

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

**ON THE BRINK OF THE PRECIPICE: A HUMAN RIGHTS ACCOUNT OF KENYA'S POST-2007
ELECTION VIOLENCE**

August 2008

TABLE OF CONTENTS

ACRONYMS	3
PREFACE.....	4
ACKNOWLEDGEMENTS.....	5
MAPS.....	
EXECUTIVE SUMMARY	6
KEY FINDINGS	7
RECOMMENDATIONS	10
CHAPTER ONE: INTRODUCTION	12
CHAPTER TWO: TRIGGERS, FUELERS AND ROOT CAUSES OF THE VIOLENCE	20
CHAPTER THREE: PROTESTS, VIOLENCE AND DIALOGUE	31
CHAPTER FOUR: THEATRES OF VIOLENCE	37
NAIROBI REGION	37
THE SOUTH RIFT REGION.....	49
NORTH RIFT REGION.....	59
CENTRAL RIFT REGION.....	70
NYANZA REGION.....	86
WESTERN REGION	97
COAST REGION	102
CENTRAL REGION.....	109
CHAPTER FIVE: FINDINGS ON NATIONAL TRENDS AND PATTERNS OF THE VIOLENCE	116
CHAPTER SIX: FINDINGS ON RESPONSIBILITY UNDER DOMESTIC AND INTERNATIONAL CRIMINAL LAW FRAMEWORKS.....	126
CHAPTER SEVEN: IMPACT OF THE VIOLENCE ON KENYA’S OBLIGATIONS	144
CHAPTER EIGHT: REMOVING THE SHIELD OF IMPUNITY.....	152
BACK FROM THE PRECIPICE? A POSTSCRIPT.....	156

ACRONYMS

ACHPR	–	African Charter on Human and Peoples Rights
AP	–	Administration Police
AU	–	African Union
CIPEV	–	Commission of Inquiry into Post-Election Violence
CRC	–	Convention on the Rights of the Child
CSO	–	Civil Society Organisation
ECK	–	Electoral Commission of Kenya
FBO	–	Faith-Based Organisation
GEMA	–	Gikuyu, Embu, Meru and Akamba
GSU	–	General Service Unit
ICC	-	International Criminal Court
ICCPR	–	International Covenant on Civil and Political Rights
ICERD	–	International Convention on Elimination of Racial Discrimination
ICESCR	–	International Covenant on Economic, Social and Cultural Rights
IMLU	–	Independent Medical Legal Unit
KNCHR	–	Kenya National Commission on Human Rights
KPTJ	–	Kenyans for Peace with Truth and Justice
NARC	–	National Rainbow Coalition
NPWJ	–	No Peace Without Justice
NSIS	–	National Security Intelligence Service
ODM (K)	–	Orange Democratic Movement - Kenya
ODM	–	Orange Democratic Movement
PNU	–	Party of National Unity
SLDF	–	Sabaot Land Defence Force
TJRC	–	Truth, Justice and Reconciliation Commission
UDHR	–	Universal Declaration of Human Rights
UN	–	United Nations

PREFACE

The Kenya National Commission on Human Rights (KNCHR), pursuant to Section 16 of the Kenya National Commission on Human Rights Act, 2002, investigated 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, which provides that the Commission may at any time submit special reports to the President and to the 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, 7 August 2008

Florence Simbiri-Jaoko, Chairperson

Hassan Omar Hassan, Vice Chair

Wambui Kimathi, Commissioner

Winfred Lichuma, Commissioner

Lawrence Mute, Commissioner

Samuel Torerei, Commissioner

Fatuma Ibrahim, Commissioner

Fatuma Dullo, Commissioner

Mburu Gitu, Commission Secretary

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-operation of No Peace Without Justice (NPWJ), an international non-profit organisation that supported the conceptualisation 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 backing of many development partners who supported this work through their Nairobi offices.

Lastly, we acknowledge the participation and contribution of Commissioners and staff.

EXECUTIVE SUMMARY

TERMS OF REFERENCE

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.

Following the post-election violence in Kenya after the 2007 General Election, 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.

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. The second aim of the investigation was to analyse 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.

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

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 promotion and protection of human rights – Section 16(g).

The outputs of the investigation and documentation were:

- a. Recommendations on accountability measures to effectively redress these violations and to deter future violations;
- b. Analysis of the triggers of the post-election violence;
- c. Comprehensive documentation of the events that took place and mapping of the patterns of violence wherever it occurred;
- d. Names of perpetrators (state and non-state) alleged to have caused the violence; and
- e. Policy, legal and other recommendations.

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-election violence

1. The violence was widespread. It erupted immediately (almost within minutes) after the announcement of the presidential election results on 30 December 2007. This immediacy was apparent in most of the theatres of violence – Nairobi, Rift Valley, Coast and Western regions. The violence eventually impacted up to 136 constituencies in six of Kenya’s eight provinces.
2. Forcible evictions and mass displacements of people not indigenous to particular regions took place. About 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.
3. The ideology and infrastructure of the post-election violence predated the 2007 General Elections. The character of the post-election violence was akin to election-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.
4. 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 oath-taking 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.
5. The violence was characterised by widespread or 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 many other 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.
6. 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.
7. The violence was largely instigated by politicians throughout the campaign period and during the violence itself via the use of incitement to hatred.

8. 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 camps for internally displaced persons (IDPs).

9. A number of egregious or gross human rights violations were perpetrated during the post-election 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, Police shootings in places including Kisumu and Kericho, and the rape of women and girls.

Findings on the conduct of state agencies

1. The Government's response to the post-election 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.

2. Throughout the period of the post-election violence, there were multiple instances where Kenya's security forces (including the Regular Police, Administration Police [AP] and General Service Unit [GSU]) 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.

3. 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.

4. 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 GSU officer in Nairobi who negotiated with demonstrators not to cause violence. Further, police stations, AP posts and chiefs' camps were one of the first ports of call for persons fleeing the violence. The Kenyan army also participated in the ferrying of IDPs from trouble spots to safer parts of the country.

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

6. The Government provided or facilitated the provision of some (although not adequate) relief support to IDPs, including food and tents. It also endeavoured to put infrastructure to enable displaced children to continue schooling.

Findings on the role of non-state agencies

1. The media, and particularly local language media, influenced or facilitated the influencing of communities to hate or to be violent 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.

2. 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, some 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.
3. 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

Many acts constituting crimes under Kenyan domestic law may have been committed during the post-election 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 offences, incitement to violence, illegal oath-taking, illegal possession of firearms, and sexual crimes such as rape.

Findings on whether the crime of genocide was committed

Kenya presently exhibits characteristics which are prerequisites for the commission of the crime of genocide. One such feature is the dehumanisation 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-election violence. Another characteristic present in Kenya is the impunity subsequent to which 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

Crimes against humanity as defined under international customary law took place. Acts such as murder, deportation or forcible transfer of population; and 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 or widespread, be in the knowledge of the victims and be pursuant to state or organisational policy. We have determined that the listed acts were not performed randomly and hence they were part of a policy. We have been able to infer that policy from the extent to which the violence was systematic, i.e. planned and organised.

Findings in respect of Kenya’s human rights obligations

1. The post-election 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.

2. In view of the above, 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 on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on Elimination of Racial Discrimination (ICERD), Convention on the Rights of the Child (CRC) and Convention on Elimination of Discrimination Against Women (CEDAW).

Findings on governance issues

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

1. 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.
2. 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.
3. The crimes allegedly committed by members of the security forces 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.
4. The Minister in the Office of the President responsible for security should fulfil 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 without further delay.
5. The Chief Justice should establish administratively special courts in theatres of violence where many crimes may have been committed to expedite the determination of post-election violence related criminal cases.

In respect of international criminal liability

6. 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

7. The Government should speed up 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.

8. The Government in partnership with Civil Society Organisations should facilitate efforts to heal the country by taking deliberate steps towards enhancing coexistence. Community based systems should be established to spearhead reconciliation.
9. 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.
10. Recommendations arising from the Commissions established under the Kenya National Dialogue and Reconciliation initiative, including the Commission of Inquiry on Post-election Violence (CIPEV), should be implemented expeditiously.
11. The constitutional review process should be finalised expeditiously as a basis for enabling the resolution of the inequalities which have been such a fundamental source of conflict in the country.
12. The Communications Commission of Kenya should be empowered to monitor the content of local language as well as other media.
13. Legislation should be passed by Parliament barring from appointive or elective offices leaders who are found liable for perpetration of gross human rights violations.
14. The Ministry of Justice, National Cohesion and Constitutional affairs and the Ministry of education should revitalise 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.
15. A more concerted and sustained program of human rights education should be undertaken by public institutions, CSOs and FBOs to enable Kenyans to have better regard for humanity.
16. The Ministry of Special Programmes should effect and communicate to Kenyans a time-bound programme 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.
17. 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

Structure of the report

1. Chapter One explains the background to the National Commission's post-election investigations project, the structure of the report, and the methodology used in the investigation. 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. Chapter Six deals with the responsibility of those who planned, organised, financed and executed the violence under domestic and international law. Chapter Seven discusses the applicable human rights standards and their implications for the violence. Chapter Eight makes conclusions and recommendations.

Background

2. This chapter provides an overview of why the 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 the Commission planned for this investigation, where the data was collected from as well as how it collected, collated and analysed that information.
3. On 30 December 2007, the Electoral Commission of Kenya (ECK) declared Mwai Kibaki of the PNU to have been re-elected as the President of Kenya in closely contested presidential elections against his main rival, Raila Odinga, of the 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 Observer Group² 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 doubt on the credibility of the presidential tallies.
4. 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 at least 1,162 people dead and about 350,000 others displaced from their homes in just over a month.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.

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 Commonwealth 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

Justification

5. For years, Kenya had come to be regarded by the rest of the world as perhaps the 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 on 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? 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 KNCHR post-election documentation, investigations and documentation activities sought to address.
6. 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 respect of the rule of law. Provision of security is a fundamental human rights issue and its realization is necessary for the enjoyment of practically every other right. Chapter 5 of the Constitution of Kenya, among other things, provides that every Kenyan is entitled to the right to life, liberty, security of the person and protection of the law. Article 6 (1) of the 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 or her life.
7. Kenya has signed and ratified international criminal law instruments including the International Criminal Law (ICC) 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. As a country, therefore, Kenya has an obligation to prevent and respond to human rights violations and hold those responsible for such violations accountable.
8. The KNCHR was established in 2003 pursuant to the KNCHR Act which was legislated by Parliament in 2002. The Commission, among other things, advises the Government 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. 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". This was the context and framework within which the commission undertook this investigation.

Objectives and Outputs

9. The objectives of the investigations and documentation were:
 - a. To investigate, document, map and analyze the serious human rights violations that took place surrounding the elections.

- b. 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:
 - i. Identifying the obligations breached and recommending appropriate remedies, both individual and collective, for victims (including civil and criminal remedies);
 - ii. Identifying failures of the state in the immediate context of the violence and recommending measures to prevent future failures;
 - iii. Identifying, within a human rights framework, the underlying causes of the violence and recommending the implementation of measures to address them; and
 - iv. Recommending accountability measures to effectively redress these violations and to deter future violations.
 - c. To analyse 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 the relevant international and Kenyan authorities.
 - d. To make any other relevant (including political) analyses whose recommendations may enable Kenya to:
 - i. Undertake a thorough truth, justice and reconciliation process; and
 - ii. Employ any other innovative solutions to redress these human rights violations.
10. The outputs of the investigation and documentation were:
- a. Recommendations on accountability measures to effectively redress these violations and to deter future violations;
 - b. Analysis of the triggers of the post-election violence;
 - c. Comprehensive documentation of the events that took place and mapping of the patterns of violence wherever it occurred;
 - d. Names of perpetrators (state and non-state) alleged to have caused the violence; and
 - e. Policy, legal and other recommendations.

Methodology

11. Between the months of February to June 2008, KNCHR teams comprising commissioners and staff undertook over 36 missions to more than 136 constituencies 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.⁵ This information was complemented by hundreds of secondary data, including media stories, reports from organisations such as the Kenya Red Cross and internet materials among other sources that have been gathered from a variety of credible sources in Kenya and abroad.
12. 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

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.

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 (NPWJ), 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.

13. Because of its commitment to providing this accountability service for the people of Kenya, the KNCHR prioritised these investigations within the general work plan 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 priority⁶. 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 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 database⁷. It is from this database that our analysts have pieced together the full story of what happened during the post-election violence.
14. 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.

Information gathering

15. 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 was gathered from the men and women of Kenya of all ethnicities and all walks of life, including farmers, IDPs, 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 around 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

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.

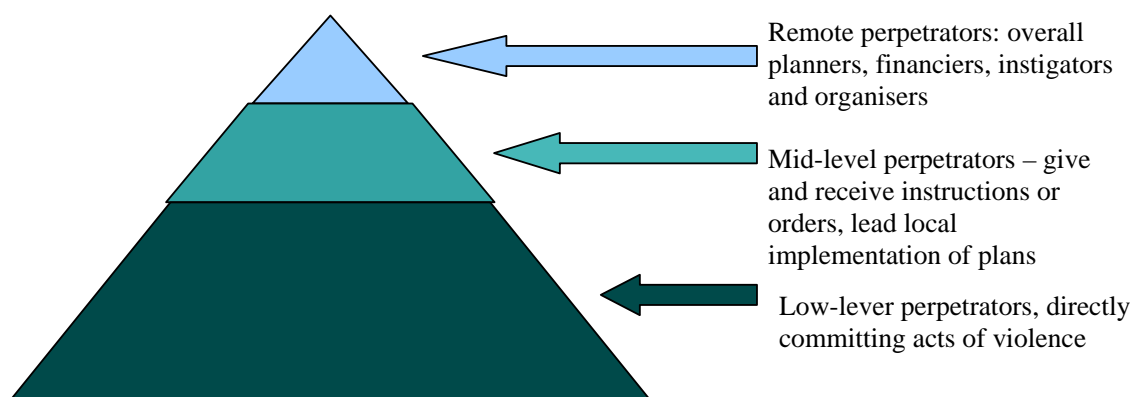
⁸ Given that this was election-related violence, the KNCHR sought to speak with all Members of Parliament and consequently wrote a letter on April 15, 2008, inviting all MPs to share their understanding of what happened following the December elections.

of the people of Kenya in establishing a record of what happened and recommending how it might be prevented in the future.

16. The initial missions focused on collecting information from interviewees in the various IDPs camps, while the subsequent missions focused on collecting information from those mentioned (wherever this was possible), as well as information from sources that could corroborate or clarify what had already been collected. 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 organised, who the perpetrators were, where the events happened, how the violence happened, as well as to reveal egregious incidents of human rights violations.
17. At a press briefing of 25 January 2008, we 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.
18. We 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.
19. As a national human rights body, our 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 caused by the violence. We, therefore, made it part of our 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, we were able to help orphaned children obtain placement in schools; provide a link between people with psychological trauma with institutions that could provide specialised and expert assistance; and ensured that the humanitarian needs of people in IDP camps were brought to the attention of those organisations and public bodies that specialise in meeting those needs.⁹
20. Throughout the period of this work, we 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 and security of our interviewees and the information they gave us.

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

21. The triangle of responsibility: Progress towards identification of those who may bear the greatest responsibility for the violations



22. 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 our 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.

23. We 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 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:

- i. Level of information and detail describing the role the alleged person may have played
- ii. Existence of corroborating/verifying information on the person (including confessions)
- iii. Believability and credibility of the allegations
- iv. Subjecting ‘I heard’ type of allegations to criteria in (a), (b) and (c) above before admission
- v. Consideration of the totality of information available, including that obtained through interviews with alleged perpetrators;
- vi. Exclusion of outrageous, preposterous and baseless information; and
- vii. 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

24. 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.
25. 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, most of who were interacting with such reports for the first time. This was meant to give a fresh and critical relook 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.
26. 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 or 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.
27. 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.
28. The ensuing report is the end product of this process which details what happened during the post-election violence and proffers an 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

29. We 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 our staff, and through the development of a set of "frequently asked questions", which enabled us to answer the many questions that people had about our work and its purpose.
30. 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 instances of outright hostility and refusal to cooperate with our interviewers while in other

cases 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 the 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.

31. Be that 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 analysed.

CHAPTER TWO

TRIGGERS, FUELERS, AND ROOT CAUSES OF POST-ELECTION VIOLENCE

An overview

32. 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 understand 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 in so far as they can be said to put the 2007 post-election violence in perspective.
33. 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 characterised by unprecedented political mobilisation. However, hardly anyone anticipated that among such dynamics would be the generation of a real 'civil war dynamic'¹² that 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

34. 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 predating the 2007 elections.¹³

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 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 emphasised 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: Organised 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).

35. While the management of the elections and other events surrounding the process were the triggers for the violence, 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 localised state-society and community contexts interacted to generate the conditions germane to the crisis.

Historical Injustices and Land Grievances

36. 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.

37. 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 ODM. 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.

38. 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 ODM ran an effective campaign painting the Kibaki government as removed from the daily realities of the 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.

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).

39. 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

40. Underlying the polarisation in Kenyan politics are the modes of political organisation in Kenya. While it is important to recognise some limited shifts in trends, ethnic-based political organisation 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 mobilise ethnic constituencies continued to be important to politicians seeking the country’s leadership. When constitutional changes allowed for multiparty politics in the 1990s, the ethnicisation 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 clientelist nature of politics meant that many Kenyans have come to view the ascendancy of “one of their own” ethnic kin to the presidency as the best assurance of “benefiting” as individuals and as communities.

Contending Citizenship Narratives

41. Related to the politics of “ethnic mobilisation” and the clientelism 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 recognises 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-racialised the sphere of civic rights, ethnic citizenship-and more specifically, clan membership- remained the only means the poor people could access land.¹⁹
42. 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.

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 President Daniel Arap Moi.

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

43. In Rift Valley for instance, the failure by the Kikuyu, Kisii, Luo, Luhya 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 ODM, that were the target of political violence and yet again they were 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

44. 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 one of the epicentres of the most recent violence.

45. Following the clamor for the restoration of multiparty politics in early 1990s, violence broke out in the Rift Valley Province targeting the Luo, Kikuyu, Luhya 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

46. 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.

47. 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.

²⁰ See generally, National Christian Council of Kenya [NCCCK], *The Cursed Arrow: A Report on Organised 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).

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).

48. 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
49. 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 an outlawed group, the Sabaot Land Defence Force (SLDF) staging attacks on members 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
50. Moreover, in the capital Nairobi as well as in neighbouring Central Province, since 2006, the outlawed Mungiki group had been engaged in violent killings that seriously challenged the state’s assumed monopoly over violence.²⁹ As in the case of the other organised gangs there was evidence that politics was wrapped up in the activities of the group.
51. 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.³⁰

Collapse of the NARC Coalition and Stalled Constitutional Reforms

52. 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 comprehensive reform of the Kenyan constitution to ensure a balance between the various arms of the government. The 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 the Liberal Democratic Party group of the Coalition 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.
53. When the NARC coalition effectively collapsed in 2005 constitutional reforms was one of the casualties. The defeat of the Kibaki-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 ODM of Raila Odinga focused on capturing political power.³¹

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 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 organisation.

³⁰ “Mt Elgon: Michuki Responds to Critics,” *Kenya Times*, April 10, 2007.

³¹ The No vote won by 58.12 percent against 41.88 percent for the Yes vote. Source: Electoral Commission of Kenya

The collapse of the coalition and the referendum campaign also set the stage for the kind of ethnic polarization that was to characterise the 2007 campaigns. In a sense, therefore, the seeds for the ethnic stereotyping and mobilisation that gave birth to post-election violence were sown way back in 2005.

Electoral Commission and Administration of Elections

54. 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 candidates. 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, KANU, had already secured the monopoly for political power through a constitutional amendment in 1982 that made it the sole political party.
55. 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 being physically prevented from presenting their nomination papers.³² 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 (KBC). In addition, the Electoral Commission was made up of presidential appointees whose loyalty to the incumbent was never in doubt.
56. 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.
57. The Electoral Commission was to generally acquit itself well in the 2002 General Elections that saw the retirement of 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 its reputation as a credible and independent electoral referee in Kenya.
58. 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.³³

³² On the 1992 General Elections see *The Multi Party General Elections in Kenya: The Report of the National Election Monitoring Unit (NEMU)* (Nairobi: 1993).

³³ *The Standard*, January 9, 2007.

59. 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. Therefore, 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

60. When the dispute over the elections erupted, the ODM leadership was categorical that it would not petition the matter in the courts. In ODM's view, the judiciary was not independent and would very likely 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 criticised this a la carte approach by the ODM as subversive to the rule of law.³⁴ 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.³⁵ 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 and Justice A. J. Couldrey who ruled that a petition against the election of President Moi had been properly filed had their contracts terminated.³⁶

61. 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.³⁷ There have also been allegations that some judges viewed as pro-Kibaki 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 end of the five years electoral terms for MPs. 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.

62. 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.

³⁴ See for instance, Africa Policy Institute, "Breaking Kenya's Impasse: Courts or Chaos?" *Africa Policy Brief No. 1* January 2008.

³⁵ See generally Makau Mutua, "Justice under Siege: The Rule of Law and Judicial Subservience in Kenya", *Human Rights Quarterly*, No. 96, 2001.

³⁶ Justice Couldrey's contract was not renewed in 1993 while Justice Torgbor's was terminated in 1994.

³⁷ 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.

Divisive Campaigns, Fuelling Divisions and Triggering Events

63. Tensions that had started building up during the campaigns were heightened on the 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.³⁸ 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 chairman Samuel Kivuitu's statements, that he could not reach some of his returning officers and his speculation that they probably were "cooking results" irreparably damaged any confidence left in those who feared rigging may have taken place.
64. 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 30 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, KBC, 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 after that. A few hours after that, in a televised press conference, the ODM leadership rejected the results and promised the country that they were poised to form a parallel government and install Raila Odinga as the "people's president".³⁹ The message from the leadership in Nairobi hardly gave confidence to their supporters that the country was one.
65. 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 polarisation, with anti-Majimbo sounding comments by John Cardinal Njue of the Catholic Church leaving the impression that that Church supported PNU. Similarly, the decision by the ODM to enter into a Memorandum of Understanding (MOU) with National Muslim Leaders' Forum (NAMLEF) thrust religion into the centre stage of politics. A fake MoU between Muslims and Raila was widely circulated in press reports and on the Internet, leading some Christians to lose faith in him. The close cooperation between the Kibaki government and the United States in counter-terrorism 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. Thus the divisive campaigns polarised the nation, and the institutions expected to provide leadership did not present themselves as impartial entities.

³⁸ 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.

³⁹ This was communicated in a December 30 message read by William Ntimama at Orange House (ODM's Headquarters).

66. 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, Luhya, Maasai and coastal communities- around a version of federalism (*majimbo*) that gave a measure of autonomy to ethnic regions.⁴⁰ 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.”⁴¹ Consequently, calls for *majimbo* in an already polarised context added to the tensions.
67. 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.
68. Of particular concern were, however, the ethnicised 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 analysts and commentators merely by reference to their ethnicity.
69. While Kenya’s voting patterns especially since 1992 have demonstrated that ethnicity is an important predictor of electoral outcomes⁴², ethnicity is hardly ever a cause of conflict, but rather a way in which people in conflict label their grievances, target the perceived ‘enemy’, mobilise 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 mobilised to achieve.

⁴⁰ 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),

⁴¹ Human Rights Watch, *Ballots to Bullets (2008)* 16.

⁴² 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.

The Media: Fanning the glowing embers

“The profession (journalism) is seriously corrupt and has lost its professionalism” - Frank Ojiambo of the Editors Guild⁴³

70. The Kenyan media are reputed as the most sophisticated in the region and have over the past 10 years grown tremendously in terms of ownership diversity and coverage.⁴⁴ The media have over the years played a critically important role in the democratisation process, especially in relation to exposing corruption and checking government excesses as well as providing a useful platform for opposition and Civil Society Organisations (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.⁴⁵ 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.”⁴⁶
71. 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, 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 characterised by misinformation.”⁴⁷ 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”.⁴⁸
72. 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 the Luo community, who do not circumcise, as unfit for leadership; and ODM aligned communities such as the Luo and Kalenjin projected the Kikuyu as assuming always the right to lead the country, as well as being arrogant, grabbers, and corrupt. While the media on some occasions criticised 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

⁴³ Frank Ojiambo in his opening speech at a media practitioners Round Table in Nairobi organised by, among others, the Editors' Guild of Kenya, Article 19, International Media Support (IMS) and Reporters Without Borders, February 2008

⁴⁴ 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.

⁴⁵ Some of these talk shows are hosted by comedians and other individuals with no training in journalism and the ethics of journalism.

⁴⁶ BBC World Service Trust Policy Briefing No 1, April 2008 :The Kenyan Election and its Aftermath: The Role of Media and Communication

⁴⁷ Ibid, pp 169 Cheeseman, Nic: The Kenya Elections 2007: An Introduction

⁴⁸ David Makali, Director Media Institute.

closing days of the election, the media covered the goings-on as they would an electrifying football match.

73. 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,⁴⁹ Steadman Associates helped animate a determination by voters that saw an unprecedented turnout throughout the largely peaceful polling day on December 27. 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 29 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 29 set the country on the delicate path it had to walk in the months ahead.

Conclusion

74. 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 Election that lit the match and set the fire of political violence that engulfed the country.

⁴⁹ 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.

CHAPTER THREE

PROTESTS, VIOLENCE AND DIALOGUE

75. 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.
76. The fiasco over the presidential results had been preceded by rumours and claims that rigging was taking place, that AP officers had been killed in several places, that more APs had been deployed across the country, and that ballot boxes had been found stuffed in favour of presidential candidates. 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. As seen in Chapter Two, 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.
77. 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 scrutinise 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.
78. 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.

