

ANNEX 6

KENYA IN CRISIS

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CONFLICT WORLDWIDE

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KENYA IN CRISIS

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Since the announcement of the contested presidential election results on 30 December 2007 giving a second term to Mwai Kibaki, Kenya has been in its worst political crisis since independence. Over 1,000 people have died and 300,000 have been displaced in violence with a serious ethnic character. As former UN Secretary-General Kofi Annan conducts negotiations for a political settlement, calm has partly returned, but the situation remains highly volatile. To address the causes of the crisis, it will not be enough for the Annan team to broker a deal on the mechanics of a transitional arrangement between political opponents and schedule negotiations on a reform agenda. A sustainable settlement must address in detail a program of power sharing, constitutional and legal reform and economic policies that convinces the drivers of violence to disarm. For negotiations to succeed, the international community must enhance its pressure, including aid conditionality and threats and application of targeted sanctions against spoilers.

State authority collapsed in the political strongholds of the opposition Orange Democratic Movement (ODM). Supporters of its leader, Raila Odinga, took to the streets in violent protest against the theft of the presidency and to seek revenge on the Kikuyu and Kisii communities perceived to be loyal to Kibaki. The security forces reacted with great brutality and members of the communities supporting ODM were violently targeted by Kibaki supporters.

Kofi Annan and a distinguished team of other African leaders have been mandated by the African Union (AU) to mediate the crisis. Soon after their arrival on 22 January, they arranged a meeting between Odinga and Kibaki and obtained pledges to negotiate a settlement. The parties have conceded some ground and are discussing a transitional arrangement which could lead to new elections after two years, legal and constitutional reforms, and a truth, justice and reconciliation commission to assist in healing wounds.

Serious obstacles remain, however. Armed groups are still mobilising on both sides. ODM, which won a clear parliamentary plurality in December, has put on hold its calls for mass action and is using the talks to restore prestige it lost internationally in the violence. It is under

pressure from its core constituencies, however, to demand nothing less than the presidency, and its supporters could easily renew violent confrontations if Kibaki's Party of National Unity (PNU) coalition remains inflexible.

The Kibaki coalition is buying time to wear down both the opposition and the international community's resolve. It benefits from the presidency's extensive powers, including unlimited access to public resources. It insists the situation is under control and there is no power vacuum, tends to treat Annan's mission as a sideshow while sponsoring alternative reconciliation processes, seeks to have Kibaki's election recognised by neighbouring countries and continues to resist genuine sharing of executive power.

While the mediation concentrates on a power-sharing agreement and a transitional arrangement leading to new elections, it has postponed equally important talks on the reform agenda and economic policy that an effective transitional government should adopt. A further year is envisaged for these talks. This is a risky approach. The Annan team should engage the two sides immediately on these topics.

Three complementary sets of issues must be addressed to finalise a detailed power-sharing agreement. The first are the legal and constitutional reforms needed during the transition period, including a complete overhaul of the electoral framework. The second are the economic policies to be implemented during the transition. The third are the concrete details of the process to be followed to end the violence and to deal with the humanitarian crisis, including the institutional framework and timelines. The ODM and PNU do not control the local violence. There is a chance to restore state authority and prevent renewed major fighting only if local leaders understand that their grievances are being addressed and concrete measures are being rapidly implemented. Civil society and economic stakeholders should also be associated with the negotiations on institutional reforms and economic policy.

International pressure is critical to achieving these objectives. The conditioning of multilateral and bilateral financial help for a negotiated settlement should be reinforced by a

general travel ban and asset freeze policy against those who support and organise the violence or otherwise block the political process. Some hardliners in Kibaki's camp depend on international credit-worthiness to keep their enterprises prosperous. The prospect of making individuals pariahs can be used to encourage concessions in the negotiations and good faith in implementation of an agreement.

The stakes go beyond Kenya, whose political and economic health is an essential ingredient for the security and prosperity of eastern and central Africa and indeed for how the entire continent's future is assessed by investors. Kenya's stability determines regional access to energy supplies and basic commodities and guarantees a relatively safe environment for hundreds of thousands of Somali and Sudanese refugees. But concentrating on a power-sharing arrangement between ODM and PNU will not be enough to restore the situation.

RECOMMENDATIONS

To the Annan Mediation Team of Eminent African Personalities:

1. Propose to open three additional areas to be addressed immediately and urgently as detailed negotiations on the structure and composition of a power-sharing arrangement continue:
 - (a) constitutional and legal reforms, including a complete overhaul of the electoral framework;
 - (b) economic policies, including immediate land acquisition and redistribution and major job-creation programs; and
 - (c) the framework and process for implementing commitments for ending the violence and resolving the humanitarian crisis, including institutions, timetables and international guarantees.
2. Involve additional stakeholders from civil society in the talks on legal and constitutional reforms and from the business community on economic policies.

To the Kenya Government and PNU Coalition:

3. Engage constructively in the power-sharing negotiations and take the opportunity of discussions on constitutional reforms and economic policies to negotiate guarantees for the continuation of reforms started by the Kibaki administration.
4. Restore security in the IDP camps and suspend all resettlement and relocation policies until a framework has been agreed by the parties.

5. Ensure equal access and distribution of humanitarian and reconstruction resources to all victims of the violence.
6. Arrest and prosecute the leaders of the Mungiki sect, as well as politicians supporting its activities, so as to redress concerns about possible state support for its resurgence.
7. Suspend immediately all police officers in charge of the areas where extrajudicial killings have occurred, including Nairobi, Kisumu, Kakamega, Nakuru, Naivasha, Sotik and Kericho.

To the ODM Leadership:

8. Engage constructively in the negotiations and support the immediate opening of detailed talks on constitutional reforms and the economic policies, to be carried out during the transition, with a view to reassuring PNU hardliners over its economic policies as well as addressing the grievances of its own hardline constituencies.
9. Condemn publicly and threaten with sanctions any ODM leader inciting ethnic hatred, and express sympathy for the Kikuyu victims of the violence.

To the U.S., the EU and its Member States, Canada, South Africa and Other International Partners:

10. Condition aid on the satisfactory conclusion of all the above-mentioned elements of the negotiation.
11. Implement and expand the travel bans already announced by the U.S., Canada, the UK and Switzerland by freezing the financial assets of individuals directly involved in or supporting violence or otherwise blocking the negotiation process and publicly blacklist their companies on financial markets.

To the Prosecutor of the International Criminal Court (ICC):

12. Open a preliminary examination of alleged atrocity crimes committed in Kenya and take into account the findings and recommendations of the fact-finding mission of the Office of the UN High Commissioner for Human Rights (OHCHR) once issued.

Nairobi/Brussels, 21 February 2008

KENYA IN CRISIS

I. INTRODUCTION

The announcement on 30 December 2007 by the Electoral Commission of Kenya (ECK) that the incumbent President Mwai Kibaki was the winner of the presidential election has plunged the country into an unprecedented political, security and humanitarian crisis. Six weeks after proclamation of the contested results, protest riots, repression by security forces and revenge killings by supporters of both camps have caused over 1,000 deaths and more than 300,000 internally displaced persons (IDPs). The loss for the economy was over Ksh 100 billion (close to \$1.5 billion) by early February 2008 and mounting. For one week in early January, Rwanda, Burundi, Uganda, South Sudan and eastern Congo were short of fuel and other essential commodities because the Mombasa highway, their main supply route, was paralysed.

The international community reacted swiftly to contain the crisis and put pressure on Kenyan leaders to end the violence. After initially endorsing the election results, Washington backtracked, questioned their credibility and sent Assistant Secretary of State for African Affairs Jendayi Frazer to support a negotiated solution. UK Prime Minister Gordon Brown called on the rival contenders to exercise restraint and supported the good offices of the AU chair, Ghanaian President John Kufuor. UN Secretary-General Ban Ki-moon quickly condemned the violence and subsequently visited Nairobi. A first round of discreet shuttle diplomacy produced an agreement of principles on a review of the election results and the negotiation of a transition towards a settlement of the crisis. However, hardliners in the Kibaki camp convinced the president to disown the document.

Both coalitions, the Orange Democratic Movement (ODM) and the Party of National Unity (PNU), include leaders from the largest communities of the country but are supported by ethnically-rooted political constituencies that include fanatical followers. For PNU they are the Kikuyu, Embu, and Meru, who originate from the Central and Eastern Provinces and are strongly represented in the Nairobi Area, Coast Province and the Rift Valley as a result of migration. ODM's ethnic constituencies are Luo, Luhya and Kalenjin, who originate from Nyanza and Western Provinces and the Rift Valley and are

equally strongly represented in the major towns. ODM also has a significant following among the coastal Muslims and in North Eastern Province.

