



# **ETHNICITY AND A FAILED DEMOCRACY**

## **A CRITICAL SURGERY OF THE PRE AND POST ELECTIONS VIOLENCE IN KENYA**

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Contacts:

Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK)

China Centre, Ngong Road,

Ground Floor, Suit 1

P.O BOX 9099-00200

Nairobi, Kenya

Tel: +254- 020-2041245 /+254-020-2731964/5

D-line: +254-020-2063727

Cell: 0722335733/0722525390

Help line: 0900 33 23 66 or 0900 55 59 99

Email: [info@oscarfound.org](mailto:info@oscarfound.org), [oscarfoundation@justice.com](mailto:oscarfoundation@justice.com)

Website: [www.oscarfound.org](http://www.oscarfound.org)

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This includes Police Accountability Report-Shielding Impunity, License to Kill, Police Prosecution or Persecution, Death Penalty vis a vis Legal Implication and National rainbow Coalition NARC Accountability Report. (All accessible at: [www.oscarfound.org](http://www.oscarfound.org)). All this would not have been possible without the support and resilience of a dedicated team of staff and consultants.

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## Dedication

*This report is dedicated to all relatives of the slain victims during pre and post election violence and to all survivors of other human rights violations including rape, defilement and plunder who despite the pain and suffering that they have endured still live with hope that the perpetrators of these heinous acts will one day sit on the seat of judgment.*

## PROFILE

About Oscar Foundation free Legal Aid Clinic-Kenya (OFFLACK)

The Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) Free Legal Aid Clinic Kenya was set up in 1998 and formally registered in 2002 as a non-governmental Organization, on a realization that Law, Policy and judicial action that upheld Human Rights Frame work had a central role to play in effectively dealing with the spread of HIV epidemic.

The Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) has been dealing with HIV/AIDS & the Law since the year 2001 when it published its training manual on HIV/AIDS and Legal Implications in Kenya.

However, the Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) continues to do much of their litigation on HIV in an adhoc manner, as and when the need arose. In the 1990's, when Kenya saw the need to deal with HIV/AIDS urgently and effectively, the Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) felt that a planned legal intervention was necessary to support PLWHA. It also felt the need to sensitize decision markers and those affected, on law and its link with the public health crisis that HIV/AIDS created.

With this in mind Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) set up a mobile full time Legal Aid Clinic with a 24hours help line response number 0900 555 999 the unit started Para-legal training in Nairobi, Ruiru, Thika, Mombasa and Kakamega town and published a HIV/AIDS protocol at work place.

This was followed with setting up of a project office (PO) at China Centre, Ngong Road office No. 1 Nairobi Kenya. P.O. Box 9099-00200 Telephone 2041245/ 2738215/ 3537799/2731964/5. The Foundation has a network of 150 Probono Lawyers working in their commercial offices country wide and heading Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) Local Project Advisory Group (LPAG)

The Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) mobile full time Legal Aid Clinic has two main spheres of activity: -Providing Free Legal services to persons living with/affected by HIV/AIDS and the poor as provided in the Civil Procedure Act Cap 21 Order XXXII Rule 1-18 Laws of Kenya -Advocacy and policy research on human rights and the law in order to access justice to those in custody and the poor.

The Foundation mobile Legal Aid Clinic unit's advocacy and policy research initiatives compliment the legal services. It's through the units' advocacy effort that links are made with other Non-Governmental Organization (NGO's). Policy Research initiative attempts to keep track of policy developments on human rights in Kenya.

The Advocacy and Policy Research Initiative of the Unit include: -

**Kamau King'ara,**

**Executive Director,**

**OSCAR FOUNDATION FREE LEGAL AID CLINIC-KENYA (OFFLACK).**

## Introduction

### *Crime, Political Transition and Changing Forms of Politics in Kenya*

Maintaining order during this period of reconstruction and democratization is vital to the future of Kenya. The failure of the Government and its law enforcement agencies noticeably the police to counter higher levels of ethnic cleansing and gang crime have led to disillusionment with the new government on law and order issues, and a potentially greater willingness among citizens to take the law into their own hands. As disorder has increased, state policing agencies have undergone fundamental changes. Also, new private and local authority policing institutions are beginning to solidify.

This report is the result of complaints of pre and post election violence including extra judicial execution by the law enforcement agents of the state documented in Kenya documented by OFFLACK over a period preceding, during and the last one and a half months after the general elections held on 27th December 200, as well as subsequent surveys conducted by the Oscar Foundation Free Legal Aid Clinic-Kenya (OFFLACK) in six provinces of Kenya namely; Rift Valley, Coast, Central, Western, Nairobi and Eastern

The report is an attempt to analyze these processes as the country faces the worst scale of ethnic cleansing and organized crime. It traces, through the pre-election period, the rise in political violence that marked the post-election period and entry of the transition to democracy, and tries to explain growing levels of ethnicity and democracy and their relationship to the current trend of planned ethnic killings with political and social transformation.

It focuses in particular on the systematic targeting of members of one ethnic community for slaughter since the Government of President Mwai Kibaki was declared winner in the December 27 general elections. The report also includes an overview of changes in the Kenyan security and political intolerance, and new initiatives in democratization and governance. Finally, the report examines forms of complicity and the implications for the future of democracy in Kenya.

## Political Transition

### Background

Kenya has witnessed the worst ethnic divisions in its post-independent period of 1992 and 1997, wide scale state repression and abuse of fundamental human rights during the Moi-era gave way for the suspension of the constitutional order that paved way for the suppression of the populars. The Moi regime misused the state machinery and instigated tribalism, nepotisms and ethnicity among the Kenyan people that has become difficult to uproot.

In 1992 and 1997, Kenya was thrown to the orgy of politically instigated ethnic slaughter of members of the ethnic Kikuyu by members of Moi's ethnic Kalenjin community of Rift Valley. Close to 2000 people lost their lives and over 200,000 were internally displaced in parts of the Rift Valley.

Molo was the worst hit area from where the Kikuyu mounted a resistance that resulted to the formation of a mediation team consisting of the Kalenjin and affiliate communities and Kikuyu elders (KAMATUSA and GEMA).

Hundreds of thousands of ethnic Kikuyu and moderate sympathizers in the Rift Valley witnessed the largest atrocity during the conflict that was mostly carried out by extremist militia groups. At least 1500 ethnic Kikuyus and hundreds of moderates died in the planned ethnic cleansing targeting to drive away the Kikuyu from Rift Valley. Some estimates put the death toll between 2000 and 2400.

In the wake of the post-election conflict which has pitted Kenya over the past one month, the international community, and the United Nation in particular, have directed severe criticism against the government for its inaction in averting the situation and failure to protect lives and property. Despite international news coverage of the violence as it unfolds, the government has failed to protect its people and their property and often declined to prevent or stop the massacre.

In the worst bizarre attack targeting members of one ethnic community, 30 people including women and children were attacked in a church where they had sought refuge from pursuing gang of attackers and burnt to death.

The European Union and the United States have considered leading the UN peacekeeping force in Kenya. Despite specific warnings and requests from the international mediators, before and during the post-election, a number of international governments have refused to send additional support, declined request for authorization to intervene, and even scaled back their authority over the legitimacy of the Party of National Unity PNU government.

Fearing reprisals, hundreds of thousands of Kikuyu and other internally displaced persons IDPs are fleeing into Uganda, and Tanzania and to other parts of the country enjoying relative calm where they are setting camps in churches, police stations and close to the military barracks. Some people who are participating in the killings are also hiding among the refugees from where they are organizing and fuelling the clashes away from suspicion.

## Charges of Revisionism

The context of the post-election conflict in Kenya continues to be a matter of historical debate. There have been frequent charges of revisionism, suspicions about both the government and the opposition and the international policies in Kenya between December 2002 and December 2007 and allegations that the UK and the United States supported the opposition leading to the creation of a diplomatic offensive which was sympathetic to the opposition.

In particular, the US has been accused of protecting the perpetrators of the post-election violence, and was instrumental in pushing for mediation. To counter those allegations, there emerged a “double ethnic” theory, accusing a Kikuyu militia known as the Mungiki of engaging in a “counter-ethnic cleansing” against the non-Kikuyus. This theory is promulgated in the events that took place.