79. 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. Although the Ministry of Information responded by banning live broadcast transmissions, the information gap led to rumours circulated through SMS.
80. Arguing that it had in fact won the largest number of seats in the parliamentary election, ODM refused to recognise Kibaki's victory and called for country wide demonstrations to pressurise the president to agree to a re-run. On 31 December 2007, ODM announced their intention to hold a rally to swear in Raila Odinga as the 'people's president'. By December 31, violent streets protests and looting had broken out in many towns around the country as well as the countryside. 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.
81. Public outrage against the violence and calls for a peaceful resolution of the disputed election mounted with the killing of 35⁵⁰ perceived PNU supporters in an arson attack on a church in Eldoret on the eve of 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".⁵¹
82. 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 Fraser, 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 Fraser, Kibaki and Odinga appeared to soften their position agreeing in principle for mediation to the crisis.
83. 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.⁵² 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 to bring Raila Odinga and Mwai Kibaki to the first face-to-face meeting since

⁵⁰ KNCHR interview on April 4, 2008.

⁵¹ "EU Observes Condemn Kenyan Election and Call for Investigations," Guardian, January 2, 2008.

⁵² "Tough Task for Kenya Diplomacy," BBC, January 9, 2008

the onset of the crisis and to secure a pledge from both to accept the mediation by a panel of prominent African leaders chaired by former UN Secretary-General Kofi Annan.

84. 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.
85. On 24 January 2008, there were reports of members of the *Mungiki* gang mobilising for reprisal attacks in Nakuru and Naivasha. In Naivasha town, 19 members of the Luo community died in an arson attack allegedly caused by *Mungiki*. The army was deployed for the first time in Nakuru and Naivasha.
86. 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, 2008, outside his house in Nairobi provoked even more violence in parts of Nairobi and the Rift Valley.
87. 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.
88. 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 the 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.
89. 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 the 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.

90. 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

91. 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 organisations, 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.

92. 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.

93. International NGOs also added to the international attention on the violence. In February, the International Crisis Group released a report on the Kenyan crisis 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.

94. 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

95. 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.⁵³

⁵³ “Kenya’s Kibaki Open to Coalition: Tutu,” Reuters, January 4, 2008.

96. The Tutu appeal for peace was echoed by the head of the Roman Catholic Church, Pope Benedict who in a letter to the Kenya Episcopal Conference called for “an immediate end to acts of violence and fratricidal conflict.” 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.”⁵⁴
97. The following day, US Assistant Secretary of State, Jendayi Fraser arrived in Nairobi to press the political leaders to open the doors for mediation. Adding to the diplomatic presence, four former presidents, Ketumile Masire of Botswana, Joachim Chissano of Mozambique, 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 Ghanaian 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.⁵⁵ 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 Mozambique and South African first lady.
98. 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.⁵⁶ 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..⁵⁷
99. 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 affected 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 Fraser described 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.

⁵⁴ “U.N. rights investigators condemn Kenya violence,” Reuters, January 4, 2008.

⁵⁵ “Kufuor to go to Kenya for Crisis Talks,” Reuters, January 5, 2008.

⁵⁶ “Rwanda suggests military option for Kenya crisis,” Reuters, January 30, 2008.

⁵⁷ “Africa Union Chief Warns of a Possible Genocide in Kenya,” VOA, January 27, 2008.

100. 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.⁵⁸ 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 organised gangs. The Council also asked the Kenyan leaders to cooperate with the UN human rights specialists in their assessment missions.⁵⁹
101. 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.
102. Nevertheless, agreement on the details remained elusive for weeks with ODM and PNU accusing each other of brinkmanship. 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.⁶⁰ On its part, the United States kept up its diplomatic engagement with Secretary of State Condoleezza 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.⁶¹ The following day President George Bush on a visit to Rwanda said that the world needed to pay attention to warning signs in the Kenyan crisis to avert a Rwanda-style genocide.⁶² 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.⁶³
103. 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.

⁵⁸ "UN chief calls on Kenya rivals to stop violence," AFP, February 1, 2008

⁵⁹ UN Security Council Presidential Statement, S/PRST/2008/4

⁶⁰ "As talks break down, army is Kenya's best hope," Guardian, February 27, 2008.

⁶¹ "Rice in Kenya for Crisis Talks," AFP, February 18, 2008.

⁶² "Bush warns leaders on genocide," Kenya Today, 19. Feb. 2008

⁶³ "Kenya: EU Warns of Sanctions If Talks Fail," East African Standard, February 15, 2008.

CHAPTER FOUR

THEATRES OF VIOLENCE

104. 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-election violence which cumulatively constitute the national story. At issue were Nairobi, the South Rift, Central Rift, Nyanza, Western and Coast regions. This chapter tells the individual stories of each of the regions.

NAIROBI REGION

INTRODUCTION

105. 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.

106. Nairobi has always been the hotbed of political activity in Kenya. In the multi-party elections of 1992 and 1997, 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 characterised by violence managed around organised gangs such as the notorious *Jeshi la Mzee* which caused mayhem during the 1992 and 1997 elections, *Jeshi la Mwenje*, *Siafu*, *Mungiki*, *Bukhungu*, *Jeshi la Darajani*, and *Taliban*.

107. Of the approximately four million people living in the city, over two million live in informal settlements in overcrowded and overstressed environments. For instance, one out of every five Nairobians lives in Kibera one of the most crowded places in Africa with a population density of 3,000 people per hectare⁶⁴. Other settlements with large populations include Mathare and Korogocho in Kasarani, Dandora and in Huruma in Embakasi, Kangemi in Westlands, and Mukuru in Lang'ata Constituency.

108. Each of these areas has great significance to the politics of Nairobi area. The ethnic dynamics in the city constituencies play out 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 Lang'ata 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 balkanisation has been used for electoral and political mobilisation.

⁶⁴ <http://affordablehousinginstitute.org>

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

110.		111. MALE	112. FEMALE	113. TOTAL
114.	MAKADARA	115. 80,329	116. 52,301	117. 132,630
118.	KAMUKUNJI	119. 76,380	120. 42,635	121. 119,015
122.	STAREHE	123. 97,922	124. 60,164	125. 158,086
126.	LANGATA	127. 100,396	128. 57,207	129. 157,603
130.	DAGORETTI	131. 68,166	132. 52,661	133. 120,827
134.	WESTLANDS	135. 96,065	136. 57,955	137. 154,,020
138.	KASARANI	139. 106408	140. 76621	141. 183,029
142.	EMBAKASI	143. 143,554	144. 106,257	145. 249,811
146.		147. 769,220	148. 505,801	149. 1,275,021

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

150. 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).

151. 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%.

152. As is the case in the rest of the country, the political inclinations of the vast majority of residents are strongly influenced by ethnicity. PNU was perceived as having the support of people from or whose origins are from Central Kenya or the Mt Kenya region. ODM had the support of people whose origins can be traced to Nyanza, Western, Rift Valley and Coast provinces. Consequently, the election campaigns were extremely competitive and tense.

PATTERNS OF VIOLATIONS

153. 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 27 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. Indications are that there were a number of violent acts during the counting and tallying of the votes in most Nairobi constituencies' tallying centres. Such acts of violence were recorded in Starehe constituency's tallying centre, Nairobi polytechnic hall, Kamukunji⁶⁵ 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.

154. 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 28 and the 29 of December as the presidential results were awaited thus raising anxiety among the Nairobians⁶⁶.

⁶⁵ *The People Daily* of 29 December 2007, Nairobi

⁶⁶ KNCHR interview with a female interviewee from Dandora on 12 February 2008

KNCHR interview with an interviewee at Jamhuri park on 7 February 2008

155. It was not however until the announcement of presidential results that widespread and more severe and methodical violence occurred. On the night of the 30 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 presidential candidate Raila Odinga as the Peoples President.
156. During the month of January 2008 and early part of February 2008, the entire city experienced incidents of violence including in the city centre. Similar or worse violence also occurred following the death of Mellitus Mugabe Were (then MP for Embakasi Constituency) who was shot dead in the early hours of 29 January 2008.
157. 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.⁶⁷

Killings, Forced Circumcision and Physical attacks

158. The violence saw a great deal of death and bloodshed in the informal settlements of Nairobi. These illegal organised groups armed with, clubs, machetes, stones and other crude weapons barricaded roads and violently attacked those they perceived to have voted for rival candidates.
159. Between 27 December 2007 and 30 January 2008, City Hospitals and other medical centers treated many cases of injuries caused by post-election violence⁶⁸. Close to 50 people are estimated to have been killed the night presidential results were announced in Kibera alone⁶⁹.
160. Forcible circumcision was one particular form of violence visited on male members of the 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 themThat night I personally witnessed the members of this group led by their commander forcefully and crudely cut the foreskins of eight male adults, mainly the Luo community. 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”.⁷⁰

161. The forced circumcision was also particularly atrocious. Some of the victims are reported to have bled to death.⁷¹

⁶⁷ See also <http://libraryfes.de/pdf-files/bueros/kenia/01399.pdf> accessed on 19 July 2008.

⁶⁸ Report from Masaba Hospital, Nairobi on 8 February 2008

⁶⁹ International Crisis Group - Kenya in Crisis

⁷⁰ KNCHR interview with a male resident of Kariobangi South on 30 April 2008 at Nairobi Central Business district

⁷¹ Report by Crisis Group Africa dated 21 February 2008 and KNCHR interview with a resident of Kariobangi South on 30 April 2008 at Nairobi Central Business District.

162. 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 forcibly circumcised during fighting at Kiamaiko in Nairobi on January 1st 08, and eight Luo men who had their genitals cut off on the 21st of January 2008⁷². 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.⁷³
163. 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

164. 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 us that the youth took advantage of the situation to loot.
165. In virtually all the areas affected by the violence, residential and commercial houses/properties 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.⁷⁴
166. In the midst of squalor in Nairobi’s informal settlements, there are thousands of thriving micro and small enterprises. While other establishments including churches were not spared, these bore the brunt of the violence.
167. The worst of the looting and chaos went on from the 31 December 2007 to 2 January 2008. It started dying down on the 6 January 2008.⁷⁵
168. In Lang’ata 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.
169. 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.⁷⁶

⁷² *Daily Nation* article dated 3 January 2008 by Patrick Githinji, Nairobi

⁷³ KNCHR interview with a resident of Kariobangi South on 30 April 2008 at Nairobi Central Business District.

⁷⁴ KNCHR interview with a male interviewee from Kijiji Cha Chewa in Mathare on 10 April 2008 taken at Nairobi Central Business District, A list of alleged perpetrators given to KNCHR by an informer from Mathare 4A on 2 May 2008, KNCHR interview with a female interviewee from Kibera Slum on 9 April 2008 at Three Wheels hotel, KNCHR interview with a female interviewee from Mathare area III on 9 April 2008 at Nairobi Central Business District, KNCHR group interview with 4 males and 1 female interviewees in Kibera slums taken on 12 February 2008 at Jamhuri park IDP camp

⁷⁵ KNCHR interview with a male interviewee of Mathare slum on 9 April 2008 at PCEA Mathare North IDP camp.

⁷⁶ KNCHR interview with a male interviewee from Kibera slum on 9 April 2008 at Three Wheels hotel and KNCHR interview with a female interviewee from Mathare area III on 9 April 2008 at Nairobi central business district

170. 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.⁷⁷
171. 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.⁷⁸ At Ayany shopping centre, 12 business premises were razed as was a 200m stretch of kiosks.
172. 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.⁷⁹ Along 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.⁸⁰
173. Other forms of destruction of property included destruction of the railway line. On 18 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 such as the Kibera Catholic Church and a Presbyterian Church of East Africa church.⁸¹
174. 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.⁸² Recent attempts by some to move back or rebuild have been violently resisted by a local gang.⁸³
175. 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 the Luo and Luhya communities 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.⁸⁴

⁷⁷ Interview with official of Umande Trust on 21 July 2008.

⁷⁸ KNCHR interview with a male interviewee from Kibera slum on 9 April 2008 at Three Wheels hotel and KNCHR interview with a female interviewee from Mathare area III on 9 April 2008 at Nairobi central business district.

⁷⁹ KNCHR group interview with 4 males and 1 female interviewee from Kibera on 12 February 2008 at Jamhuri park IDP camp

⁸⁰ KNCHR group interview with 4 males and 1 female interviewees from Kibera on 12 February 2008 at Jamhuri park IDP camp

⁸¹ KNCHR interview with a resident of Mosop on 10 April 2008 taken at Kibienit village

⁸² KNCHR interview with an informer taken on 26 May 2008 at PCEA Mathare North IDP camp

⁸³ KNCHR interview with a male interviewee from Kijiji cha Chewa in Mathare on 10 April 2008 taken at the Central Business District

⁸⁴ KNCHR group interview with a delegation of IDPs from Kijiji Cha Chewa taken at the commission on 27 May

176. In Embakasi constituency's Dandora Phase 4, Kinyago Church together with all kiosks over a distance of 300m were all destroyed with fire as were two plots with both commercial and residential permanent structures.⁸⁵ In Fuata Nyayo Slums (South B) 30 kiosks were destroyed by fire.
177. Toi market and Kijiji cha Chewa marked particularly notorious looting and burning of houses and property and where the livelihoods and in some cases lifetime savings and investments of many were destroyed.⁸⁶ 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 nicknames.⁸⁷
178. The arson, destruction of 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

179. The violence was also characterised by widespread forced evictions and displacement of people. By 10 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.⁸⁸
180. In Kibera, Lang'ata constituency, for example, an estimated 5,000 people were displaced. In Silanga Village, in there was extensive displacement of all landlords who are mainly from the Kikuyu community and invasion of houses by new and illegal tenants.
181. In Dandora Phase 4, Embakasi constituency, tenants who were mainly from the Luo community violently evicted landlords and other residents from the Kikuyu community.
182. 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.
183. 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.⁸⁹ Again, this resentment erupted as part of the violence mainly occurring between December 30 December, 2007, and mid-February 2008.

⁸⁵ List of alleged perpetrators given by KNCHR by an informer from Mathare 4A on 2 May 2008.

⁸⁶ KNCHR interview with a male interviewee from Kijiji cha Chewa in Mathare on 10 April 2008 taken at the Central Business District, KNCHR group interview with 4 males and 1 female interviewees from Kibera slum on 12 February 2008 taken at Jamhu Park IDP camp, KNCHR interview with a female interviewee from Mathare area III on 9 April 2008 taken at Nairobi Central Business District, KNCHR interview with a male interviewee from Kibera slum on 9 April 2008 taken at Three Wheels hotel, List of alleged perpetrators given to KNCHR by an informer from Mathare 4A on 2 May 2008.

⁸⁷ KNCHR interview with a female from Mathare area III on 9 April 2008 taken at Nairobi Central Business District, KNCHR interview with a male interviewee from Kibera slum on 9 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.

⁸⁸ Kenya Red Cross Society, Information Bulletin, 10 January 2008.

⁸⁹ Kibera Interfaith Peace Initiative Committee Press Release on 5 December 2001.

184. 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. Ksh2,500 for a single room which would go for Ksh1,000 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 landlords 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.
185. Once the violence broke out, tenants from some ethnic communities forcibly 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.⁹⁰ This situation precipitated another round of violence as the owners hired gangs to reclaim their property.
186. 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

187. 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. One doctor says that between 29 and 30 December 2007, he received about 50 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.⁹¹
188. From 30 December 2007 to 2 February 2008, some 230 sexual assault patients from all over the country were admitted at the Nairobi Women's Hospital. Between 44 and 48 of the victims were children below the age of 18 years. About 90 of these cases were as a result of gang rape carried out by between two 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.⁹²
189. We 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 Dogo area.
190. We were 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.⁹³

⁹⁰ KNCHR interview with a male interviewee from Kibera slum on 9th April 2008 taken at Three Wheels hotel, KNCHR interview with a male interviewee from Kibera slum on 9th April 2008 at Three Wheels hotel, KNCHR interview with a woman interviewee from Mathare area III on 9th April 2008 at Nairobi central business district.

⁹¹ Associated Press article of 13th February 2008

⁹² Ibid

⁹³ KNCHR interview with a female interviewee from Mathare area III on 9th April 2008 at CBD, KNCHR interview with a male interviewee from Kibera slum on 9 April 2008 at Three Wheels hotel.

191. 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

192. 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 organisation, monitoring, communication networking, financing, provision of transport services and facilities, medical treatment/services.⁹⁴ Indeed, it is alleged that local politicians and business people financed the violence.⁹⁵

Illegal Organised Gangs

193. Criminal gangs have become part of urban settlement reality. These gangs are mostly organised 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.

194. 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.

195. In Lang'ata 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.⁹⁶ They are hired by politicians and even other organisations who wish to hold events in the area and 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.⁹⁷ 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 pickup 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.⁹⁸

⁹⁴ List of alleged perpetrators given to KNCHR by an informer from Mathare 4A on 2 May 2008 KNCHR group interview with two men from Kijiji cha Chewa in Mathare on 25 April 2008.

⁹⁵ KNCHR interview with a male interviewee from Kijiji Cha Chewa in Mathare on 10 April 2008 at CBD, list of alleged perpetrators given to KNCHR by an informer of Mathare 4A on 2 May 2008.

⁹⁶ KNCHR interview with a male interviewee from Kibera slum on 9 April 2008 at Three Wheels hotel, KNCHR interview with a female interviewee from Mathare area III on 9 April 2008 at Nairobi central business district, *Daily Nation* newspaper of 19 January 2008, *The People Daily* newspaper of 7 December 2007.

⁹⁷ KNCHR interview with a male resident of Maili Saba in Kibera on 16 April 2008 at Umande offices, Kibera

⁹⁸ KNCHR interview with Kibera resident.

196. 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 practices, 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.⁹⁹ *Jeshi la Darajani* gang allegedly operates in the Makina area and is composed largely of Nubians.¹⁰⁰ 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 the violence.¹⁰¹
197. In Mathare, in Starehe Constituency, the gang known as the Taliban targeted the Kikuyu in parts of that area.¹⁰² 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.
198. 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 Organisation (CBO).¹⁰³ Apart from the garbage collection business they also run communal toilets and bathrooms. Several witnesses said that they are organised criminals and were seen participating in the violence and killings.¹⁰⁴ Witness accounts indicate that this gang organised 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. The group received support from civic candidates in the area. On the afternoon of 31 December 2007, a resident of Ghetto village reported witnessing a Nissan matatu owned by a local Luo businessman transporting petrol in jerricans 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.¹⁰⁵
199. 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 the place 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.¹⁰⁶

⁹⁹ KNCHR interview with a female interviewee from Mathare area III on 9 April 2008 at CBD

¹⁰⁰ *Daily Nation* newspaper of 19 January 2008, the *People Daily* newspaper of 7 December 2007

¹⁰¹ KNCHR interview with a male resident of Kibera on 7 February 2008 taken at Jamhuri Park IDP camp

¹⁰² KNCHR interview with a female interviewee from Kibera taken on 7 February 2008 at Jamhuri Park IDP camp, KNCHR interview with a male interviewee from Mathare taken on 7 February at PCEA church Mathare IDP camp Internet article by IRIN dated 22 January 2008, KNCHR interview with a female interviewee from Mathare area III on 9 April 2008 at the CBD

¹⁰³ KNCHR interview with a male interviewee of Mathare slum on 9 April 2008 at PCEA Mathere North IDP camp

¹⁰⁴ KNCHR interview with a male interviewee of Mathare slum on 9 April 2008 at PCEA Mathere North IDP camp, KNCHR interview with male resident of Mathare 4A taken at PCEA Mathare North IDP camp on 7 February 2008, KNCHR interview with a female interviewee from Mathare area III on 9 April 2008 at the CBD, KNCHR group interview with Mathare residents on 9 April 2008 at Mathare area III.

¹⁰⁵ KNCHR interview with a male interviewee of Mathare slum on 9 April 2008 at PCEA Mathere North IDP camp

¹⁰⁶ KNCHR interview with a female interviewee from Kibera on 7 February 2008 at Jamhuri Park IDP camp

KNCHR post mission report for Nairobi region done on 9 April 2008

200. 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.¹⁰⁷ As recently as early May 2008, 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.¹⁰⁸
201. The Mungiki, said to be the most organised of the gangs, is reported to have a presence throughout Nairobi. Attacks and atrocities such as forced circumcision, particularly against the Luo community in parts of Kibera (Laini Saba and Soweto), Mathare, Kariobangi and Dandora, were alleged to have been committed by members of the gang. 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 forcibly circumcised members of the Luo community.¹⁰⁹
202. 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 forcible eviction of non-Gema communities and the marking of non- Kikuyu houses in High Rise and parts of Upper Hill area in early February 2008.¹¹⁰
203. According to interviewees, a number of meetings were held during the months of January, February and March 2008 at Kenyatta International Conference Centre, Landmark Hotel and the Marble Arch Hotel ostensibly to discuss the plight of internally displaced persons, but they took a sinister turn and organised retaliation, raised funds and sourced weapons.¹¹¹
204. Other information also suggests 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, although 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.¹¹²
205. Once the initial violence broke out and information spread that particular ethnic groups were being targeted in certain areas, people mobilised their tribesmen for retaliation or defence. In Dandora, for example, when word spread that Kikuyus in Phase 4 were being killed, Kikuyus in Phases 2, 3 and 5 reacted by arming themselves to 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, the Luo community from Ngomongo and Korogocho areas were moving towards Phase 4 to assist their kin.¹¹³
206. A man who was forcibly evicted from his house in Ndumbuini in Kabete around 10 January 2008 said he was informed that there had been a meeting at the Kawangware CDF offices where

¹⁰⁷ KNCHR post mission report for Dandora, Nairobi done on 18 April 2008

¹⁰⁸ KNCHR group interview with a delegation of IDPs from Kijiji Cha Chewa taken at the commission on 27 May 2008

¹⁰⁹ KNCHR interview with a male resident of Kariobangi South on 30 April 2008 at CBD

¹¹⁰ KNCHR interview with a male resident of Kariobangi South on 30 April 2008 at CBD

¹¹¹ KNCHR follow up done on 24 April 2008 in Nairobi area

¹¹² KNCHR interview with a male interviewee in Mathare slum on 9 April 2008 taken at PCEA Mathare North IDP camp

¹¹³ KNCHR interview with a male resident of Kariobangi South on 30 April 2008 at CBD

Kikuyu youths were organised and paid Ksh1,500 to cause violence and evict the Luo community.¹¹⁴

207. The levels of involvement of illegal gangs in the violence as well as the scale of mobilisation suggests sophisticated levels of planning and organisation of the violence in Nairobi that evidently used the pre-existing infrastructure of violence which was easily recalled during the post-election violence.
208. The factors of ethnicity, political affiliation and location largely dictated on the patterns of violence. One was at great risk of violence if say one was Kikuyu, Luo or Kamba living or owning property in an area predominantly occupied by a 'rival' community.

THE ROLE OF SECURITY AGENCIES

209. Police used excessive force in attempts to contain the demonstrators. They used tear gas and live ammunition on unarmed protesters. In one incident at Ligi Ndogo where prayers were being held for deceased protesters mainly from Kibera, police used live ammunition to disperse protesters blocking the nearby Ngong Road.¹¹⁵
210. 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. The police on occasion 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 27 December 2007 and 10 January 2008.¹¹⁶ 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.
211. Information gathered from other groups commends police for their intervention as they feel that the situation would have become worse without their help. We also heard interviewees recount cases where the police just stood by and watched the looting and burning and, sometimes, even the hacking of people.
212. For instance, in Dandora, Mathare 4A and Ghetto residents reported that police watched helplessly as their houses were torched and property looted.¹¹⁷ Some interviewees claimed that some police officers supported and participated in the violence. A resident of Mathare North said on the 29 or the 30 of December 2007, he saw GSU officers who were patrolling the area actively take part in the looting of a supermarket called "Super Kanny".
213. It is also evident that the police force was divided with police officers taking sides with their ethnic communities. Victims confessed to having received assistance from police officers from their ethnic community while facing hostility from officers from outside their ethnic communities. 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.

¹¹⁴ KNCHR interview with interviewee from Ndumbuini in Kabete on 7 February 2008

¹¹⁵ *New York Times* internet article by Gentleman Jeffrey dated 2 January 2008

¹¹⁶ Human Rights Watch, *Ballots to Bullets*

¹¹⁷ A Crisis Group Africa report of 21 February 2006

214. Some officers from the Kalenjin and Luo communities when asked to stop the looting are reported to have told the victims: “*Wacha kazi iendelee* (let work go on, drawing from the PNU slogan)”¹¹⁸. 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 Ksh2,000, while another paid Ksh1,000.
215. A major frustration expressed by many victims was 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.
216. 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.

¹¹⁸ KNCHR post-mission report for Nairobi area

SOUTH RIFT REGION

INTRODUCTION

217. The South Rift region covers six administrative districts of Kericho, Bureti, Bomet, Transmara, Kipkelion and Sotik. The registered voters 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.¹¹⁹
218. The region hosts various ethnic 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. Politically, the region has in the past been predominantly KANU.¹²⁰ However, in the runup to the 2007 General Election, the majority of the people in this region joined ODM, with a small number remaining in KANU, while others supported the PNU.
219. The South Rift Region is one of those regions of the Rift Valley that was settled by migrant members of the Kikuyu community 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 Kikuyus “were regarded as providing better quality labour than other tribes.”¹²¹ With this movement of The Kikuyu community 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.¹²² Harmonious inter-ethnic relations between the Kipsigis, Kikuyu and Kisii were ruptured by calls for majimboism by KANU politicians who also sought to evict the non-Kalenjin from the area.¹²³
220. 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.¹²⁴ 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.¹²⁵ Further, retaliatory burnings of houses by non-Kalenjin communities occurred in the 1991/1992 period as in the 2007/8 period.¹²⁶
221. Just like in the 1991/2 period, membership of 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, The Kikuyu community were in the opposition in the 1991/2 period and in PNU in the 2007/8 period. As such, the Kalenjin and the Kikuyu communities saw each other through the prism of their political parties and the differences between these political parties

¹¹⁹ Repeat elections for Transmara were held on 11 June 2008, and won by PNU.