In the slums of Nairobi, Kisumu, Eldoret and Mombasa, protests and confrontations with the police rapidly turned into revenge killings targeting representatives of the political opponent's ethnic base. Kikuyu, Embu and Meru were violently evicted from Luo and Luhya dominated areas, while Luo, Luhya and Kalenjin were chased from Kikuyu-dominated settlements or sought refuge at police stations. Simultaneously, Kikuyu settlements, the largest migrant communities in the Rift Valley, were the primary victims of Kalenjin vigilante attacks that were reminiscent of the state-supported ethnic clashes of the mid-1990s.

This violence has shattered Kenya's reputation for stability. The grisly images of a church compound with as many as 30 people inside torched by vigilantes in southern Eldoret, buildings burnt in Kisumu city centre and Nairobi slums on fire illustrated the fragility of a national fabric in which the disparity between rich and poor remains one of the world's biggest. Kenya needs more than a political settlement to restore its people's trust in their government and rebuild the foundations of a stable democracy. The violence that erupted in Nairobi and Mombasa slums and in the Rift Valley illustrated the depth of the wounds Daniel arap Moi's divide-and-rule policies inflicted during the 1990s and the urgent need to address redistribution of land and other sources of wealth. There can be no return to business as usual and the laissez-faire attitude Kibaki favoured. A legitimately elected government should remain the goal, but fundamental institutional and economic reforms are needed, as well as an internationally monitored transitional justice and militia dismantlement process, to prevent resumption of ethnic violence and heal its wounds.

II. THE ELECTION CRISIS

The rigging of the presidential election started to be denounced by the opposition on 29 December 2007, the day before release of final results. Irregularities identified by ODM were later confirmed by both national and international observers and senior ECK officials. The rigging appears to have been twofold. Following a tight contest, both ODM and PNU sought support from commissioners and returning officers from their respective strongholds to inflate their totals. A second plan was set up at central ECK level to ensure the incumbent, Mwai Kibaki, would remain in office regardless of the electorate's decision.

As the count progressed, some results were withheld and modified. Kibaki's tally was inflated in the computer room at the Kenyatta International Conference Centre in order to give him a narrow lead over his main opponent, Raila Odinga. Officially, the results became 4,584,721 for Kibaki, 4,352,993 for Odinga, with Kalonzo Musyoka a distant third at 879,903.

A. A TIGHT AND TENSE RACE

The 2007 presidential election was without doubt the closest since the restoration of a multiparty system in December 1991.¹ In 1992 and 1997, the divisions within the opposition and multiple candidacies cost the leaders of the democratisation process their chance for victory. In 1992, Oginga Odinga, Raila Odinga's father and historic leader of the independence movement, Kenneth Matiba and Mwai Kibaki, both from Central Province, were unable to agree on a single champion. Five years later, Kibaki, Raila Odinga and Charity Ngilu from Ukambani made the same mistake.

The opposition defeated the Kenya African National Union (KANU) party and Moi's chosen successor, Uhuru Kenyatta, a son of Jomo Kenyatta, the nation's first leader, only after it agreed on a common platform in 2002.² It

brought Kibaki to power as the head of the National Rainbow Coalition (NARC) by stipulating a post-electoral power-sharing deal and constitutional reform agenda in a signed memorandum of understanding (MoU).³ The 2007 political line-up resulted from the NARC's collapse soon after its victory. After his election, Kibaki refused to implement the MoU, share power posts equally between its signatories and carry out the constitutional reforms necessary to create the position of prime minister for Odinga.⁴

This broke the NARC into its two main components – Odinga's Liberal Democratic Party (LDP) and Kibaki's National Alliance of Kenya (NAK) – and led to the creation of the ODM, which brought together all parties which campaigned for a "No" vote at the referendum organised to endorse a government-sponsored draft constitution in 2005.⁵ That draft, originally produced by the Bomas constitutional conference, was considerably amended by the NAK-dominated parliament and thus fell far short of promised institutional reforms, such as reduction of presidential powers, an executive prime minister, reinforcement of parliamentary control over government and supervision of judicial independence and decentralisation of central government responsibilities. Kibaki and the remnants of his coalition led the "Yes" campaign, which suffered a significant defeat in the referendum – 58.3 per cent to 41.7 per cent – which was viewed as a vote of no-confidence in his government.

Its victory in the referendum made the ODM confident of an easy victory in 2007, but Musyoka broke ranks with Odinga and launched his own presidential bid under an "ODM-Kenya" ticket. Uhuru Kenyatta, under pressure from the old Moi establishment and his own Kikuyu constituency, left ODM to join Kibaki's new PNU coalition.

¹ Moi's re-elections in 1992 and 1997 occurred in a violent environment and with an electoral commission biased in his favour. On the 1992 general elections, see David Throup and Charles Hornsby, *Multi-Party Politics in Kenya. The Kenyatta and Moi States and the Triumph of the system in the 1992 elections* (Oxford, 1998). On the 1997 elections, see Marcel Rutten, Alamin Mazrui and François Grignon (eds.), *Out for the Count! The 1997 General Elections and Prospects for Democracy in Kenya* (Kampala, 2001). Moi received only 33 per cent of the vote in 1992, 37 per cent in 1997.

² See David Anderson, "Briefing: Kenya's elections 2002 — the dawning of a new era?", *African Affairs*, no. 102 (2003), pp. 331-342.

³ See Mugambi Ngaru, "Alliances and Agreements of Tolerance as a Pre-Condition for Coalition Governments: Experience from Kenya", paper presented at the Regional Conference on Political Parties and Democratisation in East Africa, Arusha, 25-27 August 2005.

⁴ Joel D. Barkan, "Kenya After Moi", *Foreign Affairs*, January/February 2004.

⁵ The ECK assigned an orange as a symbol for the "No" campaign coalition, including the LDP and KANU, and a banana as a symbol for the "Yes" campaign, supported by the NAK, NARC and affiliated parties, Wanyama Masinde, "Kenya's fruitless referendum", *openDemocracy*, 21 November 2005.

1. Coalition building

The campaign was marred by several violent incidents and repeated abuse of office by government officials⁶ but not to the extent experienced in 1992 or 1997, when KANU barred opposition politicians from parts of the country and violently targeted members of the communities considered to be their natural supporters (Kikuyu, Luo).⁷ The worst violence in 2007 was in the heavily contested Western Province and in the areas of Molo, Kuresoi and Mt Elgon in the Rift Valley.⁸ Longstanding land conflicts between neighbouring communities escalated as their leaders positioned themselves within PNU or ODM, and youths were mobilised to intimidate voters.

Kenya's presidential races have usually been won through coalition building and appeals to the swing voters in Western, Coast, Eastern (Ukambani) and North Eastern Provinces, who rarely vote as a bloc.⁹ Voters from Central and Nyanza Provinces and the North Rift Valley do vote as a bloc for a candidate from their community (Kikuyu, Luo, Kalenjin) and/or representing their interests. The Luhya (Western Province), Kamba (Eastern Province), Mijikenda (Coast Province), Kisii (Nyanza Province) and Taita (Coast Province) electorates are much less predictable than the Kikuyus, Luos and Kalenjins, who tend to be motivated by belief in a God-given right to rule the country and largely share a deeply rooted ethnic nationalism.¹⁰

⁶ "Still Behaving Badly: Second periodic report of the Election-Monitoring Project", Kenya National Commission on Human Rights (KNCHR), December 2007.

⁷ On the ethnic clashes of the 1990s, see among other references "Divide and Rule: State-sponsored ethnic violence in Kenya", Human Rights Watch/Africa Watch, 1993; and "Kayas of Deprivation, Kayas of Blood: Violence, ethnicity and the state in coastal Kenya", Kenya Human Rights Commission (KHRC), Nairobi, 1997. The International Federation for Human Rights (FIDH) and KHRC reported in April 2007 that 380,000 Kenyans were still IDPs because of the politically instigated ethnic clashes of the 1990s, "Massive internal displacements in Kenya due to politically instigated ethnic clashes", FIDH/KHRC, no. 471/2, April 2007.

⁸ 300 people died and 60,000 have fled their homes since early 2006 in land clashes of the Mt Elgon Area. Up to 10,000 from Kuresoi were displaced to Molo in pre-electoral clashes, and several campaign incidents occurred in Western and Nyanza Provinces, with 70 deaths. "EU condemns pre-election violence in Kenya", Reuters, 21 December 2007; "Kenya pre-election violence soars", Al Jazeera, 7 December 2007; "Mobs kill three Kenyan policemen in electoral violence", Agence France-Presse, 26 December 2007; and "Still Behaving Badly", op. cit.

⁹ Throup and Hornsby, *Multi-Party Politics in Kenya*, op. cit.

¹⁰ This does not mean that intense political debate on leadership and parameters of political accountability does not occur within communities in vernacular languages, but competition for the centre of power between leaders of different communities usually relegates the issues raised in these debates to the

The Luhya electorate of Western Province is one of the most populous (two million voters) and sought after by presidential candidates from other communities. Each presidential candidate chose a Luhya running mate: incumbent Vice-President Moody Awori (PNU); former Vice-President Musalia Mudavadi (ODM); and Dr Julia Ojiambo (ODM-K). The Kamba electorate was expected to rally behind the Kamba presidential aspirant, Kalonzo Musyoka, so Muslim voters from Coast and North Eastern Provinces became the second most sought after swing voter reserve.

