODM and the Kalenjin."[546]

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[539] Some of the farms in which training and oathing was taking place are know to local people. The police need to investigate this further to establish the facts about the training, how long it took place, who was financed and it and hold those responsible to account for their role in organizing the violence. Supra note 4. (PEV, EM, FEB, 010a; PEV, INT, APRIL, 086.)

[540] See supra note 4 and PEV, EM,FEB O1Oa;

[541] (PEV, IVR, FEB, 217); (PEV, IVR, MARCH 715); (PEV, IVR, APRIL, 883); (PEV, IVR, FEB 144); (PEV, EM, APR, 025); PEV, IVR, APRIL, 883).(PEV, IVR, FEB, 442)

[542] In some cases the faces were painted in mud. See (PEV, IVR,, FEB, 150);

[543] PEV,IVR,APR,1056

[544] PEV,IVR,APR,1071; PEV,ORG,MARCH,035

[545] PEV,EM,MAR,013;

[546] PEV,ORG,MARCH,035

609. The media in general and these local language stations in particular undoubtedly played a role in hyping the election in a manner that contributed to the tensions that became the background to the violence that preceded and followed the 2007 Presidential elections.[547] For example, these stations often broadcast the uncensored statements made by politicians in the campaign trail that amounted to hate speech and continuously help to build the environment that would explode into bloody violence. In addition, the mobile phone short text messages, as well as the internet, e-mail and blogs were used to propagate hate speech and incite acts of violence in both the pre-election and post-election period.

610. In the South Rift, we were told that one local councilor went to *Kass F.M.* and *Radio Injili* to preach tolerance but other local leaders accused him of betrayal.

Role of Faith Based Organizations

611. The role of faith-based organizations immediately before and during the post-elections violence was mixed. Faith-based organizations played a positive role especially after the explosion of violence. For example, Imams at the Coast Province used the mosques to preach peace and coexistence. Similar work was done by traditional religious leaders such as *Kaya* elders at the Coast. Religious institutions hosted the internally displaced persons in their regions; some getting burnt and destroyed in the process. The commendable work done by amongst others the Catholic Justice and Peace Commission (CJPC), National Council of Churches of Kenya (NCCK) and the Evangelical Alliance of Kenya deserves mention.

612. However, there are disparate reports from across the various regions where religious leaders were involved negatively in the violence.[548] Religious leaders of modern-faiths as well as traditional ones were involved. In Kuresoi, for example, respected elders and spiritual leaders were reported to have allegedly presided over traditional ceremonies involving cleansings and blessings of Kalenjin youth in the period before the election in preparation to the violence.

613. Faith-led organizations were however tainted by what citizens perceived as pre-election partisanship.Leaders of faiths were often seen to support certain political parties. The signing of a memorandum of understanding between ODM and some muslim leaders as well as the anti-Majimbo comments by John Cardinal Njoe illustrate the extent to which religion was implicated or perceived to be fronting partisan agendas. ahead of the 2007 elections. The lack or apparent of neutrality of the faiths further compounded the polarisation that was characteristic of the 2007 elections that had resulted in a situation where no single national institution appeared neutral enough to offer moral leadership when the country descended into chaos.

Barricading of Roads and Demonstrations

614. In all the parts of the country where violence occurred, roads were blocked by young people. These young people stopped vehicles to find out who did not speak a language they did not consider from the locality where the barricade was set up. Those who did not speak a language from the region were harassed, molested and in places such as Naivasha in February, 2008 killed. These groups of young people in a pattern repeated throughout the country also lit vehicle tyres, stoned cars in places where roads were not completely blocked, stopped trucks and used them to block roads, used huge boulders to block roads while engaging in demonstrations in support of their political party.

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[547] The Wilson Center, Kenya: A Post Election Assessment, available at http://www.wilsoncenter.org/index.cfm?event_id=347121&fuseaction=events.event_summary

[548] See PEV,IVR, AR,692.

615. The barricading of roads constituted a major infringement of the right of movement of those whose travel plans were cut short or completely denied. In the North Rift, the barricading of roads began on December 26, 2007. This was a day before the election. The purpose of the barricades was to inspect vehicles entering Eldoret because of suspicions that fraudulent ballot papers were being brought into town to rig the election. These barricades even before the election indicated the high level of tensions and suspicions before election day.

616. The announcement of the election results on December 30, 2007 was immediately followed by huge demonstrations in major cities or areas of cities that had majority ODM support. These demonstrations happened in cities in the Coast, Western and Nyanza provinces with major protests in towns such as Kisumu and ODM strongholds in Nairobi such as Kibera where smoke was already seen rising in the air moments after the announcement of the election results. Demonstrations of this nature, though unprecedented in scale and duration especially in Kibera and Kisumu, indicated a rejection of the election results which were regarded as tainted with rigging and irregularities.

Killing, Looting and Destruction of Property

617. Everywhere the violence spread in the country, there were killings, extensive looting and destruction of private property particularly the homes and business premises of those considered to be from outside the region where the violence occurred. We were told of at least 2,566 instances in which buildings, property and homes were burnt down although this data may have instances of double counting in cases where more than one interviwee related the same incident.

618. In the Rift Valley houses and businesses belonging to the Kikuyu community were looted then burnt often using petrol bombs. Their herds of cattle were driven away by Kalenjin or Pokot raiders.

619. In the Coast province, demonstrators in Mvita constituency were reportedly heard shouting slogans to the effect that "Kikuyu property is our Property."[549] Property belonging to other groups such as Kamba, Embu and Meru that were perceived to be PNU supporters was also destroyed, looted or burnt. These ethnic groups were also targeted because they were regarded as outsiders or non-indigenous very much the same way that the very same groups were targeted for eviction in the Rift Valley.

620. In all the places where the violence occurred, the looting, destruction and displacement of communities not regarded as indigenous was in part explained as necessary because local communities had lost out in employment and business opportunities that these so called 'foreign communities' had acquired to their disadvantage.

621. When the counter violence started in Central province, property belonging to people from Nyanza and Western provinces was also burnt down or looted by organized gangs of young men. In these cases, there were killings of some of those who were targeted for displacement on the basis of their ethnicity. Based on the information gathered during our investigations, 1162 deaths were reported to have occurred during the violence[550].

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[549] PEV/IVR/FEB/228

[550] In the same time period of the investigation, newspapers reported 1,414 number of persons killed.

Gender and Sex as Factors in the Violence

622. Gender and sex consistently arose as factors in the violence. Women and young girls were raped almost everywhere in the country where there was violence. In the crowded and ethnically homogenous neighborhoods of Nairobi such as Kibera and Huruma, women were raped by men who did not come from their own communities. In IDP camps, there were reported cases of rape as well. Gender based violence also expressed itself in the undressing of women and girls wearing trousers and short skirts by Mungiki members particularly in Naivasha in late February 2008. There were also forced circumcisions of Luo people in Nairobi and Naivasha showing the extent to which issues relating to sexuality featured as a factor in the violence. Also, there were some cases of rape of men by men during the period of violence in the country.

Mass Displacements of Non-Indigenous Communities

623. The violence that followed the 2007 General Elections in all parts of the country resulted in massive displacement of people belonging to communities that were perceived as not indigenous to particular areas. Thus in the Rift Valley, non-Kalenjin people were displaced in large numbers. In Central province, non-Kikuyus were also violently displaced. Coast province and Western provinces were not spared either as violence in those areas resulted in the displacement of persons not considered indigenous to those areas.

624. The displaced persons sought refuge in religious facilities such as churches and monastries, police stations, provincial administration grounds, Red Cross offices and public facilities like sports stadiums.[551] These camps of displaced persons were rarely sufficiently prepared to handle the huge volume of displaced persons especially in terms of sleeping arrangements, food and basic provisions including sanitary towels for women and girls. The living conditions in most of these camps continued to be squalid particularly following heavy rains in March and April of 2008. This was exacerbated by insecurity particularly for women and girls resulting in incidents of rape, sexual harassment and other gender related forms of violence in the camps.

625. Some regionshad two groups of internally displaced persons (IDPs). In the South Rift region, there were the outgoing and incoming IDPs. The outgoing IDPs were mainly the Kikuyu and Kissi communities who were forcefully evicted from their homes, work places and business locations as well as from various towns that experienced the post election violence. The second group of IDPs were the incoming IDPs who were displaced from places like Transmara, Laikipia and Nyandarua by the Kikuyu and Maasai communities.

626. Similarly, in Central province, there were non-Central province IDPs who were forcefully evicted from their residences in Central province by Kikuyu people. These were outgoing IDPs. Then there were the incoming IDPs who were primarily Kikuyu people displaced from all over the country including from the Rift Valley, Coast, Nyanza and Western provinces.

627. Forced evictions also happened in low income residential areas in Nairobi including in some high rise residential buildings. In Nairobi, the evictions were related to a complex web of preexisting issues.

[551] Relatives, friends as well as well wishers also organized to host IDPs throughout the country.

628. First, was the question of tenants from renting communities particularly those affiliated with ODM feeling that their landlords who were mostly PNU supporters were overcharging them on their rent. So, rental disputes became a flashpoint for the evictions although clearly the divisions between tenants and landlords overlapped with ethnic and political divisions as well. For example, in Silanga Village in Kibera, there was extensive displacement of Kikuyu landlords and the occupation of their houses by non-Kikuyu tenants. Second, evictions constituted a form of ethnic cleansing from neighborhoods. Those considered to be from outside the communities that exclusively lived in neighborhoods dominated by a particular ethnic community were forcefully evicted. For example, in Dandora Phase 4, tenants who were mainly from the Luo community evicted landlords and other residents from the Kikuyu community. In Huruma's Ghetto Village, at least 62 residential and community structures were destroyed, three churches were burnt and a community toilet made of concrete torched. In seven blocks of high rise flats next to the village, property belonging to Luhyas and Luos was looted.

629. In Nairobi certain gangs existed long before the election violence started and were well known to control crucial services such as security in some neighborhoods. These gangs took the law into their own hands during the post election violence as a means of gaining further control of their neighborhoods. We were told that that gangs such as Siafu and Bukhungu which are predominantly Luyha gangs were supported by local politicians such as councilors in the Kibera area. The Nubian community on its part had Jeshi Darajani. In Mathare, violence particularly against the Kikuyu was undertaken by a group known as Taliban and another known as the Huruma Youth Group. In Kibera, particularly in Laini Saba and Soweto as well as in Mathare, Kariobangi and Dandora, members of the Mungiki engaged in violent attacks on non-Kikuyu people. These Mungiki members were involved in forced circumcisions of Luo people.

Government Failure to Prevent the Violence and Violations of Human Rights

630. A primary responsibility of any government is to provide security for its people. However, through its agents, the government of Kenya failed to anticipate the post election violence and when it occurred, the government did not immediately take firm steps to stop it. In terms of anticipating the violence, the National Security Intelligence Service has recently publicly stated that it warned the government that if Kibaki won the election and ODM rejected the results, violence would erupt.[552] If the government was appropriately warned, it failed to prevent the violence before it occurred. When the violence first erupted, the government was also ill-prepared to stop it.

631. This lack of preparation is reflected by the fact that when the violence first erupted in places such as the Coast province, the police force was overwhelmed by its magnitude. As a result the police told the demonstrators to 'loot but not to kill or to destroy private property.' In other places such as the Central Rift and the North Rift, the police shot in the air apparently with a view to scare those barricading roads and engaging in violence against others. Such efforts rarely, if at all, stopped those who were engaging in the violence. At times, the police took to long to respond to the violence and yet at other times they were too few to contain criminal elements during the violence. For example, the police were overwhelmed by the big group of Kikuyu and Kissi young men who looted and burnt a tea factory in Tinderet.

[552] Mugo Njeru, "Spy Chief Had Warned of Post-Poll Violence," Daily Nation, Friday, July 18, 2008 at pages 1 and 4.

632. In several places across the country including in the Rift Valley, there was often little to no police response to the burning of the houses of Kikuyu people by Kalenjin people. Military personnel were eventually deployed in the Rift Valley particularly to provide armed escort to caravans of evacuating internally displaced persons. The presence of the military was necessitated by the failure of the police to provide adequate security even to residents of the Rift Valley as they left the region under threat of injury and death.

633. The police and other security forces were also alleged to have participated in wrong doing together with the perpetrators of the violence. For example, in the South Rift police vehicles were used to ferry looted property. The police are also said to have engaged in looting, destroying property and giving cover to those engaging in those acts. Administration police attached to a chief's camp in the Yamumbi area of Eldoret, for example, were said to have given cover to arsonists as they looted and torched private property. In Nairobi, police officers were seen participating in looting a supermarket that carried the name "Super Kanny."

634. Police response to the violence also reflected their ethnic origins and biases. For example, in the Langas area, interviwees from the Kalenjin community told us how a senior Kikuyu police officer together with others from his community killed over twenty people. Kikuyu interviewees talking to us on the same incident said the police did an effective job in containing the violence. In the Nairobi area, some interviwees told us that they received assistance from police officers from their ethnic communities while they faced hostility from officers from other ethnic communities. In the North Rift, Kalenjin police officers are alleged to have more often than not failed to respond to stop the burning of private property belonging to the members of other ethnic communities. One officer in this region was seen by interviwees burning houses belonging to Kikuyus.

635. In other instances particularly in Kisumu, the police used lethal force in stopping demonstrators resulting in the deaths of protestors. From the 30th of December 2007, security agents in Kisumu town used live bullets when shooting into crowds to quell protestors resulting in many deaths. Lack of preparation to quell the violence is reflected in the fact that police argued that they had run out of rubber bullets. The police continued using live bullets even despite an order from the Minister in Charge of National Security that the use of live bullets should stop. We were told that some victims of police shootings were shot while in their homes in Bandani, Migori and Homa Bay towns. Those who were not shot in their homes were primarily shot in the back indicating they were most likely in flight when shot.

636. In Kericho town, on 31st of January, 2008 the day that Ainamoi MP David Too was killed, seventeen people were killed by the police. Seven of them were killed by the police after having been found looting Stage Mart Supermarket in that town.

637. However, it is notable that the police were also targets of attacks during the violence and that they often had a difficult time containing huge numbers of demonstrators. In Central Province where violence occurred in response to the violence in the Rift Valley in particular, the police were much more prepared to arrest the violence that targeted non-Kikuyu people living in the area. While not all violence was prevented, the police largely quelled road blocks and violent protests by Kikuyu youth particularly in towns like Kikuyu and Limuru thereby perhaps preventing an escalation of the violence that might have taken a character similar to the one in towns such as Naivasha and Nakuru.

CHAPTER SIX

RESPONSIBILITY UNDER DOMESTIC AND INTERNATIONAL CRIMINAL LAW FRAMEWORK

638. The acts that characterised the post-election violence are offences that are either stipulated under Kenyan domestic criminal law or under international criminal law. This chapter discusses possible criminal responsibility for those that planned, organized, financed and executed the violence under either domestic or international criminal law.

THE DOMESTIC CRIMINAL LAW FRAMEWORK

639. The following offences as provided for principally under the Penal Code and other related Acts of parliament such as the Sexual Offences Act may have been committed by various actors during the post-election violence.

OFFENCES THAT VIOLATE THE RIGHT TO LIFE AND THE SECURITY OF THE PERSON: MURDER, MANSLAUGHTER AND GRIEVOUS BODILY HARM

640. The persons that were involved in the numerous killings that took place during the post-election violence in Kenya could incur criminal responsibility for murder and related offences as stipulated under the Penal Code.

Responsibility for the crime of Murder

641. In Kenya, murder is defined as an act committed with malice aforethought that causes by unlawful means the death of another person. Section 203 read together with section 206 of the Penal Code means that one is guilty of murder if there is prove that there was intent to cause death, grievous bodily harm – that results in death, or that there was knowledge that the act or omission could cause death or grievous bodily harm. It is possible to be charged with several counts of murder.

642. Other offences that one may have committed, even if not the actual killing or murder itself include: manslaughter,[553] attempted murder[554] and conspiracy to murder.[555]

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[553] Section 202 of the Penal Code provides that the felony of manslaughter is committed where: "Any person who by an unlawful act or omission cases the death of another." Section 207 of the Penal Code regarding provocation in relation to manslaughter provides: "When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation is hereinafter defined, and before there is time for his passion cool is guilty of manslaughter only."

[554] Section 220 of the Penal Code defines attempt to murder in the following terms: "Any person who (a) attempts to cause the death of another; or (b) with intent to unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life, is guilty of a felony and is liable to imprisonment for life." Where the threat was not in writing the Attorney General's consent to prosecute is necessary, Section 223 (2) of the Penal Code. The term of imprisonment for this crime is 10 years.

643. The above named offences, murder and related offences, took place in the various regions that experienced post-election violence. In Nyanza Province most of the reported deaths were as a result of extra-judicial police killings. The evidence gathered indicates that most victims shot by security forces were shot in residential areas while others may have been shot in flight. The police officers involved must have known that it was wrong to use live bullets and to shoot to kill people who were not posing any threat to their personal safety. In Nairobi Province there were killings perpetrated by armed militia in addition to cases of extra-judicial police killings. At the Coast Province there were arson related deaths where a number of people were killed as attackers burnt down property that belonged to members of the Kikuyu, Meru and other communities.

644. In the North Rift Region, an estimated 35 people were burnt to death in the Kiambaa Church burning alone. These killings were particularly brutal and considered emblematic of the violence in the North Rift Region and the country as a whole. In the Matunda area of the North Rift Region 14 young men were lynched to death by armed youths. Three (3) children were burnt alive in Gituamba in Saboti Constituency [556] in Saboti Constituency, Trans Nzoia District in late February, 2008. The attackers guarded the entrance to ensure that no one escaped from the house. This is clear demonstration of intent to kill or cause grievous bodily harm.

645. There are many allegations of murder that took place in the Central Rift Region. Kikuyu youth attacked members of the Luo, Luyha and Kalenjin communities with knives, petrol bombs and other crude weapons. The resulting deaths in these cases, including the dismembering of victims heads, may be murder and there was evidence of planning to kill.

646. In the South Rift Region many allegations of murder were reported. Notable amongst these is the killing of an administrative police officer whom the attackers cut into pieces and set him alight on the day the Late Ainamoi MP, David Kimutai Too was killed. On the same day, 17 people were killed by the police. Seven of them were killed by the police after being found looting stage mart supermarket in Kericho Town. In Kipkellion 8 people were killed in the area including 4 people from the Kisii community who had been arrested by a group of youths and set ablaze. Of the 8 people killed, the remaining 4 were killed by the police.[557] In Bureti, Litein Town, two high school teachers were shot dead by the police on the 5th of February 2008.[558]

647. In Western Province the deaths reported were attributed to extra-judicial police killings.

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[555] Under section 224 of the Penal Code conspiracy to murder is punishable by imprisonment for 14 years.

[556] On February 27, 2008 the Nairobi Star reported also that youths coming from Kabolet Forest had killed 16 people and abducted several others and raped women, including school girls. See PEV,NWP,MAR,131

[557] Supra note 6.

[558] See (PEV, IVR, MAR, 830); (PEV, NWP, FEB, 042)

648. In Central Province the reported cases of death were 15 people. A Teso watchman at a petrol station in Kikuyu was beaten to death by a mob comprising of young Kikuyu men.[559] 10 people were killed in Limuru. [560]One Luhya was killed. He was taken to the Tigoni Police Station with all his intestines hanging outside his stomach.[561]Newspaper reports of January 16th reported two people were short dead and a police officer injured.[562]A Kalenjin man was killed at Miti Mingi in Limuru.[563] Lastly, Luo man was killed in Limuru when he was found hiding in lodging.[564]

649. We are not in any where suggesting that these were all the killings that took place during the post election violence. It is important that the police do thorough investigation and document all the cases of alleged killings that took place during that period and bring the perpetrators to book.

650. **Grievous Bodily Harm:** Grievous bodily harm is defined under section 231 of the Penal Code as unlawfully wounding or causing grievous bodily harm to any person; striking a person with any projectile including a spear, sword, knife or any dangerous or offensive weapon; causing an explosive substance to explode injuring a person; using corrosive fluids to injure a person. Grievous bodily harm is felony punishable by life imprisonment with or without corporal punishment.

651. The reported forced circumcision of Luo males in Nairobi, Central Rift – Naivasha and Nakuru, and Central province was particularly atrocious and amounts to grievours bodily harm. Some of the victims are reported to have bled to death.[565] A United Nations Inter-agency assessment report for January to February 2008 reported incidents of forced circumcision of male children. Young boys under the age of 11 and some under the age of 5 had their genitalia crudely cut with blunt objects such as broken glass. [566]

652. Grievous bodily harm also resulted from burns that many the survivors of incidents of arson reported across the country bore. This was reported in the North Rift Region in incidents such as the Kiambaa Church burning and at the Coast Province. Further, people who survived attacks with various crude weapons and gun shots wounds could have suffered grievously bodily harm.

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[559] PEV, IVR, FEB, 112b
[560] PEV, IVR, FEB, 023, PEV, FEB, 007,PEV, NWP, JAN 16,PEV, IVR, FEB 001A
[561] PEV, IVR, FEB 007
[562] PEV, IVR,APR, 985
[563] PEV, IVR, APR 871
[564] PEV, IVR, APR, 985
[565] PEV, IVR, APR, 1109
[566] PEV, IVR, APR, 1107

Offences That Violate The Right To Private Property: Arson, Malicious Damage To Property And Robbery With Violence

653. Arson and malicious damage to property characterized the violence in all the regions that experienced post-election violence.

654. **Arson** Section 332 of the Penal Code states that any person who wilfully and unlawfully sets fire to a building, structure, vessel, vegetable produce, fuel or a mine is guilty of arson and liable for life imprisonment. Section 333 extends the crime to persons to attempt to commit arson and to those who willfuly set fire to crops both of which attract imprisonment for fourteen (14) years.

655. **Malicious Damage to Property:** The Penal Code under sections 339 to 344 criminalises destruction of any property whether it is a dwelling house, river walls, aqueduct, railway or vessel.[567]

656. In Nairobi, the worst cases of arson, malicious damage to property and theft took place in Nairobi's informal settlements. Thousands of thriving micro and small enterprises were burnt, destroyed and looted. For example, in the Makina area of Kibera more than 3000 stalls in Toi market were destroyed and property worth millions of shillings lost. Along the Ayany Road, approximately 90 kiosks selling groceries were destroyed, permanent structures were broken into and property looted.[568] According to UN Habitat in Kibera, a total of 19 churches were looted and burnt, 800 stalls looted and burnt, 1100 structures looted and burnt and 900 residential houses torched. [569]

657. In the North Rift Region many acts of arson took place. This included burning houses, vehicles and people's homes. The most notable act of arson remains the burning of the Kiambaa church in Eldoret.

658. In the South Rift Region there were numerous reports of arson. These cases of arson and destruction first targeted homes and businesses of members of non-Kalenjin communities. Thereafter, retaliatory attacked targeted the property of the Kipsigis. For example in the Chebilat area businesses and houses belonging to members of the Kisii community were burnt down.[570]

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[567] Section 339 of the Penal Code
[568] PEV, IVR, APR 1096, 1099.
[569] UN Habitat- Rapid Assessment on the Impact of Post Election Violence in Nairobi.
[570] (PEV, IVR, MAR 699); (PEV, PMR, MARCH, 017a)

659. In the Central Rift Region youths suspected to have been members of the banned *Mungiki* sect in Naivasha on 27th of January 2007[571] burnt business premises belonging to ODM-supporters in the town. The property of Luos and Kalenjins was looted and anything that remained was then burnt.[572] In one ghastly incident, the militias set on fire a house where nineteen people burnt to death.

660. In Central Province cases of arson were reported where 30 acres of hay of the Kenya Agricultural Research Institute was burnt down. There was also an attempt to burn down the neighbouring trypanosomiasis research centre at Kabete. Some non-Kikuyu residential houses at the Steel Rolling area are reported to have been set ablaze on 28th February, 2008 during the demonstration in Kikuyu.

661. In Coast Province, cases of arson were reported in the Miritini area.[573] In Magogo area a member of the Luo community was said to have broken into the house and set it on fire killing eight family members. The media further reported the likely death of 11 people killed when a murderous mob locked them in a house and set it ablaze in Malindi.[574]

662. In Nyanza Province most attacks related to looting and destruction of property belonging to members of "foreign communities". Various businessmen and women lost property worth millions of shillings. These businesses included Ukwala supermarket, various businesses in Kibuye market, Ndugu Transport Company Limited and Crater Automobiles. The Government also lost property worth millions of shillings when gangs of youth attacked and looted property belonging to the Kisumu Water and Sewerage Company. The local community too lost property worth millions of shillings when Kibuye market was burnt in an alleged revenge attack.

663. Lastly, the property Nairobi-Uganda railways was destroyed in Nairobi's Kibera slums and in Nyanza Province when youths yanked off sections of rail from the railway.

664. **Robbery with Violence :** Using or threatening violence before or immediately after the time of stealing constitutes robbery with violence.[575] This offence is punishable by death if the accused person wounds, beats, strikes or uses any other personal violence to any person.[576] Where no violence is used or threatened, the offence is punishable by a term of imprisonment for fourteen years together with corporal punishment not exceeding twenty eight strokes.[577]

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[571] PEV,NWP,JAN,0021

[572] PEV,IVR,FEB,337

[573] The medical report obtained from Coast Province General Hospital indicated that those who had died were from various communities; PEV/ORG/APR/079

[574] (Daily Nation 2nd January 2008) PEV/ NWP/ JAN /002; PEV/ NWP/JAN /001

[575] Section 295 of the Penal Code

[576] Section 296(2) of the Penal Code

[577] Section 296(1) of the Penal Code. Attempted robbery is punishable by a term of imprisonment not exceeding seven years though if the accused is armed with a dangerous weapon the punishment is death, Section 297(1) and (2) respectively of the Penal Code. Assault with intent to steal is punishable by imprisonment for five years

665. Most of the cases where looting or theft was accompanied with violence constitute cases of robbery with violence.

666. **Theft** Section 268(1) of the Penal Code is defined as fraudulently and without claim of right taking anything that is capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner of any property or thing.[578]

667. In the Central Rift and South Rift Regions witnesses testified to the theft of livestock.[579]The theft of livestock is recognizable as a separate offence in the Penal Code and is punishable by imprisonment with hard labor for a term of not less than seven years but no more than fourteen years.[580]

668. Reports of the **forcible entry of land,** through use or threat of force constitute offences under Section 90 of the Penal Code. Further, forcibly remaining on someone's land otherwise referred to as forcible detainer constitutes an offence under Sec 91 of the Penal Code. This offence is alleged to have been committed in the Rift Valley and Nairobi Provinces. In the case of Nairobi, people forcibly took possession of rental premises. In the Rift Valley this occurred in to the occupation of land where people were evicted from their lands and others occupied them in one way or another e.g. moving in livestock to graze.

669. We wish to again underscore the fact that the incidents of arson, malicious damage to property, robbery with violence and theft detailed in this report are not all the cases that took place during the post-election violence.