¹²¹ Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, (Akiwumi Report), 31st July 1999 at 84-85.

¹²¹ Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, (Akiwumi Report), 31st July 1999 at 84-85.

¹²² Ibid, 85-86.

¹²³ Ibid, 86-87.

¹²⁴ Ibid, 87.

¹²⁵ Ibid, 88.

¹²⁶ Ibid, 89.

fuelled intense campaigns that naturally gravitated towards ethnic mobilisation. In a sense, therefore, the violence that followed these two periods could be considered inevitable given the highly inflammatory speeches and incitement by politicians. The Akiwumi report made the following observation in relation to the 1991/92 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.”¹²⁷

222. The inter-ethnic violence experienced 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 when 2007 came with a high stakes presidential election, there was experience and a pre-existing infrastructure of violence that could be easily mobilised.
223. The bitterness expressed by locals, that the NARC administration targeted their sons and daughters for removal from senior public jobs and the polarisation resulted from the November 2005 referendum also exposed the people to ethnic mobilisation by leaders of bad will. Lastly, grievances that relate to land ownership also meant that the people were vulnerable to ethnic mobilisation by their leaders.¹²⁸

¹²⁷ Ibid, 89

¹²⁸ This was a grievance presented to the Commission.

PATTERNS OF VIOLENCE

224. 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 mobilised 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 the non-Kalenjin from the region by political leaders, mainly parliamentary and civic aspirants, used idioms such as “*kuondoa madoadao*” – Kiswahili 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.¹²⁹
225. Violence erupted on different days in the different districts of the South Rift Region. In Kericho, Bomet, Bureti and Sotik it began on 29 December 2007 due to the delay in announcing the presidential results when youths began to barricade roads. On 30 December 2007 when the presidential results were announced declaring Mwai Kibaki the winner, 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.¹³⁰
226. In Transmara the skirmishes began on 28 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.¹³¹ The area has periodically experienced inter-ethnic clashes related to cattle rustling among the different communities, mainly between the Maasai, Kipsigis (a subgroup of the Kalenjin) and the Kisii.¹³²
227. The Maasai argument was that they had given the Kalenjins land and, therefore, could not 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. The tension has greatly been reduced by the election of a Massai in the June by-election.
228. 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.
229. In Kipkelion the violence began on 30 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 Kalenjin whose view was that the election had been stolen. The two groups, the Kalenjin on one side and the Kisii and the Kikuyu communities on the other, started attacking each other. Eight people were killed in the

¹²⁹ KNCHR interview with a male interviewee in Kericho on 13 February 2008, KNCHR interview with a female interviewee in Kericho on 13 February 2008.

¹³⁰ KNCHR interview with a female interviewee in Kericho on 13 February 2008, picture by KNCHR taken in Kericho Church IDP camp on 3 January 2008.

¹³¹ 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.

¹³² KNCHR interview with an informer from Kiridon village Transmara on 25 February 2008, KNCHR interview with a male resident from Kilgoris on 3 March 2008.

area including four people from the Kisii community who had been arrested by a group of youths and set ablaze. Of the eight people killed, the remaining four were killed by the police.¹³³

230. In January the Monastery at Kipkelion was under siege for two days as Kalenjin youths who were said to be in large numbers attempted several times to attack the monastery that was hosting IDPs from the area. The people suffered great anguish as the officers guarding the IDPs feared they would 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.¹³⁴

231. 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, David Kimutai Too, on 31 January 2008. Enraged citizens raided the Ainamoi Divisional Headquarters, soon after getting reports of Too's death, and killed an AP officer whom they cut into pieces. They set him alight and watched as his body burn to ashes. On the same day, 17 people were killed by the police. Seven of them were killed after being found looting Stagemart supermarket in Kericho Town.¹³⁵ The constituents blamed the government and retaliated by attacking the DO's office in Ainamoi division..¹³⁶

232. In Chebilat, the violence began on the 30 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 conflict between the Kisii and the Kipsigis. Businesses and houses belonging to members of the Kisii community were burnt down.¹³⁷ In response, the Kisii Community mobilised youths to defend themselves led by local councilors.¹³⁸ The youths, who included the infamous *chinkororo* organised gangs, began targeting homes that belonged to Kipsigis.

*"My nine-year-old daughter carried my one-year-old son. My daughter ran away and was exhausted and she dropped the baby, who was trampled upon by the attackers and died."*¹³⁹

233. In Magwagwa (Kisii), Kalenjin gangs killed an 18-year-old Kisii youth by cutting him with a somali sword, dowsing him with petrol and setting him ablaze by the road side.¹⁴⁰

234. It is estimated that in Chebilat and Keboy 89 residential houses, 36 shops and 42 kiosks were burnt down. Eight people are reported to have been killed, four 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.¹⁴¹

¹³³ KNCHR interview with a male interviewee from Soy B on 1 March 2008 at Eldoret show ground; KNCHR post-election violence investigation report of 18 February 2008 in Kisii

¹³⁴ KNCHR interview with a senior government officer on 28 February 2008 and KNCHR interview with a female interviewee from Kipkelion on 26 February 2006

¹³⁵ KNCHR interview with an informer in Kericho on 10 April 2008

¹³⁶ KNCHR interview with an informer in Kericho on 9 April 2008

¹³⁷ KNCHR interview with a male interviewee from Soy B on 1 March 2008 at Eldoret show ground; KNCHR post-election violence investigation report of 18 February 2008 in Kisii

¹³⁸ KNCHR interview with a male interviewee from Soy B on 1 March 2008 at Eldoret showground.

¹³⁹ See KNCHR interview with a male interviewee in Ekerenyo, Kebabe on 15 January 2008

¹⁴⁰ KNCHR interview with a resident of Magwagwa, Kisii on 15 February 2008

¹⁴¹ KNCHR interview with a senior government officer on 28 February 2008, also KNCHR interview with a District Commissioner, Sotik on 28 February 2008.

235. In Bureti, Litein Town, two high school teachers were shot dead by the police on 5 February 2008 as they were looking for a vehicle to board on their way home.¹⁴²
236. The violence whose intensity peaked after the announcement of presidential results led to looting, rape, arson and destruction of business premises and government houses, killings, and barricading of roads. This led to massive displacement of the Kisii and Kikuyu communities.¹⁴³
237. 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 forcibly evicted from their homes, workplaces 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.¹⁴⁴
238. 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.
239. The pattern of the violence in the different districts was similar. In all the districts in the South Rift, the information gathered showed that the attacks were done by raiders who came in large numbers from different directions.¹⁴⁵ The attacks targeted specific communities and the violence took the form of forceful evictions, killings, looting, burning of properties and food granaries.
240. There was method to the attacks pointing to some good level of coordination and organisation. For example, there were days for evicting the non-Kalenjin 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.
241. 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.¹⁴⁶ In addition, PNU supporters, and some government officers were also targeted for the attacks.¹⁴⁷ 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.¹⁴⁸

¹⁴² KNCHR interview with a female resident of Litein on 1 March 2008 and *Daily Nation* newspaper article by Nation Correspondent dated 7 February 2008.

¹⁴³ KNCHR interview with a male interviewee in Kericho on 13 February 2008, KNCHR interview with a female interviewee in Kericho on 13 February 2008.

¹⁴⁴ KNCHR Post-Mission Report for South Rift region dated 4 April 2008.

¹⁴⁵ In some places the youths were said to be as many as 2,000 or even 3,000. KNCHR post-election violence investigation report of 18 February 2008 in Kisii. KNCHR interview with an informer at Sirikwa farm on 12 April 2008, KNCHR interview with a chief in Kapkatet, Bureti on 29th February 2008, KNCHR follow-up group interview, Sotik on 14 April 2008. A senior police officer is also said to have reported that in one instance attacking youths numbered about 1,000. *The Standard* newspaper article dated 20 February 2008.

¹⁴⁶ KNCHR post-election violence investigation report of 18 February 2008 in Kisii.

¹⁴⁷ This included some of the region's elite that were in one way or another perceived as having a connection with the government. KNCHR interview with a Chief in Kapkatet, Bureti on 29 February 2008 where youths are said to have burnt the house of a former Permanent Secretary and the Chief of Chebilat Location.

¹⁴⁸ KNCHR interview with a Medical Doctor, Kapkatet on 29 February 2008

242. 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 homes of well known leaders from the region.¹⁴⁹ 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.¹⁵⁰ "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."¹⁵¹
243. In all the attacks, the raiders were armed with weapons like bows and arrows, rungus (clubs), swords, knives, pangas (machetes) and other crude weapons.¹⁵² 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.
244. 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 roadblocks do so". There was also information that some councillors would be heard making phone calls to the Members of parliament asking them to send money to facilitate the youths in carrying out "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 began to attack the Kisii community and burn down their houses.
245. The extent of the burning that took place in the area indicates that there was a sustainable supply of petrol that points to a source of finances not among the youths that carried out such attacks.

¹⁴⁹ The oathing is said to have began in August. See KNCHR interview in the region on 8 February 2008. KNCHR interview with a senior government officer serving in one of the region's districts on the 28 March 2008; Email report by an informer in Nairobi on 11 February 2008; KNCHR interview with an informer at Sirikwa farm on 12 April 2008; KNCHR interview with a witness at Magusi, Bureti on 14 February 2008; and KNCHR interview with an informer at Kericho on 26 February 2008.

¹⁵⁰ KNCHR interview with a male KNCHR post-election violence investigation report of 18 February 2008 in Kisii from Sotik Borabu border on 28 February 2008

¹⁵¹ This story is repeated numerous times in the South Rift Region where various numbers are cited: 100, 200, 500, some 1,000, 2,000 and 3,000. The picture is, therefore, clear that the attacking youths moved in large numbers and well organised. KNCHR interview with a male interviewee from Londiani done on 7 February 2008 at Limuru Deliverance church; KNCHR interview with a female interviewee from Nyamira at Kericho on 15 February 2008; KNCHR interview with a male interviewee from Kipkelion on 26 February 2008; KNCHR interview with a female interviewee from Kipkelion taken at Koru Police station on 14 March 2008; KNCHR follow up group report dated 14 April 2008; KNCHR interview with a female interviewee from Kisii on 15 February 2008, KNCHR interview with a female interviewee at Kisii Catholic Cathedral church on 13 February 2008; KNCHR interview with a female interviewee at Kisii Catholic Cathedral church on 13 February 2008; KNCHR interview with a resident of Londiani on 8 March 2008; KNCHR interview with a male tea farm worker in Limuru on 6 February 2008 at Tigoni Police station, and KNCHR interview with a male resident of Transmara done on 3 March 2008.

¹⁵² KNCHR interview with a senior government officer in the region on 28 February 2008;

PLANNING AND ORGANISATION

246. The violence in the South Rift region was organised and well resourced. All those interviewed and information gathered pointed towards mobilisation 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 organised 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.¹⁵³ In the subsequent days, attacks of settlements were done from all directions and at the same time with clear direction and mission.¹⁵⁴
247. 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.¹⁵⁵ In Chebilat the attackers were fighting in shifts. Some would attack in the morning and others in the afternoon. "During the fighting, around 7a.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 6p.m, 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."¹⁵⁶ There were occasions in which the attackers were dropped in vehicles.¹⁵⁷
248. On 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.¹⁵⁸
249. 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 organisation, financing and provision of transport.¹⁵⁹ 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.¹⁶⁰
250. 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 PNU and belonged to non-Kalenjin communities.¹⁶¹ 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.

¹⁵³ KNCHR interview with a female interviewee from Kipkelion done at Kisii Cathedral Catholic Church on 15 February 2008

¹⁵⁴ KNCHR interview, Kisii.

¹⁵⁵ KNCHR post-mission report for Nyanza region dated 18 March 2008

¹⁵⁶ KNCHR interview with a youth from Sotik/Burabu border on 28 February 2008

¹⁵⁷ KNCHR interview with a male resident from Chebilat on 4 February 2008

¹⁵⁸ KNCHR interview, Chebilat.

¹⁵⁹ Some of the vehicles used to transport attackers are known to the local people and some have names such as Eagle, Zion, Lion, KAP 17 K, KAP 422Q, a Red RAV4 amongst others, and at least one vehicle owner identified by the people as Umoja1.

¹⁶⁰ KNCHR interview with a female interviewee in Kipkelion on 26 February 2008.

¹⁶¹ KNCHR interview with a male interviewee in Kericho on 13 February 2008.

251. We were told of training and oathing in camps that took place in preparation for the attacks.¹⁶² The training took place in the farms of senior leaders in the area or in the region's forests.¹⁶³ 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.¹⁶⁴
252. The question of the supply of the weapons used to execute the violence remains. Someone supplied the weaponry and other materials such as petrol. The weapons used, although on the face of it crude, were of a type that might have been manufactured by a factory and not just the work of a local smith.¹⁶⁵ 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.¹⁶⁶ 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.¹⁶⁷ An investigation into the source of these guns is also necessary to establish those behind the arming of local youth.
253. 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.¹⁶⁸ 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-defence where necessary.¹⁶⁹

ROLE OF SECURITY AGENTS

254. Generally, the security agencies 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.¹⁷⁰ One of the senior police officers in Kericho and another in Londiani, both of the position of Officer Commanding Station (OCS), were adversely mentioned in the killings of several civilians in cases that amounted to excessive use of force.¹⁷¹
255. 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

¹⁶² Some of the farms in which training and oathing was taking place are known to local people. Email report by an informer in Nairobi on 11 February 2008; Internet extract of happenings in Kericho on 11 February 2008.

¹⁶³ Email report by an informer in Nairobi on 11 February 2008

¹⁶⁴ KNCHR interview with an informer in Kericho on 26 February 2008

¹⁶⁵ Nation Newspaper report on Borabu, Bureti, Sotik and Bomet borders dated 9 February 2008

¹⁶⁶ KNCHR interview with a senior government officer in Borabu Sotik border on 20 February 2008

¹⁶⁷ Nation report on Borabu, Bureti, Sotik and Bomet borders dated 9 February 2008

¹⁶⁸ KNCHR interview with a male interviewee from Eldoret at Nakuru Show Ground on 17 February 2008

¹⁶⁹ KNCHR interview with a male interviewee from Kericho taken at Kisii Catholic Cathedral on 13 February 2008

¹⁷⁰ See The People Daily Newspaper pictorial dated 30 December 2007 the People Team, KNCHR interview with a senior principal officer in Kericho on 27 February 2008; KNCHR interview with a doctor in Litein Hospital on 29 February 2008; KNCHR interview with a female resident of Litein on 1 March 2008

¹⁷¹ KNCHR interview with a male interviewee from Kericho taken at Kisii Catholic Cathedral on 13 February 2008

behind while running away to escape the violence.¹⁷² 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.¹⁷³

256. 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.¹⁷⁴
257. In Kericho and Transmara most interviewees stated that a majority of the police officers were Kalenjin, and that they deliberately neglected and or failed to offer protection to the non-Kalenjin.¹⁷⁵ In Londiani information gathered showed that some police officers sided with 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 Kikuyus.¹⁷⁶ It was further alleged that a house was burnt few metres from Londiani police station but this was in spite of early warning and pleas to the police who failed to offer security.¹⁷⁷
258. In Bureti, it was alleged that the police from Litein police station participated in looting of shops.¹⁷⁸ 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.¹⁷⁹
259. In Chebilat, information gathered showed that the police chased away Kalenjin fighters, thereby giving way to Kisii fighters to loot and burn property belonging to the Kalenjin.¹⁸⁰
260. 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 presently are facing a challenge in gathering evidence neither are they getting witnesses that are willing to give testimony as to who financed or organised 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.¹⁸¹

¹⁷² KNCHR interview with a medical officer on 24 February 2008 at Kipkelion.

¹⁷³ KNCHR interview with three male residents of Londiani on 12 March 2008

¹⁷⁴ KNCHR interview with a male resident in Bureti on 29 February 2008

¹⁷⁵ These allegations of police partiality are repeated across the region. KNCHR monitoring group report on South Rift Valley on 24 February 2008; KNCHR interview with a female resident of Kisii on 15 February 2008; KNCHR interview with an informer taken at Sotik on 14 April 2008; KNCHR interview with a business man in Londiani on 12 March 2008; KNCHR interview with a female resident of Kipkelion on 26 February 2008; KNCHR interview with a squatter from Kipkelion on 18 February 2008; KNCHR interview with a female interviewee in Kericho Cathedral; KNCHR interview with School committee elders in Sotik on 15 March 2008; and KNCHR Post-Mission report of Londiani taken at Londiani Catholic church on 12 March 2008.

¹⁷⁶ KNCHR interview with a male resident of Londiani on 12 March 2008

¹⁷⁷ KNCHR interview with a male resident of Londiani on 12 March 2008

¹⁷⁸ KNCHR post mission report for Rift Valley region dated 24 February 2008

¹⁷⁹ KNCHR post mission report for Rift Valley region dated 24 February 2008

¹⁸⁰ KNCHR post mission report for Rift Valley region dated 24 February 2008

¹⁸¹ KNCHR post mission report for Rift Valley region dated 24 February, 2008.

ROLE OF OTHER ACTORS

261. 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 organisations, political leaders, the local administration, religious leaders, opinion leaders and elders.
262. The media contributed negatively by inviting elders and callers in some of the local language radio stations that specialised in peddling hate speech against the Kikuyu community and other non-Kalenjin Communities such as the Kisii. *KASS FM* and *Radio Injili* have been mentioned in this regard.¹⁸²
263. Information gathered revealed that one of the councillors in Kipkelion took the initiative to go to *Kass FM* 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.¹⁸³
264. 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 (DOs) and the District Commissioners (DCs) in the area have also embarked on peace meetings to bring the warring communities in the region together.¹⁸⁴
265. There were several organisations 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.

¹⁸² KNCHR interview with a male interviewee in Kericho on 4 March 2008

¹⁸³ KNCHR interview with an informer at Kipkelion on 16 April 2008

¹⁸⁴ KNCHR interview with an informer at Kipkelion on 16 April 2008

NORTH RIFT REGION

INTRODUCTION

266. 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, Baringo North and South. All these districts are ancestral lands of the Kalenjin, i.e. the Nandi, Keiyo, Pokot, Tugen, Marakwet and Kipsigis. 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. 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.
267. Uasin Gishu has a mixed population with the majority being the Kalenjin with others being Kikuyu, Luhya, Kisii and Luo while Trans Nzoia has a majority Luhya population, with others being Kalenjin, Turkana, Kikuyu and Kisii people.¹⁸⁵ 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.
268. The Region has 19 electoral constituencies. 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

269. The first 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 nearby 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.
270. 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.¹⁸⁶

¹⁸⁶ *Daily Nation* newspaper article for 29th January 2008

271. People from outside Burnt Forest are said to have participated in the attacks. This is alleged by the members of the Kikuyu Community.¹⁸⁷ This indicates a possibility of attackers being ferried from elsewhere, showing some planning and organisation of the violence. An MP confirmed that some raiders came from villages other than the ones they were attacking. He gave the example of his Kikuyu neighbour whose property had been destroyed by youths from afar.¹⁸⁸
272. In Eldoret Town violence mainly affected the residents of the low-end residential areas. Intense violence occurred from 30 December 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 Luo community 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.¹⁸⁹
273. 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 off attackers who had invaded his home.
274. In the Munyaka Estate in Eldoret town, an international athlete Lucas Sang was killed. Accounts indicated that he had led a group of youths¹⁹⁰ to attack the Munyaka Estate which is predominantly Kikuyu. The attack was repulsed and Sang killed.¹⁹¹ 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.¹⁹² Violence in Langas estate initially pitted the Kikuyu against the Luo. Witnesses recounted that on the night of the 30 December 2007, members of the Luo Community were beheaded by Kikuyu attackers at Kisumu Ndogo area. Members of the Kikuyu community were overwhelmed by counter-attacks by members of the Kalenjin community who are said to have come from the villages to rescue the Luo.
275. 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.¹⁹³ 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.

¹⁸⁷ KNCHR interview with a male interviewee from Eldoret on 7 February 2008 at Kirathimo IDP camp in Limuru for a description of how raiders were dropped off in lorries

¹⁸⁸ KNCHR interview with an MP, 28 February 2008

¹⁸⁹ Raiders were said to come in groups of 50, 100, 200, 500, etc. Some estimates saying 1000. KNCHR interview with a male interviewee of Burnt Forest on 7 February at Kirathimo IDP camp, KNCHR interview with an informer in Eldoret on 11 April 2008

¹⁹⁰ KNCHR interview with an informer on 15 April 2008 in Eldoret, KNCHR interview with an informer on 16 April in Eldoret and KNCHR interview with a female resident of Kisii on 16 February 2008 at Keroka IDP camp

¹⁹¹ Reuters News report of 30 January 2008

¹⁹² KNCHR interview with a male resident of Eldoret on 27 February 2008

¹⁹³ 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 interviewees had brought with them with petrol and stacking them against the building..." See KNCHR interview with a male resident of Eldoret on 26 February 2008 for an account that alleged that kikuyu had assembled at the church to prepare to go and attack the Kalenjins at Kimuri

276. 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.¹⁹⁴ 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.
277. 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.
278. 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 35¹⁹⁵ people were burnt to death in the church, most of whom were women and children.¹⁹⁶ Some 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 visited the hospital where victims were taken for treatment.
279. The church built of mud and wood was burnt to ashes and a visit to the site depicted a gruesome scene. 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. 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. Other allegations are that the attack was provoked by the killing of a Kalenjin boy at Kiambaa.
280. The witnesses state that they actually saw some of the perpetrators hacking people to death and conducting the attacks.
281. A youth 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.”¹⁹⁷

¹⁹⁴ See Saturday *Nation* newspaper article dated 1 March 2008 by Kipchumba

¹⁹⁵ KNCHR interview with an informer in Kiambaa, Eldoret on 29 April 2008,

¹⁹⁶ This is the same number given by a former senior public administration official in the region during an interview with KNCHR April 16, 2008

¹⁹⁷ BBC *Assignment* programme on the Kenya violence,

282. 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.’¹⁹⁸
283. Our investigations also showed 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 in January 2008. The information received was that the young men had been mobilised to raid businesses at Matunda but were overpowered by the locals who, in the presence of the GSU personnel hacked them one by one. It was however not possible to ascertain 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.¹⁹⁹
284. The epicentre of the violence in the Nandi districts was Kapsabet town. The raiders targeted Kapsabet Town where businesses were looted and burnt. 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 8 January 2008, forcing an estimated 32,000 people to seek refuge at Nandi Hills police station and a nearby field.²⁰⁰ Witness statements indicate that members of the Kalenjin community perceived to have had leanings towards the PNU were also targeted and their houses burnt and property destroyed.
285. 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 SLDF²⁰¹ youth from Kabolet Forest in late February 2008. The majority of those affected were allegedly Kisii.²⁰² Several people were abducted and women, including schoolgirls, raped. Homes were burnt down and the trading centre reduced to a ghost town by mass exodus of residents.²⁰³ In this constituency, more than 20,000 people were displaced.²⁰⁴
286. In Trans Nzoia the post-election violence overlapped with violence perpetrated by the Sabaot Land Defence Force (SLDF)²⁰⁵ neighbouring Mt Elgon that was ongoing before and continued even after post-election violence ended in other affected North Rift areas. The violence in the District mainly targeted members of the Luhya, Kikuyu and Kisii communities. Some of the worst violence occurred at Gituamba where it was reported that an unspecified number of people were killed at Gituamba Farm in Cherangany by suspected armed SLDF²⁰⁶ youth from Kabolet Forest in late February 2008. The majority of those affected were allegedly Kisii.²⁰⁷ Several people were abducted and women, including schoolgirls, raped. Homes were burnt down and

¹⁹⁸ Ibid

¹⁹⁹ KNCHR investigators were told that the youth were suspected to have come from Lugari, an ethnically mixed area.

²⁰⁰ KNCHR interview with a female interviewee from Burnt Forest on 7 February 2008

²⁰¹ The SLDF was active in the border between Mt Elgon and Trans Nzoia districts. See Humanitarian update by OCHA dated 28 February to 3 March 2008

²⁰² KNCHR interview with an informer in Eldoret on 14 April 2008

²⁰³ See Reuters News report of 30th January 2008

²⁰⁴ In Saboti Constituency 3,000 were displaced.