The Muslim establishment appeared split, but the Muslim poor seemed to favour Raila Odinga, notably after the signature of an MoU between ODM and Muslim leaders, facilitated by Coast leader Najib Balala. Muslims also supported ODM in protest against the perceived close relations with U.S. anti-terrorism policy which led to the deportation of several Kenyans to Ethiopia and Somalia in October 2007 and the stripping of their nationality. Although the government subsequently took steps to assuage Muslim unease over the so-called rendition saga, the damage was done: Kibaki was largely viewed by the community as untrustworthy.¹¹

Despite its repeated splits, ODM presented a relatively large coalition at the poll, led by Odinga (Luo, Nyanza Province) and a group of five, referred to as the "pentagon": William Ruto (Nandi/Kalenjin,¹² Rift Valley), Najib Balala (Swahili, Coast Province), Charity Ngilu (Kamba, Eastern Province), Musalia Mudavadi (Luhya, Western Province) and Joseph Nyagah (Embu, Eastern Province). Henry Kosgei (Nandi/Kalenjin, Rift Valley) was appointed chairperson and Peter Anyang'Nyong'o (Luo, Nyanza Province) secretary general. Although ODM included leaders from all over the country and fielded candidates in all provinces, its main support came from the west (Nyanza Province, Western Province, Western Rift Valley), Muslims from the Coast and North Eastern Province and a large majority of the youth in major towns (Mombasa, Nairobi, Eldoret, Kisumu, Kakamega).

margins, John Lonsdale, "The Moral Economy of Mau Mau: Wealth, Poverty and Civic Virtue in Kikuyu political thought", in Lonsdale and Bruce Berman (eds.), *Unhappy Valley. Conflict in Kenya and Africa. Book Two: Violence and Ethnicity* (Oxford, 1992), pp. 315-468; and François Grignon, "Le démocratisation au risque du débat: territoires de la critique et imaginaires politiques au Kenya (1990-1995)", in Denis-Constant Martin (ed.), *Nouveaux langages du politique en Afrique orientale* (Paris, 1998), pp. 29-114.

¹¹ National Muslim Leaders Forum (NAMLEF), news release, October 2007.

¹² "Kalenjin" does not refer to a community but to a family of nilo-cushite communities from the Rift Valley speaking related dialects. They include notably the Nandi, Kipsigis, Tugen, Keiyo, Marakwet and Sabaot tribes.

The PNU and its affiliated parties were dominated by close associates of President Kibaki from the Central and Eastern Provinces. These included former Minister of State for Defence Njenga Karume (Kikuyu, Central Province), former Minister for Internal Security John Michuki (Kikuyu, Central Province), Minister for Constitutional Affairs Martha Karua (Kikuyu, Central Province), former Minister for Energy Kiraitu Murungi (Meru, Eastern Province) and former Minister for Finance David Mwiraria (Meru, Eastern Province).

The coalition also reached out to swing voters in Western, North Eastern, Nyanza (Kisii), Rift Valley and Coast Province through Vice-President Moody Awori (Luhya, Western Province), Minister for Transport Chirau Ali Mwakwere (Mijikenda, Coast Province), former Vice-President Georges Saitoti (Kikuyu, Rift Valley), former Minister for Roads and Public Works Simeon Nyachae (Kisii, Nyanza Province) and chief campaign leader George Nyamweya (Kisii, Nyanza Province). Former President Moi and barons of the previous regime such as Nicholas Biwott were brought in to galvanise Kalenjin support; leaders of other associated parties (Musikaru Kombo/Ford-Kenya, Luhya/Western), Uhuru Kenyatta (KANU, Kikuyu/Central) were likewise included.¹³

Ten weeks before the polls, the ODM wave appeared unbeatable. Odinga held a 16 per cent lead in opinion polls, and the youth vote, one of the most important new factors, was expected to guarantee his victory.¹⁴ Thanks to a youth mobilisation campaign – *Vijana Tugutuke Ni Time Yetu* (“Let’s wake up youth, it’s our time”) – conducted by a non-governmental organisation (NGO), the Institute for Education in Democracy, two entertainment companies and the ECK from March 2006 to May 2007,

1.6 million new voters were added to the registry and 2.1 million transferred to their actual area of residence, thus changing the political landscape significantly.¹⁵ The urban youth electorate became the third biggest sought after constituency.

Musyoka’s ODM-Kenya attempted to reach beyond its natural Kamba base to other communities in the Rift Valley and Western Province through the candidate’s running mate, Julia Ojiambo (Luhya, Western Province) and party chairperson Samuel Pogishio (Pokot, Rift Valley). However, it failed to build a nationwide coalition. Instead, Musyoka appeared to rely on a well-articulated, issue-oriented campaign on family values, religious inspiration and an anti-corruption agenda.¹⁶

2. The issues

ODM portrayed itself as the coalition to bring an Orange revolution and democratic change to Kenya, defending the poor and the weak against a government controlled by a clique of business people from the Muthaiga Golf Club and alleged corrupt politicians who had betrayed the 2002 reform agenda, publicly stigmatised as the “Mt Kenya mafia”.¹⁷ A new constitutional order, devolution and equitable distribution of resources were presented as its agenda. PNU campaigned with the motto *Kazi idendelee* (“Work continues”) and emphasised economic recovery – the steady 5-6 per cent growth rate during the second half of Kibaki’s presidency, which has allowed Kenya to become financially self-reliant and to fund free primary education and the creation of constituency development funds (CDFs). Free secondary education was one of Kibaki main re-election promises.¹⁸

Several factors probably contributed to the erosion of Odinga’s lead in the polls. PNU aggressively attacked ODM on its *majimbo* agenda. That term – meaning “devolution” in Swahili – is negatively associated in the collective memory with the support for federalism and

¹³ Judy Kibaki, the incumbent president’s daughter, became financial controller and a principal fundraiser of his campaign, with businessman Peter Kanyago, “The rising star of the Kibaki clan”, *Indian Ocean Newsletter*, 2 June 2007. Other family members were directly involved in the campaign (wife Lucy, sons Jimmy and David Kagai), together with the Kikuyu political/business establishment, which forms the close guard behind the president, including Lee Karuri (architect), George Muhoho (Kenya Ports Authority), Joe Wanjui (chancellor, University of Nairobi), former Minister for Defence Njenga Karume (Kiambaa MP), John Michuki (then internal security minister), Nathaniel Kang’ethe (director of Kenya Revenue Authority and owner of MCL Saatchi and Saatchi franchise), Eddy Njoroge (Kengen), Julius Gecau (formerly Kenya Power and Lighting Company) and Duncan Ndegwa (formerly Central Bank governor when Kibaki was finance minister), “Kibaki mobilises his whole family”, *Indian Ocean Newsletter*, 20 October 2007; and “Kibaki’s preliminary campaign”, *Indian Ocean Newsletter*, 28 July 2007.

¹⁴ “Raila widens gap”, *The East African Standard*, 13 October 2007; and “Raila is the Youth’s favourite candidate”, *The Nation*, 8 October 2007.

¹⁵ According to the ECK, there was an increase of 57 per cent in those under 35 in the voter register, which Chair Samuel Kivuitu attributed to the Vijana Tugutuke campaign. Written communication to Crisis Group, Institute for Education in Democracy, January 2008.

¹⁶ Musyoka, who had some wealthy supporters, declared his personal assets and challenged his opponents to do the same, “The networks of Kibaki’s challengers”, *Indian Ocean Newsletter*, 19 May 2005.

¹⁷ “Kenya: spreading the word of hate”, IRIN, 23 January 2008.

¹⁸ “Pledge No. 1 Every child including those with special needs, will be educated for free in public schools from primary to secondary education, giving every single child no matter their background an equal opportunity in life through education.”, PNU Party Manifesto, at www.kenyavotes.org/node/93.

against the unitary state expressed by minority communities at independence. It is generally perceived to be a project to benefit the biggest communities (Luo, Kikuyu), driven by the ambition of the Kalenjin, Maasai, Turkana, Samburu and Coastal populations in particular to gain exclusive control over their respective provinces' natural and other economic resources and expel migrant communities from those areas in order to reclaim their land, jobs and property. The ethnic clashes in the Rift Valley and Coast Province of the 1990s were partly organised in the name of *majimbo*.