Incitement To Violence And Offences Related To Public Order And Security

670. **Incitement to Violence:** Politicians who used hate speech during the campaigns and after the onset of the violence to further incite the public to continue burning property, killing and barricading roads could be charged under section 96 of the Penal Code for incitement to violence and section 77 (3)(e) of the Penal Code for hate speech. Section 96 of the Penal Code provides that any person who utters, prints or publishes words indicating that it is desirable to cause death to a person or a class of persons, or to damage and destroy property or to prevent by violent means the execution of any law would be guilty of

[578] Stealing is punishable by imprisonment for three years under Section 275 of the Penal Code.
[579] For example in one incident, a witness testified to the theft of 20 cows, see PEV, PMR, MARCH, 016
[580] Section 278 of the Penal Code. The stealing of motor vehicles is punishable by imprisonment for seven years together with corporal punishment, Section 278A of the Penal Code.

an offence punishable by imprisonment not exceeding five years. The entire electioneering period was characterized by hate speech and incitement to violence. Incitement to violence and incitement to disobedience of the law which carries a maximum of a five year sentence.[581]

671. **Hate Speech:** Hate speech is one of the subversive activities identified under section 77 (3)(e) of the Penal Code.[582] Politicians and other personalities were involved in advocating acts prejudicial to the public order and security of the country in their speeches calling on residents to expel members of non-indigenous communities prior to and after the election. These same politicians and personalities incited violence and by their speeches promoted feelings of hatred and enmity between different communities in Kenya.

672. The campaign to evict non-Kalenjins from the Rift Valley by political leaders – mainly parliamentary and civic aspirants- used idioms such as "*kuondoa madoadoa*" – Swahili for "removing the stains or spots". This is one example of what could be cited as hate speech during the campaigns in the pre-election period and after.

673. Hate speech was also peddled using the short text message service of mobile phones and the internet through blogs and e-mail. Some campaign posters and leaflets also peddled hate speech.

674. Illegal oathing: This constitutes an offence under both sections 60 of the Penal Code for administering unlawful oaths to commit capital offences and under section 61 of the Penal Code for administering unlawful oaths to commit other offences. We repeatedly heard allegations that illegal oathing took place in the three Rift Valley regions to prepare the youth for the task of executing the violence.[583]

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[581] This comes under Section 77 of the Penal Code which provides: "Any person who, without lawful excuse, the burden of proof whereof shall lie upon him, utters, prints or publishes any words, or does any act or thing, indicating or implying that it is or might be desirable to do, or omit to do, any act the doing or omission of which is calculated-
(a) to bring death or physical injury to any person or to any class, community or body of persons; or
(b) to lead to the damage or destruction of any property; or
(c) to prevent or defeat by violence or by other unlawful means the execution or enforcement of any written law or to lead to defiance or disobedience of any such law, or of any lawful authority, is guilty of an offence and is liable to imprisonment for a term not exceeding five years."

[582] Under stection 77(3)(e) as part of subversive actives are acts calculated to promote feelings of hatred or enemity between different races and communities in Kenya.

[583] The oathing is said to have began in August. See KNCHR interview in the region on February 8th 2008; KNCHR interview with a senior government officer serving in one of the region's districts on the 28 of March 2008; (PEV/EM/FEB/010a); (PEV, APR, 1055); (PEV, IVR, FEB 191); (PEV, IVR, MAR, 833);and, (PEV, IVR, MAR, 836).

675. The offence of riotously interfering with railway, vehicle or vessel, including obstructing/barricading roads contrary to Section 87 of the Penal Code was also committed during the post-election violence. This happened in most parts of regions affected by the post election violence.

676. There were also allegations of **illegal possession of firearms** in the various regions. This is an offence under section 89 of the Penal Code. In addition, such persons would be chargeable with the offence of going armed in public contrary to Section 88 of the Penal Code.

677. Criminal responsibility can be incurred for counselling, procuring, aiding and abetting the commission of an offence. **Counselling and procuring the Commission of an Offence** is an offence under section 22 of the Penal Code. **Aiding and Abetting** the Commission of an Offence is an offence under section 20 of the Penal Code.

678. A majority of the senior actors, especially political leaders, who might not have been directly involved in the execution of the violence as opposed to the youths on the streets who did the actual killing and destruction of property would incur criminal responsibility under these two provisions of the Penal Code.

Neglect of Official Duty Security Agencies

679. In this report KNCHR narrates several accounts of inaction by security officers. In the various regions that experienced post-election violence citizens recounted situations in which the police either sided with the attackers or stood by and watched. Whereas in some situations police officers were clearly overwhelmed and could not have dealt with the situation, in others, in what was clearly a consequence of the ethnicization of public institutions, the police defended or failed to defend the people in a pattern that suggests ethnic bias.These can be prosecuted under section 128 of the Penal Code where members of the public service are liable for neglecting official duty. Under section 14 of the Police Act police officers are charged with the responsibility to maintain law and order, preserve the peace, protection of life and property, prevention and detection of crime, apprehension of offenders and the enforcement of all laws. The reports from the regions have illustrated numerous occasions in which the police neglected duty as forbidden under section 128 of Penal Code.

680. In the South Rift region such bias was reported in various areas. In Kericho and Transmara most people stated that most of the police came from the Kalenjin community and that they were not offering protection to members of non-Kalenjin communities.[584] In Londiani information gathered showed that some police officers sided with the Kikuyus and never offered protection to the Kipsigis. There was an incident of an officer from the Luo community blocking the Kipsigis preventing them from reaching the road and telling them to go back to their homes during which time the Kikuyus would go ahead and attack them and burn their houses. In Chebilat information gathered revealed that the police were chasing away the Kisii fighters and giving way to the Kalenjin warriors to loot and burn property belonging to the Kisii.

681. "In some cases, Kikuyu men were hacked to death and their women raped in full view of the police. Some of the police told the Kikuyu in Swahili "*wacheni kazi iendelee.*"[585] [A mockery of the PNU clarion call of "Let (my) the work of rebuilding the economy and progress continue by re-electing President Mwai Kibaki.] (*Translation mine.)*

682. In the Central Rift Region, KNHCR was told that members of the Kikuyu and Kisiis Communities reported that Luo and Kalenjin officers repeatedly ridiculed them and told them that they should stop lamenting and let the violence continue since they are the ones who voted for *Kazi Ienendelee* (PNU). Reports received from some local administration officials in Elburgon confirm that in Kapsita area, the Administration Police Officers were predominantly from the Kalenjin community and that they were partial in the dispensation of their duties leading to tension among the Kalenjin and Kikuyu communities. On the other hand, it is alleged that on 2nd January 2008, some Administration Police officers deployed to Segut area (Elburgon) were predominantly from the Kikuyu community. The officers reportedly shot eight Kalenjin youths and then asked Kikuyu youths to mutilate the bodies with pangas to conceal the evidence of gunshot wounds.

683. This partiality was reported in the North Rift Region too. In the Maili Nne area of Eldoret officers from the Eldoret central Police station police allegedly left attackers to continue destroying property. In Yamumbi, administration police officers attached to the local chief's camp allegedly armed guard to a compound that is said to have housed warriors that attacked and burnt houses in the area on 30th and 31st.

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[584] These allegations of police partiality are repeated across the region. This could perhaps be explained by the fact that police officers failed to rise above the demands to side with their respective communities and protect all citizens and live up to the motto of the Kenyan Police: Utumishi kwa Wote (Service to All.) See (PEV,PMR, MAR, 012); (PEV, IVR, FEB 146); (PEV, IVR, APR, 1002); (PEV, IVR, MAR, 773); (PEV, IVR, MAR, 575); (PEV, IVR, FEB, 477); (PEV, IVR, FEB, 185);(PEV, IVR, MAR, 840); and, (PEV, PMR, MAR, 006).

[585] See (PEV, INT, APR, 086).(PEV, EM, FEB, 010a);

684. In Western Province there were instances of partisan conduct among police officers.[586] The police reportedly told people seeking refuge: "Si mliiba kura!" (Effectively: "You are paying for stealing the presidential votes!")[587] It was reported for Mumias early January 2008, for example, that there was a clear divide in the police force with ordinary police ranks fronting ODM while their seniors apparently rooted for PNU. On the 4th January 2008, Malava police station turned away displaced Luos and Luhyas arguing the station was exclusively for displaced Kikuyus, forcing the Luos to trek all the way to Siaya.

SEXUAL GENDER -BASED VIOLENCE

685. During the post-election violence rape and other forms of sexual violence were carried out as either part of the persecution of ethnic groups or as opportunistic offences that were facilitated by the general chaos and transplanting of people from their homes. These acts of sexual violence were perpetrated against mainly women and children but also men.

686. **Rape:** Under section 3 of the Sexual Offences Act outlaws rape. Rape is defined as intentionally and unlawfully committing an act of penetration with the genitals of another person without the person's consent or through force or threats or intimidation of any kind. The offence is punishable by imprisonment for a term of not less than ten year and up to a maximum of life imprisonment.

Sexual Violence against Children

687. Children were on numerous occasions defiled during the post-election violence. These Acts are punishable under the Penal Code, the Children's Act and the Sexual Offences Act.

688. The *Children Act* under its section 15 protects children against sexual exploitation, child prostitution, inducement or coercion to engage in any sexual activity, and exposure to obscene materials. The Penal Code provide against the defilement of Children under Section 145.

The Sexual Offences Act

689. In 2006, Parliament passed the *Sexual Offences Act.*[588] This law creates offences and stipulates sentences with the aim of protecting children from especially sexual abuse, indecent assault as well as other forms of violence that are sexual in nature. The Act prohibits the committing of an act which causes penetration with a child. This offence is termed defilement.[589] Defiling a child aged below 11 years attracts a sentence of life imprisonment on conviction;[590] defiling a child aged between 12 and 15 years attracts

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586 See PEV,PMR,APRIL,016.
587 See PEV,IVR,FEB,122
588 Act No 3 of 2006.
589 Section 8(1).
590 Section 8(2).

imprisonment of not less than 20 years;[591] while defiling a child of between 16 and 18 years attracts an imprisonment sentence of not less than 15 years.[592]

690. Under this Act, any person who commits the offence of rape or defilement in association with others is guilty of an offence termed gang rape and is liable upon conviction to imprisonment for a term of not less than fifteen years but which may be enhanced to imprisonment for life.[593]

691. In Nairobi Province From 30th December 2007 to 2nd February 2008 two hundred and thirty sexual assault patients (230) were admitted at the Nairobi Women's Hospital. Between 44 and 48 of the victims were children below the age of 18years. About 90 of cases were as a result of gang rapes carried out by between 2 and 11 men.[594] KNCHR investigators also heard reports of rapes in the "Kisumu Ndogo" area of Mathare North where the victims were predominantly women of Kikuyu and Kamba origin, working in the Export Processing Zones in the Baba Ndogo area. It is certainly clear that rape took an ethnic angle in Nairobi's informal settlements where sexual violence was meted against members of "enemy communities".

692. There were no reported cases of sexual violence reported in Western Province. However, the Red Cross argues there were rape incidences which were however not officially reported.[595]

693. At the Coast Province, the Nairobi Women's Hospital reported a total of 18 women having been subjected to physical and/or sexual attacks in the Coast Province: nine women to the Mshomoroni Police Unit, seven to the Likoni police station and two to Nyali police station[596].

694. In the North Rift Region there reports that members of the SLDF committed acts of murder and gang rape of women in Cherengany. A visit to Moi Referral Hospital, Eldoret, revealed that 21 cases of sexual violence had been reported during the month of January 2008. The youngest victim was one year six months old while the oldest was 70. For those cases, the doctor informed us that enough evidence was available for DNA testing.[597]

695. Generally, there were few cases of sexual violence in Central Province. There were few reported cases of sexual violence in Kabete constitutency.[598]

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[591] Section 8(3).
[592] Section 8(4).
[593] Section 10.
[594] PEV, IVR, APR, 1096
PEV, IVR, APR, 1099
[595] See PEV,PMR,APRIL,016.
[596] PEV/ORG/FEB/016
[597] KNCHR interview with Dr Lukoye Atwoli, Chair of the Psycho-Social Protection Committee, April 14, 2008

[598] PEV, IVR, APR, 981

696. Some witnesses testified to the raping of women[599] in the South Rift Region. The same was reported in the Central Rift Region.

697. There were no reported cases of sexual violence in Nyanza Province. This isn't evidence that such acts never took place but rather a gap that needs to be filled by further investigation.

LIMITATIONS OF THE DOMESTIC CRIMINAL LAW FRAMEWORK

698. The principal domestic penal law is the Penal Code and makes no direct recognition of gross human rights violations as crimes punishable under Kenyan law. In the first place, there is no recognition of the fact that there exists, for instance, the offence of murder as a crime against humanity, and therefore a widespread or systematic attack on a civilian population resulting in multiple deaths is viewed, under our laws merely as 'murder of several/numerous persons'.

699. The Penal Code thus does not recognize the human rights violations that were committed as any more serious than the offences of murder, attempted murder, assault, and the like. By the same token, it is of little consequence for the purpose of classifying the crimes committed under the laws of Kenya whether persons killed in the post-election violence belonged to a particular ethnic group or to particular ethnic groups, or whether the conduct took place in the context of a manifest pattern of similar conduct directed against those groups with a political motive.

700. The Penal Code further appears to place no greater emphasis on the executor (or direct perpetrator) of a criminal act than on the planner, instigator, or financier of the act. While the executor is considered to be the principal offender, he is liable to the same punishment as the planner (known as the aider, abetter, counsellor or procurer) of the offence. Accordingly, under the municipal penal law, there is a considerable measure of jurisprudential difficulty in attempting to recognize as an offender a person who, for instance, incites the killing of a group of people but is not one of the actual killers. However, under international criminal law, there need not be convergence in one person of incitement and the actual killing.

701. This makes it very difficult to accord commensurate responsibility, for the people who bear the greatest responsibility, the apex of the pyramid[600] and therefore such persons are able to cheat justice. The result is a continued perpetuation of the culture of impunity in Kenya. The domestic criminal law framework therefore further compounds the challenge the KNCHR investigation faced in trying to ensure that the people at the top of the apex of triangle of criminal responsibility bear the heaviest sanctions.

702. Although the International Crimes Bill awaits enactment by Parliament, the same is yet to come into force, and in any case general principles of law would prohibit the Bill from having retroactive application once enacted.

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[599] PEV, PMR, MARCH, 016

[600] Refer to chapter two on Methodology above.

INTERNATIONAL CRIMINAL LAW FRAMEWORK

703. Individuals can incur personal legal responsibility under International Criminal Law for acts that constitute what the Rome statute refers to as "unimaginable atrocities that deeply shock the conscience of humanity."[601] Amongst these are the crime of genocide, crimes against humanity and war crimes.

704. Such responsibility is recognized under the principles set out by the Nuremberg judgment[602] which are now norms of international customary international law. Most recently, individual criminal responsibility under international law was recognized by the Statute of the International Criminal Court under its article 25. Individual criminal responsibility for international crimes is therefore a norm of both customary international law and treaty law.

705. This chapter will analyse the post-election violence with a view to making a finding as to whether any of the above crimes took place in the territory of Kenya between December 27th 2007[603] and February 28th 2008.[604]

THE CRIME OF GENOCIDE

706. Genocide has been defined as the destruction in whole or in part of a group or nation. Article II of the Genocide Convention defines genocide as the killing of members of a group; causing serious bodily or mental harm to members of a group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction; imposing measures that are intended to prevent births in the group; and forcibly transferring the children of the group to another group.[605] Article 1 of the Genocide Convention is clear that genocide can be committed in peacetime. Under article IV the perpetrators can be public officials or private individuals clearly extending criminal responsibility to non-state actors.

707. For the crime of genocide to have been committed one has to prove genocidal intent which is that the actors intended to destroy a group or a nation in whole or part. Genocidal intent is difficult to prove as opposed to persecution on whatever basis in which the perpetrator chooses the victims on the basis of their identity. It is very difficult to prove genocidal intent where there is no prove of a plan, system or organization to carry out genocide given the magnitude of this crime.[606]

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[601] Preamble to the Rome Statute of the International Criminal Court.

[602] Article 1 of the Principles of the Nuremberg Charter and Judgment Formulated by the International Law Commission and adopted by G.A. Resolution 177(11)(a), 5 U.N. GAOR, Supp. No. 12, at 11-14, para. 99, U.N. Doc. A/1316(1946) also provides that "any person who commits an act which constitutes a crime under international law is responsible...and liable for punishment."

[603] This is the date when Kenya went to the polls to elect a President, Members of Parliament and Civic leaders.

[604] This is the date when the National Accord and Reconciliation agreement, brokered through the facilitation of the African Union, was signed by the two principals: Hon. Mwai Kibaki of PNU and Hon. Raila Odinga of ODM.

[605] This definition has been adopted under article 4 of the Statute establishing the ICTY, article 2 of the Statute establishing the ICTR and article 6 of the Rome Statute establishing the International Criminal Court.

[606] Prosecutor v Kayishema and Ruzindana, judgement para. 94.

708. From our analysis we find that the crime of genocide was not committed in the territory of the Republic of Kenya between December 27th 2007 and February 28 2008.

709. However, we wish to caution the nation that the threat of genocide taking place in Kenya in future is real. Scholars have over the years identified what are the key characteristics or signals that a society is likely to commit genocide.[607] Some of these characteristics have been present in Kenya for a while now – at least since 1991 when Kenya experienced the first wave of widespread inter-ethnic violence.

710. Some of these characteristics include the dehumanization of a group using labels or idioms that have the basic function of distinguishing the target group from the rest of society. These labels are normally negative and refer to people as animals, diseases or like the case of Kenya, *madoamadoa* -stains or "weeds". In Rwanda the Tutsi were referred to as cockroaches. This dehumanization process leads a group to believe that they are not committing murder because whoever is being killed is not human after all.

711. The other signs include past violence that was not punished – the 1991/2 and 1997 ethnic violence in Kenya establishing a good case of historical impunity..Social polarization that leads to the identification of a group as the enemy or source of problems is also very evident in Kenya with the identification of mainly the Kikuyu, their political supporters and ethnic kin as Kenya's problem. The Kikuyu have tended to have their own version of ethnic chauvinism, nationalism and exclusionary ideology in respect of other tribes that feeds the processes that might one day lead to genocide.

712. We urge Kenyans, and especially the government and political leaders, to take steps, including political and institutional reforms to prevent the occurrence of genocide in Kenya in the future.

CRIMES AGAINST HUMANITY

713. Kenya is a state party to the Rome Statute of the International Criminal Court. It signed the Statute on 11th August 1999 and thereafter ratified the Statute on 15th March 2005. Although the Attorney General immediately thereafter published the International Crimes Bill to domesticate the Statute, Parliament is yet enact it into law. As such, Kenyan courts do not have jurisdiction to prosecute individuals for the offences recognized in the Statute including crimes against humanity. In any event, the thresholds for punishing offences under the Statute, if it is domesticated, are especially high. This report makes a recommendation on the mode of domesticating the ICC Statute that will avoid the pitfall occasioned by the high threshold problem of proving the occurrence of these crimes before the ICC. That notwithstanding, under the Nuremberg principles, the "fact that internal law does not

[607] See Charny, I.W., and Rapaport, C., How Can we Commit the Unthinkable? (Boulder: Westview Press, 1982) at pages 317-331 where they analyse what they call the seven stages to genocide. See also Gregory H.Stanton(i), The 8 stages of Genocide www.genocidewatch.org/image/8stagesBriefingpaper accessed on 21 July 2008; and, Harff, B., and Gurr, R.T., "Systematic Early Warning of Humanitarian Emergencies" in Journal of Peace Science (1998) Vol.35:5 at pp. 551-579.

impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law."[608]

714. A limiting factor in seeking to use the International Criminal Court, (ICC), is that its jurisdiction is complementary since States have the primary responsibility to prosecute those responsible for the crimes established in the Statute. These crimes are genocide, war crimes and crimes against humanity. Unless one was able to show that Kenya had exhibited an unwillingness or inability to prosecute those crimes that were committed, the jurisdiction of the Court would be unavailable.

715. The article 7of the ICC statutes defines crimes against humanity as among other acts as murder, extermination, enslavement, deportation or forcible transfer of population; torture, rape and other forms of sexual violence, *persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious and gender* and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental or physical health. The article demands that these acts be systematic and widespread, be in the knowledge of the victims and be pursuant to state or organizational policy.

716. Our analysis comes to the conclusion that the elements necessary to prove that crimes against humanity under the ICC framework took place in Kenya were all present except that they may not meet the threshold requirement especially the requirement that such acts must be pursuant to either state or organizational policy as stated under article 7(2)(a) of the ICC statute. Article 7 (2) (a) of the Rome Statute provides that "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack." It would therefore be difficult to sustain a charge against any of the actors for committing Crimes against Humanity because the evidence available is not adequate to prove that it was part of a state or organizational policy.

717. Our analysis demonstrates that though the attacks were widespread and systematic and in the knowledge of the attackers; one would not be able to prove that it was "state or organizational policy" under the ICC framework.

718. Lastly, even in a case where one was able to prove that indeed these acts were committed pursuant to state or organizational policy by tracing the origin to officials of a party or the state, it would not be possible to try the alleged perpetrators for these acts before the Kenyan courts because Kenya has not yet domesticated the Statute of the International Criminal Court. These offences are not known to Kenyan law in the version in which the Rome Statute recognizes and identifies them as acts that have a clear political content and character.

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[608] Article II of the Principles of the Nuremberg Charter and Judgment Formulated by the International Law Commission and adopted by G.A. Resolution 177(11)(a), 5 U.N. GAOR, Supp. No. 12, at 11-14, para. 99, U.N. Doc. A/1316(1946)

719. However, a reference to the Prosecutor of the ICC is a possibility whose limitation is that the ICC exercises complimentary jurisdiction to that of states party to the treaty establishing the court. There has to be proof that the Kenyan judicial system is incapable of dealing with these acts or that the Kenyan state is unwilling to bring the alleged perpetrators to justice under Kenyan law.[609]

720. However, this does not mean the information may not be sent to the ICC's Chief Prosecutor who is the person charged with making such determinations one way or another. Article 15 of the Statute of the International Criminal Court authorizes the Office of the Chief Prosecutor of the International Criminal Court to receive information from individuals regarding the occurrence of crimes within the jurisdiction of the Court. Such information may constitute a reasonable and sufficient basis evidencing that crimes defined in the Statute of the International Criminal Court have been committed. If this was the case, such information would be considered admissible for that purpose under Articles 17 and 53(1) (b) of the Statute and could in turn trigger the Chief Prosecutors powers to initiate an investigation pursuant to Article 53(1) (a) (b) and (c) of the Statute.

721. Such a referral may be supported by further evidence such as the half hearted manner in which the Attorney General has handled the prosecutions of those responsible for the post election violence.[610] The Attorney General has not announced his prosecution strategy yet and is yet to respond to calls for the release of those currently held or charged with various post election violence offences. In addition, the Attorney General has in the past showed great reluctance to prosecute those responsible for previous incidents of post election violence as was for example recommended in the Akiwumi Report that investigated the violence that followed the 1997 elections.[611]

722. Further evidence of reluctance on the part of Kenya to deal with post election violence is Kenya's failure to enact in its law the crimes recognized in the Statute of the ICC. It can also be plausibly argued that the Kenyan judiciary is perhaps incapable of prosecuting those responsible for the various crimes committed in the period under investigation particularly given the gravity of the crimes and the absence of a legal framework in Kenya to prosecute for these crimes which are otherwise recognized under international criminal law. This is because once domesticated, international criminal law crimes may not necessarily require the high levels of planning or widespread and systematic occurrences to be prosecutable under the Statute of the ICC.[612]

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[609] See article 17 of the Rome Statute.

[610] In a statement released by the police spokesman on 31st Jan. 2008, the police had investigated 1241 cases of murder, arson and assault in Eldoret, Molo, Kericho, Nakuru and Naivasha. Of these 237 related to murder, 1025 to arson and 59 to assault.

[611] Report of the Judicial Commission of Appointed to Inquire into Tribal Clashes in Kenya, 31st July, 1999 supra note 5.

[612] The ICC Statute requires evidence of planning, widespread and systematic attacks (in the case of war crimes) and a plan or design (in the case of

723. Further evidence of Kenya's reluctance to punish international crimes is the fact that the Kenyan government has not until recently always cooperated effectively with the International Criminal Tribunal for Rwanda with regard to the arrest warrant of alleged genocide suspect Felician Kabuga.[613]

Crimes against Humanity* under *Customary International Law

724. Given the high threshold question that relates to proving the execution of crimes against humanity under the Rome statute, recourse could be had to customary international law. The ICTY in *Prosecutor v Tadic* found that "it is now a settled rule of customary international law that crimes against humanity do not have to require a connection to non-international or international armed conflict at all.[614]

725. The criteria for proving crimes against humanity under customary international law as has found expression in the jurisprudence of both the International Criminal Tribunal for Rwanda[615] (ICTR) and the International Criminal Tribunal for the Former Yugoslavia[616] (ICTY) and recently in the ICC statute are that:

i. the act is inhumane and has caused death, great suffering, caused serious injury, mental and physical harm;
ii. the act was part of a systematic and widespread attack against civilians;
iii. the perpetrator knew that the conduct was part of or intended to be part of a widespread or systematic attack against a civilian population; and,
iv. the acts were committed as part of organizational, group or state policy.

726. Whereas these criteria are similar those set out under article 7 of the Rome Statute of the ICC, the threshold for proving these elements under customary international law is arguably lower than that demanded by the Rome Statute. *Akayesu* interpreted "widespread" to mean massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims.[617] "Systematic" means thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public and private resources.[618]

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[613] UN Prosecutor Says Most Wanted Rwandan is in Kenya, AllAfrica.com IRIN, September 15, 2006 also available at http://www.publicinternationallaw.org/warcrimeswatch/archives/wcpw_vol02issue02.html#rw5 (last visited June 3rd, 2008). "Kenya: Country May Face UN Sanctions as Kabuga Allegedly Surfaces in Rwanda with Offer," The Nation, Nairobi, 1st June 2008 also available at http://allafrica.com/stories/200806020257.html (last visited June 3, 2008); Patrick Wachira, "Fugitive Kabuga Still makes Merry," East African Standard, 10th May 2008 also available at http://allafrica.com/stories/200805091194.html (last visited June 3, 2008)

[614] Tadic paragraph 141. (Prosecutor v Tadic, Appeal on Jurisdiction October 1995.)

[615] Akayesu paragraph 578. (Prosecutor v Akayesu ICTR-96-4-T, September 1998.)

[616] Tadic paragraphs 248, 250.

[617] Akayesu paragraph 580.

[618] Ibid.

727. The requirement of policy has been variously interpreted with the *Tadic judgment* stating that the "these non-state actors must have some of the characteristics of state actors, such as the exercise of domination or control over territory or people, or both, and have the ability to carry out a "policy" similar in nature to that of state action or policy." [619] *Tadic* was clear that control has to be effective not total.[620] The International Law Reform Commission has been of the view that what is important is that a group or organization has the capability to orchestrate mass atrocities.[621]

728. It is therefore possible that under Customary International Law one would be able to prove that crimes against humanity actually occurred in the territory of Kenya between December 30th and February 2008.