²⁰⁵ KNCHR interview with an informer in Kitale on 14 April 2008

²⁰⁶ The SLDF was active in the border between Mt Elgon and Trans Nzoia districts. See Humanitarian update by OCHA dated 28 February to 3 March 2008

²⁰⁷ KNCHR interview with an informer in Eldoret on 14 April 2008

the trading centre reduced to a ghost town by mass exodus of residents.²⁰⁸ more than 20,000 people were displaced.²⁰⁹

287. One of the most fatal of the attacks occurred in early March, 2008 at Embakasi in Saboti where 13 people, including a family of five were killed by suspected SLDF members. One of the most fatal of the attacks occurred in early March, 2008 at Embakasi in Saboti where 13 people, including a family of five were killed by suspected SLDF members.
288. Eight people, including six children were seriously injured.²¹⁰ The SLDF is also suspected to have made an attack at a police station harbouring 3000 displaced persons, leaving six people dead.
289. The Sabaot lay historical territorial claims and want Luhya people out of Trans Nzoia.²¹¹ In a pointer to potential for escalation of violence with the Sabaot on one side and the Luhya on the other, police detectives discovered a training base for youth at the home of a former MP.²¹² Some 200 youths who were allegedly undergoing military training were arrested on 25 January 2008.²¹³ On Wednesday, 19 March 2008, the former MP was charged with training suspected organised gangs²¹⁴ on his farm and set free on bond. Widespread atrocities by the SLDF in Mt Elgon and surrounding areas²¹⁵ prompted a military operation that has restored relative peace in the area.
290. 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.
291. 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.
292. 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.²¹⁶ The death of at least one person was reported in Marakwet East, the son of Harun Chege who had gone out to buy telephone

²⁰⁸ See Reuters News report of 30th January 2008

²⁰⁹ In Saboti Constituency 3,000 were displaced.

²¹⁰ *The Standard* newspaper article dated 4 March 2008 by Osinde Obare

²¹¹ KNCHR interview with a male resident of Eldoret on 2 April 2008

²¹² KNCHR interview with a male pastor in Nakuru on 26 January 2008

²¹³ KNCHR interview with a male pastor in Nakuru.

²¹⁴ See Peacenet Kenya Report dated 25-31 March 2008

²¹⁵ *The Standard* newspaper article dated 4 March 2008 by Osinde Obare

²¹⁶ UNON weekly security advisory dated 8–14 February 2008

credit for his dad. He was killed by gangs of Kalenjin youth who were allegedly dropped by lorries in the area.

293. 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 sought refuge at his camp, saying they had refused to heed his advice and vote for ODM.
294. At the Marakwet border with Trans Nzoia, 12 youths were shot dead as police tried to separate Marakwet and a rival community in Cherangany in January 2008.²¹⁷ 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 Kalenjin raiders.
295. 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.
296. The 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 organised and purposeful.

PLANNING AND ORGANISATION

297. The following information suggests that the post-2007 election violence in parts of the North Rift region was planned,²¹⁸ largely targeting Kikuyu²¹⁹ and other communities in that region and local people whose political loyalties went against the grain in the area.²²⁰
298. 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,²²¹ during which the eviction of the enemy (Kikuyu) was discussed.²²² The

²¹⁷ KNCHR interview with a male interviewee of Kapsabet on 14 February 2008 at Nyeri Rungu stadium

²¹⁸ *Daily Nation* Newspaper article dated 18 March 2008 by Sam Kiplagat, KNCHR interview with a male interviewee from Kondoo farm in Eldoret on 27 February 2008, KNCHR interview with a male interviewee from Langas in Eldoret on 2nd February 2008, KNCHR interview with a male interviewee in Timboroa IDP camp on 2 March 2008, KNCHR interview with a female interviewee of Nandi hills in Limuru on 7 February 2008, KNCHR interview with an informer on 13 April 2008 in Eldoret, KNCHR interview with a male interviewee from Free Area in Eldoret on 26 February 2008, KNCHR interview with a male interviewee of Tigoni on 6 February 2008 at Tigoni Police Station, KNCHR interview with a female interviewee of Molo on 6 February 2008 at Ruiru Police Station

²¹⁹ Human Rights Watch report dated 17 March 2008 and Report by Crisis Group Africa dated 21 February 2008

²²⁰ KNCHR interview with an informer in Eldoret on 15 April 2008, KNCHR interview with an informer in Kitale catholic church on 14 April 2008, KNCHR interview with an informer in Eldoret on 15 April 2008

²²¹ KNCHR interview with an informer on 13th April 2008 in Eldoret, IMO/EMO is short for EMOSTO - We are missing each other. It is a Foundation (A membership club where MPs pay Ksh10,000) and all Kalenjins are eligible members. An interviewee 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 interviewee in Cherangani police station on 29 February 2008. The Foundation's chairman Rev Kosgey is

meeting was attended by about 15 representatives drawn from Eldoret North, East, and South constituencies. It was chaired by a businessman from the area. 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.²²³

299. There are various witness accounts of political actors,²²⁴ 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.²²⁵ 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 the non-Kalenjin. 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 groups'²²⁶

300. 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 in lorries.²²⁷ Before proceeding to attack, the youth would gather at particular assembly points.

301. There are accounts of raiders being mostly young men around the ages of 18-25 years²²⁸ who were reported to have applied soot²²⁹ or mud²³⁰ on their faces. Some had red cloths around their shoulders. They had bows and arrows and small axes²³¹. 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

allegedly a preacher on regular programs of KASS FM. See KNCHR interview with a female interviewee in Cherangani police station on 29 February 2008.

²²² 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 organisation 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.

²²³ KNCHR interview with an informer on 13th April 2008 in Eldoret 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.

²²⁴ KNCHR interview with an informer on 13th April 2008 in Eldoret

²²⁵ 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

²²⁶ Transcript from BBC '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 organising 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

²²⁷ KNCHR interview with a male interviewee from Chemgoror area on 7 February 2008

²²⁸ KNCHR interview with a female interviewee from Langas Estate in Eldoret on 8th February 2008, KNCHR interview with a female interviewee from Yamumbi village in Eldoret on 25th February 2008, KNCHR interview with a male interviewee in Nakuru show ground on 17 February 2008 and KNCHR interview with a male resident of Timboroa on 17 February 2008 at Nakuru show ground

²²⁹ KNCHR interview with a female interviewee from Langas Estate in Eldoret on 8th February 2008.

²³⁰ KNCHR interview with a female interviewee from Likuyani division on 3rd March 2008, KNCHR interview with a male interviewee from Kondoo farm on 13th April 2008.

²³¹ 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

may suggest prior planning and organisation because such weapons are not commonly held by a civilian population.

302. There were allegations that in different areas guns²³² and grenades²³³ were used and further that plans were made to acquire guns²³⁴ in a rally held on 4 January 2008, at Ziwa²³⁵ attended by Jackson Kibor and Mt Elgon MP Kapondi, among other leaders.²³⁶
303. 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-made²³⁷. For example, there are reports of one local businessman 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 2007²³⁸. He was reportedly in a group of Kikuyu burning houses in the Boror area of Burnt Forest.²³⁹ Other members of the Kikuyu community also reportedly had guns.²⁴⁰ There was also information that some Kalenjin raiders used petrol or petrol bombs to burn houses.²⁴¹
304. 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 their compound. Maize is normally kept in granaries.²⁴²
305. Following the announcement of presidential results on 30 December 2007, roadblocks manned by some Kalenjin youth were set up in Eldoret Town,²⁴³ Cheplaskai,²⁴⁴ Ya Mumbi,²⁴⁵ Kondoo Farm in Burnt Forest,²⁴⁶ and Cheptiret, among other areas. At the roadblocks, vehicles were inspected for the non-Kalenjin. 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.²⁴⁷ In some roads within Eldoret town, roadblocks were established within distances of less than one hundred metres.

²³² KNCHR interview with a male resident of Kondoo farm in Eldoret on 27 February 2008, KNCHR post-mission report of Upper North Rift dated 24 March 2008, UNON weekly security advisory dated 22-28 February 2008, KNCHR with an informer in Eldoret on 16 April 2008, KNCHR with an informer in Eldoret on 16 April 2008, KNCHR interview with a male interviewee on 28th February at Endebess DO camp, KNCHR interview with a male interviewee at Endebess DO IDP on 28 February 2008

²³³ See UNON report on weekly security advisory dated 8-14 February 2008

²³⁴ KNCHR with an informer in Eldoret on 16 April 2008 and KNCHR interview with an informer in Eldoret on 15 April 2008 for how plans to acquire guns aborted.

²³⁵ KNCHR interview with with a male resident of Eldoret on 2 April 2008

²³⁶ See *The Standard* Newspaper article dated 4 March 2008 by Osinde Obare, KNCHR interview with a male resident of Kitale on 8 February 2008 at Endebess Gatatha farm, KNCHR interview with an assistant chief at Cherangani DO office on 1 March 2008

²³⁷ KNCHR interview with a male resident of Kondoo farm in Burnt Forest on 27 February 2008.

²³⁸ KNCHR interview with a female resident of Burnt Forest on 27 February 2008

²³⁹ KNCHR interview with a male resident from Kondoo village on 27 February 2008

²⁴⁰ KNCHR interview with a female interviewee of Kondoo farm on 27 February at Boror Primary School

²⁴¹ KNCHR interview with a male interviewee from Timboroa on 8 March 2008, KNCHR interview with a male resident of Endebess on 29 February 2008, KNCHR interview with a male resident of Kapsowar on 26 February 2008.

²⁴² KNCHR interview with a male resident of Burnt Forest on 11 April 2008, see also Post-Mission report on Lower North Rift dated 4 April 2008.

²⁴³ KNCHR interview with a male interviewee at Nakuru Section 58 on 17 February 2008.

²⁴⁴ KNCHR interview with a male resident of Eldoret on 26 February 2008.

²⁴⁵ KNCHR interview with a female resident of Langas on 25 February 2008 at Eldoret Showground

²⁴⁶ KNCHR interview with a male resident of Burnt Forest on 8 February 2008

²⁴⁷ *Times* newspaper article dated 18 February 2008 by Times Team

ROLE OF THE MEDIA

306. The mass media, the short message service in mobile phones and the internet were used to propagate hate speech and in some instances, to incite acts of violence. The role of vernacular radio stations, especially that of KASS FM and Inooro FM in this region, contributed in fanning the violence by facilitating the spread of such hate messages. A former senior public administration official in the area confirmed the same saying political utterances before election and the media “may have prepared people for violence.”²⁴⁸ Leaflets were also used to spread the hate message and to intimidate.²⁴⁹
307. Interviewees mentioned one Joshua Sang of KASS FM as having called on young men to come out to the road, saying ‘*vita imetokea* (the war has begun)’ and asking them what they were doing at home.²⁵⁰

THE ROLE OF STATE AGENCIES

308. 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,²⁵¹ 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.²⁵² Lastly, there were reports of police being overwhelmed²⁵³ or being the target of attacks.²⁵⁴
309. 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.

²⁴⁸ KNCHR interview with a former senior public administration official, April 16, 2008

²⁴⁹ See KNCHR follow up group interview with an informer at Burnt Forest on 13 April 2008

²⁵⁰ KNCHR interview with a Senior politician in the area on 11 April, 2008.

²⁵¹ KNCHR interview with a female resident of Langas on 25 February 2008 at Eldoret show ground, KNCHR interview with a male interviewee from Ainabkoi in Uashin Gishu on 2 March 2008, KNCHR interview with an informer at Kitale catholic church on 14 April 2008

²⁵² KNCHR interview with a male interviewee from Ainabkoi in Uashin Gishu on 2 March 2008, KNCHR interview with a male interviewee from Cherangani on 28 February 2008, KNCHR interview with a male resident of Eldoret on 2 April 2008

²⁵³ *Saturday Nation* newspaper article dated 1 March 2008 by Kipchumba, KNCHR interview with an informer in Eldoret on 12 April 2008

²⁵⁴ See The People Newspaper article dated 30 January 2008 by Peter Kahare

Police Excesses²⁵⁵

310. 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 Moi Teaching and Referral Hospital in Eldoret and interviewed four victims²⁵⁶ 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 victims²⁵⁷ said that he was in the company of other youth in Kasarani area of Langas, Eldoret on the night of 29 January 2008 and they found a contingent of police from the Langas Police station. The police chased the group of boys and were shot at them from behind, the victim fell down and was then shot in the left thigh at close range allegedly by the OCS of Langas.²⁵⁸
311. 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 authorised 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.²⁵⁹ The OCS at Langas Police Station is alleged to have personally killed 23 people.²⁶⁰
312. 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 AP officer.²⁶¹ This and other similar incidents of attacks on state agents could have provoked police use of excessive force.
313. In January 2008, five Moi Teaching and Referral Hospital workers were injured when police fired tear gas canisters into the hospital compound.²⁶² In Cherangany, 14 youths²⁶³ were shot dead as police tried to separate warring Marakwet clans. Thorough investigations on the circumstances on the ground are needed to determine whether these killings were justified or not. At Chagaya area in Nandi in January 2008, police shot dead nine youths who had allegedly come from Tinderet to loot property.²⁶⁴

²⁵⁵ KNCHR interview with an informer at Kitale catholic church on 14 April 2008, *East Africa Weekly* newspaper article dated 18-24 February 2008 by Kantai

²⁵⁶ KNCHR interview with an informer from Kasarani in Eldoret on 3 March 2008, KNCHR interview with a male interviewee from Langas in Eldoret on 3 March 2008, KNCHR interview with a male interviewee from Kasarani in Eldoret on 3 March 2008, KNCHR interview with a female interviewee from Kimondo, Endebes on 28th February 2008

²⁵⁷ KNCHR interview with an informer from Kasarani in Eldoret on 3 March 2008

²⁵⁸ KNCHR interview with a male resident of Eldoret on 26 February 2008

²⁵⁹ KNCHR interview with an informer in Eldoret on 11 April 2008 and also discussions with members of the public at Mwiruti shopping centre, Yamumbi on 11 April 2008

²⁶⁰ KNCHR interview with an informer from Kasarani in Eldoret on 3 March 2008, KNCHR interview with an informer in Eldoret on 12 April 2008, KNCHR with a male resident of Eldoret on 27 February 2008

²⁶¹ KNCHR interview with a female resident of Kisii on 16 February 2008 at Keroka IDP camp

²⁶² *Daily Nation* 18th January 2008, Peter Ng'etich, Watoro Kamau & Jared Nyataya

²⁶³ *Daily Nation* article dated 3 January 2008 by David Mugonyi

²⁶⁴ KNCHR interview with an informer at Tinderet on 8 April 2008

Failure to Protect: Security Agents' Crimes of Omission

314. 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 30 December 2007 and 1 January 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.
315. 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.
316. 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

317. 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 AP officers attached to the local chief's camp were seen providing armed guard to a compound that is said to have housed raiders that attacked and burnt houses in the area on 30 and 31 December 2007²⁶⁵. Interviewees also 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!* (Didn't you say work should go on? Let it go on.)" [The remarks were understood to be a mockery of the PNU clarion call of "Let the work of rebuilding the economy continue by re-electing President Mwai Kibaki.]²⁶⁶ 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 of the Kikuyu community 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.²⁶⁷

²⁶⁵ KNCHR interview with an informer on 11 April 2008 in Eldoret, KNCHR interview with an informer on 11 April 2008 in Eldoret (PEV/IVR/APR/929)

²⁶⁶ KNCHR interview with an informer on 11 April 2008 in Eldoret

²⁶⁷ KNCHR interview with an informer on 13 April 2008 in Eldoret

CENTRAL RIFT REGION

INTRODUCTION

318. 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 election. For purposes of this report, Central Rift Valley region comprises greater Nakuru district (including Molo and Naivasha districts) and Narok. Greater Nakuru had a total of 657,219 registered voters while Narok District had 170,244 registered 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.
319. The region has been a theatre 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.
320. 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.
321. 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.”²⁶⁸ 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 1992.²⁶⁹ These clashes pitted these groups along ethnic lines as well as on political lines.
322. 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 opposition parties.
323. 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.²⁷⁰ In 1992 the provincial administration also showed open partisanship in favor of KANU. In the 2007 post-election violence however, the provincial

²⁶⁸ Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, 31 July, 1999 at page 59

²⁶⁹ KNCHR interview with a female interviewee in Kisii on 15 February 2008; KNCHR interview with a male interviewee in Kuresoi on 30 March 2008

²⁷⁰ Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, 31 July, 1999 at page 59

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.²⁷¹

324. 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 preceding or following a General Election.²⁷² The pattern of attacks particularly in Molo in 1997/1998 showed that Kalenjin raiders first attacked and killed the Kikuyu community before burning their homes. In retaliation, the Kikuyu community organised themselves and launched counter attacks in which they killed the Kalenjin and burnt their homes.²⁷³
325. A 2006 Internal Displacement Monitoring Center report noted that 431,153 people had been forcefully displaced from their homes.²⁷⁴ This is consistent with information received by the KNCHR in its interviews. For example, on 9th November 2006, attackers from Ogiige burnt houses in Mwaragania not far from Kuresoi and killed a businessman in the area. Police did nothing to stop the attack.²⁷⁵ 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 the Kikuyu community would be evicted from the area.²⁷⁶
326. On the basis of the interethnic animosity 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.
327. In Narok, clashes between the Maasai and the Kikuyu community 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.²⁷⁷ 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.²⁷⁸ 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.²⁷⁹

²⁷¹ It is notable that after the 1992 clashes in those areas where Kikuyus were afraid to return, Kisiis bought land and in the post-election violence in 2008, they were subject to the same kind of attacks that had characterised the 1992 clashes, KNCHR interview with a male councillor in Kuresoi on 16 March 2008.

²⁷² Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, 31 July, 1999 at page 59

²⁷³ Ibid at page 151

²⁷⁴ Reuters News report of 30 January 2008

²⁷⁵ KNCHR interview with a male interviewee in Molo on 20 March 2008

²⁷⁶ KNCHR follow up group interview with a male interviewee in Kuresoi on 18 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 16 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 interviewee in Molo on 14 April 2008

²⁷⁷ Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, 31 July, 1999 at page 166-167

²⁷⁸ Ibid at page 167

²⁷⁹ Ibid at page 172-2

328. 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 the Kikuyu community and Kisii from Kuresoi.²⁸⁰
329. Interviewees 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.²⁸¹
330. Some of the flashpoints of violence in the Central Rift have been characterised by claims by the Maasai and Kalenjin of Kikuyu encroachment of their land; Kikuyu monopolisation of businesses including retail and transport businesses in the Rift Valley as well as the choice by the Kikuyu community 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 Kikuyu community, Kisii and other non-indigenous groups from the Rift Valley.

PATTERNS OF VIOLENCE

331. 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, a lot of 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.²⁸²
332. The other distinguishing feature of the violence preceding and particularly that following the 2007 elections was the extent to which roads were blocked in such an organised manner.²⁸³ Youths from both sides participated in this activity. This evidenced a rather high level of organisation and the mass mobilisation 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 organised blockages of the road transport network.
333. 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.

²⁸⁰ KNCHR interview with a male interviewee in Kuresoi on 18 February 2008

²⁸¹ KNCHR follow up group interview with a male interviewee in Eldoret North on 15 April 2008

²⁸² Daily Nation Newspaper of 2 January 2008 by J. N Nyataya

²⁸³ Representative incidents include: *Daily Nation* Newspaper article of 14 January 2008 by Agweni Gichara and G. Rono

In Naivasha for example, those business people who refused to support the cause of the Kikuyu violence against the Luo and Kalenjin communities had their buildings slated for burning.²⁸⁴

334. 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 the Luo community and the Kalenjin. Even when there was no ongoing violence, rumours contributed to the heightening of the anxiety and the mass forced displacement of people from their homes anticipating attacks that were rumored to be ongoing or planned.²⁸⁵ As such, one cannot see the violence in the Central Rift in isolation of the violence in the rest of the country.
335. In Narok, there were brief skirmishes between the Maasai and the Kikuyu on the Bomet/Narok border from 30 December 2007 but this violence fizzled out by 2 January 2008 after elders from the two communities met and struck a peace deal.
336. Prior to the announcement of presidential election results on 30 December 2007 there had been numerous incidences of violence in several areas particularly in Kuresoi constituency. By the Election Day, at least 20 people had been killed and thousands displaced.²⁸⁶ 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.²⁸⁷ 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 buildings. The second category was violence organised by ODM-supporting organised gangs (mainly the Kalenjin and the Maasai) aimed at perceived PNU supporters; mainly the Kikuyu and the Kisii communities. This type of violence was witnessed in all the districts in the region but most dramatically in Molo District and resulted in counter-attacks by organised PNU gangs. The third category was organised revenge attacks by PNU allied supporters. Local organised gangs in pro-PNU areas, particularly the Kikuyu, on receiving the fleeing internally displaced persons (IDPs), mobilised 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.
337. 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 warders²⁸⁸. Sections of the police have been accused of looting and taking sides in the conflict. In some ODM strongholds, the police shot to kill, while when confronted with pro-PNU organised gangs, 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 PNU²⁸⁹.

²⁸⁴ Report titled "Smoke Sunday" by a Red Cross official in Naivasha on 28 January 2008

²⁸⁵ KNCHR interview with a male interviewee in Limuru on 8 February 2008; KNCHR interview with a male interviewee in Molo on 15 March 2008

²⁸⁶ KNCHR interview with a man and his wife from Molo south, Kuresoi division on 28 February 2008

²⁸⁷ For example, see "EU condemns pre-election violence in Kenya", Reuters, December 21 2007

²⁸⁸ KNCHR interview with a male resident of Naivasha on 12 March 2008 at Naivasha Municipal Council, KNCHR interview with a female interviewee of Naivasha on 12 March 2008 at Naivasha Municipal Council

²⁸⁹ KNCHR interview with a male interviewee from Muiruti shopping centre in Eldoret on 12 April 2008

Molo and Kuresoi

338. 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 Kalenjin against the Kikuyu and the Kisii who are the dominant communities.²⁹⁰ The communities live in neighboring farms which are either mixed or homogeneous.
339. 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. 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 organised gangs. 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 allegedly fueled using funds provided by leaders and businesspersons and through fundraising from ordinary wananchi from the Kalenjin and Kikuyu communities. The vehicles were also used to ferry the injured to hospital and to transport food and other supplies to scenes of attacks. 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 Ksh200 to Ksh500 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 documents²⁹¹
340. Kuresoi was the worst hit area where violence had been recurring particularly after the 2005 referendum. Investigation statements suggest that there was a plot to evict members of the Kikuyu and the Kisii communities who were perceived to be anti-ODM. Numerous interviewees²⁹² from Kuresoi recounted regular 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.
341. By the time the violence subsided in March 2008, large sections of communities, mainly members of the Kikuyu and the Kisii communities, 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.²⁹³
342. 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 members of the Kikuyu community camped at the Show Ground in Nakuru and in the Municipal Stadium in Naivasha. The Luo community camped at the Afraha Stadium in Nakuru and in Kedong in Naivasha.

²⁹⁰ KNCHR interview with a male interviewee on 15 March 2008 at Muriduko farm, Kuresoi

²⁹¹ KNCHR interview with a male interviewee from Molo on 8 February 2008 at Limuru, Word of Faith Church, see also KNCHR interview with an informer in Kuresoi on 10 April 2008

²⁹² KNCHR interview in Kuresoi on 20 March 2008, KNCHR interview in Kuresoi on 20 March 2008, KNCHR interview in Kuresoi on 20 March 2008, KNCHR interview in Molo on 14 April 2008, KNCHR interview in Molo on 14 March 2008, KNCHR interview in Kuresoi on 14 March 2008, KNCHR interview in Molo on 15 March 2008

²⁹³ KNCHR interview with a priest on 18 March 2008 at Kamwaura Catholic Parish

Nakuru

343. Nakuru town has been ethnically heterogeneous. Its ethnic composition includes the Luo community, Kikuyus and the Kalenjin 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.²⁹⁴ The fact that Nakuru is also strongly associated with the presence of Mungiki adherents. It is alleged that the Mungiki were reinforced by their members from their alleged strongholds in Ol Kalau and Subukia.
344. Mungiki has a foothold in Nakuru in terms of the number of activities and strength of membership.²⁹⁵ It is also notable that a former Member of Parliament was charged with murder together with 12 suspected Mungiki members. However, a court found there was insufficient evidence to convict him.²⁹⁶ Several Central Province politicians are alleged to have met or supported Mungiki prior to the 2007 elections and during the post-election violence.²⁹⁷
345. 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 when Luo ODM supporters in Pondamali took to the streets demanding 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 the Kikuyu.²⁹⁸
346. The Kikuyu 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 paralysing public transport. Seven people (four Luo and three Kikuyu) 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 the Kikuyu. Summerland Club, another famous restaurant situated next to Lules, also caught fire. Houses and businesses belonging to the Kikuyu were burnt in Kaptembwa by the Kalenjin. The provincial commissioner declared a temporary curfew in the town effective 7pm – 6am.²⁹⁹
347. An uneasy calm returned on 2 January 2008 but a fresh orgy of violence erupted on 25 January 2008. Members of the Kikuyu community were enraged by the stories of brutality told by Kikuyu and Kisii IDPs who were flocking 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 Luo, Luhya and Kalenjin communities. Kikuyu organised gangs were assembled and deployed to the estates to flush out the enemy communities. Contingents of Kikuyu youths armed with pangas, knives, petrol bombs and other crude weapons viciously

²⁹⁴ The 2006 by election after the death of Mirugi Kariuki produced a similar fracture.

²⁹⁵ "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

²⁹⁶ "Joy as Fomer MP is Freed After 23 Months of Agony," *The East African Standard*, December 15, 2004.

²⁹⁷ *The East African Standard*, "Mungiki Members Speak Out," *The East African Standard*, April 18, 2008 available at <http://www.eastandard.net/news/?id=1143985037>

²⁹⁸ The people daily newspaper article dated 30 December 2007 by people team

²⁹⁹ KNCHR telephone conversation with its monitors and staff in the field Nakuru on 1 January 2008

attacked their enemies leading to numerous deaths and fatal injuries. Luo men were rounded up and forcefully circumcised using pangas and broken bottles.