PNU thus accused ODM of fomenting ethnic cleansing of migrant communities under the guise of *majimbo*. The Orange movement tried to dissociate itself from the violent and ethnic chauvinist stigma attached to the *majimbo* debate but also knew the confusion would rally maximum support among the Kalenjin, Maasai, Turkana and Samburu (commonly known as KAMATUSA) communities of the Rift Valley, as well as coastal populations. Several of its leaders – Ruto, Kosgei and Balala – come from the Rift Valley and Coast Province, and particularly its Kalenjin and Maasai leaders (Kipkalia Kones, Franklin Bett, Zakayo Cheruiyot and William ole Ntimama) are reputed to have participated in the ethnic clashes of the 1990s.¹⁹

A related campaign was launched by PNU against the MoU signed by ODM and the Muslim leadership, alleging a secret deal to establish Sharia (Islamic) law in the Muslim-dominated provinces.²⁰ PNU relied heavily on the Catholic and Anglican churches to mobilise support. Bishops and other senior church leaders, uneasy at ODM's alliance with the Muslim communities and some of the country's biggest Pentecostal churches, as well as *majimbo*, were co-opted by the government's camp.²¹ A Luo presidency was described as a recipe for economic disaster endangering the growth of the Kibaki presidency. The finance minister, Amos Kimunya, predicted a collapse of the Nairobi Stock Exchange (NSE) if Odinga won and brought back the

mismanagement of the Moi years,²² propaganda that appealed to the urban middle and lower-middle classes, which had benefited from economic liberalisation under Kibaki.²³

Also contributing to the reduction of Odinga's lead were personal attacks against the ODM leadership, based on deeply rooted ethnic prejudice that cut across society. PNU leaders asserted publicly that an "uncircumcised boy" could not lead the country.²⁴ This charge appealed especially to members of the Bantu communities, for whom circumcision is a key social value, associated with cleanliness and respectability. It was also intended to win votes from Kikuyu in the Nairobi slums, the poorest of the poor in Central Province, and the migrant communities in the Rift Valley.²⁵ Kikuyu vernacular radios simultaneously spread fear that the community would be in danger from a Luo President.²⁶ More than anything else, Kibaki needed to stimulate maximum support from the GEMA communities, whose low turnout would definitely defeat him.²⁷

The electorate gave both coalitions a taste of its desire for change during the November 2007 primaries to choose their parliamentary and local government candidates, which were marred by violence,²⁸ corruption²⁹ and confusion.³⁰

²² Amos Kimunya blamed a downturn in the stock market on ODM's lead in the polls in mid-October, claiming that an ODM government would reverse privatisation. "Kenya: Mudavadi Refutes Kimunya's NSE Confidence Claims", *The Standard*, 15 October 2007.

²³ One of the Kenyan ethnic prejudices refers to the Kikuyu as the only business minded community of the country.

²⁴ Luo men are traditionally not circumcised; males in most other Kenyan communities are to mark entry into adulthood.

²⁵ The Kikuyu ethno-nationalist Mungiki sect also mobilised behind Kibaki, under the banner of the Kenya National Youth Alliance, "A Sect is readying for 2007", *Indian Ocean Newsletter*, 18 June 2007. Its leaders, Ndura Waruinge and Maina Njenga, supported the "Yes" vote in 2005, "The Mungiki will vote Yes", *Indian Ocean Newsletter*, 19 November 2005.

²⁶ "Kenya: spreading the word of hate", op. cit.

²⁷ GEMA stands for Gikuyu, Embu, Meru Association, a community-based organisation involving leaders of the populations living around Mt Kenya. It was created in the 1970s to support the settlement of Kikuyu families in the Rift Valley.

²⁸ "Kenya: Confusion and Violence Mar Party Nominations", *The Nation*, 17 November 2007.

²⁹ According to the Coalition for Accountable Political Party Financing (CAPF), more than Ksh 900 million (\$14.5 million) was spent to bribe voters during party nominations. "Of the Ksh 900 million spent in the two weeks preceding the party primaries, only Ksh 300 million actually reached the voters. The remaining Ksh was allegedly shared among campaign agents and middlemen", "Hawking democracy to the highest bidder is a disgrace", *The Standard*, 27 November 2007.

³⁰ Within both PNU and ODM, some leaders obtained direct nominations, which angered many supporters and forced ODM

¹⁹ "Divide and Rule", op. cit.; and "Report of the judicial commission appointed to inquire into tribal clashes in Kenya", Nairobi, 2001.

²⁰ A fake MoU detailing the Islamic rule to be established in the Coast and North Eastern Provinces circulated on the internet. North eastern and coastal populations were particularly angry with the Kibaki administration for what was considered a blank cheque given to the U.S. to operate on Kenyan soil for its anti-terrorism operations and the expulsion without due process to Ethiopia of "suspected terrorists", "Revealed: Raila's real MoU with Muslims", *The Nation*, 28 November 2007.

²¹ Cardinal Njue sided with Kibaki in the *majimbo* debate and condemned ODM's support. Kisumu's Bishop Okoth immediately contradicted him, emphasising that this was not the Bishop's Conference position but Njue's own. "Kenya: Catholic Bishop Differs With Njue On Majimbo", *The Nation*, 30 October 2007.

In total, one cabinet minister, four assistant ministers and 37 parliamentarians were defeated, including the former internal security minister, Chris Murungaru; the assistant gender and social services minister, Alicen Chelaite; Nobel Peace Prize laureate Wangari Maathai; and former KANU stalwarts Joseph Kamotho and G.G. Kariuki. Had PNU not given direct nominations to 46 candidates – a majority of ministers – the number of cabinet casualties would probably have been much higher.³¹ ODM lost ten incumbent parliamentarians from Nyanza Province, six from Western Province and five in the Rift Valley.³²

In the end 2,600 candidates, more than twice the 2002 number, stood for the 210 parliamentary seats. ODM offered the most (190), PNU 135 and its affiliated parties, KANU, DP and NARC, 91, 86 and 59, respectively.³³ All together, 108 parties sponsored candidates for parliament, including 269 women.

As the campaign ended, the Steadman polling institute still gave Odinga a 2 percentage point lead in the presidential race.³⁴ Despite a tense environment, allegations of fraud and the appointment of five new ECK commissioners two months earlier in violation of a 1997 inter-party agreement requiring advance consultation,³⁵ the country generally believed that Chair Samuel Kivuitu's leadership was a guarantee for the independence and good performance of the electoral commission. Kivuitu had successfully presided over the election which ended KANU's 32-year reign. The potential end of Kibaki's five-year presidency did not appear to be such a problem.

to apologise, "Chaos over direct nominations", *The Nation*, 16 November 2007. Many primary losers changed parties, often buying their nomination from the leaderships of small parties, "Chaos as ODM Cancels Results", *The Nation*, 20 November 2007; and "Losers in Primaries Work Overdrive to Ensure Smooth Sail in New Parties", *The Nation*, 19 November 2007.

³¹ "46 get direct PNU tickets", *The Nation*, 16 November 2007. Many who received direct nominations were defeated in the general election.

³² "Voters Kick out Big Guns", *The Nation*, 18 November 2007.

³³ The second largest number of candidates was from KENDA, the party of controversial millionaire turned preacher Kamlesh Pattni, "2,600 Candidates in Battle for MP's Seats", *The Nation*, 28 November 2007.

³⁴ "Steadman releases its last polls before election", *The East African Standard*, 19 December 2007.

³⁵ Nine new commissioners had already been appointed without consultation with parliamentary political parties on 11 January 2007. On the reforms supported by the 1997 inter-party parliamentary group agreement (IPPG), see Stephen N. Ndegwa, "The incomplete transition: the constitutional and electoral context in Kenya", *Africa Today*, vol. 45, no. 2 (April-June 1998), pp. 193-204.

Number of Registered Voters and Official 2007 Presidential Election Results.

Province	Registered Voters	Mwai Kibaki	Raila Odinga	Kalonzo Musyoka	Turnout
Nairobi	1,275,445	313,478 47.4%	288,922 43.6%	52,974 8%	662,038
Coast	1,178,537	197,354 32.8%	353,773 58.8%	38,878 6.5%	601,201
North Eastern	315,756	97,263 50.4%	91,440 47.4%	4,498 2.3%	192,965
Eastern	2,374,763	840,805 52%	83,595 5.2%	726,782 45%	1,615,967
Central	2,186,936	1,643,421 96.4%	30,655 1.8%	11,231 0.7%	1,704,004
Rift Valley	3,358,381	916,112 35.7%	1,584,271 61.7%	34,334 1.3%	2,567,931
Western	1,564,682	312,300 32.5%	639,246 66.6%	6,729 0.7%	960,109
Nyanza	2,041,680	262,627 16.8%	1,280,978 81.7%	4,470 0.3%	1,567,139
Grand Total	14,296,180	4,583,360 45.97%	4,352,880 43.65%	879,896 8.82%	9,971,354