Were Crimes against Humanity Committed in the territory of Kenya between December 27th 2007 and February 28 20008?

729. In some of the areas that experienced post-election violence some of the elements that constitute crimes against humanity characterized the violence witnessed in those regions.

730. In Nairobi's informal settlements the killing, evictions, maiming, forced circumcision, destruction of property, arson and sexual violence had an ethnic character. The same can be said of the violence in the Rift Vallely, and Coast Provinces. In Nyanza, Coast and Western Provinces, though the evictions, arson and destruction of property was ethnic character, there is no evidence of systematic killings and infliction of grievous bodily harm that were ethnic in character.

Were the Attacks were systematic, widespread and against the Civilian Population?

731. In Nairobi the attacks were widespread because they covered all the major informal settlements in Nairobi: Kibera, Mathare and Dandora. There is evidence of the input of substantial private resources that helped organize and sustain the violence. Indeed, it is alleged that local politicians and business people financed the violence.[622]

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[619] Tadic paragraph 654.
[620] Ibid
[621] Report of the International Law Commission on the Work of its Forty-Eight Session, UN DOC.A/51/10, P.10, at 15.
[622] PEV, IVR, APR 1104

The Violence was planned and organized

732. An indicator that the violence was planned and organised is the fact that much of the violence was perpetrated by organised illegal gangs. As mentioned earlier, many informal settlements are balkanised along ethnic lines. The majority of gangs that operate in each area organized along ethnic lines. We were informed of the following gangs: *Siafu, Mungiki, Bhukungu, Taliban, and Jeshi la Darajani.* This set up makes it easy to target a particular ethnic community using a criminal ethnic gang.

733. In many cases, some of the attackers were not residents of the area- though they colluded with locals to identify victims and property for looting. This suggests that they were transported or deliberately moved from their areas of residence to mete out violence elsewhere.

734. In the South Rift Region as demonstrated elsewhere in this report the attacks were widespread and systematic. The attacks in the South Rift Region targeted specific communities. Those targeted for the attacks were members of non-Kalenjin communities mainly members of the Kikuyu and Kisii Communities. The attackers took time to identify specific homes and premises for attack.[623] In addition, PNU supporters, and some government officers were also targeted for the attacks.[624]There were reports of training and oathing of the youths by former and retired local security officers from the community in the region's forests and the farms of well known leaders from the region.[625]

735. In the North Rift region, again as described else where in this report, the attacks were systematic and widespread. They largely targeted members of the Kikuyu community. The following information suggests that the post-2007 election violence in parts of the North Rift region was pre-planned.[626]

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[623] Ibid.

[624] This included some of the region's elite that were in one way or another perceived to have a connection with the government. (See for example, PEV, IVR, MAR, 855) where youths are said to have burnt the house of a former Permanent Secretary and the Chief of Chebilat Location. PEV, IVR, MAR, 824.

[625] The oathing is said to have began in August. See KNCHR interview in the region on February 8th 2008; KNCHR interview with a senior government officer serving in one of the region's districts on the 28 of March 2008; (PEV/EM/FEB/010a); (PEV, APR, 1055); (PEV, IVR, FEB 191); (PEV, IVR, MAR, 833);and, (PEV, IVR, MAR, 836). Some of the farms in which training and oathing was taking place are know to local people. The police need to investigate this further to establish the facts about the training, how long it took place, who was financed and it and hold those responsible to account for their role in organizing the violence. Supra note 4. (PEV, EM, FEB, 010a; PEV, INT, APRIL, 086.)

[626] See PEV,NWP,APR,212, PEV,IVR,FEB,507, PEV,IVR,FEB,514, PEV,IVR,MAR,609, PEV,IVR,FEB,052 PEV,IVR,APR,924, PEV,IVR,FEB,487, PEV,IVR,FEB,005, PEV,IVR,FEB,009

Was the Violence Executed as part of State, Organization or Group policy?

736. Though the other elements of crimes against humanity were present in some of the regions that experienced post-election violence, it has been difficult to prove the policy element. Is a community- an ethnic group- a group or organization for the purposes of this element? What is the source of policy? Is the fact that political party officials were involved adequate to prove the policy element? If so, were they acting as members or officials of the party or of their tribe? Do the decisions of political leaders, however loosely organized, constitute policy? The difficulty is therefore in defining the group under whose influence the attackers were acting and not the absence of the policy *per se* because as the International Law Commission says, there is prove that the attackers were able to 'orchestrate mass atrocities."

737. Since it is impossible to carry out violence on the scale described in this report without substantial group and private resources and without some form of policy, the missing information relates to the source of that policy. Law enforcement agencies needs to investigate this aspect of the violence and the criteria, at the threshold level required under customary international law.

The Forum Question

738. The question of where, if indeed crimes against humanity were committed during the post-election violence will be prosecuted, is an important one to answer. The question remains, even if all the elements were proved, which is the judicial forum that would try the perpetrators? The Kenyan courts are limited by the failure to domesticate the ICC Statute yet the threshold question in addition to the complementarity principle puts the availability of the ICC as a forum of choice in doubt. However, the ICC may be persuaded to open investigations that relate to Kenya's post-election violence given the country's history of impunity as demonstrated by the failure to prosecute those that planned, organized and executed the 1992 and 1997 election related ethnic violence in parts of the Rift Valley and Coast Provinces.

WAR CRIMES AND BREACHES OF INTERNATIONAL HUMANITARIAN LAW

War Crimes

739. It is clear that war crimes did not take place in Kenya because Kenya did not witness a situation of internal armed conflict as defined in law.[627] Warm crimes can only take place in the context of an international or non-international armed conflict as defined by law.

[627] See article 8 of the Statute of the International Criminal Court or the Rome Statute.

740. Under the Rome Statute, grave breaches occur if there is an intentional attack directed against civilians[628] or an attack launched on a military target with the knowledge that incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage.[629] This in addition to the requirement of general gravity contained in Article 52(1) (b) of the Statute which has takes into account the number of victims, the seriousness of the crimes among other indicators might weigh against a commencement of investigation by the ICC's Chief Prosecutor. In other words, there is need to have multiple commissions of offences under the ICC Statute that rise to a level of gravity that corresponds to that in places like the Democratic Republic of Congo, Northern Uganda or Darfur in Sudan where the Prosecutor has taken steps to commence prosecutions.

741. Though there has been suggestion that the International law that regulates non-international armed conflict applies to the Kenyan situation, it is our view that what took place in Kenya would amount to what is normally categorized as internal disturbances and tensions that do not meet the criteria known to international law that is necessary to classify a conflict as an internal armed conflict. In addition, under Article 8 of the ICC Statute, the court only has jurisdiction over 'serious' war crimes that represent a 'policy or plan' in the context of war crimes.

742. Under international humanitarian law however, persons who commit grave breaches of the rules contained in the Geneva Conventions and other offences that would amount to genocide, war crimes and crimes of humanity cannot benefit from amnesty. In fact, States have a duty to prosecute such grave breaches. However, a major precondition for the applicability of international humanitarian law, rather than international criminal law, is whether the violence witnessed in the country in the post election period reached the threshold of an armed conflict. In addition to protracted violence, armed conflict requires organized armed groups engaged in the intense fighting within a determinate geographical space for a protracted period. In Kenya's post election violence it is very unlikely that the threshold of an armed conflict was reached.[630] Therefore international humanitarian law is not directly relevant to Kenya's post election violence.

743. Since there is a great overlap between International Humanitarian Law and International Human Rights, any conflicts that do not meet the criteria necessary for them to be classified as internal armed conflicts to which International Humanitarian Law applies are regulated by recognized norms of the International Human Rights Law.

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[628] Article 8(2)(b)(i) of the ICC Statute

[629] Article 8(2)(b)(iv) of the ICC Statute

[630] In the Tadic case, the International Tribunal for the Former Yugoslavia defined armed conflict as existing "whenever there is resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State," id.

LEGAL HURDLES IN BRINGING INVESTIGATIONS CONDUCTED WITHIN THE FRAMEWORK OF INTERNATIONAL CRIMINAL LAW

744. There are, however, several impediments to the application of international criminal law in the prosecution of persons bearing the greatest responsibility for the crimes against humanity committed during the period following the 2007 elections:

745. The Rome Statute operates on the principle of complementarity, that is to say that Kenya bears the primary responsibility for prosecuting and punishing those responsible for crimes against humanity. Only in situations where the country is either unwilling or unable to prosecute will the International Criminal Court assume jurisdiction. Even then, due to reasons of capacity, the International Criminal Court can only prosecute those who bear the greatest responsibility for those crimes. With the formation of a Grand Coalition government, and the implication of political leaders in the post-election violence, the question of willingness or ability to prosecute those responsible for gross human rights violations takes an uncertain dimension. This is further complicated by challenges of capacity and independence of the Kenyan judiciary. It should be noted, in this regard, that there has been no visible action on the part of the Attorney General towards bringing to justice those responsible for inciting, instigating, planning, or otherwise commissioning the violence.

FINDINGS

746. Kenya's domestic law is awfully inadequate in dealing with crimes of the nature and character that was witnessed during the post-election violence. These crimes constitute a threat to life on a mass scale, threaten national stability and have a clear political content and character.

747. The violence in some of the regions was organized, planned and well resourced. In addition, the violence in some of the regions targeted certain communities for killing, destruction and maiming. The violence in these regions was widespread and systematic. The atrocities that resulted were massive given the number of deaths and displacements that occurred. There is evidence that crimes against humanity *may have* committed in the territory of the Kenya. The ideology of an ethnically homogenous region – Kalenjin Rift Valley- could be a good basis for concluding that there was intent to persecute if not kill members of other communities. This ideology was articulated clearly during the pre-election period. This may suggest that crimes against humanity were committed in the territory of Kenya during the period under review. The challenge is finding the source of the policy, the financiers and the organizers of the violence. We recommend that the police take up this challenge and do further investigations into the matter.

748. The crime of genocide was not committed in Kenya during the period under review but as noted above, the conditions and the process of constructing genocide has been evident in Kenya for a while now – especially since 1991 when Kenya experienced the first widespread wave of inter-ethnic violence. We recommend that the state makes both political and institutional reforms that will prevent the occurrence of genocide in Kenya.

CHAPTER SEVEN

FINDINGS ON THE IMPACT OF THE VIOLENCE ON KENYA'S INTERNATIONAL AND NATIONAL HUMAN RIGHTS OBLIGATIONS AND OTHER GOVERNANCE INDICATORS

Introduction

749. This chapter makes findings on the impact of the violence on Kenya's international and national human rights obligations. It also makes findings on other governance indicators. It begins with an overview of Kenya's national and international human rights obligations. It then proceeds to make findings on each right that was violated before proceeding to examine the impact of the violence on other governance indicators such as the role of state institutions. This chapter examines the human rights obligations of the government of Kenya as well as those of citizens.

An Overview of National and International Human Rights Obligations

750. The International Bill of Human Rights comprises three basic instruments: The Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights and the International Covenant on Social and Economic Rights. The rights guaranteed under these instruments can be categorized into three groups: In the first category are civil and political rights, such as the rights to conscience, exercise of religion, freedom of movement, expression and assembly.

751. In the second category are social and economic rights, such as the rights to work[631]; to the protection of and assistance to the family, mothers and children[632]; to adequate food, clothing and housing[633] and to education[634].

752. In the third category are group rights such as the right to self determination. In addition, to the International Bill of Human Rights, there are other international human rights instruments such as the Convention on Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.

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[631] Article 6 of the International Covenant on Economic, Social and Cultural Rights, See International Covenant on Economic, Social and Cultural Rights, Dec. 19, 1966, 993 U.N.T.S. 3,6 I.L.M. 360 (hereinafter the International Covenant on Economic Rights)

[632] Article 10 of the International Covenant on Economic Rights, supra note 15.

[633] Article 11 of the International Covenant on Economic Rights, supra note 15.

[634] Article 13 of the International Covenant on Economic Rights, supra note 15.

753. While the Constitution of Kenya protects civil and political rights much like the International Covenant on Civil and Political Rights, it does not protect Economic, Social and Cultural Rights.

754. Kenya has signed and acceded to the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Kenya has also signed and acceded to the International Covenant on Elimination of Racial Discrimination.[635]

755. Kenya's international human rights treaty commitments impose a positive obligation on Kenya to respect and promote human rights at least at three levels. First, Kenya is obliged to respect human rights by refraining from violating them. Second, Kenya is bound to protect human rights by taking steps against third parties who violate these rights. For example, Kenya can meet this obligation by taking steps such as enforcing criminal sanctions against individuals who commit murder or arson. Third, the state is required to fulfil/facilitate human rights by putting in place policy, legislative and administrative measures that create an environment appropriate to enable individuals to effectively exercise their human rights.

756. In terms of the obligations States have in the area of human rights, the International Covenant on Civil and Political Rights obliges States to 'respect and ensure' the rights recognized in the Covenant while the International Covenant on Economic, Social and Cultural Rights obliges States to progressively achieve the rights guaranteed and to the maximum of available resources.[636] The Committee on Economic, Social and Cultural Rights has noted that the concept of progressive realization "should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexible device, reflecting the realities of the real world and the difficulties involved for a country in ensuring full realization of economic, social and cultural rights."[637] The reference to maximum available resources can only be invoked if a state can "demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."[638] The Committee has also concluded that the ICESCR requires every state party to ensure the satisfaction of a minimum core obligation "at the very least, minimum essential levels of each of the rights."[639]

757. That means a State may be responsible for human rights violations for both acts of omission or commission. The State may be responsible for human rights violations if it has engaged in such violations through its agents. Similarly, the State may be liable for human rights violations for its failure or omissions in preventing the occurrence of human rights violations.

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[635] Kenya has also signed and ratified or acceded the following human rights treaties: The International Convention on Elimination of all forms of Racial Discrimination (ICERD) of 1965; The African Charter on Human and Peoples' Rights (ACHPR) of 1981; Convention against Torture and Cruel or Degrading Punishment or Treatment (CAT) of 1984; Convention on Elimination of all forms of Discrimination against Women (CEDAW) of 1979; Convention on Rights of the Child (CRC) of 1989 and the International Convention on the Rights of Persons with Disabilities (ICRPD) of 2006.
[636] Article 2(1) of the International Covenant on Economic Rights, supra note 15
[637] Committee on Economic, Social and Cultural Rights, The Nature of States Parties Obligations (Art. 2 paragraph 1):. 14/12/90. General Comment 3, Fifth Session 1990 at paragraph 9. (hereinafter General Comment No. 3)
[638] Paragraph 10 of General Comment No. 3 supra note 20
[639] Paragraph 10 of General Comment No. 3 supra note 20

758. Although the rights protected in the Constitution are understood to be prohibitions against violation by the State or State actors, modern understandings of human rights prohibit private persons from violating these rights as well.[640] The Universal Declaration of Human Rights provides that "every individual and every organ of society...shall strive...to promote and respect for these rights and to secure their universal and effective recognition and observance."[641] Similarly, Article 28 of the African Charter of Human and Peoples Rights, which Kenya has signed and ratified, provides that individuals have a duty to respect their fellow human beings without discrimination. As such, while States are required to respect, protect and fulfill the human rights of their citizens, citizens too have obligations to respect the rights of their fellow citizens and to safeguard and maintain mutual respect and tolerance.

759. Thus while States have the primary responsibility to ensure internationally and constitutionally guaranteed rights are protected, respected and fulfilled, individuals have obligations not to violate human rights. The duties that individuals have with regard to human rights are recognized in Part I, Chapter II of the African Charter on Human and Peoples Rights which Kenya has signed and ratified. Article 27 for example provides that every "individual shall have duties towards his family and society" as well the State and other "legally recognized communities." Article 29(4) obliges the individual to "preserve and strengthen social and national solidarity, particularly when the latter is threatened." As such individuals who killed others and who took part in planning to cause chaos, or gave their support in aid of those that caused the violence acted inconsistently with Article 27 of the African Charter on Human and Peoples Rights.

A Word on Our Findings

760. Before examining our findings below, we refer the reader to our methodology chapter which lays down in great detail how the information upon which the findings on this report was collected. We collected information for the report as part of a human rights rather than a criminal investigation. These findings are therefore based on information gathered with a view to finding out whether or not a strong or weak case can be made of the extent to which international, national or regional human rights obligations were broken; whether or not a strong or weak case can be made that international crimes were committed and whether or not a strong or weak case can be made that international humanitarian law norms were violated or not.

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[640] Mary Robinson, "From Rhetoric to Reality: Making Human Rights Work," 1 European Human Rights Law Review, 1-8 (2003). See also, Philip Alston, (ed.) Non-State Actors and Human Rights, 2005.
[641] Article29 of the Universal Declaration of Human Rights.

Findings on Whether Kenya's Human Rights Obligations Violated in Post Election Violence

761. The violence that preceded and that followed Kenya's 2007 General Election produced incidents of rampant, systematic and gross violations of national, regional and international human rights guarantees. There were also incidents of gross violations of human rights. The rights violated cut across the entire gamut from civil and political rights violations; to social, economic and cultural rights violations to violations of the rights of children and women as well. This section outlines the human rights violations that were occasioned during the violence and those responsible for those violations.

Was the Right to Life Violated?

762. This right was violated with frequency during the violence following the announcement of Presidential election results on 30th of December, 2007. We were told of at least 1,162 deaths. Examples of this violence were police shootings of demonstrators particularly in Kisumu town and allegations involving particular police officers such as in the Langas Police station in Eldoret. While we must always be mindful of the need for the police to keep law and order particularly during periods of lawlessness when the lives of police officers are endangered, the behavior of the police was too often callous to human life and dignity.

763. This behavior is inconsistent with the protection of the right to life, liberty and security of the person which is protected under Article 3 of the Universal Declaration of Human Rights and Article 6 of International Covenant on Civil and Political Rights which guarantees every human being, the 'inherent right to life.' This right is also guaranteed under Section 70 of the Kenyan Constitution which guarantees the right to the 'life, liberty and security' to all Kenyans without discrimination on the basis of tribe, place of origin or residence, political opinion or sex. Section 71 of the Kenyan Constitution further prohibits the intentional deprivation of the right to life. Similarly, Article 5 of the African Charter on Human and Peoples Rights provides that the dignity 'inherent in a human being' shall be respected and therefore any forms of degradation and exploitations shall be prohibited.

764. It was however not only the police that were blameworthy for undermining the right to life in Kenya's post election violence. Individual Kenyans engaged in murders and killings in the country. Similarly, we were told of numerous incidents in which bodily assaults or physical attacks on individuals caused grievous bodily harm that constituted violations against the security of the person inconsistent with Article 3 of the International Covenant on Civil and Political Rights, Sections 70 and 71 of the Kenyan Constitution as well as Article 5 of the African Charter on Human and Peoples Rights. Those responsible for taking human life include individuals and police officers in particular. The schedule of alleged perpetrators contains names of some of these individuals and officers who are recommended for further investigation. The government also failed in protecting the right to life.

Was the Right Not to Be Forcefully Evicted From One's Home Violated?

765. We witnessed first hand the hundreds of thousands of people displaced from their homes, often following forceful evictions. As noted above in the discussion on trends and patterns, in every region that witnessed post election violence, including in Nairobi, Western, Nyanza, Central Province as well as the Rift Valley people were violently evicted from their homes or rental properties. Such evictions particularly given the accompanying violence and widespread arson of some of the homes of the evacuees constitutes one of the most egregious violations of human rights occasioned during post election violence. As noted elsewhere in this report, we were told of at least a 2,566 arsons during the post election violence report.[642]

766. The right not to be forcefully evicted or displaced from one's home is now increasingly recognized in international law.[643] The Commission on Human Rights has resolved that the "practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing."[644] Article 13 of the Universal Declaration on Human Rights, provides that everyone has the right of 'residence within the borders of each State.' The forced evictions that happened throughout Kenya during the violence preceding and following the 2007 General Elections therefore constituted a gross violation of the right to residence of those individuals, families and communities who were violently or under the threat of violence removed from their homes, land and neighborhoods against their will. The violence and persecution that preceded the displacements further constituted a violation of the right to liberty of these individuals.

767. The Government of Kenya is responsible for failing to intervene in the prevention of the conditions that led to insecurity and lack of safety that in turn forced hundreds of thousands to flee their homes. The government failed in its duty to protect individuals, families and communities who were evicted from their home as punishment for their belonging to a particular ethnic group or because of their political beliefs. Similarly, the communities and individuals in the towns, villages and locations that engaged in the forceful evictions of others are responsible for violating the right of persons not to be evicted from their homes.

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[642] This figure may have double counted instances in which there was more than one witness to the arson. In addition, where witnesses used terms such as 'several houses were brunt' or 'our homes were burnt', there was difficulty in establishing a precise number. This figure of arsons includes only those specific instances in which informants alleged discrete instances of arson.

[643] Office of the High Commissioner for Human Rights, Fact Sheet No. 25, Forced Evictions and Human Rights, available at http://www.unhchr.ch/html/menu6/2/fs25.htm

[644] Commission on Human Rights, Resolution 1993/77

768. As a result, displaced persons suffered high levels of impoverishment[645] including 'landlessness, joblessness, homelessness, marginalization, food insecurity'[646] as well as lack to proper medical care. Children were unable to go back to schools as many schools in areas where displacements happened were razed down, as were medical facilities. As a result, the right to education for these students was infringed. Similarly, the right to medical care for all displaced persons as guaranteed under international human rights law was violated. Displaced persons were forced to abandon their property and personal possessions only for it to be looted or razed down to the ground by their attackers and these constitute violations of the right to property as noted below. The evictions and displacements also resulted in undermining the social networks and communities that these people had created. This further exacerbated the psychological and emotional trauma that they suffered.

Was the Right to Equality and Against Discrimination Violated?

769. The massive dislocations and evictions of individuals and families from various parts of the country both right after the announcement of the Presidential election results on 30th December, 2008 and the backlash violence that followed in late January, 2008 violated the right to equality of those individuals so evicted from their homes on the basis that they belonged to a particular political party or because they belonging to a particular ethnic community.

770. Article 3 of the International Covenant on Civil and Political Rights obliges States to ensure the 'equal right of men and women to the enjoyment of civil and political rights' while Article 26 prohibits discrimination based on grounds such as race, colour, sex, religion, language, religion, political or other opinion, national or social origin, property birth or other status.[647] Section 70 of the Kenyan Constitution also prohibits discrimination on the basis of race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex. Article 3 of the African Charter on Human and Peoples Rights also guarantees individuals to the right to equality before the law.

771. The responsibility for this massive evictions first goes to the State for failing to take steps to prevent their occurrence and when the forceful evictions started for failing to take urgent steps to prevent its escalation. Individuals also bear a responsibility for participating in door to door attacks on homes and their individuals engaging in acts of looting and arson that in turn resulted in the forced evictions. Politicians who during the election campaign period who preached messages of ethnic hatred particularly aimed at the forceful eviction or displacement of ethnic groups not understood to belong to a particular region are responsible for setting up a context that facilitated these forceful evictions. Some of those politicians and individuals are mentioned in the various schedules of alleged perpetrators appended to this report.

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[645] This term was used in this context by Cernea, "From Unused Social Knowledge to Policy Creation: The Case of Population Resettlement," Development Discussion Paper No. 342 page 20 (Harvard Institute for International Development, 1990)

[646] Id.

[647] This is reinforced by the provisions of Article 2 of the Convention on Elimination of All Forms of Discrimination Against Women which prohibits discrimination against women in all its forms and obliges States, without delay, to take steps to eliminate discrimination against women.

Was the Right to Hold Opinions Without Interference Violated?

772. Here our finding is that those individuals who were evicted from their homes or had their homes burnt on account of their perceived support of particular political parties or individuals was in violation of their right to hold opinions without interference contrary to Article 19 of the International Covenant on Civil and Political Rights and Section 79 of the Constitution of Kenya which guarantee the right to hold opinions as well as to seek, receive and impart information of all kinds without interference. Further, the burnings, forced evictions of people from their homes and the interference with these rights constitutes arbitrary and unlawful interference with their privacy, family and home contrary to Article 17 of the International Covenant on Civil and Political Rights.

Was the Right to Take Part in Public Affairs and to Vote in Periodic Elections Violated?

773. The violence that met individuals who were perceived to have voted one way and not the other or who were perceived to belong to opposing political party groups constitutes a violation of their right to take part in public affairs and to vote unhindered and without any fear of retaliation contrary to Section 25 of the International Covenant on Civil and Political Rights. This provision guarantees the rights of individuals to take part in the conduct of public affairs as well as to vote at genuine periodic elections without unreasonable restrictions. Those who were evicted from their homes for having voted or having been perceived to have voted for an unapproved party by their evictors had their right to participate in public affairs and to vote in periodic elections unreasonably restricted.

Was the Right to Property Violated?

774. The widespread instances of arsons, lootings and theft of private property ranging from homes, to business premises, granaries as well as farm animals during the post election violence constitute a rampant disregard of the right to property.

775. Section 75 of the Constitution guarantees the right to private property and Article 17 of the Universal Declaration of Human Rights.[648] The Constitution and the Universal Declaration of Human Rights prohibits the arbitrary taking of private property from a person. Article 14 of the African Charter on Human and Peoples Rights also guarantees the right to private property.

Was the Right to Education Violated?

776. A large number of school age individuals were displaced from their homes by the violence. There are also reports of school that were set on fire. As a result these individuals right to an education guaranteed under Article 13 of the International Covenant on Economic, Social and Cultural Rights and Article 17 of the African Charter on Human and People's Rights was undermined.

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[648] The Universal Declaration of Human Rights is recognized as customary international law. this means Kenya is bound by its provisions notwithstanding the fact that it has not formally signed or ratified it.

Was the Prohibition Not to Engage in Incitement to Discrimination, Hostility or Violence Breached?

777. Throughout the political campaigns and immediately following the announcement of the Presidential election results, politicians, individuals as well as local language FM radio stations engaged in incitement to discrimination against members of other ethnic communities. There were leaflets, pamphlets and other forms of hate speech such as SMS's and e mails. These forms of media also demonstrated hostility towards members of particular ethnic communities by others. In a variety of places, church leaders were involved in spreading messages of hatred against members of particular ethnic communities.

778. Such conduct is inconsistent with Article 20 of the International Covenant on Civil and Political Rights prohibits advocacy of national, racial or religious hatred that leads to incitement to discrimination, hostility or violence. The International Convention on the Elimination of All Forms of Racial Discrimination condemns and prohibits ethnic discrimination as inconsistent with the principles of equality and dignity inherent in all human beings.[649] The Convention obliges States not to engage in conduct that would 'sponsor, defend or support' ethnic discrimination.[650] States are obliged to protect the security of the person 'against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.'[651] Clearly the advocacy of certain leaders, individuals and institutions such as radio stations may have resulted in hostility and violence against certain ethnic groups throughout the country. In Central province, Kikuyus targeted Luos and Kalenjins; in the Rift Valley, the Kalenjins targeted the Kikuyu, Kissi and Kamba in particular while in Western and Coast provinces, the Kikuyu were targeted. In all these instances, the State failed in meeting its obligation to ensure individuals were not targeted for violence because of their ethnicity. Further, the incitement to this ethnically charged violence constitutes a violation of the prohibition of advocacy of hatred and it ought to be further investigated. The list of alleged perpetrators appended to this report sets out information on some of the allegations of such advocacy.