However, the government has began the long-awaited meditation talks, which had an uncertain start at the beginning of the conflict and inched forward towards the end of January, the government began implementing a participatory meditation process and strengthening of the justice system, as petitions over the December elections in order to address the political differences that has enormous repercussions on the future of Kenya. Meanwhile, the UN set up meditation team currently under way in Nairobi.

The international mediation has jurisdiction over high level members of the government and the opposition, while the Government is responsible for protecting its citizens, tensions arose between ODM and PNU supporters over continued killings, though these were largely resolved once meditation talks started. Despite substantial international assistance and political reforms—including Kenya’s first ever local elections dispute mechanism—the country continues to struggle to boost reconciliation and to foster justice and peace. In a negotiated transition arrangement, President Mwai Kibaki is expected to share power with Raila Odinga of ODM.

Raila has disputed the December elections which gave Kibaki victory over the first national elections since the NARC coalition took power in 2002. A series of massive population displacements, a nagging Mungiki extremist insurgency, and the role of the police in the uprising continue to hinder peace efforts. Both ODM’s Raila Odinga and PNU’s Mwai Kibaki have been on the receiving end often clashing verbally over the legality and legitimacy of the presidency; with Raila insisting that he is the legally elected President of Kenya while Kibaki’s men threatening to take legal action against Raila.



## **Pre-Election Violence:** *The Genocide of a Generation*

In a space of five years, the government has introduced a policy of extermination targeting the youth on suspicion that they are members of the outlawed Mungiki sect. That the police have accounted for most of the deaths and yet no inquest has been constituted, to say the least, points to a systematic and deliberate effort to exterminate a generation from a particular ethnic community from the Central Kenya.

Surprisingly, this conspiracy to exterminate young people extended from the Central Kenya, Rift Valley, Eastern and Nairobi. The extermination campaign begun with extensive media campaigns painting an inciting picture of an alleged mungiki empire purported to be worth at least KES. 50 billion allegedly amassed from illegal collections from the matatu industry, illegal water and electricity connections, tax evasion rackets and illegal protection and general security levy in estates and neighborhoods.

This was meant to prepare the ground, before hand, for the execution in cold blood and displacement of over 8000 young people so far confirmed dead or missing and stir ethnic balance before the forth coming 2007 general elections in favor of the preferred political inclination of a few people working against the government within and outside the government to create anarchy and hopelessness within the targeted community in the face of rising insecurity in which the community was the major and deliberate victim. In that same period there was general insecurity which was a culmination to massive off loading of military, intelligence and police officers within the transition period without proper and adequate offloading mechanisms. Some of the officers drifted into criminality and others used their forces connection to access and trade with classified state intelligence. Such is well exemplified with the disbandment of the Kenya Police Reserve and the disbandment of the Special Branch.

However, this is not to be confused with what was witnessed in the height of the youth repression in the name of cracking down on organized crime. The catch is, although the officers so laid off were hired and were being used to behead and skin their victims in a manner similar to ritual killings associated with mungiki, and hence operated under the cover of the sect the intention was not general or abstract but specific and purposeful drive with political passion and strategic precision to prepare the field for the killings, that followed, of 8000 young Kikuyus in order to achieve an electoral motive in the 2007 elections.

The people within the government but working against the government seem to have 'assisted' the government to develop and implemented a well orchestrated extermination strategy that involved use of both modern and crude weapons, excess force and brutality to execute young people from the ethnic community using a 'Delta' squad-like joint police units squads code-named Rhino, Spider and Kwekwe. The squads worked solely and jointly in three fronts where the Kikuyus from certain economic classes and age set were to be targeted and exterminated.

One squad, would continue to cause havoc in estates, neighborhoods and in certain designated areas of the Central Province, Nairobi, Eastern and the Rift-Valley masquerading as Mungiki to create and give life to the second that would be 'intercepting', 'infiltrating' and 'crushing' the militia group (read young kikuyu men and women).

To ensure that members of the Kikuyu community in the police force would not be considered in the constitution of the terror squads for obvious reasons –to avert 'sabotage' from within the squads, it was alleged that the militia had infiltrated all the units within the police and military forces and in one instance 'they claimed' that they had over 20,000 of their own within the ranks and files of Kenyan armed forces. This meant all members of the Kikuyu ethnic community in armed forces were suspect.

It never occurred to the government that mungiki militia is not known to use fire arms in its execution of their 'mafia' like under ground and highly covert operations. The militia as was the case in various documented cases is alleged to have been using sophisticated fire arms. The militia, during a police swoop in the sprawling slums of mathare and adjacent slums in Nairobi is said to have given government forces stiff resistance in a gun fight that left one police officer dead and several with serious bullet wounds.

However, the ethnic militia, which opposes western civilization and advocates for traditional ways, uses crude weapons and preferably machetes, rungs and knives. But during the horrifying period when the beheadings and skinning occurred it was recorded that there was constant use of automatic weapons like in the case of Nyeri where a chief in the backyard of the internal security ministers' rural home was shot dead in Murang'a in the rural Central Kenya. dies are not made of metal shield.

With tens of thousands executed in cold blood and many more displaced or missing nobody raised a finger to condemn state sponsored brutality against its own citizenry. That way, even human rights organizations, the media and members of the diplomatic corp in Kenya condoned and abetted the killings by failing to intervene or condemn mass execution of the youth caught in a dangerous political conspiracy in an election year setting a bad precedence and preparing the field for the post election violence going on in the country.

One unforeseen consequence of this sustained extermination campaign targeting the youth that will be surely felt in future will be a generation gap within the Kikuyu community that will surely be felt in the coming days.



A Man with an arrow injury in his head.  
Many crude weapons including, machetes spears, bows&arrows were used in the attacks



### **Eviction!!**

Hundreds of thousands of Kenyan citizens were evicted from what they had called home for years. Eviction depended on the tribe that you belonged to.



A birds eye view of Mathare Valley as police descend during the raid



Residents run for dear life during the raid



Residents demolish shacks in search of dead bodies some resident were forced in pit latrines by the government security agents during the raid



Defenseless residents being cornered and fierce police dog released on them



## **Pre-election Political Violence:** *A Critical Look at the Pre-Election Situation*

Some people have been claiming the pre-election violence in the country are primarily caused by political rivalry. Indeed, by the beginning of 2003 the political dimensions of the conflict were almost beyond dispute, as participants clearly labelled themselves as being either ODM or PNU.

Violence in Nairobi had assumed war-like proportions, with opposing political groups battling for territorial control on the urban periphery, while around Rift Valley internecine conflict simmered as streets, blocks, houses and hostels were claimed as the territory of one or other political party.

However, to view the violence purely as a political clash would obscure important underlying causes. There was evidence, for instance, that violence often began for a variety of other reasons many related to local disputes or grievances that acquired political labels over time.

Monitoring evidence also showed that the political nature of the conflict was not always clear, with one survey showing that only about 7 percent of violent acts were reported as ODM/PNU clashes in 2006/7. For instance, only about one quarter of those involved in conflict in certain areas of Rift Valley in 1992 and 1997 could identify political leaders, and explain the ideologies of the parties whose interests they were meant to be defending. In turn, some of the violence took place not only between opposing political groups, but also within them.

Conflict was also most common in areas on the Rift Valley and in Coastal provinces that were characterized by extreme poverty. It often seemed to take the form of a battle for access to meagre resources on the urban periphery, a fight between the 'haves' and the 'have-nots', even though they were indicated as belonging to different political parties. This suggested at least that structural and material factors were involved that would not necessarily have changed after the transition to democracy had been completed.

The election did lead to a decrease in conflict, at least in the short term. The participation of the ODM in the poll meant that all parties participated, with the exception of the white far right. The ODM's early entry ensured that there was little time for the Government and other parties and its rivals to campaign in each other's territories.

Fatalities rose from more than 200 in the month before the poll to less than 1000 on average in the post-election months. The election did not end violence altogether. By mid-January ODM was simmering once again. In February nearly 40 people were killed and more than 200 houses burnt down, with monitors describing the province as being in a 'situation of near anarchy'.

The election also gave rise to new but interconnected fears that the country was sliding into criminal anarchy. Kenya's violent problem is not recent: past commentators already labelled Kenya as 'violence-generic'. The decade 1980/1990, in which the Moi regime was most strongly challenged, showed significant increases in ethnic violence.