B. THE RIGGING OF THE PRESIDENTIAL ELECTION

All national and international observers, including the Kenya Democratic Elections Forum (KEDOF), the European Union (EU), the Commonwealth secretariat, the East African community and the International Republican Institute (IRI), reported that while the voting and counting of ballots at polling-station level was orderly and satisfactory with a few exceptions, the tallying and compiling of the results was manipulated, dramatically undermining the credibility of the results Kivuitu announced on 30 December.³⁶ The best and most detailed illustration of the rigging was provided in the detailed testimony of four national observers who participated

³⁶ "Preliminary statement and verdict of the 2007 Kenya general elections", Kenya Elections Domestic Observation Forum (KEDOF), 31 December 2007; "Preliminary statement: Doubts about the credibility of the presidential results hamper Kenya's democratic progress", European Union Elections Observation Mission (EUEOM), 1 January 2008; "Kenya General Election 27 December 2007: The Report of the Commonwealth Observer Group", Commonwealth Secretariat, January 2008; "Report on the Kenya general elections December 2007", East African Community Observer Mission, January 2008; and "Statement on Post-Election Violence in Kenya", International Republican Institute, 2 January 2008.

during the night of 29 to 30 December, with ODM, ODM-K and PNU party agents and five ECK commissioners, in a review of the contested results at the Kenyatta International Conference Centre (KICC) tallying headquarters in Nairobi.³⁷

The delays in the announcement of presidential results were the first indicators of trouble. The presidential ballots are traditionally counted and tallied first in polling stations. Their late announcement, after parliamentary results, raised suspicions. The ECK chair said on 29 December he had lost contact with some of his returning officers, who had switched off their phones, and he could not explain the delays, particularly in returns from nearby constituencies in Nairobi and Central Province. He added on live television that he hoped “the books were not being cooked”.³⁸ Under pressure from ODM agents who pointed out that some results being announced by the ECK’s tallying centre at KICC differed from those announced at constituency level, Kivuitu agreed to an audit of the results already announced, with two party agents for each of the two main candidates and five national observers.³⁹

During the audit, party agents agreed that the results of 44 constituencies already announced were untrustworthy, as they were not supported by proper legal documentation. Nineteen additional results were yet to be announced. The original statutory forms, 16 and 16A, which are used to record the results officially and should have been turned in signed by returning officers and counter-signed by party agents, were often missing. Other irregularities were illustrated by inconsistencies between presidential and parliamentary tallies and instances of more votes than registered voters.⁴⁰ The ECK file for parliamentary results from Maragwa in Central Province, for instance, was presented to the ECK chair with form 17 indicating 115 per cent turnout for the parliamentary elections. ECK officials later decided to manually change these results and make them credible by reducing this to an 85.27 per cent turnout.⁴¹ The following testimony was reported by the national observers:

One ECK senior staff member called observer Koki Muli outside the hall and asked her if she was aware that something terrible was happening. The senior staff pointed out that it is important for observers

to scrutinise all ROs’ [returning officers’] returns especially of Mombasa, Central, Eastern, North Eastern, Rift Valley and Nyanza. The senior staff also cautioned that the discrepancies were planned systematically and were not accidental, and they involved most Commissioners who clearly organised how the tallying was to be carried out. There was also the concern that Commissioners were in charge of their regions and most of the Commissioners engaged Returning Officers who owed them some loyalty and in some cases replaced Returning Officers who had experience, having worked with ECK in the past.⁴²

This statement is consistent with information provided by the ECK Chair Kivuitu to Crisis Group. From April to November 2007, he had been obliged to delegate management of the commission to other commissioners due to serious health problems. The lists of returning and presiding officers to run the elections was changed by a “steering committee” established in his absence. Contrary to established practice, commissioners chose to supervise the elections in their own province and also hand-picked the returning officers. In Central Province, in particular, Kikuyu returning officers were appointed contrary to an internal directive recommending that no returning officer should come from the community for which he or she had responsibility.⁴³

The ECK chair also claimed he was not informed by his commissioners that presidential results of 44 constituencies had been identified as contentious. The minutes of the audit given him by his colleagues and prepared by the ECK senior legal officer showed that the disputes had been resolved during the night. He also claimed he had not been informed that a meeting was planned on 30 December with the participants of the audit to agree on the course of action. On 30 December, the planned follow-up meeting never took place, and national observers who had participated in the audit were barred from the commissioners’ office.⁴⁴ Misinformed and unable to independently verify the claims presented by ODM, Kivuitu announced the results of the contested constituencies on the morning of 30 December, as provided by the law.

He thus accepted results which appeared to have been tampered with or were not supported by adequate documentation.⁴⁵ Kipkemoi arap Kirui, an ECK contractor

³⁷ “Countdown to deception: 30 hours that destroyed Kenya”, Kenyans for Peace with Truth and Justice (KPTJ) coalition, 17 January 2008.

³⁸ Crisis Group witnessed the statement.

³⁹ “Countdown to deception”, op. cit.

⁴⁰ Ibid.

⁴¹ The ECK later stated that the results were exaggerated in only one polling station. This does not sound credible, however, since no single polling station had more than 1,000 voters on its register.

⁴² “Countdown to deception”, op. cit., p. 7.

⁴³ Crisis Group interview, ECK chair, Nairobi, February 2008.

⁴⁴ Crisis Group has seen copies of the minutes, which indeed allege that all problems had been solved during the night.

⁴⁵ For the recorded irregularities by constituency and the attitude of the ECK during that night, see the detailed log of events recorded by national observers in “Countdown to deception”, op. cit.

participating in one of the tallying teams at the ECK national centre at KICC, came out to the media with ODM senior leaders soon after the announcement and explained that in his team the results were illegally tallied, unverified, and unsupported by required statutory documentation (forms 16 and 16A). Although the forms were missing or had not been signed or stamped by returning officers or confirmed by party agents, the results were transmitted to the computer room for compilation by his team leader.⁴⁶

Rigging thus appears to have taken place at two stages of the tallying process: one at constituency level and one at central ECK level. The first fraud was throughout the country, with the assignment by ECK commissioners of returning officers to their provincial strongholds, where some of the chosen returning officers tampered with the vote count and sent to Nairobi inflated returns for their preferred candidate. The discrepancies between results and turnouts of the parliamentary and presidential elections, the reported expulsion of party agents from tallying rooms and the very high turnouts (over 95 per cent) recorded in some constituencies are the signs of this in both ODM and PNU strongholds.

The second fraud was organised in Nairobi, within the ECK premises, where the results were changed to give Kibaki a 230,000-vote victory. The disappearance of returning officers in PNU strongholds in particular, and the lack of either stamps or proper signatures of party agents on the statutory forms presented in the last two days of the count are damning indications. From 29 December onwards, senior ECK officials heading tallying teams and running the computer room changed results coming from the constituency tallying centres or endorsed results which had already been changed, and instructed staff to accept and compile them without supporting documentation.⁴⁷ They succeeded in having ECK commissioners and the chair announce questionable results which reversed Odinga's lead and gave the victory to Kibaki.

As reported by national monitors, it is now essentially impossible to determine an accurate tally. Rigging occurred both at constituency and central level; only a recount of every ballot – provided all the ballots themselves have not been destroyed or tampered with – might be able to tell the exact results. However, enormous doubt is cast over Kibaki's victory by the discrepancy of 325,131 votes between presidential and parliamentary returns⁴⁸ and by the fact that results announced by the ECK at the Kenyatta Centre did not match with those released at the constituency

tallying centres as reported by the national media and/or observed by the KEDOF and EU observers.

The day after the announcement, ECK officials conceded that much. Four commissioners issued a press statement on 31 December recognising that "some of the information received from some of our returning officers now cast doubts on the veracity of the figures".⁴⁹ The chair added on 1 January: "Concerns about these situations [turnout discrepancies and alleged irregularities] cannot be dismissed off hand. They call for investigation".⁵⁰ ECK officials, however, maintained that on 29-30 December, despite the reported problems, they had no other choice than to announce the results as required by law, and the dispute would have to be settled by a court. Alternatively, the chair added, "if the parties in the dispute so agree, an independent impartial team of eminent men and women can be empowered to study and inquire into the whole matter. It should have the power to make a finding as to the effect of any anomalies it may find. Their decision should be binding on the disputing parties".⁵¹

Kenya thus found itself in a dangerous political crisis. As Kibaki was hurriedly sworn in at State House and flown to a coastal military facility,⁵² the internal security minister suspended all live media broadcasts. ODM immediately rejected the results announced by the ECK chair and refused to recognise Kibaki as president. It also dismissed election petition judicial procedures as having no credibility, since the judiciary was under the control of the incumbent president. Parliamentary results confirmed the opposition's conviction that the presidential election had been rigged. PNU won only 43 seats – slightly over 20 per cent of the total – with eighteen being in Central Province and 25 in the rest of the country. ODM won 99 seats, seven short of an absolute majority. 23 cabinet ministers lost their seats, often to complete newcomers. In addition, the official ECK results named Odinga the winner in six of the eight provinces. Violent protests started almost immediately in most major towns.