Was the Right to Freedom of Movement Violated?

779. The barricading of roads throughout the country with logs, stones, trailers and other barriers constituted a major limitation on the freedom of movement particularly of those that sought to escape from the brutality that accompanied the forced evictions particularly in the Rift Valley. These barricades compounded the horror of those seeking to escape from the gangs of looters, arsonists and other perpetrators of violence.

780. The right to freedom of movement is guaranteed under Section 81of the Constitution as well as under Article 11 of the International Covenant of Civil and Political Rights as well as 12 of the African Charter of Human and Peoples Rights.

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[649] Article 1.1 and the first preambular paragraph of the International Convention on the Elimination of All Forms of Racial Discrimination, Adopted and Opened for Signature and Ratification by General Assembly Resolution 2106 (XX) of 21 December 1965

[650] Article 2.1 of the International Convention on the Elimination of All Forms of Racial Discrimination, id.

[651] Article 5.1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

Findings on Issues Relating to Governance Failures

781. First, the government of Kenya failed in effectively detecting the violence and taking steps to stop it. While the National Security Intelligence Service has recently claimedit warned the government of impending violence particularly if President Kibaki was declared victorious, the initial response of the government to the violence was little to nothing suggesting total lack of preparedness both to prevent its escalation and the humanitarian crisis that followed. As such, it is our finding based on what our investigators found out that when the violence started, Kenya's police force largely abdicated its role of protecting the citizens and their property and either stood by watching massive violations of human rights without actively intervening. In some instances, the police shot in the air while unsuccessfully trying to stop the violence. At times, the police actively participated in looting. Even more, when the police attempted to quell the violence, they shot protestors with live bullets resulting in many deaths.

782. Second, while the delay and irregularities associated with the tallying of the election results sparked the first major round of violence, the violence that occurred following Kenya's 2007 General Elections was not all spontaneous. There were elements of organization. For example, some protestors took advantage of ODM's call for mass protests between the 15th and 17th of January 2007 to engage in looting, pillage, rapes and arsons. There was also the backlash violence that occurred in places like Central and Nyanza provinces from late January into February when the influx of IDPs from regions that suffered the first huge wave of violence started arriving to the 'ancestral' homes with news of the suffering they had undergone during the peak of the violence. The violence that followed these arrivials in Central and Nyanza provinces shows that this violence was planned and organized.

783. Third, the information investigators gathered of incitement particularly by Rift Valley politicians as well as the virulent ethnic nationalism and hatred preached in ethnic radio stations prior to the elections in addition to a very closely contested election set the atmosphere of mistrust of the government and suspicions and hatreds among the various ethnic communities in Kenya that set the stage against which the violence eventually occurred. Notably, information relating to oathings and other preparations such as the timing of circumcision ceremonies as noted in the chapter on patterns and trends of violence strongly suggest that the violence was neither spontaneous nor abrupt.

784. Fourth, the violence took an extremely distressing ethnic tone. Thus in Central Kenya, non-Kikuyus were the target; in Kisumu and Luo Nyanza, the targets of the violence were Kikuyus and Kissis; in Western province, the targets were predominantly Kikuyus as was the case in the Coast province even though Kambas, Merus and Embus were also on the line for eviction there. In the Rift Valley, the violence pitted the Kalenjins, on the one hand, the non-Kalenjins such as the Kikuyu and Kissii, on the other. These ethnic divisions also overlapped with political divisions with the Kikuyu, Merus and Embus being associated with PNU while Luos and Kalenjins were associated with ODM.

785. This ethnicization is reflected by the manner in which the police responded to criminality and human rights violations during the violence. Investigators were often told that police officers were not vigilant enough in maintaining law and order or preventing the commission of offences when the offenders were members of their ethnic community. By contrast, when those engaging in criminality belonged to a different ethnicity, the police were more often than not likely to respond affirmatively to try and stop criminal conduct.

786. This ethnicization is also reflected by the extent to which other institutions were unable to play a mediating role to curb the violence or to address the injustices it occasioned. ODM for example declined to use the judicial system citing its partiality. Religious leaders too admitted having failed in their duties to preach without political or ethnic partiality. The media too played along subjectively responding to the political winds of the moment thereby losing its independence. Not even the provincial administration was spared the appearance of supporting particular electoral candidates or political parties even though it is supposed to exercise political neutrality. Perceptions that the judicial system, religious gropus, the provincial administration and the media were doing the bidding of particular political parties or that they were aligned with certain ethnic groups undermined their ability to hold the country together. Instead, they contributed to the further division of the country along ethnic and political lines. It is therefore our finding that Kenya's 2007 post election violence was deeply ethnicized and that these divisions are a reflection of how far down the road of negative ethnicity the country has descended into.

787. Fifth, we gathered little or no evidence that politicians took seriously the charge of seeking to minimize the violence by discouraging their supporters from continuing the violence. William Ruto in an interview with us on post election violence argued that many leaders were caught up like other Kenyans in failing to take affirmative steps to put the violence to an end.

788. Sixth, Kenya's long history of impunity was a background contributing factor to the post election violence. There is no evidence that previous government's took seriously the recommendations to investigate and prosecute those responsible for previous rounds of violence around election time in Kenya.

789. Seventh, the long history of discrimination at the inter-personal level in the rental market particularly in Nairobi's poorer neighborhoods became an important predictor of where the violence occurred. For example, the refusal of Kikuyu landlords to rent to Luo tenants and vice versa became a flashpoint of Kenya's post election violence.

790. Eighth, Kenya's post election violence occurring for at least the third time during or immediately following a general election shows that electoral politics are now a significant driver and predictor of election violence. This is the result of lack of constitutional reforms that would have transformed the presidential election system from a high stakes winner take all system into one in which losing candidates particularly in closely contested election still had a chance to participate significantly in national political life after the elections.

CHAPTER EIGHT

REMOVING THE SHIELD OF IMPUNITY

CONCLUSIONS

791. In this investigation, we sought to document the post-elections violations that took place between December 2007 and February 2008. We have established the stories of violations which happened in specific regions of Kenya. We have also determined that inter-communal human rights violations which on many occasions amounted to crimes were perpetrated on a large scale and that the state too did violate the human rights of individuals as it sought to or purported to quell the violence. The state failed Kenyans at their hour of greatest need: it could not provide security to Kenyans when they needed it most; it could not protect women, children and even men from being violated sexually; it was even difficult for it to guarantee minimum living conditions for persons displaced by the violence. We have endeavoured to name the violations that happened as well as to name the individuals who in our view may have committed human rights violations which should be investigated further for purposes of criminal prosecution.

792. Several other issues on which Kenyans may have mulled about in the past have again been confirmed by our report. First, Historical injustices have festered for far too long in the country without effective remedial action being taken. Inaction by the state remains on long-held grievances by individuals and communities around issues of land, regional inequalities and resource allocation. Second, as we already have stated, the failure to hold perpetrators of human rights violations as well as economic crimes remain a bane on nation-building. Third, and perhaps as a consequence of the above two factors, Kenya remains an exceedingly ethnically-polarized country. Ethnic suspicions stoke intrigue within virtually all public institutions and public life generally, in turn making it difficult for public institutions to facilitate effective nation-building. This indeed was the scenario which Kenya's security forces encountered when they attempted to protect the lives and property of Kenyans during the post elections violence.

793. Kenyans behaved extremely badly to each other; they exhibited wanton abdication of their individual and collective responsibilities to the rule of law and to general considerations of humanity and mores. Their social institutions failed them too in their greatest hour of need. Political as well as religious leaders failed to lead by example.

794. The value of this report in its totality is the message that it sends to all human rights violators: that no person that violates the rights of another should be allowed to go scot free; for impunity only perpetuates more breaches. Kenya as a society must never shield violators of human rights for short-term political or economic expediency or convenience. If

Kenya keeps doing this, it will soon find that its long-term viability as a state is threatened and perhaps even impeached.

RECOMMENDATIONS

In respect of domestic criminal culpability

795. The Attorney General of Kenya and or the Kenya Police Force should undertake investigations in terms of Section 26 of the Constitution on the list of alleged perpetrators set out in Annex 1 of this report to determine their criminal culpability for human rights violations under Kenya's penal law.

796. Since our list of alleged perpetrators is not comprehensive, the Attorney General and the Commissioner of Police should provide concrete assurances to Kenyans that post election violations are being investigated even-handedly across all the regions of Kenya and across all ethnic communities.

797. The crimes allegedly committed by members of the Police Force should be investigated by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose. The President should cause these two special offices to be established.

798. The Minister in the Office of the President responsible for security should fulfill the pledge he made early this year that a civilian board to oversee the Police Force would be established as a matter of urgency. This Board should be established within further delay.

799. The Chief Justice should establish administratively special courts in theatres of conflict where many crimes may have been committed to expedite the determination of post-elections violence related criminal cases.

In respect of international criminal liability

800. The Prosecutor of the ICC should open investigations on Kenya to determine who bears the greatest responsibility in the commission of crimes against humanity detailed in this report.

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In respect of human rights violations and governance issues

801. The Government should fast-track the establishment of a forensic laboratory to assist investigation and prosecution of sexual crimes. The Treasury, the Ministry of Health, the Ministry of Gender and the Kenya Police Force should facilitate this.

802. The Government in partnership with Civil Society Organizations should facilitate efforts to heal the country by taking deliberate steps towards enhancing coexistence. Community based systems should be established to spearhead reconciliation.

803. Parliament should enact hate speech legislation within this year. The Ministry of Information, that of Justice, National Cohesion and Constitutional Affairs, and the Attorney General are already aware of draft legislation on hate speech which the KNCHR prepared last year; this draft can be the basis for hate speech legislation.

804. Recommendations arising from the Commissions established under the Kenya National Dialogue and Reconciliation initiative, including the Commission of Inquiry on Post Election Violence, should be implemented expeditiously.

805. The constitutional review process should be finalized expeditiously as a basis for enabling the resolution of the inequalities which have been such a fundamental source of conflict.

806. The Communications Commission of Kenya should be empowered to regulate content of local language as well as other media.

807. Legislation should be passed by Parliament barring from appointive or elective offices leaders who are found liable for perpetration of gross human rights violations.

808. The Ministry of Justice, National Cohesion and Constitutional affairs and the ministry of education should revitalize the nation-building project so as to enhance unity in diversity – the idea that Kenya's communities can live harmoniously together in one country in spite of their ethnic differences.

809. A more concerted and sustained program of human rights education should be undertaken by public institutions, CSOs and Faith Based Organizations (FBOs) to enable Kenyans to have better regard for humanity.

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810. The Ministry of Special Programs should effect and communicate to Kenyans a time-bound program to resolve the IDP question. The Ministry should ensure that IDPs are fully appraised of and actively involved in making the decisions that affect them.

811. IDPs should be provided with reparations, either in the form of restitution (return of what has been taken away); or compensation (financial and moral); or satisfaction (apology); or Rehabilitation; or guarantees of non-repetition; or a combination of all or some of the above.

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CHAPTER NINE

BACK FROM THE PRECIPICE? A POST SCRIPT

812. Since completion of the field investigations, a number of important developments have taken place in the country on various issues related to the post 2007 election violence. This report will not be complete without highlighting these developments. The developments include the formation of the Grand Coalition Government, the establishment of the Commission of Inquiry on Post Election Violence, and the proposed establishment of The Truth, Justice And Reconciliation Commission and the ethnic relations commission.

The grand coalition government

813. Following successful negotiations between President Kibaki of the Party of National Unity and allied parties and the Hon. Raila Odinga of the Orange Democratic Movement and allied parties, the two agreed to establish a Grand Coalition Government bringing together all the key actors and political parties that participated in the 2007 elections. The political settlement reached included, among other things, establishing the position of Prime Minister. Subsequently, Hon. Raila Odinga was appointed the Prime Minister and a large cabinet of 40 appointed. There were loud protests about the size of the government, with civil society, the media, and sections of civil society preferring a leaner cabinet.

814. The cabinet brings together protagonists of all shades. The desire to constitute a cabinet broadly reflective of the country's diversities, as well as horse trading within the various political factions, may have resulted in some individuals whose past integrity is doubtful, and who may have played in a role fanning the post election violence, getting ministerial appointments.

815. The Grand Coalition Government has the important responsibility of implementing the recommendations of key bodies investigating different aspects of the disputed 2007 elections, including the Commission to Investigate Post Election Violence (the *Waki* Commission) and the Commission to investigate the 2007 elections. The National Commission will also present its findings on post 2007 elections human rights abuses to the grand coalition. It will be interesting to see how the coalition cabinet responds to the recommendations, particularly if some of them are implicated, and they are identified for prosecution or further investigations.

816. The Grand Coalition Government also has the important responsibility of guiding the critical constitutional and legal reforms that must be put in place as a foundation of the country moving forward after the post election chaos. Reforming the executive, particularly diffusing the powers of the President, and strengthening the Electoral Commission of Kenya, are some of the critical reforms that will be needed. The Government has published the legal framework to restart the constitutional reform process. Addressing the underlying causes of Kenya's social strife- poverty, income inequalities, land and others- is another important responsibility of the grand coalition government.

The commission of inquiry to investigate post election violence

817. Agreement to establish a Commission of Inquiry on Post Election Violence (CIPEV) was reached on 4 March 2008 by the Government and the Party of National Unity, on the one hand, and the Orange Democratic Movement, on the other hand. The agreement was reached under the auspices of the Kenya National Dialogue and Reconciliation initiative. The CIPEV is established under the Commission of Inquiry Act, and was gazetted on [April] 2008 with three Commissioners two of whom are non-Kenyan. It has a time frame of three months, and its report is due by [September] 2008.

818. The Commission is mandated to investigate the facts and surrounding circumstances related to acts of violence that followed the 2007 Presidential Election, investigate the actions or omissions of State security agencies during the course of the violence, and recommend measures of a legal, political or administrative nature, as appropriate, including measures with regard to bringing to justice those person responsible for criminal acts. It can therefore be expected that where the evidence is adequate, the Commission will name those it finds responsible for the violence.

819. The Commission of Inquiry can only make recommendations. It is for the President to determine the extent to which the recommendations will be implemented. Kenya's archives are full of reports of Commission's of Inquiry whose recommendations were never acted on. This may very well be the fate of this Commission's recommendations.

820. The time frame provided for the Commission to complete its work appears short. In view of the short time frame, the Commission should be encouraged to build on the work that other agencies and organizations have already undertaken, including the Kenya Police, civil society organizations, and the National Commission on Human Rights.

821. The National Commission will cooperate with the Commission. It fully shares in the purpose of the Commission.

The truth, justice and reconcilliation commission

822. Agreement to establish the Truth, Justice and Reconciliation Commission (TJRC) was reached on [March] 2008. The TJRC will be established under an Act of Parliament. Legislation to establish it has been published and is awaiting debate in Parliament. Kenya's civil society have called for a truth, justice, and reconciliation process since 2002 when the NARC Government came into power after the twenty four year rule of President Moi. In 2003, a Government appointed Task Force recommended establishment of a Truth Justice and Reconciliation Commission. Had this recommendation been acted on then, perhaps the country might have avoided the post December 2007 election violence witnessed.

823. The TJRC is expected to establish an accurate, complete and historical record of violations and abuses of human rights and economic rights inflicted on persons by the State, public institutions and holders of public office serving and retired, between 12th December 1963 and 28th February 2008. It will also investigate the gross human rights violations and violations of international human rights law as well as abuses that occurred, including massacres, sexual violations, murder and extra-judicial killings and determining those responsible for the Commission of the violations and abuses. It will also investigate economic crimes, such as grand corruption and the exploitation of natural or public resources and how they have been dealt with.

824. Perceptions around past injustices are one of the likely underlying causes of Kenya's post election violence. The TJRC will provide a forum to discuss these injustices. Post December 2007 election violence also falls within the purview of the TJRC.

825. The National Commission has provided recommendations to strengthen the proposed TJRC legislation, and hopes that they will be addressed through Parliament. The main recommendations are summarized below.

826. *Economic Crimes.* The Bill seeks to bestow on the Commission the power to investigate cases of economic crimes. No threshold is given. It would not be realistic for the Commission to investigate all economic crimes. We propose amendment that would ensure that the economic crimes to be investigated are clearly delineated, and where possible, the reports made by previous Commissions and other fact finding efforts be reviewed by the Commission with a view to making recommendations as to the implementation of the findings of such previous commissions.

827. *Independence of the Commission and the establishment generally.* There are instances where the stated principles in the Bill are undermined by the more specific provisions of the Bill. For example, independence of the Commission is clearly undermined by the provisions of clause 44(3) which import too much state leverage on the financial autonomy of the Commission. Again the proposed power of the President to appoint the chairperson of the Commission from amongst the members of the Commission without consulting anyone is a way of ensuring that the Chairperson is beholden to the President/the executive.

828. The need for the truth, justice and reconciliation process and indeed of the Commission is due to the failure of our existing institutions to deliver on the objectives for which they are established. It is therefore not useful having a Commission that would suffer the same emasculation as many of our national institutions. There should be amendments to the Bill that would ensure that the Commission is not vested with a facade of independence but one that is imbued with complete independence enabling it discharge its mandate as informed by the spirit of its establishment and the letter of the law. The provisions relating to the appointment of commissioners, their removal and replacement are not rendered clearly in the Bill.

829. *Amnesty Provisions.* The provisions relating to amnesty are the weakest point in this proposed law. The amnesty provisions may face constitutional challenges on the relationship with the Bill of Rights in Kenya's constitution and on the constitutional discretion of the Attorney General as to who to prosecute especially were it to be assumed that the Commission was to have power to grant amnesty and not to merely recommend it. The amnesty provisions must be consistent with international law, which excludes amnesty for certain categories of crime. The Bill fails to give a position as to whether the Commission will grant amnesty or recommend the grant of amnesty.

830. I*mplementation of the Recommendations of the Commission.* Implementation of the recommendations of the Commission should be clearly spelt out. The problem is not that the authorities are not aware of their responsibilities but that those in authority oftentimes choose to ignore these responsibilities. It would be disastrous were the Commission's recommendations not be acted upon. We recommend that the Commission be empowered to propose an implementation mechanism for its recommendations in its report. It is of no benefit to have the Commission do a report that would end up in being frustrated at implementation.

THE AMNESTY DEBATE

831. Since [March 2008], a debate in Kenya has raged regarding whether persons arrested in the wake of the post election violence should be prosecuted or granted amnesty. These persons comprise mainly youths from Rift Valley, Nyanza, Coast, Central and Nairobi Provinces who are alleged to have committed diverse offences between December 27th and February 28th. There are conflicting figures as to how many youths are being held and the offences they are alleged to have committed.

The different shades of arguments

832. One argument made, supporting the case for amnesty, is that by doing what the youths are alleged to have done, they contributed to the formation of the grand coalition government and it therefore does not make sense to have the youths languishing in jail while the politicians they 'fought for' enjoy power. It has also been argued that holding the youths in custody discriminates against the poor since politicians who mobilized the youths to those actions are themselves enjoying their liberty.

833. Another argument advanced is that 'host communities' are unlikely to cooperate with the return of the internally displaced people (IDPs) while their own sons are languishing in jail. It is a compelling argument from the point of view that the situation is still volatile in some of the regions with some locals threatening not to allow the IDPs to return. Indeed violence has broken out since the return of some IDPs in places like Molo. However this argument is countered by those who say that Kenyans have a right to property and to settle anywhere in the republic and the government should not be blackmailed into releasing alleged perpetrators on the pain of communities sabotaging the IDP return programme.

834. A third argument, rejecting amnesty, suggests that granting amnesty to the suspects would encourage impunity and threaten the rule of law. This would be tantamount to abolishing civilized society and going back to the rule of the jungle. This would also encourage organized violence.

Amnesty in other jurisdictions

835. Kenya is not the first country to consider amnesty following violent conflict. Amnesty has been used to avoid expensive prosecutions especially where massive numbers of violators are involved; prompting violators to come forward who might otherwise have eluded authorities; and prompting reconciliation between offenders and society.

836. In a number of instances, it has been used in the context of a truth telling process following protracted social conflict. The mandate of the Guatemala Truth Commission for instance prohibited it from having any "judicial aim or effect". In El Salvador, the release of the truth commission report was answered with immediate passage of a sweeping amnesty law.[652] In South Africa, the truth commission was empowered to recommend amnesty to individuals (not groups) who made full disclosure of all the material particulars of their offence which must have been perpetrated to further a political aim.[653]

837. Supporters of amnesty seem to borrow from the South African example by arguing that the youths in custody were pursuing a political aim and that their actions helped bring about a more democratic dispensation. This line of argument has however been countered by pointing out that it is not legitimate to use undemocratic means – such as indiscriminate violence directed at civilian population rather than political or military interests – to pursue democratic ends.

838. Whenever and wherever it has been applied, amnesty has been a controversial feature. Its opponents see it as impunity that encourages lawlessness and leads to the breakdown of a society's moral fibre. Human rights advocates often object that amnesties repudiate the principles of individual responsibility for criminality. It is difficult to build a society based on the rule of law unless it is understood that everyone is responsible for his or her own acts and that everyone is subject to punishment for violating the law.

839. The proponents of amnesty on the other hand see it as an important part of a political transition from dictatorial to democratic regimes. In most cases where amnesty is granted, former military dictators are still very influential and would threaten the transition to democracy if they knew that they might end up behind bars.

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[652] Priscilla Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions*, p. 86

[653] Chapter 4 of the South African *Promotion of National Unity and Reconciliation Act* No 34 of 1995

840. The injustice of the amnesty law to the victims of human rights violations in the case of South Africa was tempered by the requirement that amnesties would be accompanied by full disclosure and the promise of reparations for the victims. Most of the perpetrators were spared a trial and imprisonment, but only if they acknowledged their individual responsibility. The South African approach represents an innovative attempt both to honour a bargain that permitted a peaceful transfer of power, and to promote the interests of truth and justice, by requiring perpetrators to publicly acknowledge their crimes as a precondition to receiving a pardon.

Amnesty and International Law

841. While every government has the prerogative to issue an amnesty or to pardon criminal offences or offenders under its domestic law, when the effects of such measures deprive victims of judicial protection that are guaranteed by international instruments to which the state is a party, then the matter can no longer be regarded as purely domestic. According to international law and Article 27 of the Vienna Convention on the Law of Treaties, "a party may not invoke the provisions of its internal law as justification for failure to perform a treaty. The doctrine of *pacta sunt servanda* under Article 26 of the Vienna Convention, which establishes that "every international agreement in force is binding upon the parties to it and must be performed by them in good faith" also reinforces states' obligations not to interpose their own domestic laws as justifications for non-compliance with international agreements.

842. The 1993 World Conference on Human Rights called on states to prosecute those responsible for gross human rights violations such as torture and other humanitarian violations. Although the Rome Statute for the creation of the International Criminal Court (ICC), to which Kenya is a signatory, does not prohibit amnesties, it provides for the principle of 'complementarity', giving both national and international courts jurisdiction over international crimes such as crimes against humanity, war crimes, genocide, apartheid, torture and other international humanitarian violations.

843. The duty of states to prosecute perpetrators of human rights violations can also be found in regional and international case law. In the *Velasquez Rodriguez* case[654], the American Court of Human Rights held that the Honduras government was under an obligation to investigate and prosecute perpetrators of gross human rights violations. The Inter-American Commission on Human Rights has held that amnesty laws in Argentina and Uruguay were incompatible with the American Convention on Human Rights. In *Prosecutor v Furundzija*[655] the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) held that amnesties for torture were null and void and cannot be afforded international recognition. In the *Pinochet* case[656], the British House of Lords held that the ex-Chilean dictator could be extradited to Spain to face charges of torture and crimes against

[654] American Court of Human Rights (series C) no.4, para. 165 (1988).
[655] IT-95-17/1-T (10 December 1998).
[656] *R v Bow Street Metropolitan Stipendiary Magisrate Ex Parte Pinochet* (1998) 3 WLR 1456 (HL).

humanity committed during his reign, despite an amnesty law being in force in Chile prohibiting the authorities from prosecuting him.

844. Proposals for blanket amnesty in other jurisdictions have been roundly rejected by such high ranking officials as the former UN Secretary General, Kofi Annan. In a report to the UN Security Council responding to similar proposals in Sierra Leone, Annan said:

> *"As in other peace accords, many compromises were necessary in the Lome Peace Agreement. As a result, some of the terms which this peace has been obtained, in particular the provisions on amnesty, are difficult to reconcile with the goal of ending the culture of impunity, which inspired the creation of the United Nations Tribunals for Rwanda and the Former Yugoslavia, and the future International Criminal Court. Hence the instruction to my Special Representative to enter a reservation when he signed the peace agreement stating that, for the United Nations, the amnesty cannot cover international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law [....]."*[657]

845. No blanket amnesty should be allowed. Blanket amnesty would violate the rights of victims to life, property and equal protection of the law, which are all guaranteed by the Constitution and in international law. Indeed one of the agreements signed at Serena Hotel on 14th March 2008 provides: "No blanket amnesty will be provided for past crimes. Individual amnesty may be recommended... in exchange for the full truth...."s

846. Amnesty can be considered for certain minor offences but must be granted only upon individual application and within a legislative framework. To qualify for amnesty, alleged perpetrators must make full disclosure of the act for which they are applying for amnesty and tell the whole truth which might lead to the arrest and prosecution of the financers and planners of the violence. Before amnesty is granted, the views of the victims should be sought and taken into account.

847. Prosecution of alleged perpetrators of post election violence should be fast-tracked. This might be done through the establishment of special courts for this purpose.

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[657] Seventh Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone S/1999/836, 30 July 1999. Para 55.

848. Amnesty should apply across the country without discrimination and based purely on the type of crimes committed. The law should be applied equally, and robust investigations into the activities of politicians who incited the violence and the conduct of police who used excessive force should continue and all the culprits brought to justice without discrimination.