According to independent figures, serious offences rose by 22 percent, and less serious ones by 17 percent; murders increased by 32 percent, rape by 24 percent, and burglary by 31 percent all this targeted specific communities in Rift Valley.

The increase in levels of crime peaked in 1990s, the years in which the political transition began. Recorded levels of almost all ethnic violence showed absolute increases for the period 1990 to 1997. While the murder rate continues to rise by 7 percent, in line with rising levels of political violence, other planned attacks on particular communities increased significantly during this period: assault increased by 18 percent, rape by 42 percent, evictions by 40 percent, arson attacks by 34 percent, and housebreaking by 20 percent.

There was also an increase in the crimes of the affluent: although no accurate figures were available, white-collar crime increased significantly over this period. Trends throughout the country were not uniform; with the greatest increases occurring in urban complexes around Nairobi, Mombassa, and Kisumu

## Preparations for Ethnic Cleansing in Post-Election Kenya

Soon after the December 2007 election, leaflets asking members of a certain community to leave were circulated in parts of Rift Valley, Coast and Nyanza. Responsibility for the distribution of the leaflets being blamed on the ODM extremists and certain party bigwigs. But in spite of disagreements about the identities of its perpetrators, the attacks in Rift Valley are to many observers the catalyst for the current wave of post-election violence.

And although many Kenyans apparently interpreted the disputed election results as the cause for the violence events of the recent past seem to point in a different direction.

The declaration of the results of the disputed elections were only going to be used as the signal to alert the killers that they were to begin murdering those who had already been identified and singled out as coming from a certain ethnic community which was known to be sympathetic to the Party of the National Unity PNU with a view to driving them out of Rift Valley, Nyanza and Western province.

Ordinary citizens allied to certain ethnic community were called on by local leaders and elders including church and government officials using a known ethnic radio to kill their neighbors. Those who refused to kill were often killed themselves

One source revealed that the killings were openly discussed by known community leaders and senior opposition leaders on an ethnic radio, in gatherings and in secret meetings and that one Member of Parliament MP said he was personally in favor of getting rid of a certain ethnic community. "Without the Kikuyus all of Kenya's political problems would be over," he told members of his community.

The organizers of the killings included a senior member of the ODM 'Pentagon' and many top ranking opposition and government officials and members of the army and police.

The opposition party Orange Democratic Movement ODM has been implicated in organizing many aspects of the genocide-like killings. Senior ODM officials are alleged to have called meetings on the eve of December 29 to oath the attackers and to roll out the killings by distributing weapons including automatic fire arms, Korean made bows and arrows, machetes, petrol-bombs and all manner of conventional and crude weapons and sending out militias with strict order to kill members of the 'enemy' community. In addition to monetary inducement, the attackers were also promised that they would be settled on the vacated land and other premises from which they evict the 'enemies'.

It will be remembered that slightly before the hotly contested 2007 elections members of certain communities affiliated to the opposition ODM went round in the city and other major towns 'sharing' buildings, vehicles and other property amongst themselves – 'when our government assumes power later this year'. In some cases, they invaded farms claiming historical ownership and residential houses owned or occupied by members of other tribes requesting that they be allowed to occupy some rooms or else when their government comes to power they will take over the whole building.

In Rift Valley, Nyanza and Western particularly in Eldoret, Kisumu, and Mathare and Kibera in Nairobi the communities have invaded and evicted members of a certain community from their farms and properties which they now occupy. The tenants and other occupants having fled the new 'owners' have rented the premises to their tribes men and cronies and are collecting rent and are 'running' shops and other businesses which they have snatched from their rightful owners.

## **Training and Oathing of Ethnic Militia in Rift Valley**

The on going killings in Rift Valley were well organized, funded and executed. By the time the killings started, a militia group in Rift Valley had managed to recruit, train and oath a 30,000 strong militia comprising of retired and serving military and police officers and jobless youth men. The ratio was one member of the militia group for every ten Kikuyu families. The Kikuyus were estimated to be 300,000 in the Rift valley. However, Rift Valley was only going to be the epicenter that would trigger ethnic cleansing organized nation wide particularly in Western, Nairobi and Valley.

The defunct militia stationed in Rift Valley under the past regime during the Moi era and who were earlier on in 1992 and 1997 involved in perpetrating ethnic clashes was immediately mobilized to reinforce the 30,000 newly trained and recruited militias after the December Presidential results were announced. The group was joined by unsuspecting youth who took advantage of the clashes to loot and cause mayhem in major towns. The resulting chaos evolved into a full scale and wide spread ethnic cleansing targeting non-indigenous communities and mainly communities from central Kenya.

The nature of the attacks was not immediately apparent to locals and foreign observers, including the media and the government and was initially explained as a violent phase of the post-election that would subside as the elections instigated emotions cooled.

In the mean time the number of casualties was increasing and there did not seem an end in sight to the violence –which in fact was growing in intensity, coverage and casualties. Many victims were killed and their homes torched by ‘gangs of youth’ who were trained and paid to undertake organized attacks that were carried out to look like they were erratic and hence to veil their intentions and deceive the victims, media, the government and the international community.

Eldoret is a center of multi-ethnic sentiments, both as the homeland of the Kalenjin and other migrant and minority ethnic communities such as Kikuyus, Kisiis and Luhyas among others. While the killings occurred in other towns immediately after election results were announced, it took several days for them to become organized on the scale of Rift Valley and particularly Eldoret and Kericho.

The town which was once a flourishing business hub has been reduced into a ghost town hosting tens of thousands of displaced people. The militias have since occupied the vacated land and premises –giving the conflict an economic as well as a social dimension.

# The Unfolding of a Genocide in the Kenya's (Rift) Valley of Death.

Approximately 1000 people, mostly ethnic Kikuyus have died and 500,000 more have been internally displaced, most of whom were driven from their homes mostly in the killing fields of Rift Valley.

As Kikuyus continued to be pushed from North Rift and it was apparent that the eviction and killings targeting them was advancing towards Central and South Rift without any hope for cessation of hostility and with their plea to the government and the international community's intervention at least to protect them from a possible annihilation falling on deaf ears. By then 600 men, women and children had already been killed and hundreds of thousands of families evicted. When it became apparent that the government was not moved by the killings, they decided to put up a line of defense!

Soon displaced Kikuyus from the North Rift seeking refuge in parts of Central Rift such as Nakuru and Naivasha mobilized themselves into defense and fighting units and armed themselves with all manner of weapons both crude and conventional managing to establish a rag-tag ethnic defense militia. The size of the militia (henceforth referred to as Mungiki) was increased to its full strength as more people streamed from the North rift, Western and Nyanza eliciting ethnic emotions among their kinsmen in Central Kenya, Eastern and Nairobi.

A major exception to this pattern was in Coast province where the magnitude of the hostility and consequent violence was going down as compared to the Rift-Valley province. Although parts of Naivasha in Rift Valley mainly inhabited by communities from central Kenya and other parts of Central province opposed the killings and resisted the pressure to avenge the killings of their kin in Rift-Valley resulting to some relative calm, tension was building slowly but surely with every day of the continued violence and the government seemingly overwhelmed.

Emotions were quickly building!

On Saturday the 26th all hell broke loose and with the killing of 27 people 15 of who were women and children burned alive in their home, what was going to avert a full scale ethnic slaughter -revenge attacks, had begun when more than 15 members of the same family who had sought refuge in a house in Naivasha were attacked by the local militia mungiki who used boulders to knock down the house to gain entry. People who tried to escape were hacked down with machetes while the rest were burnt to death to avenge the in similar circumstances of 32 mainly women and children in a church in Eldoret.

The lightning attacks, said to have caught the local police and area security intelligence flat footed, targeted members of communities believed to be perpetuating hostility and violence in Rift Valley, Western and Nyanza. As violence raged the rioting youth were joined by reinforcements of the more organized groups from the central Kenya, Upper Eastern and Nairobi.