⁴⁶ Crisis Group interview, Kipkemoi arap Kinui, Nairobi, January 2008. Under threat, Kinui has been forced to flee the country.

⁴⁷ Crisis Group has seen copies of ECK statutory forms manually corrected to increase Kibaki's returns.

⁴⁸ There was a discrepancy of 50,192 votes in 2002.

⁴⁹ "Press statement" by Ambassador Jack Tumwa, D.A. Ndambiri, S.K. arap Ngeny and J. Matigaro, 31 December 2007.

⁵⁰ "Press statement by S.M. Kivuitu, Chairman, Electoral Commission of Kenya, Parliamentary election results", 1 January 2008.

⁵¹ Ibid.

⁵² Crisis Group interview, Mombasa, January 2008.

III. THE SECURITY CRISIS

The violence in Kisumu and other towns of western Kenya started on 29 December, as a protest against delays in the announcement of results. The next day, immediately after the ECK announcement, riots broke out across the country, mainly in Nairobi, Kisumu, Eldoret (the scene of the terrible church massacre which did more to focus and sustain international attention on the erupting crisis than anything else) and Mombasa. Odinga supporters turned their anger on those they perceived as supporters of Kibaki, mainly members of the Kikuyu tribe. The ferocity and speed of the violence caught many by surprise. Hundreds were killed in less than 24 hours. Houses and shops were set ablaze. Thousands began fleeing. By the second day, Kenya appeared to be on the brink of civil war.

A. PROTEST AND REPRESSION

Much of the initial violence was sparked off by the outrage felt by ODM partisans, who saw victory literally snatched from their leader on live television. This outrage quickly became ethnically oriented, with Luo mobs venting their anger on poor and hapless Kikuyu neighbours. Kikuyu youths promptly assembled to take revenge against any non-Kikuyu in their residential areas. The Kibera slum in Nairobi, predominantly an ODM stronghold in Odinga's own constituency, was the epicentre of much of the violence that rocked the capital. Gangs of youths armed with machetes, clubs and other crude weapons set upon their neighbours. Shops, makeshift kiosks, houses and garages were set on fire. Close to 50 people were killed that night, according to estimates by the Kenya Red Cross and other aid agencies, mainly by machete and gunshot. There are reports that dozens of women and girls were raped.⁵³

Other slum districts of Nairobi with a mix of Luo and Kikuyu residents, such as Mathare, Korogocho, Huruma, Kariobangi and Dandora, were also rocked by the violence. Dozens were killed, and police had to be deployed in large numbers to separate the warring groups. The officially outlawed Kikuyu Mungiki sect swung into action only hours after the presidential vote was announced, beheading and mutilating Luo and Luhya residents in the Kariobangi and Karindundu slum areas, near Korogocho.⁵⁴ A police source told Crisis Group that on the morning of 31 December, police from Kasarani station collected 38

bodies from the wider Kariobangi area, all believed to be Luos forcibly "circumcised" and left bleeding to death.⁵⁵

The role of the police in quelling the riots has been questionable, with considerable evidence that officers have taken sides and used terror tactics against slum dwellers.⁵⁶ Kikuyu youths in Mathare 4A area reported that non-Kikuyu police watched helplessly as their houses were torched and property looted.⁵⁷ The most officers did, they claimed, was to shoot in the air to scare away mobs. Non-Kikuyu victims made similar claims, giving numerous examples of people being hacked with machetes and their property looted as police watched or mocked the victims. In many cases, decisive police action came only when officers thought their tribes or those who voted with their communities were under siege.⁵⁸

One of the worst affected towns was lakeside Kisumu in the west, Odinga's heartland. Again most of those killed and displaced were Kikuyus, although scores of Luo youngsters are also said to have been shot dead by the police.⁵⁹ Many Luo youngsters took to the streets in rage at the election results, burning down shops and cars. Street protests quickly degenerated into looting and other acts of criminality. The police in Kisumu are especially blamed for contributing to the high number of fatalities. The Nyanza general hospital confirmed 44 deaths from bullet wounds,⁶⁰ and over 60 people are estimated to have died in total.⁶¹ This figure has to be treated with caution, since some bodies were burnt beyond retrieval or buried quickly to conform to Islamic teachings.⁶² There have been numerous reports of indiscriminate killings by police of people not linked to the protests. A boy of thirteen, Salim Ahmed, a class five pupil at a primary school in Kisumu, was shot dead by a police officer at the Arena playground. Youngsters having fun

⁵³ Crisis Group interview, police officer, Nairobi, January 2008.

⁵⁶ Press reports even alleged that the General Service Unit – a paramilitary unit designed for riot control – used rape as a terror tactic, "Outrage at Kenya Police tactics", BBC News, 18 January 2008.

⁵⁷ Crisis Group interview, Nairobi, January 2008.

⁵⁸ There were many exceptions. A police officer in charge of Dandora post was singled out by all interviewed for ordering his men to form a human barrier between Luo and Kikuyu combatants. He averted fighting between the Kikuyu in Dandora areas 1, 2 and 3 who wanted to attack Luo neighbours who dominate the area. Crisis Group interviews, Dandora residents, January 2008.

⁵⁹ "Live bullets stirred up lakeside town", *The Sunday Standard*, 17 February 2008.

⁶⁰ Communication to Crisis Group, January 2008.

⁶¹ "Live bullets", op. cit.

⁶² Crisis Group interview, Kisumu residents, January 2008.

⁵³ Crisis Group interview, Kenya Red Cross officer, Nairobi, January 2008.

⁵⁴ Crisis Group interview, Kariobangi resident, Nairobi, January 2008.

at a lakeside beach in Nyatike were also gunned down by police officers.⁶³

Violence likewise erupted in the port city of Mombasa, which overwhelmingly voted for ODM. However, Mombasa has largely escaped large-scale mayhem. Its sizeable Luo minority is now allied with the majority Muslims, who struck a deal with Odinga shortly before the polls. This has made the situation very precarious for the large Kikuyu community, but so far, Muslim leaders have managed to hold back their co-religionists from harming them. This may change, however, if there is not a quick settlement to the political crisis.⁶⁴

Western Province is another ODM stronghold that has witnessed violence, though much less than elsewhere. Many Kikuyu businesses and homes were burnt in the towns of Kakamega, Bungoma, Busia and Webuye. 12,000 displaced, small Kikuyu traders escaped over the border and are in camps in eastern Uganda.⁶⁵

The violence that rocked areas around the town of Kitale, such as Cherangani and Kachibora, mainly affected the Kisii community and was largely a spillover from neighbouring Eldoret. The volatile Mt Elgon region, which in the last two years has been gripped by a violent land rights campaign led by the Sabao Land Defence Force, remained largely untouched. In the major towns of Kakamega, Webuye and Bungoma, many Kikuyu-owned shops were burnt down, but individuals were rarely harmed. However, many Kikuyu families fled these towns.⁶⁶

Even though violence in Western Province was relatively low, the police crackdown, especially in Kakamega, Bungoma and Webuye, was excessive and brutal. Tens of people were killed, some in cold-blooded executions.⁶⁷ One bedridden student was shot in the stomach at Rosterman Estate in Kakamega. In Maraba, a policeman dragged two brothers from a house and shot them in the head.⁶⁸ The killing of a thirteen-year-old boy at Lurambi Market, shot by a police officer as the boy was picking up a doll from the ground, caused a storm of protest in the town.⁶⁹ Many of the brutal police murders are blamed on one notorious criminal investigation officer in the Kakamega area, who is said to be running a parallel police

unit, members of which allegedly operate in civilian dress and with unmarked cars.⁷⁰

A main reason why the police chose heavy-handed tactics was to scare the protesters and “hit them hard”, according to a local source.⁷¹ The police and the paramilitary General Service Unit (GSU) have in the past used similar brutal tactics to quell rebellion. A crackdown on the Digo community in Mombasa’s Likoni area in 1997 caused such trauma that a decade later, Digo leaders, despite their seething anger at government insensitivity to their land plight, are still terrified of any protest that might lead to another confrontation with the security forces.⁷²

B. ESCALATION IN THE RIFT VALLEY

The region most affected by post-election violence is the Rift Valley. Much of the first wave (30 December-10 January) was in the North Rift and heavily concentrated around the villages and small trading centres near Eldoret, such as Timboroa, Matharu, Burnt Forest, Tarakwi, Makutano and Cheptiret. The violence has been as intense further south in Molo, Kedowa and other trading outposts in the tea-growing district of Kericho, as well as at the border with Kisii Nyanza. In the South Rift, it took a less organised, more opportunistic turn later in January, resulting from the total collapse of state authority in the area. Its victims were predominantly Luo and Kisii settlers, many ODM supporters who were attacked by Kalenjin neighbours seeking to take their cattle and land.⁷³ Those who have borne the brunt of this conflict are dirt-poor peasant families and small farmers and traders. They fled on lorries, handcarts and bicycles and by foot. IDP camps have sprung up everywhere where there is a semblance of security – on church compounds, police outposts, army garrisons and other government facilities.