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SCHEDULE OF ALLEGED PERPETRATORS

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NAIROBI REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting Information and Chronology	Recommendation
1. Elizabeth Ongoro	Current MP for Kasarani	Allegedly supported the eviction of a community from Kijiji Cha Chewa and supplied perpetrators of post election violence with petrol to burn property and houses.	On 29th Dec. 2007 Kijiji cha chewa in Kasarani Constiteuncy was destroyed by fire. On 24th May 2008 Hon. Ongoro publicly supported the evictions. In a group interview with IDPS from the area, interviewees reported that the MP had supported the purchase of petrol to burn houses May 27th 2008	The Attorney General to order further investigations by the Commissioner of Police.
2. Councillor Ochola	Councillor for Utalii Ward in Kasarani Consitutency and lives in Kijiji cha Chewa	Financed the purchase of petrol to make petrol bombs and paid arsonists Ksh 400/day	Between 29th December 2007 and the first week of Jan 2008 he allededly financed local youth to buy petrol to burn peoples property. KNCHR interviews with victims from Kijiji Cha Chewa in Mathare on 25th April 2008 and 26th May 2008	The Attorney General to order further investigations by the Commissioner of Police
3. Obongo-	Councillor, Kiamaiko ward Lives in Ghetto	Provided food, shelter weapons transport and money to attackers	Between 29th December 2007 and the first week of Jan 2008 provided food, shelter weapons transport and money to attackers. (KNCHR interview with a male victim of Mathare slums on 9th April 2008 at PCEA Mathare North IDP camp)	The Attorney General to order further investigations by the Commissioner of Police
4. Ouma-unsuccessful civic	Lives in Ghetto	Provided food, shelter weapons transport and money to attackers	Between 29th December 2007 and the first week of Jan 2008 provided food, shelter weapons transport and money to	The Attorney General to order

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NAIROBI REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting Information and Chronology	Recommendation
aspirant			attackers. (KNCHR interview with a male victim of Mathare slums on 9th April 2008 at PCEA Mathare North IDP camp)	further investigations by the Commissioner of Police
5. Jogindar: Civic aspirant	Lives in Kijiji cha Chewa	Helped finance and organise gangs that torched houses and robbed people	Between 29th December 2007 and the first week of Jan 2008 helped finance and organise gangs that torched houses and robbed people. KNCHR interview with victims from Kijiji Cha Chewa in Mathare on 25th April 2008 . KNCHR with a female victim of Mathare 4A on 7th February 2008 at PCEA Mathare North IDP camp).	The Attorney General to order further investigations by the Commissioner of Police
6. Chrispus Kamau	Lives in Kibera	Arson: allegedly burned down a house	On 21st Jan.08, he burned down a house in Kibera. (KNCHR group interview in Kibera slum on 12th February 2008 taken at Jamhuru park)	Finalization of investigations and prosecution by the Attorney General.
7. Carlos	A member of an illegal group Bukhungu and lives in Kichinjio. This group is said to be associated with a politician	Allegedly led a gang that knocked down a house burned and stole property	On 29th Jan.08, being a member of a group, they knocked down a house before burning it down. (KNCHR interview with a female victim from Mathare area III on 9th April 2008 at CBD and KNCHR interview with a male victim from Kibera slum on 9th April 2008 at 3 wheels hotel)	Finalization of investigations and prosecution by the Attorney General.

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NAIROBI REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting Information and Chronology	Recommendation
8. John Paul (JP)	Alleged leader of an illegal group called Bukhungu operating in Kibera, Kichinjio area	Leader of an illegal gang that participated in the violence called Bukhungu	His gang was involved in acts of violence during the crisis. (KNCHR interview with a female victim from Mathare area III on 9th April 2008 at CBD and KNCHR interview with a male victim from Kibera slum on 9th April 2008 at 3 wheels hotel)	The Attorney General to order further investigations by the Commissioner of Police
9. Kotieno	Lives in Kibera slums	One of the alleged leaders of Siafu	His gang was involved in acts of violence during the crisis. (KNCHR interview with a male victim of Maili Saba on 16th April 2008 at Kibera)	The Attorney General to order further investigations by the Commissioner of Police
10. Kabaka	Lives in Kijiji cha Chewa, Mradi T Area	Leader of group that torched houses and robbed people	Between 29th December 2007 and the first week of Jan 2008 led a group that torched houses and robbed people. KNCHR interviews on 2nd February, 2008 and with victims from Kijiji Cha Chewa in Mathare on 25th April 2008, KNHCR interview with a female victim from Mathare 4A on 7th February 2008 at PCEA Mathare North IDP camp)	Finalization of investigations and prosecution by the Attorney General.

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NAIROBI REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting Information and Chronology	Recommendation
11. Baraza	Lives in Kijiji cha Chewa, acting in the same team with Jogindar and Kabaka and others	Led gangs that torched houses	Between 29th December 2007 and the first week of Jan 2008 led gangs that torched houses. (KNCHR group interview with victims from Kijiji Cha Chewa in Mathare on 25th April 2008 and 26th May 2008)	The Attorney General to order further investigations by the Commissioner of Police
12. Owino	Lives in Ghetto	Member of illegal group called Taliban that torched houses and robbed people	Between 30th December 2007 and the first week of Jan 2008 Owino was in a group that torched houses and robbed people. (KNCHR interview with a male resident of Mathare 4A on 7th February 2008 at Mathere North PCEA IDP camp. KNCHR interview with a female victim of Mathare area III on 9th April 2008 at CBD. KNCHR group interview with Mathare residents on 9th April 2008 at Mathare area III).	The Attorney General to order further investigations by the Commissioner of Police
13. Muturi Muthee	Lives in Kariobangi	Leader of Mungiki cell that forcefully circumcised Luos	Involved in various crimes during post election period. (KNHCR interview with a male resident of Kariobangi South on 30th April 2008 at CBD)	The Attorney General to order further investigations by the Commissioner of Police

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SOUTH RIF REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
1. The late Hon. Lorna Laboso	M.P for Sotik Constituency on an ODM ticket.	♦ It is suspected that the M.P supported the Pokot fighters in their attack against the Kikuyus and Kisiis. ♦ She incited members of Sotik Tea Estate to burn houses and belongings of Kisiis. ♦ Participated in planning, organizing and deployment of the youths to attack of non-Kalenjins in Sotik. ♦ She materially supported and deployed Pokot youth to fight the Kisiis at Chebilat	♦ On the third week of January 2008, she attended a purported peace meeting at Manaret Society, after which a vicious attack against the Kisiis was instead intensified. *Ref:IVR,MAR,837* ♦ Together with Franklin Bett, they talked to about 700 youths at the Sotik Tea Estate and immediately they left the youths began to burn houses belonging to Kisiis. ♦ It is alleged that on the 28th of December 2007 after the elections, she took 15 Pokot men to Chebilat and was feeding them in the compound of the late Jones Keter. *Ref :IVR APR 1014* ♦ She was also said to be transporting food to Kalenjin fighters at Chebilat. *Ref: IVR, APR, 1003*	• For the record only.

SOUTH RIF REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
2. Hon. Franklin Bett	M.P, Bureti Constituency	♦ Financed organized and mobilized the Kalenjins terror gangs to attack the Kikuyus in Kericho. ♦ He participated in the recruitment of young boys (below the age of 18) to join the Kalenjin Militia. ♦ He incited the Kalenjin community to attack and evict the Non-Kalenjins from "Kalenjin land". ♦ He facilitated the	♦ Allegedly brought young men (boys) in groups of more than 300 from Bomet who worked with the Luo locals to attack the Kikuyus. *Ref: IVR, FEB,186* ♦ Together with Kipkalia Kones and the late Kimutai Too financed the Kalenjin youths who attacked the Kikuyus and Kisiis in Kericho. *Ref: IVR, FEB,186* ♦ He allegedly organized youths to attack the Kikuyus and Kisiis in Kericho. He gave them transport, fuel and food and held their meetings at Kericho Tea Hotel and other places. *Ref: IVR,APR,1074* ♦ He was alleged to have recruit young boys to participate in attacks against Kikuyus and	• Further investigation with a view to prosecution for the crime of incitement to violence contrary to section 96 of the Penal code. • Further investigation under section 22 of the Penal Code for Counseling and procuring the commission of an offence.

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SOUTH RIF REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
		transportation of the Kalenjin youths to Kuresoi to evict the Kalenjins. ♦ He financed Kalenjin gang members in Kericho Town to attack the Kisiis and Kikuyus and raze down their properties.	Kisiis.*Ref:IVR,FEB,170 and IVR, FEB,148* ♦ He reported to have told supporters that "all the investors in Kericho and in the estates will be either Kalenjins or Indians". This statement is said to have given the youths motivation to eliminate all other tribes especially Kisiis and Kikuyus. *Ref:IVR,IVR,170* ♦ He is said to have been explaining to people who attended a meeting at Kipkatet that no one can take what belongs to the Kalenjins, especially land. *Ref:IVR,FEB,235* ♦ Before elections, He and other prominent politicians attended a meeting in the interior Ndoinet forest. After the said meeting, the group that attended massively attacked and destroyed properties belonging to the non-Kalenjins. It is believed that they incited the locals to attack non-Kalenjins.	

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SOUTH RIF REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
			Ref:IVR,APR,1058 In a meeting held in Chopkoibet in Bomet, Franklin Bett is quoted to have said that " he will beat up the Kikuyus till they leave Molo" *Ref:IVR,APR,1052* ♦ It is alleged that together with Kipkalia Kones and the late David Too, they organized and facilitated the youths to be transported from Trasmara and Bomet by Lorries through Silibwet to go and chase Kikuyus from Kuresoi. *Ref: IVR,MAR,857* ♦ He intimidated people at Kericho Police Station and told them that those that give information to investigators will be lynched. (The KNCHR team witnessed this.) ♦ Eye witnesses have reported that on the 30th of December 2007 at around10.00 am, at the Caltex Petrol Station in Kericho town, he	

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SOUTH RIF REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
			gave unspecified amount of money to some Kalenjin and Luo men who immediately after the said payment started stoning and burning kiosks perceived to be owned by Kikuyus but were in actual fact owned by the Kipsigis and the Kisii people. *Ref: IVER,INT,APR,086*	
3. The Late Hon. David Kimutai Too	The late MP for Ainamoi Constituency	♦ He urged residents to evict members of non-Kalenjin Communities.	♦ On the 23rd November he is said to have gone to the Stagemart and addressed a crowd asking residents to remove all the stains/spots (*madoadoa)* be removed from the region.(*PEV, IVR, FEB, 185)* ♦ In January he asked that all the stains/spots (*Madoadoa)* be removed from the region. (*PEV, IVR, FEB 173); PEV, IVR, FEB 155); PEV, IVR, FEB 170); (PEV, IVR, MAR 836); (PEV, IVR, MAR 857);*	This is for the record only.
4. The late Hon.Kipkalya Kones	Member of Parliament, Bomet Constituency	• He incited the youths to barricade roads	• In January while addressing youths he is reported to have told the youths :"When we tell you to block, make sure you	• For the record only.

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SOUTH RIF REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
			block the road, and when we tell you to remove, make sure you remove them."	
5. Jonah Koech	Former Councilor Londiani Ward	1. He organized, financed and transported and supplied petrol to the youths to carry out the violence. 2. He participated in burning houses	• On the 5th of February 2008, with others not mentioned here, burnt houses that belonged to non-kalenjins. The same happened on February 18 and 20th 2008. *(PEV/IVR/MAR, 783); (PEV/IVR/MAR, 835); (PEV/IVR/MAR, 773);* • He transported the youths in Pajero Registration number KAP 422Q *(PEV/IVR/MAR, 783);* • Alleged to have also used lorries in transporting the youths. *(PEV/IVR/MAR, 7833); (PEV/IVR/MAR, 83*	• Be further investigated under sections 332 and 333 for arson or attempted arson. • Further investigation under section 20 of the Penal Code for aiding and abetting the commission of an offence. • Further investigation with a view to prosecution for the crime of incitement to violence contrary to section 96 of the Penal code.

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SOUTH RIF REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
				• Further investigation under section 22 of the Penal Code for Counseling and procuring the commission of an offence.
6. General Retired Koech	Contested for the Ainamoi Parliamentary seat in 2007 General Election.	He was one of the commandants of the Kalenjin attackers in South Rift.	EP-07533 (2007-12-30) RPT-01733 (2007-12-27) — (PEV,IVR,APR,1072) • Alleged to have been the "commander in the South Rift, regions. His assistants, some government officers, and former service officers that worked with them are known to the locals.	• Further investigation under section 20 of the Penal Code for aiding and abetting the commission of an offence.
7. David Njuguna	Councilor Londiani town ward	Organized retaliatory attacks against the	He organized youths of the Kikuyu Community to burn down the shops and	• Further investigation

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SOUTH RIF REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
alias "Zebra"		Kipsigis	businesses of the Kipsigis community. *(PEV, IVR, MAR, 569); (PEV, IVR, MAR, 778); (PEV, IVR, MAR, 835); (PEV, IVR, MAR, 841);*	with a view to prosecution for the crime of incitement to violence contrary to section 96 of the Penal code. • Further investigation under section 22 of the Penal Code for Counseling and procuring the commission of an offence.
8. Martin Odhiambo	Insurance Broker, Kericho Town	Financed and supplied petrol to the Youths.	Alleged to have financed the violence and supplied youths with petrol to burn homes of members of the non-Kalenjin	• Further investigation with a view to

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SOUTH RIF REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
			communities. ((*PEV, IVR, MAR, 012); (PEV, IVR, MAR, 833); (PEV, IVR, FEB, 171);*	prosecution for the crime of incitement to violence contrary to section 96 of the Penal code. • Further investigation under section 22 of the Penal Code for Counseling and procuring the commission of an offence. • Further investigation under section 20 of the Penal Code for aiding and abetting the commission of an offence.
9. Nyabuti Moseti	Businessman	Organized the transportation of the	He provided Matatu to ferry the *chinkororo* attackers to "defend" Kisiis.	• Further investigation

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SOUTH RIF REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
		chinkororo fighters for retaliatory attackers.	*(PEV, IVR, MAR, 699); (PEV, IVR, APRIL, 1009); (PEV, IVR, APRIL 1073);*	under section 20 of the Penal Code for aiding and abetting the commission of an offence.
10. Isaak Ali	OCS Kericho Police Station	Excessive use of Force (Killing demonstrating youths.)	On the 31st of January alleged to have killed youths who were protesting the death of the late Ainamoi MP, David Kimutai Too at Kapsoit Market. (PEV, *IVR, MAR, 857.)*	• Further investigation for murder under section 203 of the Penal Code.
11. Zebra (alias David Githunguri or Njoroge)	Councilor Chepkongoni Ward	Participated in torching of houses belonging to the Kipsigis Community.	On 20th of January 2008 he led a group of attacks to burn homes belonging to members of the Kipsigis Community. *(PEV, IVR, MAR,841);*	• Further investigation with a view to prosecution for the crime of incitement to violence contrary to section 96 of the Penal code. • Be further investigated under sections 332 and 333 for arson or attempted arson.

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SOUTH RIF REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
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NORTH RIFT REGION				
Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
12. Hon William Ruto	A former cabinet minister in President Daniel Arap Moi government and former ruling (and later official opposition) party KANU Secretary General. He was a Member of the ODM Pentagon that rose to prominence during the November 2005 constitutional referendum campaigns. He is the member of parliament for Eldoret North Constituency on	A search through the Kenya National Commission on Human Rights Commission database on post-election violence reveals 'William Ruto" as the most adversely mentioned name. He is alleged to have received ODM money or used his own resources in perpetrating acts of violence planned well ahead of the December 2007 General Election. Many accounts consistently point him out as the chief	An originally secret and highly inciting document that has been widely circulated, titled *"Go Tab Kalenjin"* (House of the Kalenjin) alleges that the great Nandi Laibon, Koitalel Arap Samoei has been reincarnated as William Samoei K. Ruto to lead the Kalenjin to liberation from domination by the Kikuyu people. It calls for war to expel all the Kikuyu people from the Rift Valley to Naivasha from where Cabinet Minister William Ole Ntimama, leading the Maasai, will drive them to Kijabe, the pre-colonial border of the Kikuyu ancestral homeland. He was the chief architect of the eviction of non-Kalenjins from the Rift Valley ideology.[658]	The Government should order further investigations with the objective of charging Hon Ruto appropriately in a court of law. He should be forced to resign his cabinet position.

[658] Transcripts of KASS FM broadcasts March 20, 2008 obtained by the KNCHR

NORTH RIFT REGION				
Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
	his third term. He is the current Minister for Agriculture in the Grand Coalition government. He is a member (on the ODM side) of the mediation team chaired by former UN Secretary General, Mr Kofi Annan	organizer of the violence and a key proponent of the eviction of certain non-Kalenjin communities from the Rift Valley, especially the Kikuyu. One account alleges that as early as august 2007 he held a meeting with other senior ODM leaders in		

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NORTH RIFT REGION				
Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
13.		Kipkelion near Kericho who included the: ➧ Late Sotik MP Lorna Laboso ➧ Current Eldoret north MP William S.K. Ruto ➧ Late Bomet MP, Kipkalia K. Kones ➧ Current Kipkelion MP, Kiprono L. J. Magerer ➧ Current Bureti MP, Franklin Bett The leaders allegedly resolved to carry out mass evictions of non-Kalenjins from their Rift Valley areas, particularly the Kikuyu and Abagusii. William Ruto is alleged to have held another meeting with the same group of leaders (in Kipkelion again) on	One source states that during the rally at Bisabol on 22nd October 2007, at the shopping centre in Turbo, Hon William Ruto incited the Kalenjin and the Libya to evict Kikuyu by telling them to 'uproot weeds' he also during the meeting, he also defined PNU as 'Pita Nyeri Uone' the interviewee further states that the politician recited the phrase, *"Chungwa moja maisha bora, kutoa visiki"* referring to eviction of foreign communities.[659]	

[659] Statements relied on include:
PEV/IVR/MARCH/747
PEV/IVR/APR/932
PEV/IVR/APR/932
PEV/IVR/APR/949
PEV/IVR/APR/932
PEV/IVR/APR/949
PEV/IVR/APR/932
PEV/INT/FEB/015
New York Times Article by Jeffrey Gentleman

NORTH RIFT REGION				
Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
14. Immediate former Nominated Councilor Faruk Kibet	Former nominated councilor for Wareng County Council in Eldoret and a strong supporter of Ruto. He is allegedly a business partner in Armaco Insurance, Venture Africa, and Solanic Printers, all companies associated with William Ruto.	He was allegedly the one distributing money given by William Ruto. He is blamed for incitement and organization of the violence across the North Rift region .He coordinated attacks and has allegedly been rewarded for by William Ruto with a new Nissan Matatu. He supplied fuel used to burn houses. It is alleged that with Enoch Sugut, an ODM youth leader and Headmaster of Kaptebee Secondary School and Solomon Tilawen, an ODM activist in Turbo, they conveyed William		He has already been charged in court with incitement.

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NORTH RIFT REGION				
Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
		Ruto's message after the December 27 election to the youth that ODM votes had been stolen and that it was time they fought for their rights. As he requested the youth to wait for William Ruto's word, he allegedly asked two youth leaders Mr Enoch Sugut and Solomon Tilawen to organize the youths into battalions for the war. Further, he allegedly requested the youth leaders to enroll more warriors as they waited for instructions from William Ruto which they did. With one Councilor Solomon, they were seen with containers full of fuel		

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NORTH RIFT REGION				
Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
		in a vehicle, which they distributed to groups of youth. In a meeting held on 1/1/2008 at he allegedly informed attackers that William Ruto was fully supporting them and that he could provide all the required materials. On 2/1/2008 at Chepsaita in Ngenyilel Location, accompanied by CDF Treasurer Eldoret North Constituency, Mr Thomas Koech, the youths were advised to attack Kikuyu and PNU Supporters residing at Kipkaren River and Musembe trading centre. He also		

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NORTH RIFT REGION				
Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
		assured them they had the support of William Ruto		
		Alleged to have gone around telling people to prepare for war and alleging that he was conveying William Ruto's message. In two meetings at Kipkaren and Kabiyet areas he told people that if Mwai Kibaki was announced winner, then people should start fighting. He is blamed to have also organized the burning of the PCEA Church at Musingen	PEV/IVR/APR/947 PEV/IVR/APR/986 PEV/IVR/APR/912	
15. OCS Langas	The OCS Langas	Alleged to have shot	Interviewee stated that he was with other youth of Kasarani	Since the officer could have been identified by

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
Police Station, Mr Ngugi	Police station, Eldoret	and injured a youth in Eldoret	area of Langas Eldoret; they were armed with crude weapons and were going to guard the estate. The interviewee states that they encountered a contingent of police officers who first shot in the air and then shot at them. Ngugi shot the interviewee at close range, injuring him. PEV/IVR/MAR/682	the victims it would be possible to link him up with the offence. However it is not clear the circumstance under which he shot the victim. This would require some further investigations by the police commissioner to determine if he acted within the laid down limits regarding use of firearms by the police.
		Alleged to have shot Frederick Adiyo in Langas at Kisumu – Kona Mbaya roundabout on 31st December 2007 at about 12.30 pm.	The interviewee states that the named police officer shot him from the back after shooting his other two friends Birtenstock Ouma and Odhiambo. The victim had met the suspected officer before and suspects that the officer is the OCS Langas Police station PEV/IVR/MAR/670	The circumstances of the shooting are unclear. Was the victim armed, for example? However since this officer is mentioned in several incidents of shootings it is recommended that he be investigated further with the objective of charging him with murder,
		Alleged to have shot youth in Kasarani area of Langas, Eldoret	Interviewee states that officers on patrol on 29th January 2008 shot at them killing two of them and injuring several others PEV/IVR/MAR/682 PEV/IVR/MAR/646	

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
				manslaughter, misuse of a firearm or any other appropropriate charge, informed by results of further investigations.
16. 4. A Mr Kiptalat	A village elder of Yamumbi village in Langas-Eldoret.	Together with Thomas Siratei, alleged to have led youths in burning houses and evicting Kikuyu from the Yamumbi area	One interviewee stated that while fleeing, she met the named person in the company of the youth issuing instructions on the burning of the Kikuyu homes. This was on 30th December 2007 at around 8.30 pm PEV/IVR/FEB/550	The government should order further investigations with the objective of charging him with incitement
17. 5. Mr Thomas Siratei	A village elder in Yamumbi, Langas, Eldoret	Together with, A village elder of Yamumbi village by the name Kiptalat, alleged to have led youths in burning houses and evicting Kikuyu from the Yamumbi area.	A source stated that the named person was in the company of Kipatalat the above described together with unnamed youths PEV/IVR/FEB/550.	The government should order further investigations with the objective of charging him with: • incitement and • arson

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
18. Mr Kiarie alias 'Baba Kariuki'	A resident of Kireti farm near Burnt Forest area	Alleged to have a gun and organized the burning of Kalenjin houses in Kireti farm	Interviewee states that the named person shot Paul Ngetich PEV/IVR/FEB/516 Another source who is a victim of the shooting incident also indicated that the named person is the one who shot him PEV/IVR/FEB/500	The government should order further investigations with the objective of charging him with: • incitement and • possession of illegal firearm
19. A Mr Kaguthi	A tout in Langas area of Eldoret	Alleged to have participated in the killings of Luo people by the Kikuyu in Langas area of Eldoret Luo.	Named generally by PEV/IVR/FEB/513 and also by PEV/IVR/FEB/514[660] as having carried out attacks in Langas area.	The government should order further investigations with the objective of charging him with murder
20. A Mr Kamiteini	A businessman in Langas estate Eldoret	Alleged to have organized kikuyu youth to attack other communities in Langas.	Interviewee states that the named persons hosted meetings that planned attacks. Interviewee further states that the named person bought pangas for the youth PEV/IVR/FEB/514.	The Government should order further investigations with the objective of charging him with incitement
21. A Mr	A resident of	Alleged to have been	A source stated that the named person provided a grinder	The government should

[660] PEV/IVR/FEB/513, PEV/IVR/FEB/514

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
Waititu	Langas, Eldoret.	involved in organizing the youth.	at his place of business to sharpen pangas that were to be used in the attacks PEV/IVR/FEB/514	order further investigations with the objective of charging him with: • aiding and abetting arson • assault
22. Mr Anthony Samoia	A resident of western farm, Langas Eldoret	Alleged to be have made bows and arrows and also led Kalenjin youth to attack target communities in the area on 1st January 2008	A source allegedly saw the named person leading the youth in attacking targeted communities PEV/IVR/MAR/672	The government should order further investigations with the objective of charging him with: • aiding and abetting arson • assault and • murder
23. A Mr William	Businessman and farmer in Tinderet Tea Estate	Used his three vehicles (a Nissan, a pick-up and a tractor) to ferry property that had been looted from Kikuyu and Kisii in Tinderet tea estate.	The interviewee stated that she saw three vehicles belonging to William ferry property belonging to Kisii and Kikuyu in Chemamul, Nandi South, Tinderet Tea Estate on the morning of 31st December, 2007 PEV/IVR/FEB/552	The government should order further investigations with the objective of charging him with: • aiding and abetting a crime and • robbery with violence

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
24. Mr Alfred Chepkwony	Assistant chief, Chemamul Sub-location in Tinderet, Nandi South	Alleged to have organized youth to attack Kisii and Kikuyu in the Tinderet tea Estate. He further participated in a demonstration that was held on 3rd January 2008 to the D.O's office to demand that all 'foreign' communities leave the area	The interviewee states that she saw the sub-chief among the attackers on the morning of 31st December 2007. The interviewee also saw the administrator lead the demonstration to the DO's office PEV/IVR/FEB/552	The government should order further investigations with the objective of charging him with incitement Should also face disciplinary action from Minister for Internal Security if allegations are proved
25. Mr Silas K. Simotwo	Chairman African Merchants and Assurance Company based at Transnational Plaza in Nairobi. He is an ally of William Ruto.	He was allegedly directly involved in the organization of the violence within Soi area. He is alleged to have financed the violence.	PEV/IVR/FEB/956	The government should order further investigations with the objective of charging him with incitement
26. A Mr Jacob	A resident of Nandi hills town	Led a group of youth from around Nandi	Interviewee states that he heard the named persons planning to loot a supermarket in the town and then later	The government should order further

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
	and owns a boutique in the town	hills town to loot shops belonging to Kikuyu	saw him lead youth to loot Kikuyu shops on 28th December 2007 at around 5.00 pm in Nandi Hills Town PEV/IVR/FEB/550	investigations with the objective of charging him with: • arson • incitement and • robbery with violence
27. Mr Sammy Ruto	An ODM Councilor and current Mayor of Eldoret.	Alleged to have threatened to evict Kikuyu soon after he won the election	A source said she saw Sammy Ruto and his supporters celebrate around Kimumu area on 30th December 2007. She also heard them announce that Kikuyu will soon leave the area. PEV/IVR/531	The government should order further investigations with the objective of charging him with incitement
28. Mr Sambu	A resident of Soi area.	Alleged to have provided his Public Service Vehicles (Matatus) vehicles to ferry attackers to and from the town.	PEV/IVR/FEB/960	The government should order further investigations with the objective of charging him with: • aiding and abetting • arson • assault
29. Pastor Chesire	A pastor at Kimumu AIC Church, Eldoret	Alleged to have led youth from Kimumu and coordinated	A source stated that she heard the pastor state that Kikuyu must leave. She also saw the pastor armed with a walking stick and commanding the armed youth in the area	The Government should order further investigations with the

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
		others from Moiben and Ziwa to attack Kikuyu in the area.	PEV/IVR/FEB/560	objective of charging him with incitement
30. Bishop Kigen	Local church bishop in Kimumu	Alleged to have led youth during the violence in the area and its surroundings together with Pastor Chesire in Kimumu. It also alleged to that he stored looted property in his house. He further used the looted iron sheets to fence his compound	Interviewee claims that the Bishop was among the attackers and on approaching him, the Bishop kicked the interviewee injuring her slightly PEV/IVR/FEB/560	The government should order further investigations with the objective of charging him with: • incitement • robbery with violence
31. Mrs. Eunice Maina	An elderly Kalenjin lady and a farmer who stays in Marura area of Eldoret. She has a daughter named 'Maggie' who is prominent	She is alleged to have given out her incomplete house in Marura for night meetings to plan attacks and also allowed part of the incomplete house to be used for making of	A source stated that she saw a lorry belonging to Eunice Maina ferry youth at Kimumu on 31st December 2007 The interviewee further claims that the house , though incomplete was covered with curtains and one could see movement inside at night PEV/IVR/FEB/560	The government should order further investigations with the objective of charging him witht: • aiding and abetting arson • assault