People were forced out of vehicles along the Naivasha-Nakuru Road where the police were stationed and asked to produce their identity cards. Those found to be coming from the offending communities would be stripped naked, circumcised or hacked to death or both. Vehicles were turned back to Nairobi and transport to major towns in Western, Nyanza and North Rift paralyzed. Police road blocks were taken over and manned by the 'militia'. Overwhelmed, the police watched as people were forced out of their cars and killed as they pleaded for leniency.

The major highway and part of the great North road was barricaded with boulders to bar food and other non-food essentials from reaching the flash points in the Rift Valley from Nairobi or being evacuated into safer areas in their ancestral lands. The police were clearly overwhelmed besides being caught flat footed and resorted to using rifles to shoot in the air in a bid to scare marauding groups of youth targeting the IDP camps.

During the Naivasha attacks, most of the victims were killed in their villages or in towns, often by their neighbors and fellow villagers. The 'militia' members typically murdered their victims by hacking them with machetes. The victims were often hiding in churches and school buildings, where gangs massacred them necessitating the victims to move right into prisons compound and police stations.

As the dreaded militia started their movement north of the Rift and West of Kenya taking strategic positions by spreading out in flash points members of targeted communities began to flee to neighboring Uganda fearing wide scale retaliation. Others joined the camps of the IDPs or started new ones. On 21 January, an uprising by the ethnic Kikuyu people in eastern Rift Valley marked the beginning of the worst human slaughter that led to a return of more than 20,000 families to Rift Valley, Western and Nyanza during the last two weeks of January. This massive repatriation was followed at the end of January by the return of 50,000 more from other parts of the country after they were ejected by the government from camps around the country.

Quickly the 'Mungik'i, a banned militia once declared a threat to the national security and infamous for ritual killings, extortion and ethno-religious practices including female circumcision regrouped in Rift Valley, Eastern, Nairobi and Central provinces ready to repulse any further attacks on their community in Nairobi, Western, Nyanza and Rift Valley. About 100, 000 young men are said to have been assembled, trained and oathed to defend their community in Nairobi, North Rift, Western and Nyanza. More road blocks were erected along major highways including in Kikuyu allegedly securing Nairobi and Central Rift mainly inhabited by Kikuyus and along the roads that lead to North Rift, Western and Nyanza provinces to avert invasion.

But as the situation evolved from being defensive to offensive with people from 'offending' communities being flashed from their houses in various parts of Central Province in retaliation of the ongoing eviction of ethnic Kikuyu in the North Rift, Western and Nyanza key community leaders led by the former opposition chief and now minister of local government in Kibaki's government Uhuru Kenyatta moved in to calm groups of Kikuyu youth who had assembled in parts of the Central Province neighboring Nairobi with an intension of invading Nairobi.

Addressing them in their mother tongue the leaders impressed upon the youth not to avenge pleading with them to be patient with on going mediation exercise. This worked and averted a potentially explosive situation.

Internally Displaced People IDPs continued to arrive in Naivasha and some parts of central province namely Kiambu and Kikuyu with heart rending sharing of the killings targeting their ethnic community. Most well-known eyewitnesses to the post-election killings in Rift Valley are sharing their experiences with depression and post-traumatic stress disorder

National vernacular radio have been accused of urging people to stay in their homes, and the government-funded station KBC broadcast vitriolic attacks targeting members of the opposition. Hundreds of roadblocks were set up by the militia around the country. Police escorting non-Kikuyus of towns in Rift Valley, were unable to do anything as Mungiki kept escalating the violence and even started targeting, via vernacular radio.

**WARNING: The Next Page Contains Photographic Evidence of these Events and some of these images may be disturbing.**





A helpless Child cries next to the body of his dead mother. Women and children were the ones who were worst hit by the clashes.



Residents pass-by a dead body lying out in the open. Scenes like these were not uncommon.



Police Prepare to pick up a man who was beaten up forcibly, circumcised, and killed on the streets.



Bodies of People burnt to death. Militia groups would lock people in buildings and torch them.



Looting and vandalism reduced businesses to shells as thugs took advantage of the unrest to commit crimes like these.



# **The Intricate and Evolving Dimensions to the Conflict:**

## ***The Socio-Economic Dimension***

Criminality such as the one witnessed during post election period in the country is not exclusive to Kenya. Comparative evidence suggests that ethnic based criminal attacks increased significantly during periods of political transition that are coupled with instability and violence. This was the case in Rift Valley. The same was witnessed in Eastern Europe during the transition to democracy, and in the final days of the Soviet Union and the first days of the Soviet republics.

The Russian case contains added complexities: economic and political collapse has created a vacuum into which organized ethnic crime has expanded and in which current and former members of the security forces are active.

In Northern Ireland it is feared that the promise of political compromise, the concomitant loosening of tight and opposing community bonds, the greater number of (armed) ex-fighters on the streets and less vigilant policing may herald an increase in crime.

Kenya's evidence on the subject is overwhelming: apparently, crime increased markedly in conflict prone regions of the Rift Valley before and just after the first inclusive multiparty election. The elections tore the societies and are now loosened in periods of instability, seemingly making ethnic strife more likely.

While political violence has declined in some areas of Kenya, it may have left a legacy with important potential consequences for further trend of ethnic cleansing. Campaigns to retrieve illegal guns have been largely unsuccessful: slightly more than 1 000 youths and crude weapons were surrendered in two amnesties during the post-election violence.

The relatively easy availability of licenses to legally hold weapons a consequence of permissive gun ownership laws increases the stock of weapons available to criminals, who may acquire them legally or steal them from legal gun owners use them illegally to exterminate people holding opposing political views or coming from different ethnic community during an ethnic crises such as the one facing the country a the moment.

In Kericho, a gang raided a police station and stole fire arms which are being used to cause mayhem. The current post-election conflict has also weakened social control, producing marginalised groups that rely on conflict for a livelihood. This results in increased levels of ethnic cleansing and organized crime, as disaffected individuals (often township youth) become engaged in it. This point towards likely trends in ethnic protracted crime rates in the near future.

Perhaps most importantly, the rising crime rates are almost certainly related to political, social and economic trends that existed before the formal transition began, and have been accentuated by it. Evidence suggests that crime rates in townships around Nairobi have been high for many years, but that ethnic segregation largely insulated more affluent (Kikuyu) areas from its effects. It seems likely, given the gulf between town residents and the law enforcement agencies, that most post-election attacks in these areas are unrecorded.

The erosion and subsequent collapse of traditional support systems with increasing urbanization among Kenyans allowed organized crime to move out of the towns and into the suburbs, where it is more likely to be recorded. Greater affluence in these areas, and in parts of informal settlements where barriers to economic empowerment disappeared, increased the rewards available to organized criminals and the incentive to engage in more organized and sophisticated, forms of gangs like the Mungiki and the Taliban.

## The Land (E) Question

This question continues to elicit a lot of controversies given that the conflict seems to have assumed all the three dimensions. At the start the issue was election, the slogan 'No Raila no Peace' best captures the spirit of the initial conflict before the conflict evolved into ethnic cleansing and then lately the great land debate characterized by 'historical injustices'.

The issues of 'historical injustices' did not begin with the first regime though as is being touted at the moment by forces out to evict the Kikuyu community from the Rift Valley at all cost. The settlement of Kikuyus in the Rift Valley was done in three phases.

Firstly, in some cases, like was the case in Central province, the locals were displaced by the colonialists and their local allies from their home province, and either transported to other parts of the 'white-high-lands' mostly in Nakuru, Eldoret, Laikipia and Kericho to provide free or cheap labor or simply put in concentration camps in either of the two provinces particularly during the emergency period. These people from central Kenya were settled in the Rift Valley during pre-independence period by the colonialists.

Secondly, most of the power brokers during the first Kenyan government are known to have formed land-buying companies targeting the so called 'white high-lands' then occupied by the minority Europeans who upon the country's independence, after a bitter struggle for freedom, were disposing of land and leaving for other destinations. The prime 'white-high-land' occupied a huge chunk of Central province and some parts of the huge Rift Valley province. Most of the power brokers were from the Kikuyu community. It is also understood that the government bought land from the white settlers under the Settlement Transfer Fund STF scheme with funds from donors and other partners with a view to resettling the displaced communities. Huge chunks of land were acquired but instead of benefiting the displaced the land-buying companies which were heisting big and were owned by a few politically correct individuals acquired many acres of prime land.