348. Those who resisted were beheaded. The investigating team was told that the Kikuyu organised gangs comprised members of the outlawed Mungiki sect and angry youths who had fled to the town from the violence in the countryside. The Kalenjin 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 Kalenjin raiders had been mobilised 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, more than 100 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 deaths since the beginning of the revenge attacks on 25 January 2008, an official total of 161 for Nakuru district alone.³⁰⁰

Naivasha

349. 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 Luo, the Kalenjin, the Luhya and any community believed to have been behind the onslaught on their ethnic colleagues.

350. Some informants told investigators that the local organisers received support from Kikuyu businesspersons and politicians who did not reside in Naivasha town. Several interviewees said that leaflets warning the Luo, the Kalenjin and their allies were distributed in the estates prior to the violence³⁰¹. The said communities were required to vacate the area or face dire consequences but they did not take them seriously. The leaders mobilised local jobless youths who were reportedly bolstered by Mungiki followers from the neighbouring 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.

351. A former MP, Jane Kihara, bought pangas from a local supermarket called B-Kubwa which were used by the attackers.³⁰² 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 Luo community employed in the flower industry reside.

352. 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

³⁰⁰ *Daily Nation* Newspaper article of 18 March 2008 by Sam Kiplagat

³⁰¹ KNCHR interview in Naivasha on 13 February 2008, KNCHR interview in Naivasha on 12 March 2008, KNCHR interview in Naivasha on 12 March 2008, KNCHR interview in Naivasha on 8 March 2008, KNCHR interview in Naivasha on 12/2/08

³⁰² KNCHR interview in Kisumu on 12 March 08

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 vandalised and completely destroyed³⁰³. They went to Kabati estate where they hunted down the Luo community and forcefully circumcised them before brutally hacking them to death. They then conducted a door-to-door search of the Luo community 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. Here is the story of Bernard Orinda Ndege..

‘On 27th January 2008 (Sunday), I woke up at 7:30am 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 500m 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 three 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 two wives and nine children. My elder wife was pregnant and due to deliver in 6 days time at the time of her death³⁰⁴.

353. 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 Luo community.³⁰⁵ 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 displaced³⁰⁶.

Narok

354. The violence in Narok 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 the Kisii communities 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 violence³⁰⁷. The violence nevertheless claimed lives and led to considerable displacement of Kikuyus and the Kisii community³⁰⁸.

³⁰³ Report titled “The smoke Sunday” by a Red Cross official in Naivasha on 28 January 2008

³⁰⁴ KNCHR interview in Kisumu on 12 March 08

³⁰⁵ Report titled “The smoke Sunday” by a Red Cross official in Naivasha on 28 January 2008

³⁰⁶ Kenya Times article dated 28th January 2008 by Victor Obure

³⁰⁷ KNCHR interview with a female interviewee on 17 February at Kongasis

³⁰⁸ KNCHR interview with a male interviewee from Narok on 12 March 2008

PLANNING AND ORGANISATION

355. 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 galvanised the Kalenjin Community towards large-scale violence targeted at anti-ODM communities³⁰⁹. The 2007 General Elections were seized as an opportunity to pursue the land grievances, which has bedeviled the region for many years. The Kalenjin accused the Kikuyu of voting against the wishes of the locals and hence justifying their eviction from the region 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 galvanise the Kalenjin to war.³¹⁰
356. One meeting was held at Chepkinoiyo near Sitoito after nominations which was financed by the immediate former MP of Kuresoi, Moses Cheboi and attended by many other politicians. During the meeting, it was resolved that Kikuyus should be evicted so that they don't vote for the Kikuyu aspirant in Kuresoi.³¹¹³¹²
357. Another meeting was held in Keringet on 22 December 2007, which declared total war on the Kikuyus and the Kisii.³¹³ All the Kalenjin leaders in the constituency were invited. This meeting was attended by about sixty (60) leaders.
358. It was resolved that there must be war to save the Kuresoi parliamentary seat from going to the Kikuyus. Secondly that the Kalenjin must obtain and defend their land from the Kikuyus and Kisii. The chairman of the meeting was a respected elder. The 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.
359. When the national presidential results were announced on 30 December 2007, the Kalenjin gave up their political differences and decided to unite against the Kikuyus and the Kisii community 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.
360. 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 Olenguruone 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 organise themselves on how to execute the attacks.³¹⁴
361. In Kamwaura area, the raiders met at several settlement schemes, which are exclusively inhabited by the Kalenjin.

³⁰⁹ KNCHR interview with a male interviewee in Kuresoi on 28 February 2008

³¹⁰ KNCHR interview with an informer from Molo on 17 April 2008

³¹¹ KNCHR interview in Molo town on 17 April 2008

³¹² KNCHR interview with an administration official from Lulukwet sub-location in Molo on 16 March 2008, KNCHR interview with a male coucilor in Kuresoi on 16 March 2008; KNCHR interview with a male resident of Kuresoi on 18 February 2008, KNCHR with a male resident of Kuresoi on 20 March 2008, KNCHR interview on 11 April 2008 at Kamwaura, and KNCHR interview with an informer in Molo on 17 April 2008.

³¹³ KNCHR interview in Molo town on 17 April 2008

³¹⁴ KNCHR interview in Njoro on 16 March 2008

362. In Kuresoi division, the raiders met in Kongoi farm and the adjacent Kio, Ogilge, Haraka, Set Kobor and Kipkewa farms. These groups attacked Murinduko, Tegea, Central, Mwaragania, Githima, and Kuresoi among other farms.
363. In Kamara Division, the raiders met at Kapsinendet. This group operated with the support of Kalenjin youths from Eldama Ravine constituency. The leader of this group is nicknamed 'DC', a prominent farmer and was in the group that burnt Total Trading Centre.³¹⁵ In Mau Summit area, the attackers converged at the Sinendet farm of a retired primary school teacher and board member at a secondary school.³¹⁶ The raiders also frequently gathered at Leopard Park Hotel within Total Trading Centre where they used to receive their pay from a manager of the hotel. In Molo/Sirikwa area, the raiders converged at residences of some prominent people/elders.³¹⁷ These contingents launched attacks in settlements around Mau Summit, Nyakinyua, Sirkwa, Haraka, Jogoo and Molo.
364. The raiders were transported to various scenes of attack in vehicles donated by politicians and businesspeople
365. 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.
366. 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. 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.³¹⁸
367. The investigation team was told of a certain councillor in Olenguruone who was a key mobiliser³¹⁹ 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 Kalenjin 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 the Kisii community but they were all evicted during the 1992 clashes. The land has since been taken over by the Kalenjin.³²⁰
368. The team was told that the headmaster of a secondary school in the area was a key organiser of violence. His main role was mobilising 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 Centre near the main bus stop opposite DEB primary school. This happened daily between 4th and 20 January 2008. Many students from Amaro Secondary School participated in the attacks.

³¹⁵ KNCHR interview in Molo Town on 17 April 2008

³¹⁶ KNCHR interview in Molo Town on 17 March 2008

³¹⁷ KNCHR interview in Molo Town on 16 March 2008

³¹⁸ KNCHR interview with an informer from Molo, Kuresoi on 17 April 2008

³¹⁹ KNCHR interview in Molo Town on 17 April 2008, KNCHR interview in Njoro on 16 March 2008, KNCHR interview in Nakuru on 13 April 2008

³²⁰ KNCHR interview in Molo Town on 17 April 2008, KNCHR interview in Njoro on 16 March 2008, KNCHR interview in Nakuru on 13 April 2008

He used to pay the raiders between Ksh200 and Ksh500. 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)³²¹.

369. 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 that an ODM parliamentary aspirant mobilised and issued instructions to ODM supporters to attack their rivals.
370. 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 organised gangs on the eve of the attacks. The organised gangs reportedly came from Subukia, Nyahururu and Engashura. When the organised gangs struck, they brandished new pangas, which were uniformly sharpened. They attacked in a well-organised and regimented manner and communicated in oblique Kikuyu. They mutilated their victims in an analogous manner that included forced circumcision and beheading. Other reports indicate that in some instances the organised gangs 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 Ksh200 upwards.
371. Reports also indicate that the Kalenjin were equally organised 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 organising themselves to fight back the Mungiki raiders who had threatened to attack.
372. The planning and execution of violence in Naivasha was similar to Nakuru. The investigation team heard that local Kikuyu businesspersons and politicians mobilised funds and recruited local youths to avenge the brutality meted against fellow Kikuyus in the countryside.
373. As mentioned elsewhere in this report, KNCHR heard that leaflets had been circulated prior to the violence warning the Luo community, Kalenjin and allied communities to vacate the area or face dire consequences. A number of interviewees³²² 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 Kalenjin whom 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 (Ksh3,000) to be distributed amongst Kikuyu youths so that they could attack members of the Luo community.³²³

³²¹ KNCHR interview in Njoro on 16 March 2008, KNCHR interview in Nakuru on 13 April 2008

³²² KNCHR interview in Naivasha on 15 February 2008, KNCHR interview in Naivasha on 14 February 2008, KNCHR interview in Naivasha on 15 February 2008, KNCHR interview in Naivasha on 15 February 2008, KNCHR interview in Naivasha on 12 February 2008, KNCHR interview in Naivasha on 12 February 2008, KNCHR interview in Naivasha on 2 March 2008, KNCHR interview in Naivasha on 1 March 2008, KNCHR interview in Naivasha on 12 March 2008, KNCHR interview in Naivasha on 12 March 2008

³²³ KNCHR interview in Naivasha on 15 February 2008

374. 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 23 and 26 January 2008 in a local hotel attended by numerous youths and influential local wealthy people and leaders³²⁴ An employee of one of the flower farms in Naivasha gave the an account of one of the meetings.

375. 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 the Kikuyu to come out and join the war. Prominent Matatu proprietors also played a key role in organising and mobilising for the violence. They were led by Messrs. Munderu, Wajulia, Pharis Ndungu Chege and Lucky Boy. The Matatu proprietors also organised for the transportation of Kikuyu youths from the neighboring central province.³²⁵

[BOX] *“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 (member)’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”³²⁶*

376. The youths were reportedly paid between Ksh100-Ksh200 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 Luo community employed in the flower industry reside.

377. 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, William Ole Ntimama, a senior ODM politician severally threatened the eviction of the Kikuyu and the Kisii communities during the campaign period. One interviewee said he heard a Politician on 24 December 2007 saying that if the Kikuyu did not vote for him, they would move out. He reportedly reminded the Kikuyu that Narok was not their home. The politician is said to have organised and paid Maasai youths to unleash violence in Narok town and its environs. Kalenjin elders and politicians and civil servants also reportedly mobilised their youths to unleash terror on the Kisii and Kikuyu communities.

³²⁴ Human Rights Watch (HRW), *Ballots to Bullets: Organised Political Violence and Kenya’s Crisis of Governance* (New York: 2008), pg 46

³²⁵ KNCHR interview in Naivasha on 2 March 2008

³²⁶ Report titled “The Smoke Sunday” by a Red Cross official in Naivasha on 28 January 2008

THE ROLE OF STATE AGENCIES

Provincial Administration

378. 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.³²⁷

The police and other security forces

379. 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 organised gangs 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 organised gangs.

380. 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 raiding gangs must also have either had prior reassurance in this regard, or having observed that the police were simply shooting in the air, carried on their attacks undeterred.

381. 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.. In the few incidences where the police arrived, they were awfully outnumbered by the organised gangs and merely shot in the air as the attackers wreaked havoc. Despite the fact that there is a police station at Olenguruone town, the organised gangs 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 fact that although many of the local security authorities said that they had information on the organisers of the violence, the culprits have not been held accountable. The police argued that they were still investigating the suspects.

³²⁷ KNCHR interview with a male interviewee in Molo on 16 March 2008 see also *Kenya Times* Newspaper dated 21st January 2008 article by Dan Nyakundi

382. The attacks in Narok, Naivasha and Nakuru towns are also astonishing given that they occurred at district headquarters and provincial headquarters respectively. The organised gangs unleashed terror and maimed their victims with little challenge from the police who were unable to promptly contain the mayhem. Some police officers were reportedly spotted in the midst of raiders providing back up while armed. The violence only subsided after the military intervened albeit after the organised gangs had already inflicted severe damage and loss.
383. The investigating team learnt that surprisingly there were no intelligence officers in Kuresoi division despite the region being one of the epicenters of violence since early 1990s.³²⁸
384. 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 involved 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 lendelee* (PNU slogan).
385. In Kaptembwa Police Station (Nakuru) for example, it was reported that the police officers were so divided that they almost fought amongst themselves.³²⁹ An officer based at the station said that the Kenya Army had to intervene in the violence since the police were unable. On 30 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 AP 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 2 January 2008, some AP 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.
386. In Naivasha, prison officers deployed to contain the violence reportedly terrorised 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.
387. 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.³³⁰
388. The OCS, Kuresoi Police Station was massively accused of gross negligence and complicity in violence, which led 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.³³¹

³²⁸ KNCHR interview with an informer (senior police officer) in Kuresoi on 14 April 2008

³²⁹ KNCHR interview with an informer in Nakuru on 13 April 2008

³³⁰ KNCHR interview with a male interviewee in Kuresoi on 17 March 2008

³³¹ KNCHR interview with an informer in Molo on 14 April 2008

389. 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 vandalised and burnt down 29 February 2008.

The Civil Service

390. 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, mobilised their respective communities and acted as local agents in concretising 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.

Politicians

391. 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 mobilised other local leaders and business persons through numerous meetings and galvanised 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 organised gangs 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.³³²

The Business Community

392. 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 organised gangs 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.³³³ The business people also facilitated transportation of the injured raiders for treatment and supported funerals of the raiders who died in the attacks.³³⁴ 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

³³² For example, KNCHR interview with a male interviewee in Molo on 16 March 2008; KNCHR followup group interview in Molo on 17 April 2008; *Daily Nation* newspaper article for 29 January 2008, Nakuru Town MP Lee Kinyanjui and Eldama Ravine MP Musa Sirma calling for peace in Nakuru town on 28 of January, 2008

³³³ KNCHR interview with a male interviewee in Molo on 16 March 2008; businessman S.P. Siele a wholesale trader in Molo at the Total Trading Centre allegedly financed raiders; Similarly Wilson Leitich was alleged to have done the same, as well as Jane Kihara former Naivasha MP, KNCHR interview in Naivasha on 15 February 2008; KNCHR interview with a male interviewee from Naivasha on 15 February 2008 at Kedong IDP camp; KNCHR interview with a male interviewee at Kedong camp, Naivasha on 11 February 2008

³³⁴ For example, Dickson a.k.a. 'Dyma' of Olenguruone has a Mitsubishi lorry and a green Toyota Pickup truck that was used to ferry raiders to scenes of attacks, see KNCHR interview with Catholic priest from Olenguruone on 16 March 2008 at Njoro. Matayo, a resident of Ambusket in Olenguruone reportedly donated a ten-wheel grey truck for use during the violence, KNCHR interview with an informer in Kuresoi on 13 April 2008

to organise their own security. Further, the investigation team gathered that the business community organised 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.

The media

393. In the Central Rift, we interviewed witnesses who stated that Radio KASS was inciting Kalenjins.³³⁵ One witness told the team that in terms of incitement, Radio Injili was “actually worse”.³³⁶ Other witnesses told the team that vernacular music on Kikuyu stations such as Kameme and Inooro played music that intensified feelings of ethnic hatred.³³⁷ Kikuyu FM stations like Inooro, Coro and Kameme were also accused of waging an ethnic propaganda campaign, though a more subtle one, against ODM and the Kalenjins.”³³⁸

Other Actors

394. During the investigation missions, the team interacted with a range of other special sectors of the society that included humanitarian groups, civil society, community based organisations, community elders, professional groups and religious leaders and organisations. 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.

395. These sectors alerted the authorities of impending attacks, organised 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.

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

³³⁵ KNCHR followup group interview with a male interviewee in Molo on 11 April 2008

³³⁶ KNCHR followup group interview with a male interviewee in Molo on 17 April 2008; Crisis Group Africa countrywide report on 21 February 2008

³³⁷ United Nations Office for Coordination of Humanitarian Affairs country wide report on 22 January 2008

³³⁸ Crisis Group Africa countrywide report on 21st February 2008

NYANZA REGION

INTRODUCTION

397. 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.
398. 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 region³³⁹.
399. Nyanza province has a rich history within the Kenyan political context. The province is the home of several renowned 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.
400. The province is divided into two distinct sections defined by ethnic settlement. The Southern part is mainly inhabited by the Kisii, Luhya and Kuria who have a mixed history of political party affiliations. While the rest is mainly inhabited by the Luo who have a long association with opposition politics, which 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, it 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, the Members of Parliament from Nyanza province are ODM members.
401. The 2007 elections in the Luo part of the province were characterised 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.
402. The urban areas such as Kisumu are cosmopolitan bringing together people from different ethnic and racial backgrounds. This complexity was also reflected in the electoral politics. Outside Kisumu city, the southern part of the province supported both ODM and PNU candidates at the parliamentary level. The presidential vote however was largely in support of PNU.

³³⁹ www.eck.or.ke/downloads/Registeredvoterscomparative.pdf

PATTERNS OF VIOLENCE

403. Violence was reported in Nyanza before the December 27 elections.³⁴⁰ 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.
404. Nyanza province witnessed violence in the months of December 2007, January, February and March 2008. Initial violence occurred around 29 December 2007 in which three AP officers were reported to have been killed.³⁴¹ 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. Information 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.
405. 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.
406. The first phase of violence was precipitated by delay in announcement of the presidential results as well as the announcement of Mwai Kibaki as the President and this was largely between 29 December 2007 and 10 January 2008.³⁴²
407. The second phase of violence was between 15 and 17 January 2008, which is also the period when ODM called for mass protests. The mass protests had been declared illegal by the police.
408. 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.
409. The information collected by the KNCHR suggests that the first phase of violence had a relatively lower level of organisation as compared to the second and third phases of violence, which appeared to have had a fairly high level of planning and organisation.

³⁴⁰ See *The People* Newspaper article dated 27th December 2007 by People team

³⁴¹ *Daily Nation* online, posted 27 December 2007, titled Mutua Confirms APs Killed But Refutes Plot to Steal the Vote.

³⁴² 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.

410. 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.³⁴³ The general view in the region was that the ODM presidential candidate, Mr. Odinga, had won the elections.³⁴⁴
411. 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 6 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, as well as in Migori and Kuria.³⁴⁵
412. The Chinkororo vigilante group³⁴⁶ 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.³⁴⁷
413. 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 2008³⁴⁸. 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.³⁴⁹

Looting and Destruction of Property

414. Looting and destruction of property was mainly perpetrated against members of so-called “foreign communities” including the Kikuyu, the Kisii communities and Asians. Nevertheless, members of the local community were also affected in areas where they were deemed to have

³⁴³ KNCHR interview with a male resident of Kisumu on 17th March 2008, and KNCHR interview with an informer in Kisumu on 10 April 2008

³⁴⁴ KNCHR interview with an informer in Kisumu on 15 April 2008 and KNCHR interview with an informer in Kisumu on 10 April 2008

³⁴⁵ A video clip captured by NTV Patrick Amimo on 31 December 2007

³⁴⁶ 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 recognised by a significant portion of the Abagusii as a community defence force, guarding territories against cattle rustlers and other perceived enemies.

³⁴⁷ Internet article by IRIN dated 22 February 2008

³⁴⁸ KNCHR post mission report for Kisii Nyanza region dated 18 February 2008

³⁴⁹ *Daily Nation* Newspaper dated 24 March 2008 by Sammy Kiboi

supported the PNU for instance, Rongo and Migori.³⁵⁰ During the second and third phases of the violence, some affluent the Luo community also had their property looted and destroyed in what was seen as a class struggle.³⁵¹

415. Both men and women participated in the looting and destruction of property in the region.³⁵²

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.

416. 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 allegations³⁵³. Ndugu Transport Co Ltd was allegedly attacked because some of its employees were not from the local community.

417. Several properties belonging to persons of Kikuyu origin were looted and destroyed and these included Crater Automobiles, Classic Hotel in Dunga³⁵⁴ and Heritage Hotel, among others. Residential property belonging to individuals residing in Nyalenda, Manyatta, Migosi and Obunga estates of Kisumu were also destroyed.

418. 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.³⁵⁵ The hotels were vandalised and extensively damaged. Some of the violations of human rights witnessed in the region are highlighted below.

Ukwala Supermarket

419. 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 Ksh150 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

³⁵⁰ KNCHR interview with an informer in Migori on 15 April 2008

³⁵¹ KNCHR interview in Migori on 15 April 2008, note 14

³⁵² KNCHR interview with FIDA Kenya Kisumu branch on 10 April 2008

³⁵³ KNCHR interview with one of the managing directors of Ukwala supermarket kisumu on 17 April 2008 and KNCHR interview with an informer in Kisumu on 12 April 2008

³⁵⁴ 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.

³⁵⁵ These are hotels going by the name Kimwa Hotels which were based in Kondele area and Kisumu Town Central Business District

who also engaged in the looting. The management alleged that the police watched as property was destroyed.³⁵⁶

420. 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 some seven people lost their lives in the fire.³⁵⁷

Kibuye Market

421. 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 people from the locality. 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.³⁵⁸

Ndugu Transport Company Limited

422. 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.³⁵⁹ 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.

Kimwa Hotels

423. 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 in the Central Business District. The property in Kondele estate was destroyed immediately after announcement of presidential results. Looters vandalised 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 in Meru at the time.³⁶⁰

³⁵⁶ KNCHR interview with one of the managing directors of Ukwala supermarket Kisumu on 17 April 2008

³⁵⁷ KNCHR interview with the OCS Central Police Station on 17 April 2008

³⁵⁸ KNCHR interview with an informer in Kisumu on 11 April 2008

³⁵⁹ KNCHR with an informer in Kisumu on 12 April 2008

³⁶⁰ KNCHR interview with an informer in Kisumu on 9 April 2008

Kiwasco

424. On 31 December 2007 about 17 vehicles and other property belonging to the Kisumu Water and Sewerage Company (Kiwasco) 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.³⁶¹ 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.

Eviction of Non-Luo Communities

425. 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 had non-locals living and working there. Evictions mostly took place in the cosmopolitan areas. Eviction of so-called "foreign communities" in Nyanza province occurred in two phases.

426. The communities targeted for eviction during the first phase of the violence between 29 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.

427. [BOX]"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."³⁶²

428. 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 10 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 23 February 2008, Raila asked the community to stop the attacks on the Kisii "as they are our brothers".³⁶³ The KNCHR's officers were able to confirm during a subsequent visit to Kisumu between 8 and 17 April 2008 that members of the Kisii community had indeed resumed residence and business operations in the town.

429. 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), the Kikuyu, the Kisii community. He is further alleged to have said that if he won, he would "remove the visitors and make the Luo community own the businesses".³⁶⁴ Interviewee accounts were that on 29 December 2007, non-Luo people in Migori were attacked and shops looted. There were reported cases of destruction of property belonging to members

³⁶¹ Ibid.

³⁶² KNCHR interview with interviewee in Kondele Police Station on 12 February 2008

³⁶³ KNCHR interview with a male interviewee of Kisumu on 14 February 2008

³⁶⁴ KNCHR interview with a male resident of Migori on 17 March 2008

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.

430. Interviewees alleged that some senior politicians were responsible for influencing locals to violence during campaign rallies before the elections and also during the period after 29 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.
431. During the pre-election period, Raila Odinga is quoted as having told people in Migori at a political rally that: “we do not want *madoadaa*”. The phrase was understood either to mean that other communities were unwanted in Migori; or that he preferred the ‘three-piece’ voting system – in which voters would tick against one party’s civic, parliamentary and presidential candidates³⁶⁵ After violence erupted in Luo Nyanza following the controversial results of the presidential elections, Raila 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 attacks on the Kisii community ceased immediately whereas attacks against the other communities went on.³⁶⁶
432. The KNCHR also received information regarding co-ordination of demonstrations by local politicians.³⁶⁷ In this regard, two Kisumu Town MPs, Shakeel Shabbir and Olago Aluoch, are said to have led people in demonstrations.³⁶⁸³⁶⁹

ROLE OF SECURITY AGENCIES

433. 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.
434. **Inaction by security agencies**
435. 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.
436. 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.