The second wave of violence (24-28 January) hit Nakuru and Naivasha after a minor incident between youths escalated into a major confrontation between gangs from Luo, Kalenjin and Kikuyu communities, ultimately requiring the army’s intervention. The Mungiki sect was a key driver of the violence in both towns, organising the systematic, brutal killings of women and children so as to expel Luo and Kalenjin from Kikuyu-dominated areas. The police also engaged in indiscriminate shootings and extrajudicial killings.⁷⁴

⁶³ Crisis Group interview, Kisumu residents, January 2008.

⁶⁴ Crisis Group interviews, Mombasa Muslim leaders, January 2008.

⁶⁵ “Uganda: More refugees flee from neighbouring Kenya”, IRIN, 16 January 2008.

⁶⁶ Crisis Group interviews, residents of Kitale, Kakamega and Webuye, January 2008.

⁶⁷ Crisis Group interview, Kakamega, January 2008.

⁶⁸ Crisis Group interview, Kakamega, January 2008.

⁶⁹ Crisis Group interview, Kakamega, January 2008.

⁷⁰ Crisis Group interview, Kakamega, January 2008.

⁷¹ Crisis Group interview, Kakamega, January 2008.

⁷² Crisis Group interview, Mombasa, January 2008.

⁷³ “Chaos in North Rift unmasks historical disputes over land and cattle rustling”, *Daily Nation*, 25 January 2008.

⁷⁴ “Nakuru attack victims shot while fleeing”, *Sunday Standard*, 17 February 2008.

1. The rise of Kalenjin warriors in the North Rift

The violence in the North Rift region, though sparked by the disputed elections, has its roots in deeply entrenched, long-festered anti-Kikuyu sentiment within certain segments of the Kalenjin, particularly the Nandi and Kipsigis communities. They continue to feel aggrieved by the settlement of Kikuyus in their home areas after independence and often view Kikuyu communities as unscrupulous and greedy land-grabbers, who have historically manipulated the political system to ensure their dominance in commerce and politics.⁷⁵

Organised violence

Barely minutes after the announcement that Kibaki had won, Kalenjin youths armed with machetes, arrows and jerry cans of kerosene and petrol attacked Kikuyu settlements. In less than two hours, large areas with a heavy concentration of Kikuyu families near Eldoret were ablaze.⁷⁶ Most of the Kalenjin youth were ferried to the attacks by lorries⁷⁷ and were allegedly paid thousands of shillings to carry out the raids. Credible reports obtained by Crisis Group suggest multiple sources of funding for these operations, mainly from members of the Kalenjin political and business establishment of the North Rift related to the Moi regime.⁷⁸

⁷⁵ Moi, a Tugen from Baringo, was made vice president by Jomo Kenyatta in 1969 to quell Nandi and Kipsigis opposition to the settlement schemes that brought tens of thousands of Kikuyu into the North Rift Valley. The land which was redistributed to the Kikuyu settlers and taken by senior government officials in the North Rift is part of the traditional homeland from which Nandi and Kipsigis had been forcibly removed by the colonial powers to create space for white settlers. After independence, Nandi and Kipsigis landless peasants were angered at Kenyatta and Moi, who they believed submitted them to a second oppression to benefit new foreign settlers, the Kikuyu. David Throup, "The construction and destruction of the Kenyatta state", in Michael Schatzberg (ed.), *The Political Economy of Kenya* (New York, 1987), pp. 43-46. Throughout the 1970s and 1980s, Moi only tolerated Nandi leaders who accepted the land arrangement he had sealed with Kenyatta. Others, like John Marie Seroney in the 1970s and Bishop Alexander Muge in the 1980s, were repressed or killed, François Grignon, "Les années Nyayo: Racines de l'autoritarisme et graines de démocratie", in Grignon and Gérard Prunier (eds.), *Le Kenya Contemporain* (Paris, 1998), pp. 315-348.

⁷⁶ "Kenya: Opposition Officials Helped Plan Rift Valley Violence", Human Rights Watch, 24 January 2008.

⁷⁷ Crisis Group interviews, Eldoret, January 2008

⁷⁸ The report of the 2001 Akiwumi Commission recommended investigations on a number of individuals believed involved in the organisation of the violence in the ethnic clashes of the 1990s. A number of them, who are ODM parliamentarians, may be connected to the recent violence. "Report of the

In one of the worst incidents during the week-long bloodbath, a Kalenjin mob set a church on fire in Eldoret on 1 January, killing dozens of frightened Kikuyus who had taken shelter. It is not known exactly how many perished, but most accounts suggest it could be as many as 30. This heightened fears that Kenya's recurrent ethnic violence could be entering a new and more deadly phase, similar to the murderous campaign which rocked the country in the 1990s.⁷⁹ However, while as discussed further below there was a certain amount of anti-Kikuyu incitement by local elders, the suggestion there was a systematic, well-orchestrated campaign to purge the region of Kikuyus needs to be treated cautiously. In a less publicised incident, a Kalenjin mob "hunting for Kikuyus to kill" at the University of East Africa, Baraton, was persuaded by a lone police officer to disperse, not a likely response by an organised group bent on genocide.

Much of the violence around Eldoret was perpetrated by well-organised groups of Kalenjin warriors. These young men usually took orders from the elders of their settlements, who still wield considerable influence over some sectors of rural communities. Young recruits undergo group initiation rites (based on age) before achieving "warriorhood" status and are sworn to secrecy.⁸⁰ Each age group, usually involving several hundred youths circumcised together, has its own name. Members of the Kimnyigei age group have reportedly been involved in much of the violence.⁸¹

There is nothing new nor sinister in the existence of these groups themselves. Similar initiation rites for young male adults exist elsewhere in the country, especially among the Maasai, Pokot, Turkana and Samburu and pastoralist communities who have retained an age-based division of labour. The purpose of the ritual is to cement solidarity and courage and instil discipline.

The "warriors" are cattle herders, farmers and traders, who lead a routine existence and are only mobilised when the community is believed to be in danger. Warrior units are autonomous, non-hierarchical and without central command. Since the 1990s in particular, when ethnic clashes were organised by senior Kalenjin members of the Moi regime, this social institution has, however, been manipulated by business people and politicians, often to settle scores with perceived enemies. The warriors' arsenal is predominantly traditional – bows and poisoned arrows, spears, machetes and clubs. Lately it has included Molotov cocktails.

judicial commission appointed to inquire into tribal clashes in Kenya", Nairobi, 2001.

⁷⁹ Outside the country, the images recalled to many in the international community the memory of the Rwanda genocide; while the comparison was not apt, the shock did much to stimulate the initial international interest and concern.

⁸⁰ Crisis Group interviews, Eldoret, January 2008.

⁸¹ "Chaos in the North rift", op. cit.

Some Kalenjin tribes, especially the Tugen and the Marakwet, are known to have guns,⁸² the bulk of which were given to them during the later Moi years to help them defend themselves against heavily armed cattle rustlers from the Pokot community.

Several informed sources suggest these groups now have wealthy athletes as new benefactors.⁸³ The Rift Valley is famous for producing world-class long-distance runners. The athletes have made fortunes from competing in international track and field events and have transformed some of the depressed and sleepy rural villages in the region by investing in farmland and other real estate. The motivation for giving the raiders cash and transport is said to be partly economic. They allegedly want the Kikuyus evicted so they can take their farms and property. The athletes, most of whom have a military background, are reportedly also training and sometimes commanding the raiders.⁸⁴ There are various accounts of how Lukas Sang, an athlete and ex-army corporal, died, but most accounts suggest he met his death on the outskirts of Eldoret while commanding part of a Kalenjin raiding party.⁸⁵

Some reports allege that the Sabaot Land Defence Force (SLDF), a shadowy militia group active in and around the Mt Elgon region of western Kenya, has joined with their Kalenjin cousins. It has been engaged in its own campaign against so-called non-indigenous tribes. Many Luhyas, Kikuyus and members of other tribes have been attacked, over 600 have died and 60,000 have reportedly been displaced in this two-year old conflict.⁸⁶ The SLDF is now the most powerful and best-armed militia group operating in the west. Its hit-and-run attacks from the Mt Elgon forest are a major challenge for the authorities, who appear incapable of quelling the rebellion. The group is officially headed by a man called Wycliffe Matakwei Kirui Komon,⁸⁷ but there is speculation the real leader is a newly elected ODM parliamentarian from the region, though he has denied any links.⁸⁸