Lastly, after independence people were encouraged by the government to 'mingle' buy and own property 'anywhere' in the sovereign Kenya. Members of the Kikuyu community responded well to this national call and moved not only to the Rift Valley but to most of the other parts of the country, where they bought land for subsistence farming and are engaging in many other entrepreneurial activities.

What analysts are failing to concede is that the conflict is assuming a life of its own. And as the situation stands it has become a war of class taking dangerous economic dimensions where any one considered to 'have' is targeted by the 'have-nots' regardless of his or her ethnic background or political inclination like the case with Kisumu and Eldoret where several well off Luos and Kalejins have suffered in the hands of looters from their own community.

The disparity between the rich and the poor in Kenya, which is touted as one of the highest in the world with over 70% of the population touted to be living below poverty line according to the United Nations standards, has come back to haunt the country. Frankenstein, the ghost that the country created at the height of economic marginalization of the majority is now ruling the streets.

## Gender Dimension

Amid the violence that engulfed several parts of the country including the Kenyan capital Nairobi following the declaration of controversial results of the presidential elections vulnerable groups particularly women and children have been targeted in a new dimension of the violence involving rape and defilement of women and children including sodomy of boys.

At least one hospital has reported a 100 per-cent rise in the number of rape victims seeking treatment. The Nairobi Women's Hospital said it had on 31 December received 19 rape cases, almost double the daily average. Many others are believed to have limited access to medical assistance due to increased hostility on the ground, lack of transport or simply lack of awareness of where to seek what service. Many cases hence have not been reported with the on going displacement and forced eviction.

This is just the tip of the iceberg, those who made it to the hospital had spoken of other rape survivors who could not seek treatment because the security situation prevented them from venturing out of the informal settlements or they lacked transport

The survivors of rape and defilement in Nairobi came mainly from the slums of Kibera, Korogocho, Mathare and Dandora, and are mostly women and young children from one ethnic community which was targeted in a new dimension to the conflict which is taking gender perspective. Sexual violence has been used before in conflict situation in the world.

Violence has pitted mainly Odinga's supporters against communities perceived to have voted for Kibaki, with cases of reprisal attacks also being reported. Sexual violence has also been reported against men, with the Kenyatta National Hospital in Nairobi on 2 January saying several men had been admitted after they were sexually assaulted during the violence.

Violence erupted mostly in the slums of Nairobi and other areas soon after the Electoral Commission of Kenya announced that incumbent President Mwai Kibaki had won the poll, beating his opposition rival challenger Raila Odinga by a close margin. The Opposition chief immediately rejected the results citing alleged rigging of the poll in the incumbents favour. Since then Kenya has not known peace.

There are several men admitted in various wards after they were subjected to forced circumcision, a source at the hospital said. Odinga's core supporters come from the Luo ethnic group that does not practice circumcision, while Kibaki's supporters are mainly from central and eastern regions where male circumcision is an essential rite of passage from adolescence to manhood. Many of Raila supporters were circumcised on the streets and left to die from excessive bleeding or simply killed.

New details are also emerging from the Rift valley where it is alleged that scores of fleeing women and children are being way laid, intercepted and gang raped by groups of marauding youth in what seems to be a deliberate act of war aiming at humiliating the Kikuyu community. To make matters worse, complaints have been raised of police and military officers soliciting for sexual favors from the survivors of the conflict before they can 'safely' evacuate them.

As if that is not all, scores of many other women and children have been forcefully sexually assaulted by law enforcers within police stations, chiefs camps and churches where thousands have sort refuge.

# Government's Conspiracy over the Killings:

## *An Error of Omission or Commission?*

There is no consensus on the number of dead between December 29 and Feb 2. Unlike the killings carried out in Rwanda or by the Nazis or by the Khmer Rouge in Cambodia, authorities made no attempts to record deaths. The PNU government has stated that 950 people have so far been killed, 10% of which were non-Kikuyus.

The Oscar Foundation which contacted an independent audit on the number of death put the figure to 1100 deaths, while the United Nations lists the toll as slightly above 1000 deaths. What is important to note is that the head of the mediation team former UN Secretary General, Kofi Annan has described the killings as “Systematic and appeared to have been planned against one community.

There was an attempt to eliminate the Kikuyu — men, women, and children — and to erase any memory of their existence.” The government and the state owned human rights body KNCHR are still adamant and reluctant to classify the slaughter as genocide and aimed at annihilating a particular community for political reasons had the international community not acted to intervene.

Even at the inception of the post-election killings, the government clearly knew what was about to unfold. In fact, the police and the National Security Intelligence Service NSIS was aware of the spreading of anti-Kibaki and anti-Kikuyu propaganda by certain ethnic FM radio stations in Nyanza, Western and Rift Valley, through which ODM was coordinating and organizing the massacre of the Kikuyu community residing in the respective provinces.

The government was aware of what was going to occur in Kenya however, they failed to recognize the gravity of the situation, instead choosing to bury their heads in the sand of denial like the proverbial ostrich. In fact, some ODM officials send out an early warning calling it an “inevitable, unstoppable ethnic conflict,” that would be as a result of “historical grievances and distributive injustices” and that it was in a way “typical” of the region –Rift Valley (read 1992 and 1997 ethnic clashes).

Others openly vowed not to accept ‘rigged’ elections –warning of dire consequences that would plunge the country into anarchy and civil war if their political party ODM was handed defeat in ‘suspect’ circumstances. It was this prediction, intuition and fixed mindset which having come to pass has led many to believe that the opposition had a veiled card up their sleeves with which they intended to score by hook or crook.

That the opposition had prior to the elections dismissed the possibility of loosing was an insult to principles of democracy. On one hand, the government must have underestimated ODM's capacity to carry out their verbal threats –arm twisting. The opposition was spoiling for a fight and they made it clear ‘If elections fail- No peace will prevail!’ only the government did not either listen or hear.

On the other hand the opposition must have underestimated Kibaki's determination to cling on to power. They predicted that with his personality, soft and gentleman, he would easily concede defeat or resign after witnessing the post elections devastation in the country. That never happened and is not envisaged to happen!

Towards the end of the year 2007 as the country approached the general elections some supermarket shops in Nairobi and other parts of the country raised alarm that unknown people were purchasing thousands of machetes. In one case, a supermarket in Nairobi notified the Kenyan Police that a certain individual had bought machetes numbering over 500.

These cases continued to be heard across the country particularly in the Rift-Valley, Nairobi, Nyanza and Western provinces. In Naivasha, a government registered vehicle destined for the Western Kenya was intercepted by police following a tip of from members of the public and thousands of bows and arrows confiscated in broad day light. The vehicle was assigned to a government minister.

Despite of all these overwhelming evidence that genocide was in making and support from the members of the public –nobody was prosecuted in a preemptive effort for planning to carry out mass killing of fellow Kenyans. In fact, nobody has ever been charged in Kenya following the 1992 and 1997 ethnic clashes in which over 2000 people were killed and tens of thousands more evicted from their land in the Coast and Rift Valley province.

The Kenya government is accustomed to using units of police force as a method of controlling poplars and influencing its power. In the on-going conflict the government over relied on the police even at a time when it was very clear that the police was way overwhelmed, lax and partisan –a situation that should have called for the deployment of the more respected and professional units of the military forces.

It is a “global tendency” to examine and quickly dismiss the deployment of military intervention as the only way to respond to mass killings.

In addition, the government failed to effectively jam the signal of the “murder-inciting” vernacular radio stations before and during the cleansing, and failed to share intelligence information and inform the public of any impending attacks, or even encourage communities to stop violence. It is these small steps that could have helped diminish the slaughter.

The Government, however, is so desperately trying to avoid criticism that they failed to seek these options although evidence on the ground indicate that the government remained inactive and apathetic towards an escalating crisis.

During the slaughter, the government referred to and applied the concept of ethnic cleansing selectively and narrowly. Clearly, the government “set the bar for systematic killings too high.” The term was used distinctively for only certain cases and areas: What was to be considered ethnic cleansing had to be an extreme situation characterized by systematic killings with water tight evidence of tribal hostility targeting particular communities or as was the case -community, which the government denied and disregarded as taking place. This characterized the government’s unwillingness to intervene at the early preventive stage to avert the catastrophe. In some instance, the government has withdrawn security abandoning vulnerable villages and settlements. In one case the government failed to provide with security a church compound filled with mothers and children from the ethnic Kikuyu community who had fled from their burning houses and had sought refuge at a church, Kenya Assemblies of God in Eldoret, while armed Kalenjin youth waited outside, drinking beer and chanting war songs.