³⁶⁵ KNCHR interview with a male resident of Migori on 17 March 2008

³⁶⁶ KNCHR interview with a male interviewee from Kisumu on 14 February 2008 at Manyata

³⁶⁷ KNCHR interviews with interviewees in March 2008

³⁶⁸ KNCHR interview with an informer in Kisumu on 12 April 2008

³⁶⁹ KNCHR interview with a male interviewee in Migori on 17 March 2008

Use of Excessive Force by Security Agencies

437. 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 29 December 2007, police exercised restraint in dealing with protesters and used rubber bullets and lobbed teargas canisters to disperse riotous crowds. However, on 30 December 2007 and thereafter, security agencies did use live bullets to quell riots.³⁷⁰ 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 30 December 2007 and during the second and third phases of violence, the security agencies did not attempt to fire in the air to disperse crowds, but actually fired into crowds, injuring and killing scores of protesters³⁷¹.
438. In addition, although the police stated that they resorted to using 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 homes³⁷² 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 were shot from behind, while some were shot in the leg and others in the hand.³⁷³ It appeared that most of those who were shot may have been fleeing when they were hit. 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.
439. A total of 15 people from Migori were shot and killed by police.³⁷⁴ 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,³⁷⁵ while at least four people were shot by security agents in Koru and Muhoroni. One interviewee said that on 30 December 2007, his son was shot in the stomach by a General Service Unit Officer as he left his mother's salon.³⁷⁶ Another claimed that a police officer shot him in the leg on 31 December 2007 while visiting the site where his friend's body lay after being shot dead on the previous day. He allegedly witnessed the killing of another friend by the police during this latter incident.³⁷⁷ In another incident, an interviewee claimed that he sustained severe gunshot wounds at the back of his head just beneath the neck after police shot him on his way home from the city centre where he was shopping.³⁷⁸ 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.³⁷⁹

³⁷⁰ KNCHR interview with an informer in Kisumu on 9 April 2008

³⁷¹ KNCHR interview with an informer in Kisumu on 11 April 2008

, and KNCHR interview with an informer in Kisumu on 14 April 2008

³⁷² KNCHR interview with a female interviewee from Kondele Kisumu on 14 February 2008 taken at Kisii

³⁷³ KNCHR interview with a female doctor of New Nyanza General Hospital on 17 February 2008

³⁷⁴ KNCHR interview with Red Cross officials in Migori on 15 April 2008

³⁷⁵ KNCHR interview with the DO Rakwaro Division Rongo District on 15 April 2008

³⁷⁶ KNCHR interview with a male resident in Kisumu on 14 February 2008

³⁷⁷ KNCHR interview with a male resident in Kisumu on 14 February 2008

³⁷⁸ KNCHR interview with a male resident in Kisumu on 14 February 2008

³⁷⁹ KNCHR interview with an informer in Kisumu on 15 April 2008

440. Several interviewees alleged that the officer in charge of Central Police Station, Kisumu, Chief Inspector Wanyama, participated in looting and destruction of property.³⁸⁰ 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.
441. 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 at³⁸¹. As a result up to 100 people died³⁸² and hundreds were injured during the protests.
442. 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.³⁸³ 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.³⁸⁴
443. 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 making faces at him. Constable Kirui is currently facing a murder charge for shooting to death a civilian.

PLANNING AND ORGANISATION

444. Information gathered on the following points at possible planning and organisation of the violence that occurred in the region;

Looting and destruction of property

445. 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.
446. 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

³⁸⁰ KNCHR interview with an informer in Kisumu on 10 April 2008

³⁸¹ KNCHR interview with an informer in Kisumu on 9th April 2008

³⁸² 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.

³⁸³ KNCHR interview with a female resident in Kisumu on 15 March 2008, KNCHR interview with a female resident in Kisumu on 17 March 2008 and KNCHR interview with a female resident in Kisumu on 17 March 2008

³⁸⁴ KNCHR interview with an informer in Migori on 15 April 2008

looted and destroyed property were drawn from the neighbourhoods where members of “foreign communities” resided, and the latter were therefore easily recognised. Interviewees allege that the attackers appeared to have some organised 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

447. 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.³⁸⁵ The KNCHR was further informed that the evicting youth would flush out members of “foreign communities” from individual homes, 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 a mobile shop.³⁸⁶ A disc jockey at the Resort Club, Migori identified only by one name, Sebii, is said to have led people in looting and destroying property of non-Luo.³⁸⁷

448. The KNCHR was, however, unable to gather conclusive evidence – in terms of systematic planning and co-ordination – to fortify a case of organised attacks in relation to the evictions that were effected between 29 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 organisation, 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.

449. There was circumstantial evidence pointing at more organised planning and organisation during the violence that occurred subsequently.

Use of Excessive force by security agencies

450. 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.

³⁸⁵ 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

³⁸⁶ KNCHR interview with a male resident in Migori on 17th March 2008

³⁸⁷ KNCHR interview with a male resident in Migori on 17th March 2008

451. 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”.
452. 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 29 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 29 December 2008 prompting the PSC to call for reinforcements. From this information, one can deduce that the reinforcements were on standby to avert possible total collapse of the security situation in the region.

ROLE OF SPECIAL SECTORS OF THE SOCIETY

453. 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.
454. 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 businessmen 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.
455. 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.

WESTERN REGION

INTRODUCTION

456. 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 Luhya ethnic group. However, parts of the province in particular Lugari district have large settlement schemes that are composed of people from diverse ethnic groups.
457. The administrative headquarters of Western Provinces is Kakamega town. The other important towns being Bungoma, Mumias and Webuye. As at 5 November 2007, the Western Province had 1,648,888 registered voters.
458. 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.

PATTERNS OF VIOLENCE

459. Violence in Western Province took the form of:
- Burning, looting and vandalising of property primarily owned by the Kikuyu community.
 - Displacement of persons of Kikuyu origin and in some places, of the Kisii community.
 - Evictions of individuals from communities that supported the PNU primarily the Kikuyu but also the Kisii.
 - Excessive use of force by the police
460. 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 six demonstrators dead.³⁸⁸ There was also widespread tension following the killing of three AP officers on the 26 December 2007 in Lugari. Three AP officers were killed on 26 December 2007 as a state of tension engulfed various parts of the country ahead of the general election the following day, 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).³⁸⁹
461. In Mumias, on the 27 December 2007 a crowd of 1,000-people surrounded a trader known as Macho at his shop alleging that he had stored boxes of ballot papers to be used for rigging.³⁹⁰ 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 Kikuyu with eviction whether or not ODM won or lost the presidency.

³⁸⁸See *Sunday Standard* newspaper dated 30 December 2007 by Peter Ochieng and four others

³⁸⁹*The People* newspaper dated 27 December 2007 by People Team

³⁹⁰KNCHR post-mission report of western region dated 18 March 2008.

462. 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 paralysed with a large trench dug at Jua Kali (Turbo). In Kakamega town, 10 houses were burnt alongside some WECO university hostels.
463. On 1 January 2008, in Likuyani, Lugari, people returned from New Year 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 names of the Kikuyu and their residence identification and seemed to control and finance the group of 300 Luhya and Luo youths.³⁹¹ 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 4 2008 with 50 youths in balaclavas (these are masks that cover the whole head but have holes cut out for the eyes) trying to block victims' access to the DO's office. 'Toll stations' were erected on the roads which however, the area Chief removed.
464. 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.³⁹² By 30 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.³⁹³
465. In neighbouring Nambale, violence was first reported on 30 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.³⁹⁴ Fearing destruction of property, the police allowed vehicles to cross the border into Uganda without subjecting them to the normal inspection.³⁹⁵ By 31 December 2007, it was obvious that the civilian violence was targeted at the Kikuyu while police targeted the Luo community and Tesos. It appears that the motive of the violence was to loot and burn property rather than to kill. Some members of the Kikuyu and Bukusu communities 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 was a home to about 5400 refugees.³⁹⁶ The DC Busia is quoted as saying that some rape cases had been reported from the Mulanda transit camp.³⁹⁷
466. The demonstrations were often accompanied by attacks against the Kikuyu. In Kakamega, Mumias and Busia, the demonstrators targeted property and businesses belonging to the Kikuyu, burning, looting and vandalising 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 the Kikuyu. It is reported that the attackers, who were wearing black balaclavas and were painted white on the faces, were armed with pangas

³⁹¹ KNCHR interview with a male interviewee in Lugari on 27 February 2008

³⁹² KNCHR interview with a male resident of Bunyala on 15 March 2008

³⁹³ KNCHR interview with an informer in Lugari on 14 April 2008 at Likuyani IDP camp

³⁹⁴ Email report by UN OCHA dated 26 January 2008

³⁹⁵ KNCHR post-mission report of western region dated 18 March 2008 and *The People* newspaper pictorial dated 30th December 2007 by People Team

³⁹⁶ See *Daily Nation* newspaper dated 5 January 2008 by Gedieon Maundu and others

³⁹⁷ KNCHR post mission report of western region dated 18 March 2008

and arrows and used matches to burn grass thatched houses and petrol to burn the more permanent structures.

467. 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

468. 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.

469. Many interviewees 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.³⁹⁸ 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 the Kikuyu 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 the Kikuyu.

470. 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 for help.³⁹⁹

471. 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.⁴⁰⁰ These deaths are ascribed to the police. It is noted that 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

³⁹⁸ KNCHR interview with a male interviewee of Lugari on 27 February 2008 at Lukuyani DO IDP camp

³⁹⁹ KNCHR interview with a male interviewee of Lugari on 29 February 2008 at Lukuyani DO IDP camp

⁴⁰⁰ KNCHR interview with a male interviewee in Kakamega Provincial Hospital on 13 March 2008

Wanjala confronted the celebrating supporters of ODM candidate Ababu Namwamba killing one of them.⁴⁰¹

472. In Bungoma police shot dead three people on 31 December 2007 following a protest against the announcement of the presidential election results. Another 10 people were admitted to hospital in critical condition.⁴⁰² 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.⁴⁰³
473. On 2 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 3. On 4 January police at Malava police station turned away Luo IDPs who had walked from Eldoret, telling them that the station was only sheltering the Kikuyu. On 30 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.⁴⁰⁴
474. 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.⁴⁰⁵ The police reportedly told people seeking refuge: “*Si mliiba kura!* (You are paying for stealing the presidential votes!)”⁴⁰⁶ There are also many people from the area mentioned in connection with the violence none of whom was arrested.
475. 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 the Kikuyu 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

476. Save for Lugari, information from Busia, Mumias and Bungoma District Security teams indicate that the violence in the region was spontaneous.⁴⁰⁷ Indeed, a source in the District Security Committee ascribed the violence to “mob psychology” rather than intentional pre-planning.⁴⁰⁸
477. 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 Bonny Khalwale’s car, and the inflammatory remarks directed at the Kikuyu. Okemo for instance declared he did not want votes from the Kikuyu who

⁴⁰¹ KNCHR interview with a male resident of Bunyala dated 15 March 2008

⁴⁰² See *Daily Nation* Article dated 2 January 2008 by Jared Nyataya

⁴⁰³ KNCHR interview with a male interviewee in Mumias on 14 March 2008 at Mumias Police Station IDP camp

⁴⁰⁴ See *Daily Nation* Article dated 1 January 2008 by Nation Team

⁴⁰⁵ KNCHR interview with a male interviewee from Lugari on 28 January 2008 at Likuyani DO IDP camp.

⁴⁰⁶ KNCHR interview with a male resident of Kakamega on 7 February 2008 taken at Kirathimo IDP camp

⁴⁰⁷ KNCHR post mission report on West Region dated 18 March 2008

⁴⁰⁸ KNCHR post mission report on West Region dated 18 March 2008

retard development among the Luhya.⁴⁰⁹ The interviewees predominantly identified the disputed presidential elections as the trigger of the violence.

478. 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.⁴¹⁰ 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.
479. There is also a report that on 2 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).⁴¹¹ 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.
480. 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 "cannot continue to dominate the country as they have done and should return to Central Province".⁴¹²
481. 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.⁴¹³
482. Many of the interviewees 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 the Kikuyu from their farms in Lugari district.
483. Although pastor Isaiah Nyongesa, has been cited as one of the key organisers of the violence in Lugari,⁴¹⁴ 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 was instrumental in distributing relief to IDPs.

⁴⁰⁹ Chrisanthus Okemo, a former Finance minister, was campaigning for the Nambale parliamentary seat.

⁴¹⁰ KNCHR interview with a male interviewee in Lugari on 27 February 2008 at Likuyani DO IDP camp

⁴¹¹ KNCHR interview at Likuyani DO IDP camp

⁴¹² KNCHR interview with a male interviewee in Lugari on 27 February 2008 and KNCHR interview with a male interviewee in Lugari on 28 February 2008 at Likuyani DO IDP camp

⁴¹³ KNCHR interview with a male interviewee in Lugari on 28 February 2008 at Likuyani DO IDP camp

⁴¹⁴ KNCHR interview with a male interviewee in Lugari on 27 February 2008 at Likuyani DO IDP camp.

COAST REGION

INTRODUCTION

484. The Coast Province is situated along the Indian Ocean, and is 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 communities, people of Arab descent, Pokomo, Orma, Taita, Bajuni among others. Other smaller ethnic communities commonly referred to as the residents from upcountry or 'wabara' found in the coast include the Kamba, Kikuyu, Embu, Meru, Luo and Luhya.
485. According to the Electoral Commission of Kenya (ECK), the Coast Province had a total of 1,083,839 registered voters out of a total voting age population of 1,580,515 in the 2007 general elections.⁴¹⁵ Coast province was predominantly an Orange Democratic Movement (ODM) stronghold as was evidenced by the election results. , 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 12⁴¹⁶ of the 21 parliamentary seats, in Coast Province, while PNU together with its affiliate parties obtained 7 seats.⁴¹⁷
486. 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 incidents of violence, particularly in 1997, which was also an election year.
487. 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 referred to the clashes as "traumatic and well organised".⁴¹⁸ A organised gangs group known as the 'Kaya Bombo' comprising 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 and freed those in police custody.
488. 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 mobilise around these 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 individualised title deeds. A senior public official confirmed this sentiment but explained that a lot of land had also changed

⁴¹⁵ Statistics obtained from the Electoral Commission of Kenya website <http://www.eck.or.ke/elections2007> (Accessed 19 June 2008).

⁴¹⁶ 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)

⁴¹⁷ <http://www.eck.or.ke/elections2007>

⁴¹⁸ Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, pages 25 and 256

hands on a 'willing seller willing buyer' basis and that even those recently resettled and issued with title deeds are known to be selling land.⁴¹⁹

489. 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.⁴²⁰

490. Talk of *Majimboism* (federal government) in the Coast have also been widely 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*, (long live Federalism, the Coast is for the Mijikenda)."⁴²¹

491. 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".⁴²² 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.⁴²³

PATTERNS OF VIOLENCE

492. 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 29 December 2007, two days after the polling day, the tension was 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 30 December 2007 and the chaos began immediately the presidential results were announced in the afternoon of the 30 December 2007.⁴²⁴

493. The reaction to the presidential results were characterised 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, however, what differed was the magnitude of the violence.⁴²⁵

⁴¹⁹ KNCHR interview with a senior public official in Kwale District on 20 March 2008

⁴²⁰ KNCHR interview with a senior chief inspector of police in Ukunda South Coast on 20 March 2008

⁴²¹ Daily Nation dated 25 August 1997

⁴²² ODM Manifesto Chapter 15 on Devolving Power accessible at <http://www.kenyavotes.org/node/107>

⁴²³ KNCHR interview with a senior chief inspector of police in Ukunda South Coast on 20 March 2008

⁴²⁴ KNCHR interview with a male resident of Mombasa on 15 February 2008 at Changamwe, and a interviewee at Mishomoroni dog unit police station on 16 February 2008

⁴²⁵ KNCHR interview with an administration police commander in Mombasa on 19 March 2008

Demonstrations and Barricading of roads

494. 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 to control and were forced to fire teargas to disperse 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'.⁴²⁶
495. Our 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 31 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 avenge the destruction that had taken place on 30 December 2007, which had affected them more as a community.⁴²⁷ 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.
496. 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."⁴²⁸

Looting and destruction of property

497. In Magongo (Changamwe) a building housing different business premises was burnt by mobs chanting ODM slogans on 31st December 2007.⁴²⁹ The youths used rungas (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 the Kikuyu and Kamba communities.⁴³⁰
498. A witness stated that in Changamwe constituency, a group of youth attacked and looted the Total Petrol Station.⁴³¹ 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.
499. 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 man was arrested by police for allegedly

⁴²⁶ KNCHR interview with a male resident of Mombasa taken on 16 February 2008 at Mishomoroni Dog Section police station IDP camp

⁴²⁷ KNCHR interview with a Member of Parliament on 18 February 2008 in Magongo Mombasa

⁴²⁸ KNCHR interview with a female resident of Mishomoroni on 16 February 2008 at Mishomoroni Dog Unit police unit IDP camp and KNCHR interview with a male resident taken at Changamwe on 15 February 2008

⁴²⁹ KNCHR interview with a female resident of Magongo on 15 February 2008 and *Daily Nation* Newspaper article by Nation team dated 1 January 2008

⁴³⁰ KNCHR interview with a female interviewee of Mombasa on 15 February 2008 at Magongo

⁴³¹ KNCHR interview with a male interviewee from Mombasa taken on 18 February 2008 at Likoni Police Station IDP camp

informing the residents that the Kikuyu were arming themselves in preparation for war against the perceived members of ODM.⁴³²

500. 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 the Kikuyu were burnt in Diani. A grass thatched (makuti) church was also burnt⁴³³. 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.⁴³⁴
501. 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"⁴³⁵ while at the same time bringing down and burning kiosks, lighting fires and throwing bottles.
502. Other interviewees including members from international and non-governmental organisations also corroborated this information noting that the looting mostly targeted businesses of persons from upcountry and especially the Kikuyu and Meru communities. 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.⁴³⁶
503. According to a newspaper report, in Diani, Kwale District, a 58-year-old man by the name Peter Ngaithe Chege was killed on 19 January 2008 and his family members injured. His house was also torched and household items stolen. The OCPD Stanley Lamai confirmed this and noted that the killers were armed with machetes and runguns.⁴³⁷
504. 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 announcement 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, an MP from the Coast region was named as an inciter and was said to have paid youths Ksh500 to cause violence.⁴³⁸
505. Witnesses confirmed that in incidences where violence manifested itself into looting and destruction of property the targets were mostly Meru, Kamba and the Kikuyu. 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 communities.⁴³⁹ Some of the interviewees also noted that the violence also targeted those known to have been PNU supporters.

⁴³² *Daily Nation* newspaper article dated 1 January 2008 by Nation Team

⁴³³ KNCHR post-mission report of 19 February 2008

⁴³⁴ KNCHR interview with a senior government official at Ukunda South Coast on 20 March 2008

⁴³⁵ KNCHR interview with a male interviewee on 15 February 2008 at Changamwe Holy Cross Catholic church

⁴³⁶ KNCHR report by the monitoring team in Mombasa on 1 January 2008

⁴³⁷ Report by *Standard* Newspaper of 20 January 2008

⁴³⁸ KNCHR interview with a female interviewee on 16 February 2008 in Mombasa.

⁴³⁹ KNCHR team mission report of 19 February 2008

Eviction and displacement

506. 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 days⁴⁴⁰. 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 Likoni⁴⁴¹. 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.
507. 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 antagonised each other in the church with the Kikuyu and the Kamba asking their Luo and Luhya counterparts why they too were at the camp after having attacked them.⁴⁴²
508. The Commission captured photographic images and obtained leaflets evidencing that the evictions were targeted at specific communities. Spray paints were used to identify property to be vandalised. Some read '*Kikuyu Vanja*' understood to be read as '*Kikuyu Vunja*' meaning that the property belongs to a Kikuyu hence is or can be destroyed.

[BOX] *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. Muondoe magari yenu kabla ya muda kumalizika. Ama damu na majivu ya mali yenu itamwagika from Kaya Revolution Council. Similani Midzichenda.*
Translation: 'You Kikuyu's, Kamba's, who have already arrived here and those we have information. We are coming we shall kill all of you. We shall burn all those vehicles you have brought. 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 Council. Similani Midzichenda (sic).'

Killings and infliction of bodily harm

509. In Miritini in Changamwe constituency, property belonging to a man from the Meru ethnic community was razed down, killing six tenants from unspecified communities.⁴⁴³ 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.⁴⁴⁴

⁴⁴⁰ KNCHR interview with a priest (witness) on 19 February 2008 in Mombasa

⁴⁴¹ YMCA assessment report dated 16 January 2008 in Mombasa

⁴⁴² KNCHR interview with a male interviewee on 19 February 2008 at Magongo Mombasa

⁴⁴³ 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 16 April 2008

⁴⁴⁴ KNCHR interview with a female interviewee on 15 February 2008 in Mogongo Mombasa

510. The media further reported the likely death of 11 people, most of them from one family, who were killed when a murderous mob locked them in a house and set it ablaze in Malindi.⁴⁴⁵
511. The Coast Provincial Hospital received approximately 70 people suffering from gun shot wounds and burns especially between the 31 of December 2007 and 3 January 2008. The total number of patients admitted was 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.⁴⁴⁶
512. At A 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.⁴⁴⁷

Gender-based violence

513. 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.⁴⁴⁸

PLANNING AND ORGANISATION

514. Unlike other parts of the country, Coast province stood out in that violence was contained by mid January 2008.⁴⁴⁹ 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.⁴⁵⁰
515. 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 200⁴⁵¹ or more when they were looting and destroying property damage. They were armed with [rungus, pangas, stones, tarimbos (crowbar),⁴⁵² and hammers, the latter of which were used when breaking into properties.⁴⁵³
516. Members of specific communities perceived to be from outside the region were issued with threats and leaflets, urging them to vacate the Coast Province.⁴⁵⁴ 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.⁴⁵⁵

⁴⁴⁵ *Daily Nation* report of 2 January 2008 and *Daily Nation* report of 1 January 2008

⁴⁴⁶ YMCA assessment report of March 2008 and Interview with a Doctor of Coast provincial hospital on 13 January 2008

⁴⁴⁷ KNCHR team mission report dated 15 May 2008

⁴⁴⁸ YMCA assessment report of 16 January 2008

⁴⁴⁹ *Standard* newspaper report of 23 January 2008 and KNCHR post mission report done on 23 March 2008

⁴⁵⁰ KNCHR post mission report done on 23 March 2008 and interview with an official of YWCA.

⁴⁵¹ KNCHR interview with a male interviewee taken on 15 February 2008 at Changamwe Holy Cross Catholic church

⁴⁵² KNCHR interview with a male interviewee in Tudor Mishomoroni on 16 February 2008

⁴⁵³ KNCHR interview with a male interviewee in Tudor Mishomoroni on 16 February 2008

⁴⁵⁴ Copy of leaflet threatening Kikuyus to leave the Coast Province by 20 January 2008

⁴⁵⁵ KNCHR interview with a male interviewee in Mishomoroni Mombasa on 16 February 2008

517. Interviewees from local non-governmental organisations reported there appeared to be some form of planning because 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.⁴⁵⁶
518. Other 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.⁴⁵⁷ Other sources from the Government and officials from the Council of Imams reported that the violence was not organised, 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.⁴⁵⁸

ROLE OF SECURITY AGENTS

519. Some interviewees reported that the police appeared to have been overwhelmed by the violence.⁴⁵⁹ Others reported that the police focused 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'.⁴⁶⁰ However, police officers interviewed denied these allegations.⁴⁶¹
520. The Commission was informed that in one incident in Likoni, GSU officers sat in the vehicles and watched as the crowd sang and looted responding only to protect tourists⁴⁶².
521. According to reports by the Coast Province General Hospital, six patients were admitted with gunshot wounds.⁴⁶³ 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.⁴⁶⁴

⁴⁵⁶ Hate speech by a senior politician at a public rally in Kisauni Mombasa on 13 November 2008

⁴⁵⁷ KNCHR interview with a male resident of Mishomoroni on 16 February 2008

⁴⁵⁸ KNCHR post mission report in Mombasa on 19 February 2008

⁴⁵⁹ KNCHR interview with a male interviewee on 8 February 2008 in Mombasa

⁴⁶⁰ KNCHR interview with a male interviewee on 15 February 2008 in Changamwe and an interview on 16 February 2008 in Mishomoroni

⁴⁶¹ Interview with OCS Likoni and an OCPD in Kwale District

⁴⁶² KNCHR interview with a priest (witness) on 19 February 2008 at Likoni Mombasa

⁴⁶³ YMCA assessment report of March 2008 and KNCHR interview with a doctor at Coast Provincial Hospital on 13 January 2008

⁴⁶⁴ *Nation* Newspaper report of 17 January 2008

CENTRAL REGION

INTRODUCTION

522. 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 turnout for the presidential elections was 82% while the parliamentary turnout was 81%.
523. 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.⁴⁶⁵

PATTERNS OF VIOLATIONS

524. Central Province was characterised 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.⁴⁶⁶ 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 harassment. At the same time, some members of these communities said that if their man (Raila Odinga) took over, they would rape Kikuyu women.⁴⁶⁷ 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.
525. 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 results began showing that 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.
526. 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

⁴⁶⁵ Toni Weis, "The Results of the 2007 Kenya General Elections", *Journal of East African Studies*, Vol. 2 No 2, July 2008, 1-41

⁴⁶⁶ KNCHR interview in Nyeri on 12 April 2008

⁴⁶⁷ KNCHR interview with a business man in Nyeri on 12 April 2008

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, maiming 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.

527. 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 28 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 the DO, 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.⁴⁶⁸ The main reason why Kiambaa in Kikuyu became the first epicentre 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.⁴⁶⁹

528. Second, there were mixed reactions by local residents to the inflow of IDPs. Some residents empathised 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 incoming 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.

529. The case of a woman who hosted around 90 IDPs in her two-bedroomed house in Othaya exemplifies this.⁴⁷⁰ 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.

530. 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

⁴⁶⁸ KNCHR interview with senior Government officer in Kiambu Town on 9 April 2008

⁴⁶⁹ KNCHR group interview at Kiambaa Cooperative society in Eldoret on 19 January 2008; KNCHR interview with male interviewee at Nandi Gaa farm, Eldoret, on 26 February 2008.

⁴⁷⁰ KNCHR interview with interviewee in Othaya, Nyeri, on 14 February 2008; *New York Times*, 15 February 2008

production levels had declined due to the tensions and violence resulting in temporary closures and loss of skilled labour.⁴⁷¹

531. 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, Ol Kalou 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 characterised by blocking of highways and harassment of motorists.
532. 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.”⁴⁷² By 31 January 2008, non-Kikuyu people had moved to police stations in readiness to go to their rural homes.
533. 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.⁴⁷³ 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 organised gangs needed 400 human heads.⁴⁷⁴ 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.⁴⁷⁵
534. 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 Kenya 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.
535. 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 forcibly circumcised.