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
	business lady in the area	arrows for the attacks. She is also alleged to have, together with her daughter, provided lorries to ferry youth from Moiben to and attack Kimumu and the surrounding areas		
32. Mr William Sang	The Chief Chepkoilel Location near Eldoret.	Allegedly directed attackers in Kimumu area during the attacks	A source allegedly saw the chief directing the attackers on 31st of January 2008 at Kimumu PEV/IVR/FEB/560	The government should order further investigations with the objective of charging him with incitement
33. Mr Jackson Kibor	A wealthy businessman, resident of Chepsira, Kimumu near Chepkoilel Campus, Moi University	Alleged to have addressed youth and urged them to attack and evict Kikuyus from the area on two occasions during the violence. Alleged to have worked closely with current Mt Elgon MP Fred Kapondi in an attempt to procure	Interviewee alleged that the youth were assembled at the alleged perpetrator's home and later marched to Maili Moja shopping centre where they were addressed by Mzee Jackson Kibor on 30th December 2008 at 5.30 pm. At Chepkoilel campus also addressed a bigger number of youths in his home on 1st January 2008. With Elijah Sumeiyo (former Mp and Deputy Commissioner of police), Tabitha Seii (former ambassador) and Kipchoge Keino (Chairman Kenya National Olympic Committee) incited people, declared war and advised people to buy guns during the burial of Mr Sang.	The hearing was set for 20 May 2008 V but failed to start in Nakuru as Chief Magistrate, Ms Margaret Wachira was away. The politician who was accused of inciting people to violence on February 3, 2008 in Uasin Gishu District was out on

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		arms for use in post-election violence	Mr Kibor confessed inciting violence on BBC and tried to justify the actions in the interview.[661] Mr Kibor is among persons recommended for further investigations in *The Judicial Commission of Inquiry on Tribal Clashes in Kenya* (Akiwumi Report)[662] PEV/IVR/FEB/555 PEV/IVR/FEB/949 PEV,ORG,APR,067, PEV,ORG,MARCH,035	a Ksh 200,000 bond and Surety of similar amount at the time of preparing this report.[663]

[661] Transcript from BBC 'On Assignment' interview of Mzee Jackson Kibor on February 1, 2008
[662] In July, 1998, former president Daniel Arap Moi appointed the Akiwumi Commission of Inquiry Into Tribal Clashes in Kenya. At the end of July the following year, the commission presented a detailed report complete with recommendations for action.
[663] See PEV,NWP,APR,163

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		Is mentioned with the late Lucas Sang who died during a raid to have been in the meeting which mobilized youths from	PEV/IVR/APR/940	

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		Ziwa areas to attack Kimumu area.		
34. A Mr Sechete	Resident of Silas area of Eldoret. He owns butchery at Silas Estate.	Alleged to have organized Kikuyu to attack other communities living in Silas and Munyaka estates of Eldoret town.	A source states that he saw the alleged person leading other Kikuyu in Silas on the morning of 30th December 2008 PEV/IVR/FEB/538	The government should order further investigations with the objective of charging him with incitement
35. Mr Shaaban Mbugua	A kikuyu resident of Silas area and a lorry driver	Alleged to have been a leader of attackers in the Silas area of Eldoret	Interviewee states that he saw the alleged person leading other Kikuyu in Silas on the morning of 30th December 2008 to burn houses in Ilula and Silas areas of Eldoret PEV/IVR/FEB/538	The government should order further investigations with the objective of charging him with arson
36. A Mr Alfred	A resident of Tambach township and a *matatu* driver along Iten road	Alleged to have transported attackers to burn the home of the interviewee. He is further alleged to have burnt houses belonging to Kikuyu in Tambach together with Abraham Chemen, (a	Interviewee states that he was told by one Mr Gilbert Bundotich who is also a neighbor that Alfred transported attackers to burn his house The interviewee further states that Alfred was the custodian of funds that were used to pay the attackers and generally carry out the attacks PEV/IVR/FEB/560	The government should order further investigations with the objective of charging him with: • arson • aiding and abetting a crime

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
		construction worker in Tambach), Bobon, Raymond Mebar, and Kibiyego (a neighbor and a medical worker at Kakuma refugee camp in Turkana district).		
37. A Rev. Kosgey	A preacher and works with Kass fm radio station.	He is alleged to have started a micro-finance group in Kapcherop, Cherangany division that is suspected to have funded the burning of property in Kapcherop and adjoining areas. He is further alleged to have incited the local communities against foreign communities in the area during the launch of the group and also	The interviewee states that she attended the forum where the 'EMO' group was launched in Kapcherop and heard the preacher incite the local community in the local language. The interviewee further states that has listened to the programmes aired through Kass FM and heard the inciting messages in the programmes PEV/IVR/MAR/679	The Government should order further investigations with the objective of charging him with incitement

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
		through his radio programmes		
38. Mr Boaz Kaino	Current ODM MP for Marakwet West	At a meeting which Hon William Ruto also attended, he (Kaino) is alleged to have said that he would remove Kikuyu and Kisii from the area after elections.	Interviewee was at the meeting at which the words were uttered at Kapcherop Primary School on 11th Dec 2007.	Seeking votes on an eviction platform was highly inciting but since almost all ODM MPs in the Rift Valley did it, only those who proceeded to actually evict people should be investigated for possible prosecution.
39. OCS Endebess Police Station		Led a group of police officers and Kikuyu attackers to Turbo area in Endebess on 6th January 2008 at around 11.00 am and shot and injured people in the area including the interviewee		The government should order further investigations with the objective of charging him with: • attempted murder • failing to prevent a felony
40. Police officers from		Police officers and Kikuyu attackers went to Turbo area in		The government should order further investigations with the

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
Endebess Police station		Endebess on 6th January 2008 at around 11.00 am and shot and injured people in the area.		objective of charging him with: • attempted murder or • murder
41. Mrs. Koko Sebukwa	An old lady who resides near Kimondo shopping centre in Endebess.	Alleged to have provided her compound as a training ground for the youth for attacks for about a week. The burning of houses started on 15th from Salama area January 2008. The youth were 200 in number	An interviewee stated that the mentioned lady hosted 200 youth for training but does not specify the time of training and the details PEV/IVR/MAR/686	Further investigations are needed to establish the form of training and who else participated. Then prosecutions may be necessary.
42. Mr Alamin and Mr Chemaris a	All are Sabaots and residents of Kambuiwa neighborhood of Kimondo Forest in Endebess	Alleged to have been ring leaders of attacks	An Interviewee states that the named persons were involved in attacks in area and further states that the names have featured prominently in the DO's office at Endebess as ring leaders PEV/IVR/MAR/686	The government should order further investigations with the objective of charging him with: • incitement and • arson

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43. A Mr Kaunda	A Marakwet man staying in an area neighboring Matierio Village in North Kisii Farm, Trans-Nzoia District	Alleged to have organized attacks and arson in Matierio Village	Interviewees state that they saw the named person lead the youth in burning houses in Matierio village on 1st September 2008 at around 2.00 pm, there were about 150 youth PEV/IVR/MAR/654 Also mentioned in PEV/IVR/MAR/688	The government should order further investigations with the objective of charging him with: • incitement and • arson
44. Mr Kipkoech Too and Nicholas Sitienei	Former headmaster of Kakiptui Primary School and currently CDF Committee Member for Mosop respectively	Conducted harambee towards buying of arms. About 3000/= was raised and they said in the meeting that they knew people who could assist buy the arms.	PEV/IVR/MARCH/959	The government should order further investigations with the objective of charging him with: • incitement and • aiding and abetting arson
45. Councilor Kiptindinyo	Councilor of Kapsimotwo Ward, Nandi	He is allegedly widely known to have lead violence in Nandi Hills and being very active in violence incitement on Kass FM.	PEV/IVR/APR/958	The government should order further investigations with the objective of charging him with incitement

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46. Mr Joshua Arap Sang	A reporter with Kass. FM who hosted some of the morning shows	Used the station to mobilize and plan for violence. He further instilled the perception to the locals that the elections had been stolen. He branded those who did not vote with the rest of the Kalenjin community traitors	During the breakfast show "Lee Nee Emeet" on February 18, 2008 he told listeners not to cooperate with investigators of post-election violence.[664] PEV/IVR/APR/955 PEV/IVR/APR/959	The government should order further investigations with the objective of charging him with murder
47. A Mr Jacob aka 'AYJ'	A business man at Nandi Hills township, a secondhand clothes dealer.	In the planning for violence he was to identify all Kikuyu and Kisii in the town. Was also to recruit youths to do the destruction within the township. He was appointed treasurer of the violence funds	PEV/IVR/APR/939	The government should order further investigations with the objective of charging him with aiding and abetting arson

[664] Transcripts of the broadcast obtained by the KNCHR

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		With Councilor Kiplimo and Metto alias 'Mataifa' they burnt down Total Petrol station in Nandi Hills.		
48. General Service Unit Officer Kirwa	A GSU Officer at Nabkoi GSU Camp in Nandi North. He hails from Sochoi Village, Nandi South District.	Alleged to have shot dead Mr James Tukong who died on the way to the hospital on allegations that he was in the PNU camp. The body was taken to Nandi Hills Hospital. The officer is alleged to have come to have gone on December 31, 2007 in a Police Land Rover accompanied by other police officers to Chief Samuel Bitok of	PEV/IVR/APR/942	The government should order further investigations with the objective of charging him with murder

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		Lainguse Location. They allegedly brought 2 AK 47 rifles and a hand grenade as samples of weapons contributed by friends of the Kalenjin people to be used on an attack on the Kikuyu schedule for January 4, 2008 in camps in Burnt Forest.		
49. Councilor Cheboso n	Councilor of Chepterwaii Ward	Alleged to have given the gas cylinder that burnt the Kiambaa Church in Eldoret.	PEV/IVR/APR/947	The government should order further investigations with the objective of charging him with aiding and abetting murder
50. Retired Senior Superint	Retired Superintendent of Police and a	Was in charge of training the warriors in the area.	PEV/IVR/APR/947	Investigate further to confirm allegations then prosecute if allegations

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endent of Police Murei	resident of Cheptirwa Village			proved
51. A Mr Serem	KNUT Secretary Nandi North	Was involved in the planning of the violence in the area. Organized youths from Sangalo to burn houses	PEV/IVR/APR/947	The government should order further investigations with the objective of charging him appropriately
52. Dr. Jacob Bitok	A lecturer at Moi University	Allegedly ferried Marakwet warriors to attack and drive Kikuyu out of Rock Centre in Eldoret and in Kipkaren areas. He was the custodian of the funds collected to finance the violence within Mosop area.	PEV/IVR/APR/932	The Government should order further investigations with the objective of charging him with aiding and abetting a crime

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53. A Mr Maiyo	A resident of Yamuumbi estate, Muiruti Shopping Centre. Alleged uncle to Eldoret North MP, William Ruto.	He housed youths till 30/12/2008 who were suspected to have caused the violence immediately after the announcement of the Presidential election results. He accommodated and fed the youth warriors who were preparing to attack. With Mr Jeremiah Kosgey they hosted the attackers.	PEV/IVR/APR/962	The government should order further investigations with the objective of charging him with aiding and abetting a crime
54. Mr Mabea Mugaka	Was a Nandi North District Officer at the time.	Did not allegedly oppose the removal of the Kikuyu community from the region, but wanted his fellow Kisii to be spared.	PEV/IVR/APR/944	The government should order further investigations with the objective of charging him with failing to prevent a felony

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55. Mr Ishmael Choge	A resident of Kapsabet and former councilor.	Was in charge of funds distribution in Emgwen. He also worked with Amos Korir of the same area. Allegedly collected over Kshs. 312, 000 from the business community which was used to sponsor the violence.	PEV/IVR/APR/944	The government should order further investigations with the objective of charging him with aiding and abetting a crime
56. Hon Sally Kosgey	Cabinet Minister, Current ODM MP for Aldai, former Head of the Civil Service and Secretary to the Cabinet in Moi government.	With Hon Henry Kosgey, they allegedly attended violence organizing meetings and oversaw execution of the violence. They recruited former GSU Commandant	PEV/IVR/APR/936	The government should order further investigations to verify. If these allegations are confirmed, should be forced to resign cabinet positions or/and face prosecution

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		Cherabos. They are alleged also to have funded the violence.		
57. A Mr 'Barubaru'	Was An ODM Aspirant for Chemundu Ward	Coordinated and participated in violence in Nandi North District.	PEV/IVR/APR/936	The government should Investigate further to verify allegations for possible prosecution.
58. Mr Benjamin Murei	A Seventh Day Adventist (SDA) Church elder	Was called upon to pray for and bless the youths before they went off to war. Offered traditional prayers and read a verse from the Bible to the youth attackers in support of the violence.	PEV/IVR/APR/950	This level of participation is very damaging as it legitimizes crime and violation of basic human rights. If confirmed through investigations by the government, this man should be prosecuted and the SDA prevailed upon to disown him.
59. Mr Joshua Arap Keter	Head teacher Kosacheii Secondary School Sugoi.	With his saloon car KAJ 456 D, used to ferry petrol, airtime and money to mobilize the youth for	PEV/IVR/APR/950	The government should order further investigations with the objective of charging him with aiding and abetting

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		the violence.		a crime
60. Fred Kapondi	Current Mt. Elgon ODM MP	He has been mentioned by sources as having participated in inciting violence in the Rift Valley and saying that that Luhyas should be expelled from Trans Nzoia. He is reported to have encouraged the acquisition of guns for use in the post-election violence	He is reported to have attended and addressed Kalenjin warriors meetings together with political figures suspected to be behind acts of post-election violence like Jackson Kibor. (PEV/IVR/APRIL/896)	The government should order further investigations with the objective of charging him with aiding and abetting a crime
61. Mark Too	A wealthy farmer and businessman, former Nominated KANU MP	Allegedly hosted a raiders' training camp at his farm next to the Eldoret International Airport where he supplied food and milk for the raiders during training	PEV/IVR/APRIL/896	
62. Mr Thomas	Chief campaigner of William Ruto	His lorry was allegedly used to ferry items	PEV/IVR/APR/932	The government should order further

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Boiben	and a close confidant.	believed to have been used during the violence. He was quoted to have asked his fellow Kalenjins why any Kikuyu houses were still standing unburnt at the height of the violence.		investigations with the objective of charging him with incitement
63. Mr Henry Kosgey	Cabinet Minister, long serving Tinderet Constituency MP, and a member of the ODM Pentagon	He allegedly held several meetings with the Nandi Hills area councilors and other opinion leaders at Septon Guest House within Septon Estate. The meeting, it is believed, was for planning and organization the violence. He also attended a meeting in which the area	PEV/IVR/APR/931 PEV/IVR/APR/936	The government should order further investigations with the objective of charging him with incitement

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
		councilor for Kiptindinyo Ward advised the people not to take action till otherwise advised by them (leaders). In the same meeting, the Assistant Chief of Kipsebwa Sub-location, Mr Robert Maritim advised the people not to loot the property of other people but that of Kikuyu only. With Sally Kosgey, they allegedly attended violence organizing meetings and oversaw execution of the violence. They recruited former GSU Commandant Cherabos. They are alleged also to have		

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Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
		funded the violence.		
64. Mr Richard Chesmen t and Salina Kosgey alias Wasitara	Prominent businessmen in Nandi Hills Township	Allegedly ferried and funded youths who caused the mayhem using their own vehicles that went around looting the Kikuyu property.	PEV/IVR/APR/931	The government should order further investigations with the objective of charging him with: • aiding and abetting a crime and • Robbery with violence
65. Wilson Mutai	Resident of Kosachei Ward and a former Chairman Wareng County Council	With Dennis Chemase-Kanu youth leader Eldoret North were seen moving around the district distributing money to the youth during and after the chaos which was allegedly given by William Ruto.	PEV/IVR/APR/947	The government should order further investigations with the objective of charging him with : • aiding and abetting a crime and • incitement
66. A Mr Bernard	Acting Assistant Chief of Mubele Sub-location.	Alleged to have been involved in the violence.	The assistant chief is said to have been arrested and released by police over the allegations.	The government should order further investigations with the

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NORTH RIFT REGION				
Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
				objective of charging him appropriately. He should also face disciplinary action from the Office of the President .
67. Mr Benjamin Akumu alias Malo malo	A Luo man who is a newspaper vendor in Oginga Odinga street, Eldoret.	Alleged to have led the youth in burning and looting houses in Kipkaren area of Eldoret and killed one person in the process	Interviewee states that the mentioned person led the youth to evict Kikuyu from Kipkaren area and loot and burn their property on 31st December 2007. A kikuyu man named Kennedy was later found burnt in one of the houses PEV/IVR/FEB/546	The government should order further investigations with the objective of charging him with: • robbery with violence and • murder
68. Mr Peter Maluma alias 'Pokot'	A resident of Kipkaren Estate of Eldoret	Alleged to have also organized the youth to evict Kikuyu from Kipkaren area and burn their houses	Interviewee states that the named person who is known to him was in the company of the attackers PEV/IVR/FEB/546	The government should order further investigations with the objective of charging him with aiding and abetting a crime.
69. Mr Koskey Magut	Elected Councillor in Eldoret	Mentioned in connection with violence in Kipkaren area.	Witness says he heard this from several people.	Not enough information to suggest any action against this person
70. Mr 'Mzee Pilot'	A Kikuyu man who stays in Huruma area of	Alleged to have hosted youth in his place	Interviewee states that the named person hosted a group of youth who were around 300 in number on 29th December 2008 at around 2.00 pm, interviewee further states that he	The government should investigate further to confirm allegations for

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NORTH RIFT REGION				
Alleged Perpetrator by Full Name	Background of Alleged Perpetrator	Findings Concerning the Alleged Perpetrator	Supporting Information	Recommendations
	Eldoret and owns a bar in the area		saw the named person give instructions to the armed group PEV/IVR/FEB/505 Also mentioned to have been a leader of the attackers in Huruma PEV/IVR/FEB/525	possible prosecution.
71. Mr 'Brother Jew'	A Hotel owner in Huruma area of Eldoret named 'Brother Jew'	Alleged to have been involved in the planning of violence in Huruma area of Eldoret	An interviewee states that the named person provided a grinder at his premises in Huruma PEV/IVR/FEB/525	The government should order further investigations with the objective of charging him with: • aiding and abetting a crime and • incitement

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
MOLO DISTRICT				
1. Peter Belsoi, Thomas Belsoi	Both are sons of a prominent former Army captain in who was killed in revenge attacks during the 1991 clashes by Kikuyus. They reside at Sirikwa farm.	-He hosted militias and was personally involved in attacks against members of the kikuyu community.	On diverse dates in January 2008, he regularly hosted raiders at his residence in Sirikwa farm. He was also reportedly in charge of a large group of attackers that attacked Kikuyu homesteads and killed 21 people on 2nd and 4th January 2008 -PEV/ IVR/ FEB/ 316 -PEV/IVR/ APRIL/ 870	Further investigation with a view to prosecution for the crime of murder and/or conspiracy to murder contrary to sections 204 and 224 of the Penal code.
2. Mr. Stephen .K. Soi	Former Assistant Commissioner of Police (GSU)	-Hosted, fed and financed Kalenjin attackers at his residence in Sirikwa farm	On diverse dates in January 2008, he regularly hosted raiders at his residence in Sirikwa farm where attacks on Kikuyu and Kisii communities were planned -PEV/IVR/MAR/316	Further investigation with a view to prosecution for the crime of murder and/or conspiracy to murder contrary to sections 204 and 224 of the Penal code.

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
3. Thomas Cheruiyot Sirikwa	Agricultural/ Veterinary Officer in Sirikwa	-Organised clashes in Molo -Threatening and incitement and disruption of learning activities	He threatened the headmaster of Sirikwa Primary School (a kikuyu) and asked him to leave arguing that the school deserved a Kalenjin headmaster. This was during a public meeting convened by the Kamara District Officer held on 27/11/07. Cheruiyot further reportedly incited the Kalenjin parents to withdraw their children from Sirikwa Primary and Secondary Schools. As a result the Secondary school was reportedly closed down. PEV/IVR/FEB/316 PEV/IVR/APRIL/1039	Further investigation with a view to prosecution for the crime of incitement contrary to sections 77, 94 & 95 of the Penal code.
4. Hon. Kipkalya Kones	MP, Bomet and Minister of Roads and Public Works	-Hosting of Kalenjin attackers at his residence.	-Kalenjin raiders were said to have repeatedly been hosted at his residence in Sirikwa from where they launched attacks against the Kikuyus and Kisiis. -PEV/IVR/FEB/316	Further investigation with a view to prosecution for the crime of conspiracy to murder contrary to sections 204 and 224 of the Penal code.
5. Hon. William Ruto	MP, Eldoret North and minister for Agriculture	He incited and directed violence against members of the Kikuyu and Kisii communities	He attended several meetings in Kuresoi constituency during which he incited kalenjins to fight members of the Kisii and kikuyu communities	Further investigation with a view to prosecution for the crime of incitement contrary to sections 77,

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			-PEV/IVR/FEB/482 - PEV/IVR/APR/1114a - PEV/IVR/APR/1117 -PEV/IVR/APR/861	94 and 95 of the Penal code.
6. Franklin Bett	MP, Bureti constituency	Incitement to violence	During a public meeting in Kiptororo in Kuresoi in 13/5/2007, he reportedly urged the kalenjins to fight the Kikuyus until they leave Molo area PEV/IVR/APR/1114a	Further investigation with a view to prosecution for the crime of incitement contrary to sections 77, 94 and 95 of the Penal code.
7. S.P. Siele	Businessman (Wholesale trader) in Total Trading centre	Financed attacks in Molo and Total	He was reportedly one of the key financiers of violence against non-ODM supporters in Total and Mau Summit area. -PEV/IVR/MAR/846	Further investigation with a view to prosecution for the crimes of conspiracy to murder and destruction of property contrary to sections 224 and 332 of the Penal code.
8. Wilson Leitich	A former nominated councilor and former Nakuru Kanu branch chairman	-A key adviser and financier of violence - hosting of raiders.	He was reportedly a key adviser and financier of the violence and severally hosted raiders in his residence at Muchorwe Farm from where they planned and launched attacks. -PEV/IVR/APR/114a	Further investigation with a view to prosecution for the crimes of conspiracy to murder and destruction of property contrary to sections 224 and 332 of the Penal code.
9. Joseph Rotich a.k.a Survivor.	Ass. Chief of Mawingu sub-	-Organized violence in Mawingu sub-location and	He severally threatened the kikuyu residents in his area that their time was	Further investigation with a view to prosecution for

No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
	location	Murinduko trading centre -Incitement against other communities	running out and that they would be taken back to central province. On 4/10/07, he was said to have publicly told the residents of Murinduko farm that the Shopping center would be burnt down soon. After two days, there was an attack at Murinduko Trading Center by Kalenjin raiders but they were repulsed by the Kikuyus. A month later (25/11/07), there was a major attack in Murinduko during which two elderly people were killed by Kalenjin raiders. When Murinduko center was finally razed down on 16/1/08, Mr. Rotich was spotted among the raiders near Set-Kobor farm. After the Trading Center was burnt, Murinduko residents flew en bloc. Mr. Rotich was reportedly heard bragging that his word that the Kikuyus were going to move to Central Province had been fulfilled. He said that he was going to ensure that all Kikuyus fled to Kiambu and Nyeri. -in another incident on 1/1/08 Rotich curiously sent the following SMS to a kikuyu resident perhaps an indicator that he had knowledge of impending attacks: *"Please, it is information from Kiptororo that many men were seen*	the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			coming towards this end. God will help you" (sent from +254726903953 on 1/1/08 at 19:36:06) Immediately after he sent this message, attacks began in Murinduko and Mawingu farm. -PEV/IVR/APRIL/868) -PEV/IVR/APRIL/870) -PEV/IVR/APR/1116 -PEV/IVR/APR/1113	
KURESOI				
10. Hon. Zakayo Cheruiyot	MP, Kuresoi	Funding and organizing violence in Kuresoi	He was reportedly one of the key financiers of violence in Kuresoi constituency. He further reportedly donated one white canter Mitsubishi truck for ferrying raiders. -PEV/IVR/FEB/486 -PEV/IVR/APRIL 861 -PEV/IVR/APRIL 1100	Further investigation with a view to prosecution for the crimes of conspiracy to murder and destruction of property contrary to sections 224 and 332 of the Penal code.
11. Moses Cheboi	Immediate former MP Kuresoi	-Incitement to violence -Negative ethnic comments and hate speech -Financed meetings where attacks were planned and financed the attacks -Provided transport to attackers	-During a public meeting at Kiptororo on 13/5/2007, he reportedly told the kalenjins to re-elect him so that he can work with them to evict the Kikuyus from their land. -In January 2006, he stopped at Murinduko shopping center on his way from Kongoi farm. He reportedly told	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			the Kikuyus that their votes did not count since ODM had already won the referendum. He accused them of failing to vote for him in 2002 and said that he did not require their votes. In the 2007 Elections, he concentrated his campaigns in the Kalenjin strongholds where he commanded heavy support. -He reportedly financed a meeting held at Chepkinoiyo near Sitoito after party nominations during which it was resolved that Kikuyus should be evicted so that they do not vote for the Kikuyu aspirant. -He also co-financed another meeting held in Keringet on 22/12/07, which declared total war on the Kikuyus and the Kisii. -He supplied a lorry which was reportedly used to ferry raiders to scenes of attacks on diverse dates. -He is further said to have heavily financed the violence. -PEV/IVR/MAR/847 -PEV/IVR/MAR/845	

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			-PEV/IVR/APRIL/884 -PEV/IVR/APRIL 870 -PEV/IVR/APRIL 869 -PEV/IVR/APRIL 864 -PEV/IVR/APRIL 861 -PEV/IVR/APR/1101 -PEV/IVR/APR/1113 -PEV/IVR/APR/1115 -PEV/IVR/APR/1116 -PEV/IVR/APR/1114a -PEV/IVR/APRIL 1100 -PEV/INT/APR/086 -PEV/IVR/1052	
12. James Koskei	Former MP, Kuresoi	Facilitating and organizing violence	He facilitated and/or attended meetings that planned attacks on Kisiis and Kikuyus PEV/IVR/APR/1114a	Further investigation with a view to prosecution for the crimes of conspiracy to murder and destruction of property contrary to sections 224 and 332 of the Penal code.
13. Joseph Kebenei	Parliamentary aspirant, Kuresoi	Inciting, facilitating and organizing violence against Kikuyus and Kisiis.	He facilitated and attended meetings that planned attacks on Kisiis and Kikuyus PEV/IVR/APR/1114a	Further investigation with a view to prosecution for the crimes of incitement,