When the police withdrew, the militants entered the church and massacred those inside, including children and then set the church on fire. The few who attempted to escape were hacked to death.

In the case of Eldoret for example, the Government initially failed to characterize forced evictions, deportation, rape, torture and slaughter of members of an ethnic community, (Kikuyu) as ethnic cleansing, arguing that the aggressors (Kalenjin) were “not trying to evict or to kill all Kikuyus in their midst.” But as more and more people continued to lose their lives and properties the Government eventually resorted to ‘saving’ lives in the Rift Valley by assisting fleeing members of the aggressed community to vacate their properties –which would later be set on fire by the attackers, and to settle in designated areas which have now become IDP camps hosting hundreds of thousands of mainly women, the aged and children.

During the early periods of the onset of the Rift Valley conflict particularly in Eldoret, Kericho and Nakuru the conflict seemed closely related to the 1992 and 1997 ethnic clashes. However, the 1992 and 1997 ethnic clashes were occurring shortly before the elections in a bid to displace voters from certain communities and scare them into political submission that would tilt election results in favor of the ruling elite.

In sharp contrast, the current clashes have mutated in dimension from a political conflict regarding the results of a dispute election into a well planned and orchestrated systematic cleansing of a clearly identified ethnic community for their political beliefs and perceived economic and social position.



President Kibaki and members of his cabinet appear largely detached from the realities on the ground. In the midst of the crisis, President Kibaki was playing touch and insisting that the crisis in Kenya was of historical grievances better addressed by solving historical problems. This position explains the government reluctance to accept international mediators. The Ghanaian President and the Chair of AU and the South African Archbishop Desmond Tutu left the country in unclear circumstances after the government insisted that the crisis in Kenya did not warrant an international mediator.

In a bid to play down the magnitude of the crisis the government is now threatening to close down all camps of the Internally Displaced Persons IDPs and to send the displaced people back to their homes notwithstanding that their homes and granaries have been burnt down and their lands occupied by the aggressors who have subdivided it amongst themselves and their cronies. Some are faced with the danger of contracting epidemics of cholera and dysentery that is likely to sweep the refugee camps.



Police brutality was meted to innocent and defenseless poor residents of mathare, While their female counterparts were raped by the law enforcement agents.



The crackdown was a great human rights violation. Just as it happened in 1954 at the same area by the colonialists.



## **The Rise of an Ethnic Police in Kenya:** *A Security Lapse or Open Sabotage*

A few days to the election the Kenya Police in unprecedented move, during a high security period that elections world wide are, went on a go-slow strike which was splashed in all the major newspapers in Kenya to push the government to negotiate with the force on an earlier promised pay increment citing salary disparity within the civil service in which they are the least paid.

The government responded by promising a KES. 1000 Christmas offer which the officers vehemently refused to accept demanding a negotiable 100 per-cent increment or the implementation of recommendation of a commission set by the state earlier on to enquire on the need for reviewing of the police salary.

The police counter-responded by jamming the police radio communication affecting official communication across the country and making it difficult for efficient responses to crime. Some police officers even used the radio to pass inciting communication against the 'the Kikuyu' government!

The issue was not resolved and Kenyans went into an election with a badly disgruntled and disillusioned police force came out fighting only to find the law enforcement agency on a go-slow-strike. In their vigilance 1200 Kenyan's were killed including two MPs and 250,000 other displaced. No explanation as been offered. No apology has been given by the Kenya police, which is accused of taking sides!

Further, there is extensive evidence of state involvement in post election violence: senior police officers had been implicated in extra judicial execution and gun running before the elections and it is alleged that prior to the election about 3000 guns and paramilitary jungle uniform had disappeared from a GSU armory and store at the force headquarters in Nairobi.

The government was deeply worried and highly suspicious that the Kenya Police comprising of 58 per-cent members of the Kalenjin ethnic community and 30 per-cent Luos and other ODM sympathetic communities were biased against the government having taken sides purely on ethnic grounds.

The police chain of command has broken with orders coming from the top ranks dominated by members of Kibaki's ethnic Kikuyu community and other 'ally' communities being questioned and some time out rightly disobeyed in solidarity with ODM by disgruntled mid-level and lower cadre officers' majority of who are ethnic Kalenjins and 'ally' communities.

With suspicion running high, the government was accused of smuggling soldiers drawn from the elite units of the Ugandan People Defense Force PDF in to Kenya to provide government friendly officers with reinforcement in areas mainly occupied by ethnic communities loyal to the opposition chief including Nyanza and North Rift where the slaughter of ethnic Kikuyus was rife and to provide VIPs including the president with alternative security that could be depended upon in case of the break down of Kenyas Police.

A major reshuffle was carried out recently within the top ranks of the police targeting members of the Kalenjin, Luo and other ODM sympathetic communities who are said to be siding with and aiding their ethnic fighters in Rift Valley with arms, uniforms, essential supplies including food rations and medicine and strategies to carry out their 'slaughter-of-Kikuyu-business' in the Rift Valley.

While the police had been shown to be openly biased for the opposition ODM and its allies, where others did not care to hide their dissatisfaction with the 'Kikuyu' government, tension and suspicion in the military was rising with individual members of the military forces of all ranks secretly, some time openly, expressing emotional support in solidarity with their ethnic identities.

At one point in Eldoret a contingent of the military officers from a nearby military barracks is known to have confronted the paramilitary GSU, during a street battle with rioters, who the military officers accused of using excessive force against members of their ethnic community.

In another instance, military forces stationed in Nakuru are said to have defied an order not to be involved in the conflict and instead left their barracks to quell the cleansing when several communities which were being targeted in revenge attacks complained of inadequate police protection. It was the same in Naivasha where the military used helicopters to shoot blank bullets from the air to disperse rioters.

Like the police the military comprises of the majority ethnic Kalenjin who are said to dominate lower and mid-level ranks at a per-centage estimated at 60 against all other 42 communities combined. With recruitments being carried out using administrative boundaries of districts, Rift Valley with the most number of districts in Kenya has always recorded the most number of recruits in all forces, although they remain an ethnic minority in terms of population.

Kibakis regime did little if anything at all to address this disparity at the lower ranks choosing instead to effect radical changes at the mid-top and top ranks which saw members of the Kikuyu and other government friendly communities assume command of strategic positions in the army, navy, air force and the National Security Intelligence Service NSIS, paramilitary General Service Unit, Criminal Investigation Department CID, Administration Police and other specialized units of the Kenya Police.

Members of the minority Kikuyu and other 'ally' communities in the forces at the mid and lower ranks are said to be extremely disappointed that 8000 of their kinsmen were exterminated before the elections in mysterious circumstances and that 1000 more have died after the elections under the watch of their own and that more hostile fire seem on their community yet the internal security, constitutional and justice affairs, finance and defense dockets are held by some of their own.

The 'generals' lost control, simply they had no command! A mutiny was unfolding

## Reaction and Intervention from the International Community

The international community has moved with much speed and last month's presence of Ban Ki-moon, UN Secretary General in Kenya was a statement of commitment by the United Nations that it will not sit back as another genocide unfolds in Africa. The recent visit by UN Secretary General Ban Ki-moon to Kenya is an affirmation that the United Nations and the community of nations is focused and committed to bringing to an end the senseless killings in parts of Kenya.

The US government has also expressed its commitment to push for more action from the Government to end the killings and has remained committed to the "local conflict" in Kenya, and has even referred to it as "ethnic cleansing", a decision which the UN has warned that calls for more action.

The lessons learnt after UNAMIR was hampered from the outset of the genocide in Rwanda by resistance from numerous members of the United Nations Security Council to becoming deeply involved first in the Arusha process and then the genocide. Several years later, the scenario is different in Kenya as France and other members of the Security Council of the UN seek for a strong resolution on Kenya including possible deployment, this has also attracted the attention of the Africa Union AU, East Africa Community EAC and the Inter Governmental Authority on Development IGAD.