⁴⁷¹ KNCHR interview with a factory worker at Limuru on 10 April 2008; KNCHR interview with a male interviewee at Kedong IDP Camp in Naivasha on 15 February 2008; KNCHR group interview with workers from KARI on 9 April 2008

⁴⁷² Crimes against Humanity report on political situation in Kenya published on 17 March, 2008; KNCHR interview with interviewee originally from Fort Jesus Estate in Ruiru but then resident at Moi Stadium in Kisumu on 13 February 2008

⁴⁷³ KNCHR interview with workers of Kikuyu Steel Rolling Mills on 9 April 2008

⁴⁷⁴ KNCHR interview with interviewee originally from Fort Jesus Estate in Ruiru but then resident in Moi Stadium IDP Camp in Kisumu on 13 February 2008

⁴⁷⁵ OCHA countrywide report on the violence in Kenya on 31st January 2008; KNCHR interview with a factory worker at Limuru on 10 April, 2008

536. 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.⁴⁷⁶ 10 people were killed in Limuru.⁴⁷⁷ One Luhya died after being taken to the Tigoni Police Station with all his intestines hanging outside his stomach.⁴⁷⁸ Two people were shot dead and a police officer injured in mid-January.⁴⁷⁹ A Kalenjin man was killed at Miti Mingi in Limuru.⁴⁸⁰ A Luo man was killed in Limuru when he was found hiding in a lodging.⁴⁸¹
537. Around 7 February 2008, 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.⁴⁸²
538. There were several incidents of discrimination, dehumanisation, humiliation, intolerance and prejudice.⁴⁸³ 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.⁴⁸⁴ 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.⁴⁸⁵
539. 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.⁴⁸⁶ 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.
540. 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.⁴⁸⁷ The other case was that of a woman gang-raped in Kabete.⁴⁸⁸

⁴⁷⁶ KNCHR group interview with casual workers from Nderi village/KARI at Kikuyu Police Station camp on 10 February 2008

⁴⁷⁷ 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 6 February 2008; *Standard* Newspaper report of 24 January 2008; KNCHR interview with a male tea farm worker in Limuru at Tigoni Police station Camp on 6 February 2008

⁴⁷⁸ KNCHR interview with a male flower farm worker at Tigoni police station in Limuru on 6 February, 2008

⁴⁷⁹ KNCHR interview with a factory worker on 10 April 2008 at Limuru

⁴⁸⁰ KNCHR interview with a factory worker on 10 April 2008 at Limuru

⁴⁸¹ KNCHR interview with a factory worker on 10 April 2008 at Limuru

⁴⁸² KNCHR interview with a resident of Thika's Makongeni estate on 5 February 2008 at Jamhuri Park IDP camp in Nairobi, KNCHR interview with a group of IDPs on 5 February 2008 at Thika Municipal Stadium camp

⁴⁸³ KNCHR interview on 13 February 2008 at Moi Stadium Kisumu, IDP camp with a resident originally from Fort Jesus estate in Ruiru.

⁴⁸⁴ KNCHR interview with a male interviewee from Ruiru on 6 February 2006 at Ruiru Police station

⁴⁸⁵ KNCHR interview with a male interviewee from Ndeiya in Limuru on 8 February 2008 at Kirathimo IDP camp, Senior Politician hate speech at a meeting in Mukurweini on 13 October 2007

⁴⁸⁶ KNCHR interview with a male interviewee on 6 February 2008 at Kikuyu police station

⁴⁸⁷ IRIN news bulletin of 25 February 2008

⁴⁸⁸ KNCHR interview with senior Government officer on 9 April 2008 at Kiambu.

PLANNING AND ORGANISATION

541. 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.
542. 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.
543. Short Messaging Services (SMS) and e-mail messages were used to organise, rally and galvanise the Kikuyu community against other communities.
544. 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.
545. Certain individuals within PNU allegedly raised funds and organised gangs 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.⁴⁸⁹ The meetings started to take a sinister turn when retaliation against non-Kikuyu communities was discussed and organised.⁴⁹⁰ 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 Arch Hotel. Leaders who attended these meetings included Njenga Karume, the immediate former MP of Kiambaa. Other participants in 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 organised gangs; and Mary Wambui, a PNU activist, who allegedly organised finances and arranged for arms to be delivered from Ethiopia via Moyale and Marsabit.⁴⁹¹ 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.⁴⁹²
546. 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

⁴⁸⁹ KNCHR interview with an informant in Nairobi on 24 April 2008

⁴⁹⁰ KNCHR interview with an informant in Nairobi on 24 April 2008

⁴⁹¹ KNCHR interview with an informant in Nairobi on 24 April 2008

⁴⁹² KNCHR interview with a Herbalist from Ndeiya on 8 February 2008 at Kirathimo IDP camp.

Kikuyu Town.⁴⁹³ Individuals said to have supplied weapons for use in raids were Mburu Gituya and John Nice.⁴⁹⁴ Small businesses such as Buba Hardware, Kimiti Hardware and Menrose hardware, all in Kikuyu, supplied weapons such as machetes.⁴⁹⁵

547. 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 generally 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.⁴⁹⁶

548. 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. Inoro FM put on air highly emotional and distraught victims of the violence, a factor that tended to whip up the emotions of its audience. Music in the Kikuyu language played on Kameme and Inoro radio stations also engendered or raised ethnic tensions. One such song, by Miuga Njoroge, variously played by Inoro FM, lyricised about Raila Odinga and the Luo community in very negative terms.⁴⁹⁷

549. Non-Kikuyu IDPs alleged that organised gangs, 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.⁴⁹⁸ 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 organised gangs to frighten non-Kikuyu communities into leaving.

THE ROLE OF SECURITY AGENCIES

550. Security agencies, including the regular Police and AP, 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.

⁴⁹³ KNCHR interview with an informant in Nairobi on 24 April 2008

⁴⁹⁴ KNCHR interview with businesspersons in Langas Centre at Klique Hotel in Eldoret on 3 March 2008

⁴⁹⁵ KNCHR interview at Klique Hotel in Eldoret on 3 March 2008

⁴⁹⁶ IRIN news bulletin documentary of 22 January 2008 concerning use of hate speech and derogatory music by vernacular broadcasting stations.

⁴⁹⁷ IRIN news bulletin documentary of 22 January 2008; Report by Kenya in Crisis Africa Report N°TK – 21 February 2008 about Embargoed Draft for Media in Kenya.

⁴⁹⁸ Mungiki behead their interviewees and skin the heads, which they then display.

551. The regular Police and AP responded to various situations and levels of violence. The police responded to distress calls from victims. 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. The police quickly thwarted a splinter group of demonstrators which ran towards the Steel Rolling area with the aim of attacking some Luo residents. In the same constituency, they swiftly contained a group of youth who 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.
552. 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.
553. 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.
554. DOs and DCs from various districts in the Province carried out activities such as planning, organising 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.

CHAPTER FIVE

FINDINGS ON NATIONAL TRENDS AND PATTERNS OF THE VIOLENCE

Introduction

555. This chapter shows the trends and patterns of the violence and the violations that happened following the 2007 General Elections. It examines trends and patterns under the following headings: Indicators of preplanning and coordination of violence; barricading of roads and demonstrations; killings, looting and destruction of property; sexual and gender-based factors in the violence; mass forced displacement of non-indigenous communities; the role of mass media; the role of faith-based institutions; and government failure to prevent the violence.

Trends and Patterns of the Violence

Indicators of Pre-planning and Coordination of the Violence

556. 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 30 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 spurts of violence occurred immediately after the announcement of the presidential election results on 30 December 2007. This violence was characterised by the burning, looting and destruction of property 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 these cities, the police used tear gas and water canons to disperse demonstrators.

557. 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 the 1991/2, 1997 and 2006 periods particularly in its apparent spontaneity. Elements of the violence particularly in the 1991/92 period, on the one hand, and the violence following the 2007 elections on the other, were similar. As such, the latest round of violence immediately and following the 2007 elections was unlikely to have begun on the spur of the moment. In particular, 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.

558. 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, the making of arrows in a manner that suggested once violence was triggered, mass mobilisation and participation would have been possible because the preparations had already taken place.

559. 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.⁴⁹⁹ 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.
560. 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.⁵⁰⁰ A 2006 Internal Displacement Monitoring Center report noted that 431,153 people had been forcefully displaced from their homes.⁵⁰¹ The violence that followed the 2007 elections followed a similar pattern.
561. 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”⁵⁰²
562. 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 interviewee, in less than ten minutes.⁵⁰³ Examples of similar attacks from the Rift Valley point to pre-planning and coordination.
563. Another indicator of preplanning and coordination of attacks are the numerous statements of interviewees from the communities who were victimised by the violence who said 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 happened 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 galvanisation an of nti-PNU sentiment took place , often translating into violence against the Kikuyu and the Kisii communities living outside Central and Nyanza provinces respectively. In the Coast province, as already seen in chapter Four, the KNCHR

⁴⁹⁹ 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.

⁵⁰⁰ KNCHR interview with a male interviewee in Kuresoi on 18 February 2008

⁵⁰¹ Reuters News report of 30 January 2008

⁵⁰² Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, at 89

⁵⁰³ KNCHR interview with a male interviewee at Likuyani DO’s camp in Lugari on 27 February 2008

investigators photographed a spraypainted hate message that read “Kikuyu Vunja” which translates into incitement for the destruction of property belonging to Kikuyu people.

564. 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 was 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 Kipsigis. Businesses and houses belonging to members of the Kisii community were burnt down.⁵⁰⁴ In response, the Kisii Community mobilised youths to defend themselves.⁵⁰⁵ The youths, who included the infamous *chinkororo* organised gangs began targeting homes that belonged to Kipsigis.
565. We were told in various parts of the country that there were plans to engage in violence before it erupted. In the Coast province, we were told 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.
566. 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 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.
567. 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 included forceful evictions, killings, looting, burning of properties and food granaries. In the Central Rift, there was a high level of organisation and coordination. There were particular days for evicting non-Kalenjin communities from the area. Looting would then be undertaken on different days. The same applied to burning business premises and residential houses. On other days the raiders would focus only on blocking roads.

⁵⁰⁴ KNCHR interview with a female witness at Chebilat, Kericho on 4 February 2008, KNCHR post-election violence investigation report of 18 February 2008 in Kisii

⁵⁰⁵ KNCHR interview with a female witness at Chebilat, Kericho on 4 February 2008

568. In the Rift Valley, raiders were more often than not armed with bows and arrows, rungas (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 sources of funding.
569. A further element that shows the violence was organised and not sporadic or random in the Rift Valley was that the information gathered pointed towards mobilisation 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 organised and coordinated 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.
570. 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.
571. 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 organisation, financing and provision of transport.⁵⁰⁶ It is alleged that local politicians and business people financed the violence. The local community also gave support by providing food, transport to ferry the attackers and 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.
572. We were told of training and oathing in camps that took place in preparation for the attacks.⁵⁰⁷ The training allegedly took place in the farms of senior leaders of different communities or in forests. Jackson Kibor, who has since been charged with election violence related offences, is alleged to have hosted 300 young men in his house on 30 December 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. On 25 February 2008, some 205 armed men were arrested on the farm of a former Member of Parliament while allegedly undergoing training. These allegations of training gain particular 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.
573. 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 uniforms in the form of black shorts and black shirts.⁵⁰⁸ Where they did not have black shorts

⁵⁰⁶ Some of the vehicles used to transport attackers are known to the local people and some have names such as Eagle, Zion, Lion, KAQ 17 K, KAP 422Q, A Red RAV4 among others and at least one vehicle owner identified by the people as Umoja1.

⁵⁰⁷ Email report by an informer in Nairobi on 11 February 2008

⁵⁰⁸ KNCHR interview with a male interviewee at Mishomoroni, Mombasa on 16 February 2008; KNCHR interview with a female interviewee at Kongasis, Elementaita Naivasha on 13 March 2008; KNCHR interview with a former male councillor

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.⁵⁰⁹

Barricading of Roads and Demonstrations

574. 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 even 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.

575. 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 ferried to rig the election. These barricades indicated the high level of tensions and suspicions before election day.

576. 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 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

577. 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 many instances where buildings, property and homes were burnt down.

578. 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.

in Molo on 16 March 2008; KNCHR hate speech captured by the election monitoring team on 29 November 2007; KNCHR interview with a male interviewee in Keroka, Kisii on 16 February 2008

⁵⁰⁹ In some cases the faces were painted in mud. See KNCHR interview with a female interviewee at Charles Lwanga Cathedral church in Kisii on 15 January 2008;

579. In the Coast province, demonstrators in Mvita constituency were heard shouting slogans to the effect that “Kikuyu property is our Property.”⁵¹⁰ 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.

580. 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.

581. When the counter violence started in Central province, property belonging to people from Nyanza and Western provinces was also burnt down or looted by organised 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 violence⁵¹¹.

Sexual and Gender-based Factors in the Violence

582. 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 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

583. 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.

584. The displaced persons sought refuge in religious facilities such as churches and monasteries, police stations, provincial administration grounds, Red Cross offices and public facilities like sports stadiums.⁵¹² 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.

⁵¹⁰KNCHR interview with a male interviewee of Changamwe taken on 15 February 2008 at Magongo Police Station

⁵¹¹ In the same time period of the investigation, newspapers reported 1,414 number of persons killed.

⁵¹² Relatives, friends as well as well wishers also organised to host IDPs throughout the country.

585. Some regions had two groups of 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 forcibly 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.
586. Similarly, in Central province, there were non-Central province IDPs who were forcibly 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.
587. 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 pre-existing issues.
588. 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 forcibly 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.
589. 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.

The Role of the Media

590. The role of local language radio stations is also a notable feature in Kenya's post-election violence. Many of Kenya's multiple 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.

591. Interviewees throughout the country told us that local language FM radio stations played a key role in the incitement that preceded the violence. KASS FM was inciting Kalenjin people.⁵¹³ Radio Injili⁵¹⁴ as well as Kikuyu FM radio stations such as Kameme and Inoro played music that intensified feelings of ethnic hatred.⁵¹⁵
592. One interviewee told us: “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 Inoro and Kameme are also accused of waging an ethnic propaganda campaign, though a more subtle one, against ODM and the Kalenjin.”⁵¹⁶
593. The media in general and the 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.⁵¹⁷ 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.
594. In the South Rift, KNCHR investigators were told that one local councilor went to *Kass FM* and *Radio Injili* to preach tolerance but other local leaders accused him of betrayal.

Role of Faith-Based Organisations

595. The role of FBOs immediately before and during the post-elections violence was mixed. FBOs 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 IDPs 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.
596. However, there are disparate reports from across the various regions where religious leaders were involved negatively in the violence.⁵¹⁸ Religious leaders of modern-faiths as well as traditional ones were involved. In Kuresoi, for example, respected elders and spiritual leaders presided over traditional ceremonies involving cleansings and blessings of Kalenjin youth in the period before the election in preparation for the violence.

⁵¹³ KNCHR follow up group interview with a male interviewee in Molo on 11 April 2008

⁵¹⁴ KNCHR follow up group interview with a male interviewee in Molo on 17 April 2008; Crisis Group Africa countrywide report on 21 February 2008

Crisis Group Africa countrywide report on 21 February 2008

⁵¹⁵ United Nations Office for Coordination of Humanitarian Affairs country wide report on 22 January 2008

⁵¹⁶ Crisis Group Africa countrywide report on 21 February 2008

⁵¹⁷ The Wilson Center, Kenya: A Post-election Assessment, available at

http://www.wilsoncenter.org/index.cfm?event_id=347121&fuseaction=events.event_summary

⁵¹⁸ KNCHR interview with a male resident of Lugari on 28th February 2008 taken at Soy Market.

597. Faith organisations were however tainted by what citizens perceived as pre-election partisanship. Leaders of FBOs 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 comments by John Cardinal Njue indicating his scepticism about the Majimbo system of government illustrate the extent to which religion was implicated or perceived to be fronting partisan agendas ahead of the 2007 elections. The public's perception that FBOs were not neutral 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.

Government Failure to Prevent the Violence and Violations of Human Rights

598. 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 NSIS has recently publicly stated that it warned the government that if Kibaki won the election and ODM rejected the results, violence would erupt.⁵¹⁹ 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.

599. 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 too 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.

600. 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.

601. 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. AP 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."

602. Police response to the violence also reflected their ethnic origins and biases. For example, in the Langas area, interviewees 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.

⁵¹⁹ Mugo Njeru, "Spy Chief Had Warned of Post-Poll Violence," *Daily Nation*, Friday, July 18, 2008 at pages 1 and 4.

In the Nairobi area, some interviewees 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 interviewees burning houses belonging to Kikuyu Community.

603. 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. Some of those who were not shot in their homes were shot in the back indicating they were most likely in flight when shot.
604. 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.
605. 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

FINDINGS ON RESPONSIBILITY UNDER DOMESTIC AND INTERNATIONAL CRIMINAL LAW FRAMEWORKS

606. 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, organised, financed and executed the violence under either domestic or international criminal law.

THE DOMESTIC CRIMINAL LAW FRAMEWORK

607. 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

608. 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

609. 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.

610. Other offences that one may have committed, even if not the actual killing or murder itself include: manslaughter,⁵²⁰ attempted murder⁵²¹ and conspiracy to murder.⁵²²

⁵²⁰ Section 202 of the Penal Code provides that the felony of manslaughter is committed where: “Any person who by an unlawful act or omission causes 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.”

⁵²¹ 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.

⁵²² Under section 224 of the Penal Code conspiracy to murder is punishable by imprisonment for 14 years.

611. 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 organised gangs 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.
612. 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 children were burnt alive in Gituamba in Saboti Constituency⁵²³ 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.
613. 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.
614. In the South Rift Region many allegations of murder were reported. Notable amongst these is the killing of an AP officer whom the attackers cut into pieces before setting 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 Kipkelion eight people were killed in the area including four people from the Kisii community who had been caught by a group of youths and set ablaze. Of the eight people killed, the remaining four were killed by the police. In Bureti, Litein Town, two high school teachers were shot dead by the police on 5 February 2008.⁵²⁴
615. In Western Province the deaths reported were attributed to extra-judicial police killings.
616. 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 young Kikuyu men.⁵²⁵ 10 people were killed in Limuru.⁵²⁶ One Luhya was killed. He was taken to the Tigoni Police Station with all his intestines hanging outside his stomach.⁵²⁷ Newspaper reports of 16 January reported two people

⁵²³ 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 *Nairobi Star* Newspaper article by star team dated 27 February 2008

⁵²⁴ KNCHR interview with a female resident of Litein on 1 March; *Daily Nation* newspaper article by Nation correspondent dated 7 February 2008

⁵²⁵ KNCHR interview with a male resident of Kikuyu taken on 6 February 2008 at Kikuyu police station IDP camp

⁵²⁶ KNCHR interview with a male interviewee of Tigoni at Tigoni Police Station on 6 February 2008, KNCHR interview with a male interviewee of Limuru at Tigoni Police Station on 6 February 2008, *Standard* Newspaper Article by Cyrus Ombati and others on 24 January 2008

⁵²⁷ KNCHR interview with a male interviewee of Limuru at Tigoni Police Station on 6 February 2008

were short dead and a police officer injured.⁵²⁸ A Kalenjin man was killed at Miti Mingi in Limuru.⁵²⁹ Lastly, Luo man was killed in Limuru when he was found hiding in lodging.⁵³⁰

Grievous bodily harm

617. 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 a felony punishable by life imprisonment with or without corporal punishment.

618. The forced circumcision of Luo males in Nairobi, Central Rift – Naivasha and Nakuru, and Central province was particularly atrocious and amounts to grievous bodily harm. Some of the victims are reported to have bled to death.⁵³¹ 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.⁵³²

619. Grievous bodily harm also resulted from burns that 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 or had gun shot wounds could have suffered grievously bodily harm.

Offences that Violate the Right to Private Property: Arson, Malicious Damage to Property and Robbery with Violence

620. Arson and malicious damage to property characterised the violence in all the regions that experienced post-election violence.

621. 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 wilfully set fire to crops both of which attract imprisonment for fourteen (14) years.

622. 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.⁵³³

⁵²⁸ KNCHR interview with a interviewee (factory worker) on 10 April, 2008 at Limuru.

⁵²⁹ KNCHR interview with a female interviewee from Kiambogo farm in Limuru on 17 February 2008 at Kongoi IDP camp in Naivasha

⁵³⁰ KNCHR interview with an informer resident of Limuru at Limuru town on 10 April 2008

⁵³¹ A list of the alleged perpetrators given to KNCHR by an informer from Mathare 4A on 2nd May 2008

⁵³² KNCHR interview with a male Resident of Kariobangi South Area, dated on 30 April 2008 taken at Nairobi Central Business District

⁵³³ Section 339 of the Penal Code

623. In Nairobi, the worst cases of arson, malicious damage to property and theft took place in the 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 Estate Road, approximately 90 kiosks selling groceries were destroyed, permanent structures were broken into and property looted.⁵³⁴ According to UN Habitat, a total of 19 churches were looted and burnt, 800 stalls looted and burnt, 1100 structures looted and burnt and 900 residential houses torched.⁵³⁵
624. 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.
625. 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 attacks 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.⁵³⁶
626. In the Central Rift Region youths suspected to have been members of the banned *Mungiki* sect in Naivasha on 27 January 2007⁵³⁷ 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.⁵³⁸ In one ghastly incident, the organised gangs set on fire a house where 19 people burnt to death.
627. 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.
628. In Coast Province, cases of arson were reported in the Miritini area.⁵³⁹ In Magongo 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.⁵⁴⁰

⁵³⁴ KNCHR interview with a female interviewee from Mathare area III on 9 April 2008 taken at Nairobi Central Business District, KNCHR interview with a male interviewee from Kibera Slum on 9 April 2008 taken at Three Wheels Hotel.

⁵³⁵ UN Habitat - Rapid Assessment on the Impact of Post-election Violence in Nairobi.

⁵³⁶ KNCHR interview with a female witness at Chebilat, Kericho on 4 February 2008; KNCHR post-election violence investigation report of 18 February 2008 in Kisii

⁵³⁷ *Standard* newspaper of 19 January 2008 by Nation Team

⁵³⁸ KNCHR interview with a female resident of Naivasha on 15 February 2008 at Kendong IDP camp in Naivasha

⁵³⁹ The medical report obtained from Coast Province General Hospital indicated that those who had died were from various communities;

⁵⁴⁰ *Daily Nation* newspaper of 2 January 2008 by J. N Nyataya; *Daily Nation* Newspaper for 1 January 2008 by Nation team

629. 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.

630. Lastly, the property Nairobi-Uganda railway was destroyed in Nairobi’s Kibera slums and in Nyanza Province when youths yanked off sections of rail.

Robbery with violence

631. Using or threatening violence before or immediately after the time of stealing constitutes robbery with violence.⁵⁴¹ This offence is punishable by death if the accused person wounds, beats, strikes or uses any other personal violence to any person.⁵⁴² Where no violence is used or threatened, the offence is punishable by a term of imprisonment for 14 years together with corporal punishment not exceeding twenty-eight strokes.⁵⁴³

632. Most of the cases where looting or theft was accompanied with violence constitute cases of robbery with violence.

Theft

633. 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.⁵⁴⁴

⁵⁴¹ Section 295 of the Penal Code

⁵⁴² Section 296(2) of the Penal Code

⁵⁴³ 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

⁵⁴⁴ Stealing is punishable by imprisonment for three years under Section 275 of the Penal Code.

634. In the Central Rift and South Rift Regions witnesses testified to the theft of livestock.⁵⁴⁵The theft of livestock is recognisable 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.⁵⁴⁶

635. 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 with the occupation of land where people were evicted from their lands and others occupied them.

Incitement to Violence and Offences Related to Public Order and Security

636. 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 an offence punishable by imprisonment not exceeding five years. The entire electioneering period was characterised 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.⁵⁴⁷

637. Hate speech is one of the subversive activities identified under section 77 (3)(e) of the Penal Code.⁵⁴⁸ 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-

⁵⁴⁵ For example in one incident, a witness testified to the theft of 20 cows, see KNCHR Post mission report for Central Rift Region dated 20th March 2008

⁵⁴⁶ 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.

⁵⁴⁷ 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."

⁵⁴⁸ Under section 77(3)(e) as part of subversive activities are acts calculated to promote feelings of hatred or enmity between different races and communities in Kenya.

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.

638. 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.

639. 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.

640. Illegal oathing 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.⁵⁴⁹

641. 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.

642. 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.

643. 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.

⁵⁴⁹ The oathing is said to have begun in August. See KNCHR interview in the region on February 8 2008: KNCHR interview with a senior government officer serving in one of the region’s districts on the 28 of March 2008; Email article titled “Mumiat Oathing” dated 11 February 2008; KNCHR Follow up group report with a female interviewee in Molo on 12 April 2008; KNCHR interview with a witness at Magusi, Bureti on 14 February 2008; KNCHR interview with a senior principal officer in Kericho on 27 February 2008; and, KNCHR interview with an informer at Kericho on 26 February 2008.

644. 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 by Security Agencies

645. 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 ethnicisation 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 to perform their duty in contravention of section 128 of the Penal Code.

646. In the South Rift region such bias was reported in various areas. In Kericho and Transmara interviewees stated that most of the police came from the Kalenjin community and that they were not offering protection to members of non-Kalenjin communities.⁵⁵⁰ 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.

647. In the Central Rift Region, members of the Kikuyu and Kisii 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 were the ones who voted for *Kazi lendelee* (PNU). Reports received from some local administration officials in Elburgon confirm that in Kapsita area, AP 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, on 2nd January 2008, AP 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.