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
				conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
14. Ezekiel Kesendany	Parliamentary aspirant, Kuresoi	Inciting, facilitating and organizing violence against Kikuyus and Kisiis.	In a meeting held at Kiptororo on 13/5/2007, he stated that kalenjins should evict Kikuyus from Nyota farm PEV/IVR/APR/1114a	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
15. Arap Sang (nicknamed LW)	Prominent businessman	Hosted a Kalenjin leadings for a meeting where attacks against Kikuyus and Kisiis were planned	On 22/12/07, he hosted a Kalenjin leaders' meeting at his residence at Keringet during which the leaders declared war on the Kikuyus and Kisiis. -PEV/IVR/APR/1114a	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
16. Julius Sigei	Former councillor, Nyota ward and a chief campaigner of Moses Cheboi and a resident of Muchorwe farm	Organizing violence	He was reportedly a key perpetrator of violence against the Kikuyus and Kisiis. PEV/IVR/APR/1114a	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the

No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
				Penal code.
17. Jacob Rono	Personal Assistant to Moses Cheboi and also the CDF manager	-Organizing violence	On 28/12/07 after Moses Cheboi lost the Kuresoi seat, he ordered the youth to go and start attacks alleging that votes had been rigged. The youth later attacked and burnt houses at Keringet Trading centre PEV/IVR/APR/1114a	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
18. Mr Sigilai	Civic aspirant Mkulima war in Kuresoi	• Hate speech and hate campaigns	He repeatedly urged Kalenjin voters during campaigns not to vote for kikuyu aspirants so as to reduce kikuyu dominance in the area PEV/IVR/MAR/845	Further investigation with a view to prosecution for the crime of engaging in offensive conduct to breaches of peace contrary to section 94 of the Penal code.
19. Geoffrey Koskey (Kio Farm, Kuresoi)	Former Civic Aspirant (2007), Kuresoi Ward -He was reportedly one of Moses Cheboi's chief campaigners.	-Planning and organizing violence -Hate speech, use of demeaning/ derogatory language	He reportedly warned a witness to escape from the area so that he is not harmed when violence begins. He allegedly told the witness that they had been holding night meetings to discuss the fate of Kikuyus.	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			He further referred to Kikuyus as madoadoa (spots) Funyo (enemies), Ng'ogi (dogs) and Gogoiyo (a derogatory term). PEV/IVR/APRIL/882	Penal code.
20. Paul Kenduiywo (Kio Farm, Kuresoi)	Local prominent businessman	-Hosted meetings that planned attacks	He hosted, on several times, the immediate former MP, Moses Cheboi during meetings believed to have been convened to organize the violence PEV/IVR/APRIL/882	Further investigation with a view to prosecution for the crimes of conspiracy to murder and destruction of property contrary to sections 224 and 332 of the Penal code.
21. Josiah Gakono (Kio Farm, Kuresoi)	One of Moses Cheboi's chief campaigners	-Participated in attacks against targeted communities	He was reportedly spotted several times burning houses in the area. In one major attack, he was seen armed with bows and arrows and a Panga. He was wearing a shot and had smeared his face. When he realized that the witness had recognized him, he took off. He also reportedly referred to Kikuyus as madoadoa (spots) Funyo (enemies), Ng'ogi (dogs) and Gogoiyo (a derogatory term).	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and destruction of property contrary to sections 224 and 332 of the Penal code.
22. Joseph Marindany (Keringet)	Chief, Tulwet Location)	Involvement in stock theft and connivance with cattle rustlers	On 14/2/08, he was allegedly arrested in connection with a stock theft incident and conniving with the raiders.	Further investigation with a view to prosecution for the crimes of stock theft,

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			PEV/IVR/APRIL/869	conspiracy to murder, arson and destruction of property contrary to sections 224, 278 and 332 of the Penal code.
23. Alexander Ngetich (Keringet)	Sub-Chief, Soliat Sub-location)	Involvement in stock theft and connivance with cattle rustlers	On 14/2/08, he was allegedly arrested in connection of a stock theft incident and conniving with the raiders. PEV/IVR/APRIL/869	Further investigation with a view to prosecution for the crimes of stock theft, conspiracy to murder, arson and destruction of property contrary to sections 224, 278 and 332 of the Penal code.
24. Alexander(Sundu River, Kuresoi)	Chief	• Incitement	Reported to have been arrested for incitement but was later released -PEV/IVR/APRIL/868 -PEV/IVR/APRIL/1101	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
25. Benjamin Chirchir	Local prominent businessman. (Set- Kobor,	Hosting attackers, organizing and planning attacks	Raiders reported to have been staying at his home. Sometime in November 2007, a group of about 200 raiders was	Further investigation with a view to prosecution for the crimes of incitement,

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
	Kuresoi)		spotted by a witness in his compound, which is next to a forest. Later that evening, there was an attack in Murinduko farm. -PEV/IVR/APRIL/868	conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
26. Chief of Bararget Location	Bararget location Chief	Involvement in stock theft and connivance with cattle rustlers	Was reportedly part of a group of raiders that attacked and injured a group of people including a police officer who had gone to pursue stolen livestock on 17/3/08. -PEV/IVR/APRIL/867	Further investigation with a view to prosecution for the crimes of stock theft, and causing grievous harm contrary to sections 278, 231 and 234 of the Penal code.
27. Richard Kirui	Teacher (Sundu River Primary school, Kuresoi)	-Organizing violence	His daughter was reportedly raped in 2006 sparking a fresh wave of clashes. The rape allegation reportedly turned to be a hoax meant to justify attacks by Kalenjins. The teacher is reportedly one of the Key organizers of violence PEV/IVR/APRIL/864	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
28. Mathayo Sang (Kongoi farm, Kuresoi)	Local businessman timber dealer, Cheboi's chief campaigner, head of CDF committee.	Organizing and funding of violence	Reported to have been one of the key influential persons who hosted raiders and planned violence. He once told a witness that they either vote for Cheboi or they get pushed out of the area. On 2/2/08, he reportedly used sent two men to purchase petrol at Kuresoi Trading Center, which was later used to	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			burn houses. Reported to have also been involved in the 1992 clashes. During the current clashes, he reportedly hosts and pays the raiders (500/- for each house burnt and 5000/- for each person killed). After the attacks, raiders allegedly slaughter and feast on stolen livestock PEV/IVR/APRIL/864 PEV/IVR/APRIL/864	
29. Francis Kenduiywo (Kongoi farm, Kuresoi)	Local businessman, Former Councillor, Kuresoi Ward	Planning and funding of violence	Reported to have been one of the key influential persons who hosted raiders on diverse dates during which violence against the Kikuyus and Kisiis was planned violence PEV/IVR/APRIL/864	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
30. John Maritim (Kongoi farm, Kuresoi)	Local businessman, Former Councilor, Kuresoi Ward.	Planning and funding of violence	Reported to have been one of the key influential persons who hosted raiders on diverse dates during which violence against the Kikuyus and Kisiis was planned violence PEV/IVR/APRIL/864	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
31. Mr Osewe	OCS, Kuresoi Police Station	Inaction despite receiving credible reports of impending attacks	Said to have failed to take action against the raiders even after receiving information in advance about pending attacks. Reportedly refused to offer security to Mwaragania Primary School despite repeated requests by the teachers. The school was burnt on 29/2/08. On 31/12/07, a witness states that he met Mr. Osewe who had visited Gacharage farm which had been attacked and houses were burning. He asked Mr. Osewe what measures he had put in place to stop the escalating violence. He told the interviewee that *'vile nimeona, hiyo imenishinda. Kila mtu ajisaidie' (From what I have seen, I can't manage the situation, everyone should take care of themselves*). He then reportedly drove of and left the area burning. PEV/IVR/APRIL/864	Further investigation with a view to prosecution for the crime of gross negligence of duty
32. Wesley Ruto (Ogilge farm, Kuresoi)	Former parliamentary Aspirant, Kuresoi)	Facilitating and planning violence	Raiders reportedly used to gather at his house. His four-wheel car (Toyota Double Cabin) was reportedly used to ferry injured raiders to hospital. Sometimes in 2007, during a fundraiser,	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			he reportedly told the Kalenjins to stop selling land to the Kikuyus and Kisii. PEV/IVR/APRIL/864	contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
33. Elijah (Nickname, Jua Kali) Kongoi farm, Kuresoi	Local businessman.	Planning and facilitating violence	His car called *'Tinet Gaa'* reportedly used to ferry raiders to scenes of attacks and to ferry the injured to hospital. PEV/IVR/APRIL/864	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
34. Edward Chirchir	A parent at Sirikwa Primary School, ring leader and farmer	Organizing and planning of violence	According to witnesses, Chirchir co-ordinated the theft of cattle in Sirikwa and oftenly bailed out the youths who had been arrested in connection with the violence. Chirchir further reportedly said that Kikuyus should leave the area PEV/IVR/APRIL/1039	Further investigation with a view to prosecution for the crimes of stock theft, conspiracy to murder, arson and destruction of property contrary to sections 224, 278 and 332 of the Penal code.
35. David Chumba also known as Siagi	Prominent businessman who deals in livestock and timber	Issuing threats, hosting atackers and organizing attacks	During the campaign period, he reportedly issued threats to a Civic aspirant Mr Wilson Moturi who vied and worn the Chemaner seat. He told him that he should stop vying for the seat or else he faces dire consequences. His house was reportedly raided by police after an attack in Giticha farm	Further investigation with a view to prosecution for the crimes of incitement, threatening, stock theft, conspiracy to murder, arson and destruction of property contrary to sections 77, 94,95, 224,

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			sometimes in November 2007. During the attack, some raiders were killed by the police. The police then proceeded to Chumba's house where they reportedly found a group of raiders preparing to take tea which had been prepared using big sufurias (cooking pots). It is alleged that the police found a dead body in the house. Chumba and the raiders were arrested but were shortly released reportedly upon the intervention of Hon Moses Cheboi. PEV/IVR/APR/1101 PEV/IVR/APR/1102a	278 and 332 of the Penal code.
36. Sammy Ng'etich	Acting chief for Chemaner Location	Involved in forceful eviction of kisiis and kikuyus	Ng'etich reportedly told the Kisiis and the Kikuyus that they must vacate the area whether they like it or not. The chief was all along against the establishment of a police post in the area and had threatened several residents who had spearheaded the establishment of Giticha Police Camp following recurrent attacks. Sometimes in September 2007, he reportedly held a meeting which was attended exclusively by Kalenjins and the night	Further investigation with a view to prosecution for the crimes of incitement, threatening, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.

COMMITTEE

No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			after the meetings, a group of youths attacked Kamwaura shopping center whereby two people were killed and several houses burnt. PEV/IVR/APR/1101 PEV/IVR/APR/1102a	
37. Josiah Langat	Local Prominent businessman, Owns several posho mills and trades in livestock.	-Planning and organising of violence -Stock theft	He reportedly financed youths to steal livestock and hosted raiders at his residence in Kabongoi. Sometimes in august 2007, his son and a group of cattle rustlers were arrested by police with stolen cows which they were driving towards Transmara. They were reportedly charged and fined PEV/IVR/APR/1101	Further investigation with a view to prosecution for the crimes of incitement, stock theft, conspiracy to murder, arson and destruction of property contrary to sections 77, 94,95, 224, 278 and 332 of the Penal code.
38. Joel Langat	Former OCPD, Nakuru. Farmer at Kamwaura Angurwe village	Hosting raiders and stock theft during the post elections violence	Raiders are reported to have frequently gathered at Langat's home for planning of attacks. Stolen livestock were first taken to his residence before being driven away. PEV/IVR/APR/1101	Further investigation with a view to prosecution for the crimes of incitement, stock theft, conspiracy to murder, arson and destruction of property contrary to sections 77, 94,95, 224, 278 and 332 of the Penal code.
39. William Ngerech	Chief, Temuyota Location. Former GSU officer	Planning and participating in attacks	He stays in Muriginyen farm. During the polling period he was shot by the police at Keringet while in a group of youths that had attacked a vehicle hired by the	Further investigation with a view to prosecution for the crimes of incitement and destruction of

No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			Electoral Commission of Kenya (ECK) to ferry election materials. PEV/IVR/APR/1101	property contrary to sections 77, 94,95, and 332 of the Penal code.
40. Mathias	Resident of Haraka farm and is said to own a big house .		A witness stated that he was informed by a policeman (called Ngui) attached to Murinduko Police Post that he saw about 200 raiders gathered at Mathias' residence. Ngui was on the material day among a group of policemen pursuing stolen animals PEV/IVR/APRIL/1113 PEV/IVR/APR/1116	Further investigation with a view to prosecution for the crimes of conspiracy to murder and destruction of property contrary to sections 224 and 332 of the Penal code.
41. Cheruiyot	Policeman based at Murinduko Shopping Center	Organised violence	Reportedly a key organizer of violence PEV/IVR/APR/1116	Further investigation with a view to prosecution for the crimes of negligence of duty, conspiracy to murder and destruction of property contrary to sections 224 and 332 of the Penal code.
42. Tito (nickname) Haraka farm, Kuresoi Division	Local and prominent businessman with a posho mill, shop and a hotel	Hosting attacker, financing and planning of violence	Raiders reportedly converged at his business premises to organize attacks. In August 2006, he was arrested by Kikuyu youths during an attack by Kalenjin raiders in Murinduko but was released shortly. He is very influential	Further investigation with a view to prosecution for the crimes of conspiracy to murder and destruction of property contrary to sections 224

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			and commands huge support from the Kalenjins. On 28/11/07, a witness saw hundreds of Kalenjin youths gathered outside Tito's shop. They later threatened the witness and crossed over to the neighbouring Murinduko farm and began attacking Kikuyus who were attending to their farms, killing two elderly people. PEV/IVR/APRIL/1113 PEV/IVR/APR/1116	and 332 of the Penal code.
43. Joel Toweet	Farmer at Set-Kobor	Hosting attackers and planning violence	According to witnesses, Joel's son, Vincent Mutai was killed in 2006 during a cattle-rustling incident at Tegea farm. He accused Murinduko people of being behind his son's death. He used to drink beer at Murinduko center and severally threatened to avenge the death of his son. Prior to an attack at Murinduko farm on 28/11/2007 during which two elderly people (Daniel Waruhiu and Susan Wangui) were killed, raiders were spotted meeting at his residence. -PEV/IVR/APRIL/1113	Further investigation with a view to prosecution for the crimes of conspiracy to murder and destruction of property contrary to sections 224 and 332 of the Penal code.
44. Wesley 'Chagau'	Nominated councilor, Keringet	Financing violence	Wesley reportedly owns a light blue Datsun 1200 which was used to ferry food to various scenes of attacks. He	Further investigation with a view to prosecution for the crimes of conspiracy

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			also owns a big butchery in Keringet and used to supply cooked meat to the raiders PEV/IVR/APRIL/1114a	to murder, arson and destruction of property contrary to sections 224 and 332 of the Penal code.
45. Stephen Ngetich a.k.a Alexander	Ass. Chief, Tulwet Location	Hosting raiders and planning violence.	He reportedly hosted raiders at his residence and was a key organizer of the post election violence. In September 2007, there was an incident at Sundu River farm where five people were killed by Kalenjin raiders. The raiders reportedly assembled at his place before launching the attack PEV/IVR/APR/1101	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and destruction of property contrary to sections 224 and 332 of the Penal code.
OLENGORUONE				
46. James Tuwei	Councilor, Cheptuech ward	Incitement and participating in violence	The Councillor was always very inflammatory during the campaigns. That during a meeting after the party nominations, he said that the Kalenjins must fight and liberate the rest of the Kuresoi like they did in Chepakundi in 1992. (Chepakundi farm used to be	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and destruction of property contrary to sections 224 and 332 of the Penal

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			inhabited mainly by Kikuyus and Kisiis but they were all evicted during the 1992 clashes. The land has since been taken over by the Kalenjins). He was also reportedly spotted armed with bows and arrows in several incidences PEV/IVR/APRIL/861 PEV/IVR/APRIL 1100 PEV/IVR/APRIL/1115	code.
47. Mr Mohamed	District Officer (DO) - Olenguruone	Negligence of duty	He reportedly used to fraternize with the raiders and did nothing to forestall or contain the violence PEV/IVR/APRIL/861	Further investigation with a view to prosecution for the crime of gross negligence of duty
48. Thomas Mukabwa	OCS Olenguruone Police Station	Negligence of duty	The OCS took no action against the raiders who met daily in the trading center just a few meters from the police station. Negligence of duty, Complicity in violence PEV/IVR/APRIL/861	Further investigation with a view to prosecution for the crime of gross negligence of duty
49. Bidii Arap Too 50. Olengoruone	Former Councilor	Financing and planning violence	His Lorry(white, Mitsubishi Fuso)was reportedly used to ferry raiders to scenes of attacks PEV/IVR/APRIL/861	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and destruction of property contrary to sections 224 and 332 of the Penal code.

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
51. Joshua Sang	Prominent farmer	Financing and planning violence	Sang is reportedly a driver to an Asian called Spinni who is a milk dealer. He owns a lorry which was used to transport raiders on diverse dates. He is a very influential person and lives in Olenguruone PEV/IVR/APRIL/1114a PEV/IVR/APRIL 1100	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
52. Joseph Koromecha Mamoen	80- year old Kalenjin elder.	Illegal oathing	Koromecha is reportedly a unifying symbol of the Kalenjins in Kuresoi. He is the one who presides over traditional ceremonies and cleansing/blessing the youths for the war. He is like the overall commander. He gets instructions from the political and community leaders. He lives in Saptet on the way to Olenguruone. He is the only one who can stop violence once it is declared. He is said to have held a meeting with Kalenjin elders on 22/12/07 between 11.00am to 1.00pm at a Mr. Arap Sang's (nicknamed LW) residence PEV/IVR/APRIL/1114a	Further investigation with a view to prosecution for the crimes of illegal oathing, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
53. Mr Dickson a.k.a 'Dyma' (Olenguruone)	Local prominent businessman. Proprietor of Dyma Wholesalers	Financing violence	His Lorry (white canter, Mitsubishi) was reportedly used to ferry raiders to scenes of attacks. He also reportedly sponsored the violence through supply	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and

No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
	and Dyma Petrol station.		of food, fuel and money. He also reportedly owns a green pick-up truck, Toyota which he used to take fuel and food supplies to the forest. He is reportedly related to Moses Cheboi, the immediate former MP for Kuresoi -PEV/IVR/APRIL/861) -PEV/IVR/APRIL 1100 -PEV/IVR/APRIL/1114a -PEV/IVR/APRIL/1115	destruction of property contrary to sections 224 and 332 of the Penal code.
54. Simeon Rabwet (Olenguruone)	Headmaster-Amaro Secondary School.	Organizing and participating in violence	He was a Chief campaigner for Zakayo Cheruiyot (current Kuresoi MP) and a reported key organizer of violence. His car KAL***H was reportedly used to accompany the raiders during attacks. He was spotted addressing raiders during several planning meetings. According to another witness Rabwet's main role was mobilizing the raiders and coordinating transport to various scenes of attack -PEV/IVR/APRIL 1100 -PEV/IVR/APRIL/861 -PEV/IVR/APRIL/1114a	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
55. Mr Keror	Former Police	Incitement and organizing	He was together with his wife actively	Further investigation with

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
	officer	of violence	involved in mobilization towards the violence -PEV/IVR/APRIL/1115	a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
56. Pius Koech (Olenguruone)	Former Teacher and Chief. Also an influential village elder.	Organizing, financing and participating in violence	He is a village elder who reportedly used to solicit for contributions towards the violence. He was spotted severally addressing the raiders at Olenguruone trading centre. He was also seen severally boarding vehicles destined for Muchorwe while armed together with the raiders. This was around the third week of January 2008 PEV/IVR/APRIL 1100	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
57. Matayo	Resident of Ambusket area of Olengurone	Financing violence	Matayo reportedly donated a ten wheel truck, 'grey' in colour for use during the violence PEV/IVR/APRIL 1100	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
58. Mr Bii,	Headmaster, Teta	Directing and participating	He reportedly led a group of raiders	Further investigation with

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
	primary School	in violence	that burnt down the Nyagachu chief's office and Nyagachu Police Post. The raiders reportedly threatened the area chief with lynching if he did not support the violence. The chief was ordered to remove his files from his office before it was set ablaze PEV/IVR/APRIL/1114a	a view to prosecution for the crimes of incitement, threatening, arson and destruction of property contrary to sections 77, 94, 95, and 332 of the Penal code.
59. Mochogorop Oyonge	Kalenjin Spiritual leader.	Illegal administering of oaths.	In January 2008, he was brought from Transmara by local leaders and elders to administer oaths to the youths in readiness for the attacks. One of the elders who brought him is called Joseph Koromicha PEV/IVR/APRIL/1114a	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
60. Korir	Former Chief, Amaro location	Mobilizing and organizing violence	Korir was reportedly in charge of mobilizing and training/briefing of raiders on the attacks. The raiders routinely assembled at Olenguruone, Keringet shopping center and on various spots along the roads where they were picked by the trucks PEV/IVR/APRIL 1100 PEV/IVR/APRIL/1115	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
61. Joseph Sang	Retired Clinical	Incitement, mobilizing of	Sang is reportedly very popular amongst	Further investigation with

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
	Officer	funds and organizing violence.	the local youths and used to mobilize them for the attacks. He further used to mobilize for funds to facilitate the attackers. He was spotted severally addressing the youths in Kiptagich area. Immediately after the announcement of the presidential results, a group of youths allied to Joseph Sang attacked and burnt a residential area near the DO's office which is mainly inhabited by Kisiis PEV/IVR/APRIL/1115	a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
MAUCHE				
62. Kirui alias 'Savco'	Aspiring councillor, Mauche ward	Incitementy, organizing and participating in violence	He said to have repeatedly convened youth meetings convincing them to protect their community. He further organized the youths to dig up trenches on the tarmac road and to barricade the roads PEV/IVR/APRIL/1106b	Further investigation with a view to prosecution for the crimes of incitement, arson and destruction of property contrary to sections 77, 94, 95, and 332 of the Penal code.
63. 'Saitoti' (Nickname)	Influential farmer	Incitementy, organizing and participating in violence	He reportedly incited the kalenjins against the Kikuyus. On 31/12/07, he reportedly said that the Kalenjins should not allow the Kikuyus to flee under police escort since they were the cause of their problems. He wanted them to remain for them to be dealt with accordingly.	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal

No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			PEV/IVR/APRIL/1106b	code.
64. Sammy Rotich, Alias 'Saro'	Youth leader	Participating in attacks	He was reportedly always in the front line in during the violence. He was also reportedly notorious looter. He reportedly used to be in the company of another ex-army office PEV/IVR/APRIL/1106b	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
MAU SUMMIT				
65. Wilfred Bii (Mau Summit)	Former Teacher (Pele Primary School) and cureently a board member-Mau Summit Secondary School).	Hosting raiders and organizing violence	Raiders reportedly used to converge at his house at the height of violence. PEV/IVR/APRIL/866	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and destruction of property contrary to sections 224 and 332 of the Penal code.
66. Josiah Koech (Mau Summit)	Headmaster, Koige Primary School.	Participating in violence	He was reportedly seen participating in violence during a raid in Mau Summit on 1/1/08 PEV/IVR/APRIL/866	Further investigation with a view to prosecution for the crimes of murder, conspiracy to murder, arson and destruction of property contrary to sections 204, 224 and 332

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
				of the Penal code.
67. Mr Kenei Mau Summit	Area Public health officer.	Organizing and financing violence	Mr Kenei reportedly used to pay the raiders after the attacks. -PEV/IVR/APRIL/866	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and destruction of property contrary to sections 224 and 332 of the Penal code.
68. Mr Koech (Jogoo, Mau Summit)	An employee of Kenya Pipeline Company, Jogoo Plant)	Organizing and financing violence	His car a white Toyota van, was reportedly used to transport fuel to scenes of attacks. -PEV/IVR/APRIL/866	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and destruction of property contrary to sections 224 and 332 of the Penal code.
69. Arap Dawa (Mau Summit)	Village Elder	Organizing violence	Reported to have been a key organizer of violence.PEV/IVR/APRIL/866	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and destruction of property contrary to sections 224 and 332 of the Penal code.
70. Chemasingi (Mau Summit)	Village Elder	Organizing violence	Reported to have been a key organizer of violence PEV/IVR/APRIL/866	Further investigation with a view to prosecution for the crimes of conspiracy

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
				to murder, arson and destruction of property contrary to sections 224 and 332 of the Penal code.
71. Paul Tuwei (Mau Summit)	Village Elder	Organizing violence	Reported to have been a key organizer of violence.PEV/IVR/APRIL/866	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and destruction of property contrary to sections 224 and 332 of the Penal code.
72. Ben (Total, Mau Summit)	Manager, Leopard Park Hotel	Hosting attackers, organizing and financing violence	Raiders reportedly received their daily payments from his hotel. He was reportedly the one paying the raiders (3000/- per house), the hotel reportedly belongs to a former security escort attached to former President Moi PEV/IVR/APRIL/86S6	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and destruction of property contrary to sections 224 and 332 of the Penal code.
73. Philip Tuikong (Mau Summit, Haraka Sub location)	Subchief, Haraka Sublocation	Negligence of duty and complicity in violence.	He reportedly told his neighbour (a Kisii) to move away since there was going to be an attack on the Kikuyus PEV/IVR/APRIL/866	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and destruction of property contrary to sections 224

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
				and 332 of the Penal code.
74. Mr Rono, Mau Summit.	Retired chief, Mau Summit Location	Organizing and participating in violence	He together with other people reportedly burnt a Mr G.K. Mwaura in his house on 1/1/08. Mwaura was escaping from his house which had been set on fire by the chief and his colleagues. The attackers caught up with him and tossed him into the burning house where he burnt too death.	Further investigation with a view to prosecution for the crimes of murder, conspiracy to murder, arson and destruction of property contrary to sections 204, 224 and 332 of the Penal code.
NAKURU				
75. Mr. David Manyara.	Former MP for Nakuru town	Planning and financing violence	Mr. Manyara held meetings in Nakuru town with suspected Mungiki members -Reportedly bought 500 pangas from Magic supermarket PEV/IVR/FEB/488 PEV/IVR/FEB/486 Alleged to have mobilized and led around 300 members of Mungiki to Ponda Mali estate of Nakuru on 15th January 2008 PEV/ IVR/ FEB/ 328 Allegedly bought pangas from	Further investigation with a view to prosecution for the crimes of murder, conspiracy to murder, arson and destruction of property contrary to sections 204, 224 and 332 of the Penal code.

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			Woolmart supermarket on Friday 11th January 2008 in preparation for attacks	
76. Mayor Gikara		Planning and organizing violence	Interviewee states that the person together with two other people were involved in bringing members of the Mungiki group to Kwa Rhoda estate of Nakuru	
77. Zakayo	A businessman based in Nakuru and owns a sawmill and a hotel known as 'Zakayo' on Kanu street in Nakuru	Planning and organizing violence	Interviewee states that the person together with two other people were involved in bringing members of the Mungiki group to Kwa Rhoda estate of Nakuru	
78. Mr. Maina	Principal, Nakuru Blanket secondary School, Nakuru	Incitement	Said to be a Luhya and he was inciting people to violence against the Kikuyus PEV/IVR/FEB/467	Further investigation with a view to prosecution for the crime of incitement contrary to sections 77, 94 and 95 of the Penal code.
79. The In-charge and other Police officers of Kaptembwa Police Post	Officers from the police force based at Kaptembwa	Negligence of duty, arson and stealing	During some skirmishes on 30th December 2007, the Police officers based at Kaptembwa Police Post were reportedly spotted looting shops in Kaptembwa estate.	Further investigation with a view to prosecution for the crimes of negligence of duty, stealing and arson.