Kenya maintains strategic or economic interests in the East and Central Africa region. With prices of fuel, food and other non-food items in countries as far as DRC, Rwanda and Burundi, Sudan and Uganda continuing to rise because of the prolonged conflict in Kenya the crisis has now attracted regional focus.

Uganda, a landlocked country that relies heavily on goods shipped through the coast of Mombasa is the most affected with prices of consumer goods rising beyond the purchasing power of the common Ugandans. To avert a looming disaster, the Ugandan government which was the first in Africa to recognize president Kibaki's government is said to have sent contingents of the elite presidential guards and regular troops in Kenya to secure goods destined for their country and to reinforce the government forces.

The new PNU government is working hard to minimize international criticism. Kenya is a member of the AU and foreign affairs minister argued that the claims of ethnic cleansing and genocide are exaggerated and that the government was doing all that it could to stop it. Kenya's diplomatic missions abroad are also using their diplomatic links in Europe to reduce criticism.

If the government does not expeditiously and diligently react on the recommendations coming from the mediation table led by the former UN boss Kofi Annan the country might witness the evolution of the violence into class war of the haves and have not. The conflict in Kenya is highly dynamic and is evolving fast from political, to ethnic to historical injustices and to economic dimensions.

Many nations issued travel advisories and threatened to close their embassies as violence escalated. As it was, the complexity of the conflict confounded conspiracy theories that sketched all perpetrators of conflict as mere puppets of the west. Where there were conspirators, they encouraged and worsened existing conflict; they did not create it out of nothing! Some countries and their observers in the country were known to have openly taken sides. Their observers were suspect and their mission untrustworthy. They had only come to 'observe' their 'national interests'

## Post Violence Kenya

### *From violence to crime: Policing the Transition and Political Transformation*

#### *The future of safety and security*

Sections of the citizenry are undoubtedly unwilling to wait for the uncertain benefits of police transition, and have made their own arrangements to protect themselves and their possessions. The result is a substantial growth in private security services, demands for the establishment of local authority policing agencies, as well as possible new forms of self-policing all of which could have an important impact on how Kenya is policed in future.

Surprisingly, the political transition seems to have weakened citizens' anti-crime initiatives in some areas, such as neighborhood organizations, and self-defense and self-protection units. As these responses are not necessarily subject to democratic rules, this seems to be a gain for democratic order, further reinforced by more recent initiatives in which civil society groups have united to fight crime without resorting to armed force.

However, community policing initiatives, together with declining confidence in the ability of public institutions to maintain order, could prompt resurgence in self-policing. While this will require careful management, these initiatives could strengthen police activities, and in a context that enhances democracy. This will be subject to the provision that where they emerge, they will be regulated and encouraged to co-operate with the police rather than ignored or simply suppressed.

Besides this, a debate has begun on the desirability or otherwise of local authority policing. The current constitution provides for local police, although they are confined to 'crime prevention'. Given the proposed relationship between local police and local government, accountability may be easier to attain. Comparative and domestic examples suggest that local policing could help to counter crime in the city centers, while performing a useful public service role.

But opportunities for corruption and abuse of power still exist. Municipal policing could strengthen democratic order, provided diverse local forces will obey common democratic norms. However, the danger remains that if national government is too prescriptive of the standards local authority policing has to achieve, local forms of policing could be privatized, and lines of democratic accountability may become blurred.

Indeed, private security has clearly benefited from a reduced reliance on public policing. The industry has grown hugely; it initially expanded by about 30 percent a year, and now outnumbers the public police. It is seeking to assert itself as a source of effective protection against crime.

But it is not a homogeneous sector; different components provide various services, and due to internal competition it has been difficult to consolidate and regulate. The relationship between private and public policing may be more complex than a mere withdrawal of the state from some areas of control, to be replaced by private means. The instruments of public policing have not contracted during the period when private policing institutions have grown.

Rather, private security enterprises have expanded as a result of increases in private property ownership and heightened perceptions that society is unsafe. In turn, societies such as Kenya emerging from authoritarian rule often have the personnel to staff growing private security sectors as a result of the numbers of demobilized combatants, often with few other marketable skills, available for employment.

The transition to democracy was accompanied by intense conflict: over 1000 people have died between December 29 and Feb 2 in internecine violence, most of them in the rural and urban complexes. Since the Dec election political violence has continued to increase, but crime has continued to increase, as it did during the first two years of the 1990s.

Political violence began before 1990, but increased especially from November 1997 in Rift Valley and in Likoni. Today, the rise in the killings has risen from an estimated 800 to more than 1500. Violence began to increase as negotiations began, and peaked in the ended month of January.

It is critical that lack of better policing and monitoring seems have instigated some of the violence. However, it changed its pattern, not its extent. By January 15, pitched battles between antagonists had reached uncontrolled level, only to be replaced by drive-by shootings and hit-and-run attacks by both police and civilians.

The visible parties to the conflict were replaced by invisible ones. The result was an even more lethal conflict: by January 30th, more people were being killed than wounded. The resumption of all-party talks under the Kofi Annan mediation talks, after a dispute about state involvement in the conflict, coincided with a sharp rise in violence and wide spread killings, after it had decreased for the first part of mid January: deaths for the first month of the year were more than half of 1990's when the country suffered the same ethnic killings.

Explanations for the violence varied. Some claimed a conspiracy on the part of the Government. Violence, they tried to show, peaked when there was a breakthrough in negotiations; either its architects were those who did not want a settlement, or it resulted from a strategy of the opposition ODM to weaken its bargaining partners. The ethnic order generated crime rather than controlling it. The police are agents of a state that created crimes through its efforts to erect moral, economic and political boundaries between the ethnic groups of different political parties.

Most people acknowledged that during the Moi era, only one in 10 members of the force were engaged in detecting and investigating crime. Combating crime was secondary to policing ethnicity and maintaining internal security.

As the police force was so heavily politicized during the Moi era, the recent political transition also demanded a transition in the force. But, unlike the Prison service and the Kenya Armed Forces, the police cannot turn inward for a period of reform, and then return to the public arena to perform its task. Transition impedes the capacity of the police to combat organized crime, while crime in turn impedes their capacity to transform the force. Current analyses of changes in the police force warn against a situation where "restructuring of the police is treated in virtual isolation from the societal conditions within which the institution is embedded".

Public concern at the growth in post-election violence rates coincides with a period in which the Kenya Police Force has been severely stressed as a result of the transition. Inevitably, the police transition has not been smooth. Visible conflict within the force, revelations of past police brutality, continuing corruption and ebbing police morale evident in the 42 police suicides are not conducive to the efficient maintenance of law and order.

It is hardly surprising, then, that the latest figures show that the police solved on averages only half of all recorded violent crimes in 2007. Violations committed by police officers have also undermined public confidence in the force: one in four officers in the Nairobi area were investigated for suspected brutality during the post-election period in the past one month. Much will still have to be done before a national policy on prevention and control becomes a reality.

The transformation of the police force has been under way for some time. The old Police force sought to control change by restructuring the force before the new political authorities took office. Changes since then have concentrated on civilianizing the Police force, and making it more service-oriented. Key among these has been a focus on 'community policing', aimed at encouraging greater co-operation between police and public in the fight against organized crime.

The process has not been uncontroversial, and many human rights observers argue that it has only been partly successful. Many believe community police forums are controlled by the police, and the public and the police themselves frequently see community policing as a 'softly-softly' approach to the problem of crime. However, there is not necessarily a contradiction between greater police accountability to the citizenry and effective crime control. In the light of the brutal history of policing in Kenya, a police force more responsive to community needs is not only an appropriate strategy to fight crime, but also essential for ensuring a police agency with which the public can co-operate.

There are obstacles to this transformation. Continued violence on the urban periphery in Kenya suggests that community policing strategies will be hard to implement when paramilitary methods are needed in the short term to police the post-election conflict. In general, if police respond to demands to tailor their operations to democratic norms, immediate gains in crime control are not guaranteed, and any benefits are only likely to become evident in the longer term.