648. 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, AP officers attached to the local chief's camp allegedly armed guard to a

⁵⁵⁰ These allegations of police partiality are repeated across the region. See KNCHR Post Mission report for South Rift dated 24 February 2008; KNCHR interview with an informer taken at Sotik on 14 April 2008; and, KNCHR Post-Mission report of Londiani of 12 March 2008

compound that is said to have housed warriors that attacked and burnt houses in the area on 30th and 31st.

649. In Western Province there were instances of partisan conduct among police officers.⁵⁵¹ The police reportedly told people seeking refuge: “*Si mliiba kura!* (Effectively: “You are paying for stealing the presidential votes!”)⁵⁵² 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 4 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 and Gender-Based Violence

650. 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.

651. 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 years and up to a maximum of life imprisonment.

652. Children were on numerous occasions defiled during the post-election violence. These Acts are punishable under the Children’s Act and the Sexual Offences Act.

653. The *Children Act* under section 15 protects children against sexual exploitation, child prostitution, inducement or coercion to engage in any sexual activity, and exposure to obscene materials.

654. The *Sexual Offences Act* creates offences and stipulates sentences with the aim of protecting children from 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.⁵⁵³ Defiling a child aged below 11 years attracts a sentence of life imprisonment on conviction;⁵⁵⁴ defiling a child aged between 12 and 15 years attracts imprisonment of not less than 20 years;⁵⁵⁵ while defiling a child of between 16 and 18 years attracts an imprisonment sentence of not less than 15 years.⁵⁵⁶

⁵⁵¹ KNCHR post-mission report for Western region dated 18 March 2008

⁵⁵² KNCHR interview with a male resident of Kakamega taken at Kirathimo IDP Camp in Limuru on 7 February 2008

⁵⁵³ Section 8(1).

⁵⁵⁴ Section 8(2).

⁵⁵⁵ Section 8(3).

⁵⁵⁶ Section 8(4).

655. 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.⁵⁵⁷
656. From 30 December 2007 to 2 February 2008 230 sexual assault patients were admitted at the Nairobi Women's Hospital. Between 44 and 48 of the victims were children below the age of 18 years. About 90 of the cases were as a result of gang rapes carried out by between 2 and 11 men.⁵⁵⁸ We 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 Dogo 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".
657. At the Coast Province, a total of 18 women having been subjected to physical and/or sexual attacks: nine cases reported to the Mishomoroni Police Unit, seven to the Likoni police station and two to Nyali police station.⁵⁵⁹
658. In the North Rift Region there reports that members of the SLDF committed acts of murder and gang rape of women in Cherengany. 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.⁵⁶⁰

Limitations of the Domestic Criminal Law Framework

659. The principal domestic penal law is the Penal Code which 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 Kenyan laws merely as 'murder of several/numerous persons'.
660. The Penal Code thus does not recognise 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.
661. 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 or she is liable to the same punishment as

⁵⁵⁷ Section 10.

⁵⁵⁸ KNCHR interview with a female interviewee from Mathare area III on 9 April 2008 taken at Nairobi Central Business District, KNCHR interview with a male interviewee from Kibera Slum on 9 April 2008 taken at Three Wheels Hotel

⁵⁵⁹ YWCA Needs Assessment report of 16 January 2008 in Mombasa

⁵⁶⁰ KNCHR interview with Dr Lukoye Atwoli, Chair of the Psycho-Social Protection Committee, April 14 2008

the planner (known as the aider, abetter, counsellor or procurer) of the offence. Accordingly, under the penal law, there is a considerable measure of jurisprudential difficulty in attempting to recognise as an offender a person who, for instance, incites the killing of a group of people but is not one of the actual killers.

662. This makes it very difficult to accord commensurate responsibility, for the people who bear the greatest responsibility, the apex of the pyramid and therefore such persons are able to cheat justice. The result is continued perpetuation of the culture of impunity in Kenya. The domestic criminal law framework therefore further compounds the challenge our investigation faced in trying to ensure that the people at the top of the apex of the triangle of criminal responsibility bear the heaviest sanctions.

INTERNATIONAL CRIMINAL LAW FRAMEWORK

663. International criminal law refers to laws relating to war crimes, crimes against humanity and genocide whose sources are the Geneva Conventions and their Additional Protocols; the Rome Statute; and Customary International law. All of these apply to Kenya. 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.”⁵⁶¹ Such responsibility is recognized under the principles set out by the Nuremberg judgment⁵⁶² which are now norms of customary international law. Most recently, individual criminal responsibility under international law was recognised by the Statute of the International Criminal Court (ICC) under its article 25. Individual criminal responsibility for international crimes is therefore a norm of both customary international law and treaty law.

664. This section of the chapter analyses the post-election violence with a view to making findings as to whether the crime of genocide or crimes against humanity took place in the territory of Kenya between 27 December 2007 and 28 February 2008. Our analysis does not seek to make a finding on whether war-crimes happened in Kenya, since no credible allegations to that effect were ever made in relation to the post-election violence.

The Crime of Genocide

“Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;

⁵⁶¹ Preamble to the Rome Statute of the International Criminal Court.

⁵⁶² 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.”

(e) Forcibly transferring children of the group to another group”⁵⁶³

665. The key elements that constitute genocide are the following: the intention to destroy in whole or in part a specific group on account of its national, ethnic, racial or religious character; it requires the commission of one or more of the specified acts (in paragraphs (a) to (e) above): these constitute the elements that need to be proved, cumulatively, to prove that the crime of genocide has been committed. It does not require the existence of an armed conflict; and it does not require that the acts be committed by State officials.

666. The elements necessary for genocide to be present are contained in the Rome Statute Elements of Crimes, namely: that there be an act; that the victim belong to a protected group; that genocidal intent is present; and that the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

667. The element that distinguishes the crime of genocide from any other crime, including the crime against humanity of persecution, is genocidal intent, namely actions intended to destroy an identified group in whole or part. Genocidal intent is difficult to prove as opposed to persecution on whatever basis by which the perpetrator chooses the victims on the basis of their identity. While it may be difficult to prove genocidal intent where there is no prove of a plan, system or organisation to carry out genocide given the magnitude of this crime⁵⁶⁴ one can infer genocidal intent from the facts as they unfolded on the ground, bearing in mind that there is no need for the result to be achieved in order to prove genocide. If, for example, there is sustained killing of members of one ethnic group only and this is coupled with statements (for example on the radio) about the need to eradicate that group, one can infer genocidal intent from that. In the absence of a manifesto or written orders to destroy a group, genocide will be proved through an inference of genocidal intent⁵⁶⁵: The Rome Statute Elements of Crimes general para 3 also provides that “Existence of intent and knowledge can be inferred from relevant facts and circumstances”.

668. In view of the above, do the facts we gathered establish that the prohibited acts, some of which were committed like the first two ((a) killing members of the group and (b) causing serious bodily or mental harm to members of the group), were committed with genocidal intent? Notwithstanding the fact that these acts happened and that during the campaigns hate speech was used in some cases, our investigations did not obtain sufficient information to prove that the people who were actually killing and injuring members of specified groups did so with the intent to destroy, in whole or in part, members of the groups that faced these atrocities. More likely, the overriding intention was to create a situation of internal disturbance through appealing to old prejudices in order to keep the situation volatile so it would have an impact on the power-sharing discussions taking place at the same time; i.e. That the intent was not to destroy but to create means by which to leverage political power⁵⁶⁶ following the disputed presidential election results.

⁵⁶³ For details see: Genocide Convention, article 2 and Rome Statute, article 6]

⁵⁶⁴ Prosecutor v Kayishema and Ruzindana, judgement para. 94.

⁵⁶⁵ See for example the *Krstic Appeals Chamber decision at the ICTY, Case No: IT-98-33-A, 19 April 2004, paras 24-38.*

⁵⁶⁶ In a KNCHR interview with a senior politician in April, this view was expressed “minus the violence, there most likely would not have been an accord”. Similar views had been stated publicly by another senior politician in February when Kibaki and PNU were said to be dilly-dallying on the peace negotiations, when he said that ‘the only thing they (Kibaki and his allies in

669. From our analysis we find that the crime of genocide was not committed in the territory of the Republic of Kenya between 27 December 2007 and 28 February 2008.

670. However, we wish to caution the nation that the threat of genocide taking place in Kenya in future is real. Key characteristics or signals that a society is likely to commit genocide⁵⁶⁷ have been present in Kenya for a while now – at least since 1991 when Kenya experienced the first wave of widespread inter-ethnic violence.

671. Some of these characteristics are 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, madoadoa - stains. In Rwanda, the Tutsi were referred to as 'cockroaches'. This dehumanisation process leads an aggressor group to believe that they are not committing murder because whoever is being killed is not human after all.

672. 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 polarisation 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 ethnic communities that feeds the processes that might one day lead to genocide.

Crimes Against Humanity

673. Pursuant to the Rome Statute:

"crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ... or other grounds that are universally recognised as impermissible under international

government then) they can listen to is the power of the people and I think that power needs to be revived" See ippmedia.com/ipp/guardian/2008/02/21/108835.html

⁵⁶⁷ 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.

On the Brink of the Precipice: A Human Rights Account of Kenya's Post-2007 Election Violence
Preliminary Edition

law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the [ICC];

- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”⁵⁶⁸

674. The threshold requirements for crimes against humanity, as contained in the chapeau to the Article is constituted by the following elements: There is an attack against a civilian population; The attack is widespread or systematic; The act in question was committed as part of that attack; and The accused knew of the broader context in which his or her act is committed.

675. Attack against a civilian population means a course of conduct involving the multiple commission of the enumerated acts [preamble to the Elements of Crimes of the Rome Statute]; the attack does not need to be a physical attack but can consist of other forms of inhumane mistreatment of a civilian population. The population needs to be predominantly civilian, i.e. people who are not (or no longer) taking a direct part in hostilities.⁵⁶⁹

676. For the attack to be widespread or systematic, it does not need to be both. It may in fact be both, but this is not a legal requirement to satisfy the elements of crimes against humanity. “Widespread” means that the attack takes place on a large scale and is perpetrated against a number of victims; “systematic” refers to an organised pattern of conduct.⁵⁷⁰ In customary international law, there is no requirement to show that there was a State or organisational plan or policy to commit such an attack. It has been suggested that it would be useful if such a plan or policy could be proven, but that this is an evidentiary matter, not a legal one.⁵⁷¹

677. For the act to be committed as part of the attack, there needs to be a nexus between the act and the attack, which excludes random or isolated acts. It also does not exclude personal acts (for example crimes committed against individuals for personal reasons) provided that the act is also part of the broader attack.

678. For the accused to have known of the broader context within which his or her act was committed, this does not mean that the perpetrator needed to share the purpose or goal or that they needed to know all parts of the plan or of all aspects of the attack; just that they intended to further the attack by committing the relevant acts.

679. In these kinds of crimes, there is no requirement that there be an armed conflict of any type: as with genocide, crimes against humanity may equally be committed in times of peace as in times of war.

⁵⁶⁸ Rome Statute, article 7

⁵⁶⁹ See for example Common article 3 to the Geneva Conventions

⁵⁷⁰ See for example Prosecutor v Akayesu, Case No. ICTR-96-4, ICTR Trial Chamber, Judgment , 2 September 1998, para. 580. See also the Rome Statute, article 7.

⁵⁷¹ Tadic, Trial Chamber Judgement, 7 May 1997

680. The ICC requires that the attack be committed pursuant to a State or organisational plan or policy. The Rome Statute requires that the acts be committed in furtherance of a State or organisational plan or policy to commit such an attack. This means that the State or organization must actively promote or encourage such an attack against a civilian population, although in exceptional cases it may be shown by State or organisational inaction.

681. Kenya is a state party to the Rome Statute of the ICC. It signed the Statute on 11 August 1999 and thereafter ratified the Statute on 15 March 2005. Although the Attorney General immediately thereafter published the International Crimes Bill to domesticate the Statute, Parliament is yet to 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. That notwithstanding, under the Nuremberg principles, the “fact that internal law does not 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.”⁵⁷²

682. Our analysis (see paragraphs below under the heading of crimes against humanity under Customary International Law illustrating incidences of violence) demonstrates that the attacks were both widespread and systematic, and in the knowledge of the attackers; they were also committed against a civilian population. Given the extensive information about the patterns of conduct and the planning that happened prior to and in the course of the attacks (see chapter 5 above), we were extremely constrained in determining whether crimes against humanity had happened.⁵⁷³

683. Our analysis arrived at the finding that the elements necessary to prove that crimes against humanity happened under the ICC framework 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 organisational 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 organisational policy.

Crimes against humanity under Customary International Law

684. The criteria for proving crimes against humanity under customary international law as has found expression in the jurisprudence of the International Criminal Tribunal for Rwanda⁵⁷⁴ (ICTR), the

⁵⁷² 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)

⁵⁷³ See the Rome Statute Elements of Crimes general para 3. Also note *Tadic Judgment* (para 653) and *Blaskic* (paras 204-5) that the widespread or systematic manner of the act may evince a policy to commit the acts. *Blaskic* para 204 also sets out the types of facts that may go towards showing the existence of a policy, including the political context within which the acts take place, the general tenor of a political program as evidenced by its documents and speeches and media propaganda.

⁵⁷⁴ Akayesu paragraph 578. (Prosecutor v Akayesu ICTR-96-4-T, September 1998.)

International Criminal Tribunal for the Former Yugoslavia⁵⁷⁵ (ICTY, the Special Court for Sierra Leone,⁵⁷⁶ and recently in the ICC statute are that: the act is a prohibited act, namely murder etc; the act was committed as part of a systematic or widespread attack against a civilian population; and the perpetrator knew that the conduct was part of or intended to be part of a widespread or systematic attack against a civilian population.

685. Under customary international law, the presence of a policy to commit crimes against humanity does not have to be formalised in a manner directly attributable to a state, but can be deduced or inferred from the way in which the acts constituting crimes against humanity occur.⁵⁷⁷ Relevant questions to assist in the deduction of policy include the levels of organisation or planning that preceded an attack which may indicate the existence of a policy.

686. Our finding in this regard, therefore, is that the violence following the 2007 General Election meets the criteria of crimes against humanity under Customary International Law in so far as it involved conduct including the multiple commission of acts of inhumanity against civilian populations, pursuant to or in furtherance of an organisational policy to commit such attacks in the theatres of conflict.

687. Clearly, the attacks and counter-attacks which took place involved a lot of planning and organisation and as such were systematic. For example, in Nairobi's informal settlements the killings, 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 Valley, Coast, Central and Western Provinces.

688. In Nairobi the attacks were systematic 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, local politicians and business people financed the violence.

689. An indicator that the violence was planned and organised is the fact that much of the violence was perpetrated by organised illegal gangs. As already stated in this report, many informal settlements are balkanised along ethnic lines. The majority of gangs that operate in each area are also organized along ethnic lines. We were informed of the following gangs: Siafu, Mungiki, Bhukungu, Taliban, Mungiki and Jeshi la Darajani. This set up makes it easy to target a particular ethnic community using a criminal ethnic gang.

⁵⁷⁵ Tadic paragraphs 248, 250.

⁵⁷⁶ All its cases concern crimes against humanity; there are two Trial Chamber decisions, one in the case against the CDF and one in the case against the AFRC.

⁵⁷⁷ Tadic, Trial Chamber Judgement, 7 May 1997, at para. 653.

690. 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.

691. In the South Rift Region as demonstrated elsewhere in this report, the attacks were widespread and systematic. They 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. In addition, PNU supporters and some government officers were also targeted. 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.

692. 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.

693. This, then, is the basis of our finding that crimes against humanity under Customary International Law were perpetrated in Kenya during the material period. While we cannot find express policy on the part of the state or an organisation to commit attacks or counter-attacks, the systematic (in organisation and planning) character of the violence persuades us that crimes under Customary International Law did take place.

The Forum Question

694. The question of where crimes against humanity may 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, organised and executed the 1992 and 1997 election related ethnic violence in parts of the Rift Valley and Coast Provinces.

695. 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. 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, the policy of the ICC Prosecutor is to prosecute those who bear the greatest responsibility for those crimes, in order to enhance the effectiveness of those prosecutions, including their potential for deterrence. With the formation of a Grand Coalition government, and

the implication of this for political leaders in the post-violence government, 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.

CHAPTER SEVEN

FINDINGS ON THE IMPACT OF THE VIOLENCE ON KENYA'S INTERNATIONAL AND NATIONAL HUMAN RIGHTS OBLIGATIONS AND OTHER GOVERNANCE INDICATORS

Introduction

696. 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

697. The International Bill of Human Rights comprises three basic instruments: The Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights and the International Covenant on Social and Economic Rights (ICCPR). The rights guaranteed under these instruments can be categorised 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.

698. In the second category are social and economic rights, such as the rights to work⁵⁷⁸; to the protection of and assistance to the family, mothers and children⁵⁷⁹; to adequate food, clothing and housing⁵⁸⁰ and to education⁵⁸¹.

699. 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 (CRC).

700. 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.

701. Kenya has signed and acceded to the ICCPR; the ICESCR and the CRC. Kenya has also signed and acceded to the International Covenant on Elimination of Racial Discrimination (ICERD).⁵⁸²

⁵⁷⁸ 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)

⁵⁷⁹ Article 10 of the International Covenant on Economic Rights, supra note 15.

⁵⁸⁰ Article 11 of the International Covenant on Economic Rights, supra note 15.

⁵⁸¹ Article 13 of the International Covenant on Economic Rights, supra note 15.

⁵⁸² 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.

702. 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.
703. 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.
704. 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.⁵⁸³ The UDHR 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."⁵⁸⁴ Similarly, Article 28 of the African Charter of Human and Peoples Rights (ACHPR), 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.
705. 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 recognised in Part I, Chapter II of the ACHPR, 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 recognised 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 ACHPR.
706. *Was the Right to Life Violated in the post election violence?* 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

⁵⁸³ 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.

⁵⁸⁴ Article 29 of the Universal Declaration of Human Rights.

police officers are endangered, the behavior of the police was too often callous to human life and dignity.

707. This behaviour is inconsistent with the protection of the right to life, liberty and security of the person which is protected under Article 3 of the UDHR and Article 6 of ICCPR 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 ACHPR provides that the dignity ‘inherent in a human being’ shall be respected and therefore any forms of degradation and exploitations shall be prohibited.

708. 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 ICCPR, Sections 70 and 71 of the Kenyan Constitution as well as Article 5 of the ACHPR. 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.

709. *Was the Right not to be Forcibly Evicted from One’s Home Violated?* KNCHR witnessed firsthand 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, constitute one of the most egregious violations of human rights occasioned during post-election violence. As noted elsewhere in this report, we were told of multiple arsons during the post-election violence period.

710. The right not to be forcibly evicted or displaced from one’s home is now increasingly recognised in international law.⁵⁸⁵ 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.”⁵⁸⁶ 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.

⁵⁸⁵ 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>

⁵⁸⁶ Commission on Human Rights, Resolution 1993/77

711. 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.
712. As a result, displaced persons suffered high levels of impoverishment⁵⁸⁷ including 'landlessness, joblessness, homelessness, marginalisation, food insecurity'⁵⁸⁸ 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.
713. *Was the Right to Equality and Against Discrimination Violated?* 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.
714. Article 3 of the ICCPR 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.⁵⁸⁹ 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 ACHPR also guarantees individuals to the right to equality before the law.
715. 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

⁵⁸⁷ 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)

⁵⁸⁸ Ibid.

⁵⁸⁹ 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.

these forceful evictions. Some of those politicians and individuals are mentioned in the various schedules of alleged perpetrators appended to this report.

716. *Was the Right to Hold Opinions Without Interference Violated?* 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 ICCPR 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 ICCPR.
717. *Was the Right to Take Part in Public Affairs and to Vote in Periodic Elections Violated?* 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 ICCPR. 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.
718. *Was the Right to Property Violated?* 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.
719. Section 75 of the Constitution guarantees the right to private property and Article 17 of the UDHR.⁵⁹⁰ The Constitution and the UDHR prohibits the arbitrary taking of private property from a person. Article 14 of the ACHPR also guarantees the right to private property.
720. *Was the Right to Education Violated?* A large number of school age individuals were displaced from their homes by the violence. There are also reports of schools that were set on fire. As a result these individuals' right to an education guaranteed under Article 13 of the ICESCR and Article 17 of the ACHPR was undermined.
721. *Was the Prohibition Not to Engage in Incitement to Discrimination, Hostility or Violence Breached?* 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.

⁵⁹⁰ The Universal Declaration of Human Rights is recognised as customary international law. This means Kenya is bound by its provisions notwithstanding the fact that it has not formally signed or ratified it.

722. 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.⁵⁹¹ The Convention obliges States not to engage in conduct that would ‘sponsor, defend or support’ ethnic discrimination.⁵⁹² 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.’⁵⁹³ 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 the Luo and Kalenjin communities; in the Rift Valley, the Kalenjin 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.

723. *Was the Right to Freedom of Movement Violated?* 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.

724. The right to freedom of movement is guaranteed under Section 81 of the Constitution as well as under Article 11 of the International Covenant of Civil and Political Rights as well as 12 of the ACHPR.

Findings on Issues Relating to Governance Failures

725. 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 claimed it 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 fired 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.

⁵⁹¹ 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

⁵⁹² Article 2.1 of the International Convention on the Elimination of All Forms of Racial Discrimination, *id.*

⁵⁹³ Article 5.1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

726. 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 organisation. 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 arrivals in Central and Nyanza provinces shows that this violence was planned and organised.
727. 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.
728. 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 the Kisii community; in Western province, the targets were predominantly Kikuyus as was the case in the Coast province even though the Kamba, the Meru and the Embu were also on the line for eviction there. In the Rift Valley, the violence pitted the Kalenjin, on the one hand, the non-Kalenjin such as the Kikuyu and the Kisii, on the other. These ethnic divisions also overlapped with political divisions with the Kikuyu, the Meru and the Embu being associated with PNU while the Luo and the Kalenjin were associated with ODM.
729. This ethnicisation 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.
730. This ethnicisation 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 groups, 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 ethnicised and that these divisions are a reflection of how far down the road of negative ethnicity the country has descended into.

731. Fifth, KNCHR gathered little or no evidence that politicians took seriously the charge of seeking to minimise the violence by discouraging their supporters from continuing the violence. William Ruto in an interview with the KNCHR 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.
732. Sixth, Kenya's long history of impunity was a background contributing factor to the post-election violence. There is no evidence that previous governments took seriously the recommendations to investigate and prosecute those responsible for previous rounds of violence around election time in Kenya.
733. 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.
734. 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

735. 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.
736. Several other issues which Kenyans may have debated and sought action on 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-polarised 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.
737. 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.
738. 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

739. 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.
740. 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.
741. 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.
742. 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.
743. 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

744. The Prosecutor of the International Criminal Court (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

745. 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.
746. The Government in partnership with Civil Society Organisations should facilitate efforts to heal the country by taking deliberate steps towards enhancing coexistence. Community-based systems should be established to spearhead reconciliation.
747. 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.
748. 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.
749. The constitutional review process should be finalised expeditiously as a basis for enabling the resolution of the inequalities, which have been such a fundamental source of conflict.
750. The Communications Commission of Kenya should be empowered to monitor content of local language as well as other media.
751. Legislation should be passed by Parliament barring from appointive or elective offices leaders who are found liable for perpetration of gross human rights violations.
752. The Ministry of Justice, National Cohesion and Constitutional affairs and the ministry of education should revitalise 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.
753. A more concerted and sustained programme of human rights education should be undertaken by public institutions, CSOs and FBOs to enable Kenyans to have better regard for humanity.

754. The Ministry of Special Programmes 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.

755. 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.

OUT OF THE WOODS? A POSTSCRIPT

756. 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

757. Following successful negotiations between President Kibaki of PNU and allied parties and Raila Odinga of ODM 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, Raila Odinga was appointed the Prime Minister and a cabinet of 40 appointed. There were loud protests about the size of the government, with the media and sections of civil society preferring a leaner cabinet.

758. 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 roles fanning the post-election violence, getting ministerial appointments.

759. 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 further investigations.

760. 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

761. Agreement to establish the Commission of Inquiry on Post-election Violence (CIPEV) was reached on 4 March 2008. 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 is led by three Commissioners, two of whom are non-Kenyan.
762. 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.
763. 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 Commissions of Inquiry whose recommendations were never acted on. This may very well be the fate of this Commission's recommendations.
764. The time frame provided for the Commission to complete its work – three months - appears short. In view of the short time frame, the Commission should be encouraged to build on the work that other agencies and organisations have already undertaken, including the Kenya Police, civil society organisations, and the National Commission on Human Rights.

The truth, justice and reconciliation commission

765. Agreement to establish the Truth, Justice and Reconciliation Commission (TJRC) was reached in March 2008. The TJRC will be established under an Act of Parliament. Legislation to establish it has been published and is being debated 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.
766. 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.
767. 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.

768. The National Commission has provided recommendations to strengthen the proposed TJRC legislation, and hopes that they will be addressed through Parliament.

The AMNESTY DEBATE

769. 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.

770. 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 mobilised the youths to those actions are themselves enjoying their liberty.

771. 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.

772. 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 civilised society and going back to the rule of the jungle. This would also encourage organised violence.

773. The commission has in the past few months made recommendations on the amnesty debate, including that:

- a. Blanket amnesty should not be allowed.
- b. 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.
- c. 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 financiers and planners of the violence. Before amnesty is granted, the views of the victims should be sought and taken into account.

- d. Prosecution of alleged perpetrators of post-election violence should be speeded up. This might be done through the establishment of special courts for this purpose.
- e. 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.