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			-The officers also reportedly burnt Jupiter Supermarket in Kaptembwa while their in-charge was watching PEV/IVR/FEB/467	
80. Mike Brawan	Aspirant for the Nakuru Parliamentary seat	Incitement	Its alleged that he urged the kalenjins to rise up and join the rest of Kenya in expressing anger on the stolen elections PEV/IVR/FEB/467 He is alleged to have been in the company of violent youth chanting ODM slogans and harassing and intimidating kikuyus in Nakuru on 30th December 2007 PEV/IVR/APR/1062 He is alleged to have been with youth who smashed properties belonging to kikuyus in Langa langa and Mwisho areas of Nakuru PEV/IVR/APR/1062	Further investigation with a view to prosecution for the crime of incitement contrary to sections 77, 94 and 95 of the Penal code.
81. Ephantus Kiura	Rift valley Province Police head of operations	Negligence of duty and complicity in violence	He reportedly connived with Mungiki youths on 25/1/08 as they attacked and killed ODM supporters in Nakuru town.	Further investigation with a view to prosecution for the crimes of negligence of duty conspiracy to murder, arson and

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
				destruction of property contrary to sections 204, 224 and 332 of the Penal code
82. Mr Too	Chief of Timboroa, Subukia location.	Organizing and participating in violence	Involved in instigating violence. He reportedly ordered Kalenjin raiders in Subukia on, 1/1/08, to attack and burn Kikuyu houses. He allegedly personally took charge of the attacks. PEV/IVR/FEB/47	Further investigation with a view to prosecution for the crimes of negligence of duty conspiracy to murder, arson and destruction of property contrary to sections 204, 224 and 332 of the Penal code
83. Hezron Wamutonyi	Businessman in Free Area, Nakuru. He also deals with herbal medicine	Organizing and financing violence	Said to be financing the violence. He reportedly owns a butchery and a bar called Buffalo. He was allegedly heard saying that whoever killed a Kalenjin would be paid Ksh. 25,000 and a Luo Ksh. 18,000 PEV/IVR/FEB/487 Alleged to have hosted about 2000 youth armed with pangas in his home in Free Area, Nakuru after the elections. He was later arrested by the police and released. PEV/IVR/FEB/340	Further investigation with a view to prosecution for the crimes of conspiracy to murder, arson and destruction of property contrary to sections 204, 224 and 332 of the Penal code

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			Alleged to have been receiving reports from members of the Mungiki group who carried out attacks. Interviewee states that the alleged person called him on 13th February 2008 and apologized to him that he was affected yet he (the interviewer) was a PNU supporter . He promised to tell his boys not to attack him and asked the interviewer to call him in case of any danger PEV/IVR/APR/ 1044	
84. Wandaka	A resident of Free Area, Nakuru and a scrap dealer. Also deals in hides and skins and owns residential houses	Planning and financing violence	Alleged to have hosted a meeting attended by kikuyus after elections to plan violence in Free Area, Nakuru PEV/IVR/FEB/340 Alleged to have sponsored violence in Kiratina and Free Area in Nakuru PEV/ IVR/ APR/ 1044	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
85. Joseph Kuria	A resident of Free Area, Nakuru and owner of a hotel known as 'Farmers Hotel'	Planning and organizing violence	alleged to have convened a meeting for kikuyus after the elections to plan violence in Nakuru's Free Area PEV/IVR/FEB/340	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
				property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
86. Mr. Kimotho	An elderly man and a resident of Free Area, Nakuru and owns a matatu	bought and ferried pangas with his matatu to Free Area during the violence	Interviewee states that she saw the matatu among other lorries that ferried youth to Free Area and she further states that the vehicle she identified as Kimotho's brought pangas PEV/IVR/FEB/340	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
87. Danson Ngatia	A businessman in Free Area, Nakuru. Owns a hardware known as 'Bura Yangu' in Free Area	Financing violence	alleged to have financed the mungiki group to carry out violence in Kiratina and Free Area in Nakuru PEV/ IVR/ APR/ 1044	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
88. Mash wa Dafra	A youth who stays in Karatina, Nakuru and owns a hotel known as	Participating in violence	Alleged to have been the ringleader of youth who attacked luos and kalenjins in Karatina and Free Areas in Nakuru. He is further alleged to have been in	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder,

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
	'Dafra'		constant communication with named financiers of the violence PEV/ IVR/ APR/ 1044	arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
NAROK				
89. William Ole Ntimama MP, Narok North	MP, Narok North	Incitement to violence against Kikuyus and Kisiis in Narok.	During the 2007 election campaigns, William Ole Ntimama reportedly incited the Maasais in Narok against the Kikuyus and Kisiis. He reportedly told the Maasai's to evict the said communities if they did not vote for him and ODM. On 30/12/07, The Narok market was burnt and several people injured after Ntimama allegedly told Kalenjin and Maasai youths that the Kikuyu women in the market had insulted him. ▪ PEV/IVR/FEB/198 ▪ PEV/IVR/FEB/115 ▪ PEV/IVR/MAR/631 ▪ PEV/IVR/MAR/641 ▪ PEV/IVR/APRIL/890	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
90. Benjamin Koech	Policeman	Organizing and	On 30/12/07 2007 at Kimogoro farm,	Further investigation with

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
		participating in violence	Sogoo location, in Narok South, he was reportedly seen in the company of Kalenjin raiders armed with an AK rifle. He was allegedly seen firing in the air to scare the Kikuyus as the raiders burnt their houses. He is reportedly based at the Kenya- Tanzania border, he further reportedly organized the burning and looting of property in Narok, Kimogoro farm PEV/IVR/MAR/642 PEV/IVR/MAR/639	a view to prosecution for the crimes of negligence of duty conspiracy to murder, arson and destruction of property contrary to sections 204, 224 and 332 of the Penal code
NAIVASHA				
91. Mrs. Jane Kihara	Immediate Former MP Naivasha	Organizing and financing violence.	She reportedly organized the Kikuyu youths and solicited funds to facilitate attacks against Luos who she accused of failing to vote for her leading to her defeat. She participated in several planning meetings at La Belle Inn and other Hotel in Naivasha Town. On 25/12/07, she reportedly bought pangas and other crude weapons from Branch Kubwa Supermarket for use	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.

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NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			during attacks against the Luos. On the day she lost the elections, she reportedly went to Keroche industries and provided money to Kikuyu workers so that they could evict Luos. She further reportedly organized for ferrying of kikuyu militia to Karagita. PEV/IVR/FEB/334 PEV/IVR/FEB/375 PEV/IVR/FEB/325 PEV/IVR/FEB/401 PEV/IVR/FEB/368 PEV/IVR/FEB/645 PEV/IVR/FEB/253 PEV/IVR/MAR/739 PEV/IVR/MAR/7742 PEV/IVR/FEB/331 PEV/IVR/FEB/337 PEV/IVR/MAR/761	
92. Mark Kariuki	Prominent businessman (proprietor of La Belle Inn	Organizing and financing violence.	His Hotel was routinely used as meeting point during the planning of the violence - PEV/IVR/FEB/645	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
				and 332 of the Penal code.
93. Pharis Ndung'u Chege	former Naivasha mayor and prominent businessman in Naivasha Town	Organizing and financing violence.	He was one of the key architects and financiers of the violence. He was one of the conveners of the meetings held at La Belle Inn. -PEV/IVR/FEB/645	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
94. Timothy Kamau	Prominent Local Businessman	Organizing and financing violence.	He was one of the key architects and financiers of the violence. He was one of the conveners of the meetings held at La Belle Inn. - PEV/IVR/FEB/645	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
95. Kigoshi	Prominent Local Businessman	Organizing and financing violence.	He was one of the key architects and financiers of the violence. He was one of the conveners of the meetings held at La Belle Inn. On 27/1/08, he is said to have gone round Naivasha town and the estates and called upon the Kikuyus (using a	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal

No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
			loudspeaker) to come out and join in the violence. - PEV/IVR/FEB/645	code.
96. Munderu	Prominent Local Businessman-Matatu Operator	Organizing, mobilizing and financing violence.	Together with several other Matatu proprietors, he was involved in planning, mobilizing and coordinating the violence in Naivasha and its environs. He was among the group that coordinated the transportation of Kikuyu attackers alleged to be Mungiki from other areas in Central Province. - PEV/IVR/FEB/645	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
97. Wajulia	Prominent Local Businessman-Matatu Operator	Organizing, mobilizing and financing violence.	Together with several other Matatu proprietors, he was involved in planning, mobilizing and coordinating the violence in Naivasha and its environs. He was among the group that coordinated the transportation of Kikuyu attackers alleged to be Mungiki from other areas in Central Province. - PEV/IVR/FEB/645	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
98. Lucky Boy	Prominent Local Businessman-Matatu Operator	Organizing, mobilizing and financing violence.	Together with several other Matatu proprietors, he was involved in planning, mobilizing and coordinating the violence in Naivasha and its environs. He was among the group that coordinated the transportation of Kikuyu attackers alleged to be Mungiki from other areas in Central Province. - PEV/IVR/FEB/645	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
99. Owner of Rafiki Supermarket	Prominent Local Businessperson	Organizing, mobilizing and financing violence.	-She was reportedly a key organizer of violence. She ordered her Luo tenants to vacate the houses. On 25/12/07, she reportedly held a meeting at Kabati estate, which was exclusively attended by Kikuyus. earlier in the day, she was spotted in the company of Jayne Kihara, the area MP, who was buying pangas and other crude weapons from Branch Kubwa supermarket. - PEV/IVR/FEB/325 - PEV/IVR/MAR/746 - PEV/IVR/FEB/331	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
100. Virginia	Prominent Local	Organizing, mobilizing and	She was involved in financing the	Further investigation with

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
Wambugua	Businessperson-Proprietor of Meta meta Supermarket.	financing violence.	violence and is also accused of evicting Luo tenants from her houses. - PEV/IVR/MAR/746 - PEV/IVR/FEB/331	a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
101. Mr Njuki	Prominent Local Businessperson-proprietor of Njuki Hardware	Organizing, mobilizing and financing violence	He was involved in financing the violence: -PEV/IVR/MAR/746	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
102. Komen	Teacher-Joyland academy	Organizing and participating in violence.	He was involved in organizing the Kalenjin youths towards the violence and was severally seen participating in violence and in particular on 3/1/08 at Elementaita PEV/IVR/MAR/719	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
103. Chepkwony	Teacher -	Organizing and	He was involved in organizing the	Further investigation with

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
	Muririshwa Secondary school	participating in violence.	Kalenjin youths towards the violence and was severally seen participating in violence and in particular on 3/1/08 at Elementaita PEV/IVR/MAR/719	a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
104. Kihara Njoroge (Ngata farm, Kiambogo, Naivasha Constituency)	Local leader	Organizing and participating in violence.	He was reportedly one of the ring leaders during an attack in Ngata farm by Kikuyu raiders PEV/IVR/APRIL/880	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
105. Samson Nderitu (Ngata farm, Kiambogo, Naivasha Constituency)	Local leader	Organizing and participating in violence.	He was reportedly one of the ring leaders during an attack in Ngata farm by Kikuyu raiders PEV/IVR/APRIL/880	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
106. Jonathan Kuria Warothe	Current councilor, Hell's Gate ward.	Organizing and participating in violence	He allegedly convened a meeting at Shamba la Nyama Butchery in Karagita	Further investigation with a view to prosecution for

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
	Previously worked as a junior supervisor spraying section at Nini farm in Naivasha		where a friend of the interviewee, one Solomon attended and the meeting. The meeting was called for all kikuyu workers of Nini flower farm, persons who attended the meeting were told to be prepared for war and fight the Luos and they would be paid by Jonathan and Jane Kihara, the immediate former MP of Naivasha. The meeting was held for three days consecutively PEV/IVR/MAR/739	the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
107. Wasami, Gathuo, Gachia and Wainaina	Workers at Naivasha's Nini flower farm	Incitement and threats to violence	The interviewee alleges that the three who are his co-workers at Nini flower farm arrived on the morning of 31st December 2007 at their place of work and started taunting and threatening non-kikuyus at the work place PEV/IVR/MAR/739	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
108. Mr Ngujiri	A resident of Kitur farm in Naivasha	Organizing and participating in violence	Mentioned as one of the persons who was involved in organizing kikuyu youth in Kitur farm to go and attack kalenjins	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
				code.
109. Wagaitho	A businessman in Naivasha	Incitement to violence	On 30th December 2007, after announcement of elections, he was among the group that went around Nini estate in Naivasha shouting that all non-kikuyus must leave the estate	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.
110. 'Meta meta'	A businessman in Naivasha	Incitement to violence	On 30th December 2007, after announcement of elections, he was among the group that went around Nini estate in Naivasha shouting that all non-kikuyus must leave the estate	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.

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No CENTRAL RIFT				
NAME	BACKGROUND	FINDINGS	SUPPORTING INFORMATION	RECOMMENDATION
111. Dr. Ngige	Owns a residential houses in ..... estate in Naivasha	Incitement to violence	On 30th December 2007, after announcement of elections, he was among the group that went around Nini estate in Naivasha shouting that all non-kikuyus must leave the estate	Further investigation with a view to prosecution for the crimes of incitement, conspiracy to murder, arson and destruction of property contrary to sections 77, 94, 95, 224 and 332 of the Penal code.

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NYANZA				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
1. Shakeel Shabbir 2. Olago Aluoch	MPs for Kisumu XXX and Kisumu Town West respectively	Incitement to violence against members of communities not considered to be indigenous to the area.	It appears that the incitement is in connection with the attack on Ndugu Transport Co. Ref IVR 966	Further investigations necessary, with a view to prosecution. Newspaper reports have already mentioned the tw MPs as having been arrest in connection with incitement
Police Commissioner Maj-Gen Hussein Ali	Police Commissioner	Overall in charge of police operations to contain the violence in Kisumu and environs	Shoot-to-kill orders and the consequent deaths must *prima facie* be attributed to him (Various IVRs)	Further investigations to establish the role, if any, h played, in the giving of the orders, with a view to prosecution for culpable negligence
1. Paul Olando 2. Grace Kaindi 3. Scaver Mbogo 4. Mr. Omwanga	Members of the Nyanza Provincial Security Committee	In charge of on-the-ground operations in Nyanza Province as regards maintenance of law and order	Allegedly gave shoot-to-kill orders against demonstrating youth in Kisumu	Further investigations to establish the following: i. whether such orders were given; ii. whether there was necessity generally for t giving of such orders in all th circumstances

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NYANZA				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
				iii. the situation; whether, in th particular case that resulted i death or injur to civilians, there was excessive use force by the security office concerned. After verification of the foregoing, it is recommended that the members of the Provincial Security Committee be charged with XXXXX, and t particular security officers be charged with murder o attempted murder, as the case may be
1. MP for Nyatike 2. Kanyores, John 3. Opere, Morris	Current MP for Nyatike	1. Hiring of lorry to loot cereals depot (MP only) 2. Funding the violence 3. Looting and rioting		Further investigations. Possible offences: attempt murder, theft

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NYANZA				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
4. Oguda, Fores 5. Oruath, Ogeyo 6. Ogiro, Jared 7. Oyoo, Daniel 8. Osodo, Utturu 9. Otingo, Jones 10. Odinga, Samuel 11. Odinga, Elius		in Nyatike 4. Plotting deaths of Nyatike councilllors		
John Pesa	Current MP, Migori	Inciting local residents against non-Luos	During campaign period, said at Migori Primary School that visitors had taken "our" businesses. That if he won, he would remove the visitors and make Luos own the businesses. Ref IVR 784	Verification of allegations, and further investigations with a view to charging th MP with incitement.
Zebii	DJ at a Resort Club in Migori	Leader in looting and destruction of property	He led the youth in pointing out premises belonging to non-Luos for looting and destruction Ref IVR 784	Further investigation and prosecution for theft, malicious damage to property
Mama Atoti	Business lady in Migori	Leader in looting and destruction of property	Led people who broke into the premises of a mobile phone dealer Ref IVR 784	
Raila Odinga	Prime Minister	Incitement during campaigns	Addressed political meeting in Migori during last days of election campaigns and said "We do not want madoadoa",	Further investigations into this allegation, and

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NYANZA				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
			a phrase which was understood to mean that other communities were unwanted in Migori Ref IVR 784	subsequent possible prosecution
Nyagem	Female Police Officer, Kisumu town	On duty during spate of violence after death of Ainamoi MP Too.	Shot a young man dead around Kibuye Ref IVR 974	Further investigations to establish identity of boy allegedly shot dead, full names of police officer, ar circumstances around the shooting. Thereafter, possible prosecution of th police officer for murder
Chief Inspector Wanyama	OCS, Central Police Station, Kisumu	Participated in looting of property	Ref IVR 1080	Release of the report into investigations carried out the police, with a view to prosecution
Unknown, but identifiable	Police officer	Shot a civilian youth who had gone to view the body of his friend	Ref IVR 771. The shot civilian says that the police officer is known to him	Identification of the police officer by the civilian, and subsequent prosecution fc attempted murder
Dennis	Police officer	Shot civilian youth at Manyatta, Kisumu	Ref IVR 770. Victim says he was shot on left arm by the police officer	Full identification followec by prosecution of the poli officer for attempted murder
Ndegwa	Police officer	Shot civilian at his place of work in Migori	Ref IVR 964	Full identification followec by prosecution of the poli officer for attempted murder
Unknown, but	Administration	Shot demonstrating	Ref IVR 970	Identification of the

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NYANZA				
Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
identifiable	Police officer	civilian in Siaya		Administration Police offic by the civilian, followed b full investigations into circumstances of the shooting, and possible subsequent prosecution fc attempted murder
Kirui	Police officer on duty in Kisumu during protests by the youth	Shot and killed youth at Kondele, Kisumu	Television clip showed that youth shot was not protesting and was shot at point-blank range. It was also clear that police officer was not shooting in self-defence	Police officer already facin murder charges
Raila Odinga	Then presidential candidate, and leader of ODM opposition party, now Prime Minister	Incited anti-ethnic sentiments	Said at a campaign rally in Migori that he did not want 'madoadoa' in Migori, and this was understood to mean that he did want non-Luo communities in the area. Ref: IVR 784	Verification of the allegations, and further investigations with a view charging him with incitement. Investigations should also examine his rc in successfully asking the l not to attack Kisiis "as the are our brothers" in order establish whether this wa out of personal appeal, or due to the existence of a command structure

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Alleged perpetrator by full name	Background of alleged perpetrator	Findings concerning the alleged perpetrator	Supporting information	Recommendation
Raphael Wanjala	Former, MP, Budalangi	A person was killed outside his gate • . Several of his supporters were arrested and charged with various offences including arson, destruction of property in Busia courts	• PEV,PMR,APRIL 016	Follow up to establish the progre of this cases
Chiri Kamanu –		arsonist, stole cows	PEV,IVR,FEB,537	Further investigations needed
Hillary Jirongo		arsonist, stole cows	PEV,IVR,FEB,537	Further investigations needed
Patrick Amukora		arsonist, stole cows .	PEV,IVR,FEB,537	Further investigations needed
Pastor Isaya Nyongesa	Pastor in Likuyani	Hate speech ("Kikuyus out!"	PEV,IVR,MAR,692	
Patrick Sakwe	Councillor, and Mumias Mayor	Incitement	Its alleged that he was behind the text messages which alleged that PNU had rigged elections in Mumias and incited people to burn business that belonged to Kiyuyus PEV, PMR, April 016	We should established through t ministry of information safaricom if id indeed participate

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Police	Police in Busia, (Officers identified as Njoki and Peter Matu) mumias and Kakamega (Outgoing PPO was Peter Kavila) while OCS Malava was a Mr. Wainaina	Shooting and killing peaceful demonstrators	PEV<IVR FEB 117, PEV,IVR, MAR 178, PEV, IVR 807,PEV,IVR,MAR807,PEV,NWP,JAN, 0021, PEV,IVR, MAR 750,PEV,IVR,MAR,800,PEV,ORG,JAN,001,PEV,ORGMAR 035, PEV,PMR,APR, O16	Further investigations are need to establish the circumstanc surrounding the shootings.
Mr. Omusula alias Zamaleck	Proprietor of Zamelck Music stores in Kakamega town	Allegedly paid youths to burn Kikuyu property	Its allegedly that this was done on several days PEV, IVR MAR, 752	Further investigations are need to establish his involvement
Isaiah Nyongesa	Local Pastor in Lugari	Inciting and organizing attacks against Kikuyus	PEV,IVR,MAR 692	Further investigations are need to establish his involvement
COAST REGION				
Alleged perpetrator by full name	Background of alleged perpetrator	Allegations concerning the alleged perpetrator	Supporting information on the allegations	Recommendations
1. OCSs for Chaani, Changamwe, Mishoromoni , Ujamaa, and Shika Adabu	Police at Chaani; Changamwe Mishomoroni and Ujamaa Shika Adabu	The police supported the youths who were raiding the Kikuyu, Kamba and Meru homes and businesses. They kept guard hence aiding and abetting commitment of crime.	The interviewee states that a group of ODM youths raided his business and looted. The Police kept guard over the looters and encouraged them to loot but not to kill. Witness Statements	Further investigation and prosecution of any officers found to have been involved in the aidir and abetting of property looting

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police stations.			PEV/IVR/FEB/27 PEV/IVR/FEB/256 PEV/IVR/FEB/232	
2. Hon Ali Hassan Joho	Current MP for Kisauni Constituency	Allegations of hate speech against the a particular community understood be the Kikuyu PEV/IVR/FEB/277	According to an interviewee at an ODM meeting the MP allegedly said 'the wealth of the country had been stolen by some people from one community' PEV/IVR/FEB/277	
3. Hon. Ramadhan Kajembe	Current Member of Parliament for Changamwe Constituency	Allegations that he hosted a number of people at his home on the day violence erupted PEV/PMR/MAR/018 Allegations that he appeared to "command" the youth that was looting in Changamwe area PEV/IVR/Feb/421 Allegations that he paid lawyers fee to represent persons arrested for incitement PEV/IVR/Feb/205 NB: when interviewed the MP denied any involvement saying that he had played a major role ensuring that the youth including the Bangladesh Youth Group did not get involved in violence PEV/PMR/ MAR/O18	[According to interviewee statements, he had been involved in the violence].	
4. Imams at Bakarani and Kisauni Mosques	Imams at the Bakarani and Kisauni Mosques	Incitement through passing of false messages	The Imams are alleged to have announced at the Bakarani and Kisauni mosques respectively that the Mungiki were coming to Kill Swahili men. PEV/IVR/FEB/233, PEV/PEM/MAY/002 NB: PEV/PMR/MAR/018 Sheik Dor confirmed this allegation but indicated	Further investigation with a view establish the Imams who spread t the crime of incitement to violen and causing tension amongst members of the public

			that the corrective action had subsequently been taken	

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Alleged perpetrator	Biodata of alleged perpetrator	Allegation(s)	Supporting information	Recommendation(s)
1. Mburu Gituya	Businessman	Supplied weapons to Kikuyu raiders in Eldoret town.	KNCHR interview with businesspersons in Langas centre on 3rd March 2008 at Klique Hotel in Eldoret.	Police to Investigate further for possible prosecution for aiding violence contrary to the Penal Code
2. John Nice	Businessman	Supplied weapons to Kikuyu raiders in Eldoret town.	KNCHR interview with businesspersons in Langas centre on 3rd March 2008 at Klique Hotel in Eldoret.	Police to investigate further for possible prosecution for aiding violence contrary to the Penal Code
3. Mr Buba	Businessman and owner of Buba Hardware	Supplied weapons to Kikuyu raiders in Eldoret town.	KNCHR interview with businesspersons in Langas centre on 3rd March 2008 at Klique Hotel in Eldoret.	Police to investigate further for prosecution for the offence of aiding violence contrary to the penal code
4. Name not established	Owner of Kimiti Hardware	Supplied weapons to Kikuyu raiders in Eldoret town.	KNCHR interview with businesspersons in Langas centre on 3rd March 2008 at Klique Hotel in Eldoret.	Police to investigate further for prosecution for the offence of aiding violence contrary to the penal code
5. Peter Mwathi	MP for Limuru constituency	He asked Mungiki to arm themselves to defend the Kikuyu in the Rift Valley in a meeting where alongside other MPS HE addressed IDPs on 19th January 2008	KNCHR interview with a Herbalist from Ndeiya on 8th February 2008 at Kirathimo IDP camp.	Police to investigate further with a view to prosecute on the offence of incitement to violence contrary to the Penal Code
6. Inooro FM	Radio station which broadcasts in the Kikuyu language	Disseminated incitement via call-in programmes	Report by Kenya in Crisis Africa Report N°TK – 21 February 2008 about Embargoed Draft for Media in Kenya. On23rd January 2008, one caller by the name Mama Ciiru typically sobbed on air saying "how many people have to die before we can say enough is	Police to investigate further. Ministry of Information to review media laws on call-in programmes

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CENTRAL REGION				
Alleged perpetrator	Biodata of alleged perpetrator	Allegation(s)	Supporting information	Recommendation(s)
			enough; our people will be exterminated"	
7. Kameme FM	Radio station broadcasting in the Kikuyu language	Perpetration of hate speech	IRIN news bulletin documentary of 22nd January 2008 concerning use of hate speech and derogatory music by vernacular broadcasting stations. Reference to "beasts from the west' in reference to Raila were made.	Police to investigate further
8. Muiga Njoroge	Musician/artist	Perpetration of hate speech	IRIN news bulletin documentary of 22nd January 2008 concerning use of hate speech and derogatory music by vernacular broadcasting stations. The musician composed derogatory song insinuating that Raila Odinga is a murderer and power hungry. He made reference to Luo people as being lazy. Played on several local language stations with following in Central Province	Police to investigate further these allegations of incitement to hate
9. Njenga Karume	Former MP for Kiambaa	He was to provide money to aid the evictions. The money was to be received by 29th January 2008.	KNCHR interviwee with a construction worker in Kikuyu Police Station on 6	police to investigate further these allegations

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CENTRAL REGION				
Alleged perpetrator	Biodata of alleged perpetrator	Allegation(s)	Supporting information	Recommendation(s)
			February 2008; KNCHR interview with an informant in Nairobi on 24th April 2008	
10. George Thuo	MP, Juja			
11. Uhuru Kenyatta, Mary Wambui, Kabando wa Kabando, Stanley Githunguri	Central Province politicians	On diverse dates during January, February and March 2008 met at KICC, Landmark hotel, Marble Arch hotel to plan retaliatory attacks in the Rift Valley	KNCHR interview with an informant on 24 April 2008	Police to investigate further these allegations

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