This imperils attempts at police reform, since it will only yield limited if any reductions in crime for the time being, with a potential growth in pressures for a return to the authoritarian style of the past. Or it may divert resources badly needed elsewhere to policing matters, while current comparative evidence suggests that increased expenditure on policing does not automatically translate into reductions in crime rates.

In comparison to other societies, there is a long-standing assumption that Kenya is inadequately policed. Contrary to popular perceptions, the police is proportionately not much smaller than police agencies in other countries. The combined police strength is 3,1 active force members for every 1 000 people, just slightly less than the European average of 3,5. However, policing resources have been concentrated almost exclusively in white areas.

Until recently, estimates suggest, 80 percent of policing resources were concentrated in suburbs and city centres, while 20 percent of the police are in the marginalized areas. Kenya is not only inadequately policed, but police resources are also spread unevenly.

Some senior police officers have conceded that the police will have to reconsider its distribution, providing a more comprehensive service in townships and leaving the suburbs to private security companies. 'Normal' models of policing have largely been confined to white areas; the suburbs have been well stocked with police services, while the townships have been policed more for purposes of control than for crime prevention.

With the focus beginning to shift, it is clear that the police is not only ill-prepared to police crime in the townships as it has to move away from the past instruments of political control, such as informer networks but it also does not have the required resources.

Adequate reform of the police will entail a fundamental shift of resources towards the towns, implying that the suburbs will receive less policing. It is also possible that some police resources will have to be concentrated on areas of focus policing, such as the post-election violence, allowing 'visible policing' to be undertaken by other agencies. The implication is a further growth in local authority and private policing. As a police reform document candidly admits: "It is general knowledge that the different socio-economic classes of a national population will have different security needs. It is also assumed that the safest measures are available to those who can afford it, because it is expensive. This can lead to public policing for the needy and private policing for the affluent. If this is the case, what is the future of a national police service?"

The Kenyan private security industry itself was partially spawned by apartheid policies. The security apparatus encouraged its growth, so that state resources could be concentrated on policing political dissent. The industry has a continuing close relationship with the state: private security puts mechanisms in place guards, alarms and detection devices to gather information that can be fed to the police: rather than decreasing demands on the police, private security may overburden it in some areas. Besides this, the market for the industry is expanding into areas that have previously been the exclusive domain of the public police.

In some instances, private policing has directly replaced the public police. A small number of municipalities charge private security to local authority rates and taxes, and award contracts to security firms to 'police' individual suburbs. City centres have not been excluded from this trend: for example, a private consortium polices a number of blocks in the city centre of Nairobi.

The growth in private security enterprises is also not exclusively confined to the wealthy parts of the urban environment. Former KANU combatants have established security firms in urban areas to protect delivery vehicles, and are selling their services to blocks of town residents.

This expanding industry may harbour dangers to Kenya's developing democracy. These are inherent in the fact that security companies, mainly staffed by officers from the former police or similar apartheid agencies, will potentially protect the rights of their clients at the expense of everyone else, and further entrench the divide between the (privately policed) minority and the majority.

The private security industry in itself does not constitute a threat to democratic order, as it is too fragmented and competitive and needs to ensure a healthy relationship with the state. Indeed, the growth of the industry may contain some advantages. Private security could absorb redundant personnel left over the rationalization of the military and the disbandment of militias, and it could reduce attempts at self-policing that have a greater potential to threaten civil liberties.

The blessing, however, may be distinctly mixed. There is evidence that residents of the suburbs may react to crime by seeking to insulate themselves physically from the poor, who are seen as its perpetrators. This is reflected not only in the use of private security, but in the changing architecture of cities, that are increasingly characterised by walled suburban complexes.

This could entrench a form of social distance that would impede attempts to create a common Kenya loyalty. Private security could threaten citizens, as is evident in reports of private security officials being responsible for cases of abuse, and could entrench a divide between those who can hire personal protection and those who cannot.

In the suburbs, the likelihood that the former will be mainly white and affluent and the latter mainly poor and black may enhance racial and social barriers and increase the possibility that security will become, or at least be seen to become, a weapon used by the former against the latter. This would erode a fundamental norm of democratic societies that policing is uniformly available to all, and its powers exercised through universally applicable laws.

## Recommendations

### *Kenya needs a Truth, Justice and Reconciliation Commission TJRC*

We at the Oscar Foundation believe that there can be no Peace without justice and no justice without addressing the question of restitution. The Over 500, 000 displace mothers and children need urgent assistance and their social fabrics of the Kenyan society MUST be restored. We intend to ensure that every affected person gets the assurance of being resettled back to their affected homes and perpetrators of this heinous act put to account.

We wish to recommend the following, just as massive violations and abuse of human rights lie at the root of the Kenyan post-election conflict and characterized by it, sustainable post-conflict restoration of the country must be based on principles of human rights. In recognition of the importance of human rights principles in post-election Kenya, the former United Nations Secretary General Kofi Annan has proposed for the setting up of an independent accountability mechanism to investigate all allegations of human rights abuses and bring to account all perpetrators. These will address issues relating to crimes committed during the post-election conflict and seek to reconcile the country.

Human rights bodies have also proposed the establishment of a Truth, Justice and Reconciliation Commission (TJRC) that will function as an independent statutory body of mixed national and international composition established by government legislation pursuant to the on-going mediation and subsequent agreement between the two political entities.

The establishment of a Special Court under an agreement between the Government of Kenya and the United Nations pursuant to a resolution by the UN Security Council on Kenya will exercise personal jurisdiction over those who “bear the greatest responsibility” for serious violations of international humanitarian law and Kenyan law committed in Kenya. The court should be a sui generis body of mixed international and national jurisdiction and composition. It should derive its legal basis from a bilateral agreement between the United Nations Secretary General and the Government of Kenya.

A major public declaration on the importance of a vigorous truth, justice and reconciliation process for post-conflict should form part of the Human Rights manifesto of Kenya.

A human rights manifesto that constitutes a solemn declaration anchoring post-conflict reconstruction, reconciliation and rehabilitation in Kenya on the principles of accountability for violations and respect for human rights. In that document the Government of Kenya and UN should undertake to provide technical assistance for the establishment of the Truth, Justice and Reconciliation Commission, therein lay the root of bilateral support to the establishment of the TJRC, which will be agreed as apart of the on-going mediation process.

The resumption of ethnic cleansing almost decade after Kenyans witnessed mass slaughter and displacement of members of the Kikuyu community in parts of the Rift Valley prompted the debate for the establishment of a TJRC, although the necessary legislation had not been approved by parliament.

The TJRC is crucial for post-conflict reconciliation in Kenya. Its contemporaneous existence with a Special Court will be unique and could serve as a model for future attempts to address impunity and ensure justice, accountability and reconciliation in post-conflict transitional societies. Although it has been suggested elsewhere that mandate of the Commission and Court should be related and mutually supportive, they are distinct and provide different paths to ensuring accountability for violations of human rights and humanitarian law.



The Commission should be victim oriented and seeks to provide restorative justice, but the Court is “perpetrators focused” to provide punitive justice in order to deter future violations. While the personal jurisdiction of the Court will be restricted to “those who bear the greatest responsibility” for the commission of serious violations of humanitarian law and crimes committed under Kenyan law, the TJRC will bear a more embracing mandate covering all abuses and violations.

The TJRC will bear great potential in its recommendations mandate to act as a catalyst for the social and legal reform required to address impunity and establish a resilient culture of respect for human rights in Kenya.

If the Commission exercises this mandate with wisdom and the government “faithfully and timeously” implements the recommendations as required by law, the Commission will have booked its rendezvous with history as an important catalyst for change in post-conflict Kenya.

The involvement of political elites in the current post-election conflict in Kenya deserves to be investigated and all perpetrator be held accountable. It's evident that politicians from the two political divides have participated in organizing terror in various parts of the country. Which has resulted to ethnic cleansing and genocide that qualifies to crimes against humanity and genocide under international and local laws.

This exercise upon its inception costs Kshs 30 million and we are appealing to well-wishers to join in and assist in this endeavor. We will require another 20 million to enable us do a follow-up of the resettlement, counseling and handling the legal claims that have arisen on behalf of the affected victims. The public litigation project will also work with other legal experts from the United Kingdom and the United States with purposes of bring out high profile public interest test cases international litigations to the International Criminal Court.