The SLDF seeks to evict non-indigenous people because it considers the region belongs to them and the KAMATUSA (an abbreviation of the Kalenjin, Maasai, Turkana and Samburu tribes) – a coalition of largely pastoralist tribes of the Rift Valley that share a common linguistic and cultural heritage. The group is allegedly now arming and

training the Kalenjin warriors⁸⁹ and receives their support in an attempt to take control of the Luhya-dominated district of Trans Nzoia, which produces the bulk of Kenya's maize. Sabaot militants believe a future Rift Valley state within federal Kenya is incomplete without Trans Nzoia. The SLDF's main ambition is to carve the agriculturally important Trans Nzoia away from Western Province and annex it to the Rift Valley. Their violent campaign seeks to cause mass displacement of non-Sabaots and non-Kalenjins, in the hope that a friendly central government will eventually legitimise facts on the ground.⁹⁰

Land, majimbo and propaganda

In other areas of the Rift Valley, motivations for the violence were not necessarily election related but may also have been linked to longstanding competition for access to land and jobs. Fighting was reported to spread to the South Rift, principally in and around the tea-growing district of Kericho and Bomet, as well as the border between Borabu and Sotik.⁹¹ Kalenjin specifically targeted Kisii settlers from over-populated Nyanza Province – a community which the militants consider to be as covetous of their land as the Kikuyu. They killed over a dozen, and many more were executed during the subsequent police crackdown.⁹²

This development reinforces the view that the conflict in the Rift Valley is essentially over land. The Kalenjin appear determined to reclaim what they see as their ancestral lands from the so-called immigrant communities such as the Kikuyu and the Kisii. The Kalenjin argue that Kikuyus, backed by big land companies and state bureaucracy, bought large tracts in the fertile parts of the Rift Valley. The Kenyatta regime indeed gave former Mau Mau combatants priority to resettle in the Rift Valley as a reward for their contribution to independence, but more importantly to avoid the continuation of what was mostly a Kikuyu civil war over land in Central Province. To protect the large properties accumulated by collaborators with the colonial regime and members of the establishment in Central Province, Kenyatta decided to resettle the Kikuyu landless poor and Mau Mau supporters on Kalenjin land in the Rift Valley. Kalenjin communities were further

⁸² Crisis Group interviews, Eldoret, January 2008.

⁸³ Crisis Group interview, Eldoret, January 2008.

⁸⁴ Crisis Group interviews, Eldoret, January 2008.

⁸⁵ Crisis Group interviews, Eldoret, January 2008.

⁸⁶ "Massive internal displacements in Kenya due to politically instigated ethnic clashes", FIDH/KHRC, no. 471/2, April 2007.

⁸⁷ "SLDF militia a force to reckon with", *The Standard*, 10 April 2007.

⁸⁸ Crisis Group interview, Kitale resident, January 2008.

⁸⁹ Crisis Group interview, Kitale resident, January 2008.

⁹⁰ Crisis Group interview, Kitale residents, January 2008.

⁹¹ "Many dead in fresh Kenya unrest", BBC News, 21 January 2008; and "Gunshots as police battle youths in Sotik", *Sunday Nation*, 3 February 2008.

⁹² "Quiet burial for victims of police brutality", *Sunday Standard*, 17 February 2008.

angered by the renaming of their areas with Kikuyu names, thus erasing part of their heritage.⁹³

The problem is further compounded by a laissez-faire system of land sale and allocation, which often takes no account of communal tenure and is deeply flawed due to corrupt allocation and registration practices. The dream of many poor Kenyans to own land has turned into a nightmare, with double or triple registration and the repeated issue of fake title deeds. The ODM did well in the Rift Valley and Coast Province because of its promise the two regions would become a self-governing, semi-autonomous state if it won. The ODM's *majimbo* cleverly exploited the yearning for regional autonomy among the Kalenjin and other so-called minority tribes. But ODM did not provide details on what such devolution would involve, and many Kalenjins saw *majimbo* as a chance to "throw off the Kikuyu yoke".⁹⁴ That view was echoed in Coast Province.

The violence has also involved a certain amount of indoctrination and incitement. Politicians and traditional chiefs in the Rift Valley have been whipping up anti-Kikuyu feelings for a long time, and the tempo of their incitement was ratcheted up shortly before the polls. The net effect was a consistent message that Kikuyus are the cause of all the region's ills. A powerful tribal elder was heard making statements that would have seen him prosecuted in many countries. Jackson Kibor, a prominent Nandi elder and politician in Eldoret, was unapologetic over the violence and said to the BBC that the Kalenjin have a right to kill Kikuyus. He described the violence in the Rift Valley as "a war" and said Kikuyus will never be allowed back.⁹⁵ This chilling message from the traditional elders is widely shared by most ordinary Kalenjin.

Vernacular radio stations may also have played a part in whipping up ethnic chauvinism. Kass FM, a Kalenjin station beamed to the Rift Valley, is much blamed for broadcasting inflammatory statements by politicians and ordinary people. A respected clergyman in the Rift Valley, Bishop Cornelius Korir, has frequently complained that Kass was inciting violence and warned it could provoke "Rwanda-style" killings.⁹⁶ Its broadcasts were mostly aired prior to the elections in December. The station, aware it is now being watched closely, has since toned down its propaganda and is careful not to air anti-Kikuyu statements. 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).⁹⁷

Kikuyu FM stations like Inooro, Coro and Kameme are also accused of waging an ethnic propaganda campaign, though a more subtle one, against ODM and the Kalenjin. Again, much is usually hidden in the phone-ins. Inooro FM is particularly notorious for putting highly emotional and distraught people from the confrontation areas on air. It also inserts into or ends the call-ins with gospel songs, an obvious effort to increase the emotional effect. "How many people have to die before we say: enough is enough. Our people will be exterminated", a woman called Mama Ciiru typically sobbed in one such broadcast on Inooro on 23 January 2008.⁹⁸

2. The return of Mungiki

In the second wave of violence to rock the Rift Valley, ethnic gangs engaged in deadly combat for control of two of the principal towns in the province, Nakuru and Naivasha.⁹⁹ The busy Nairobi-Nakuru highway was impassable for a few days, with barricades and ethnic militia checkpoints popping up and passengers in buses and minibus taxis (*matatus*) being asked to produce their national identity cards and then brutally lynched if they belonged to the wrong western tribe.¹⁰⁰ Some of those murders can be blamed on the notorious Kikuyu crime cult, Mungiki.

The sect has its roots in the Rift Valley but is well entrenched in Nairobi slums and central Kenya. Membership is gained by swearing oaths (often forced) and strictly limited to Kikuyu men. The initial aim was the "liberation" of Kikuyus from Moi oppression and a cultural revival of the traditional Kikuyu way of life. It borrows much from Mau Mau symbolism and argues that no one except a Kikuyu should ever rule Kenya. Over the years and especially between 1992 and 1997, it has had contacts with parliamentarians from central Kenya. Though they were sometimes forcibly sworn into the

⁹³ See for more details, "How State policy shaped land conflict", *Saturday Nation*, 9 February 2008.

⁹⁴ Crisis Group interview, University of Nairobi lecturer, January 2008.

⁹⁵ Interview for BBC radio, 31 January 2008.

⁹⁶ Crisis Group interview, Eldoret resident, January 2008.

⁹⁷ Crisis Group interview, Eldoret resident, January 2008; and "Kenya: spreading the word of hate", op. cit.

⁹⁸ Media advisory, BBC Monitoring, 23 January 2008; and "Kenya: spreading the word of hate", op. cit.

⁹⁹ "Fighting spreads in Western Kenya", BBC News, 28 January 2008; "Violence shatters Nakuru's image", *Sunday Nation*, 3 February 2008; and "Pain and Sorrow engulf 'Happy Valley'", *Sunday Nation*, 3 February 2008.

¹⁰⁰ "Fighting spreads", op. cit.

group, they found cooperation with Mungiki useful for political mobilisation.¹⁰¹

Mungiki was in disarray following a mid-2007 crackdown by the security forces but is believed to have regrouped and is operating openly despite being a banned organisation. Speculation about official acquiescence in this resurgence is rife.¹⁰² Mungiki now casts itself as the defender of the beleaguered Kikuyu in the Rift Valley. Its handlers and supporters, who are said to include some senior members of the Kikuyu elite, want to make it an effective counterweight to the Kalenjin warriors, and there are reports it is accumulating weapons, including guns.¹⁰³ The sect is also bringing young men from Central Province for oathing and then transferring them to the Rift Valley for operations.¹⁰⁴

The group is aggressively stepping up the search for new members, having deployed recruiters in most of the Kikuyu-dominated IDP camps. It is particularly targeting vulnerable Kikuyu youngsters displaced by the violence. The Mungiki message is stark: it is time for revenge. The angry young men in the camps are being manipulated into believing counter-violence is their only way out. The deadly inter-ethnic clashes that rocked the industrial towns of Nakuru and Naivasha are said to have been mostly carried out by these new recruits.¹⁰⁵ The sect seems to enjoy a degree of support from the local establishment and police, who used minimal force against them as they were torching and killing. Reports that some gangs leading the onslaught in the Central Rift are led by members who have long been in prison suggests that local authorities are releasing some Mungiki convicts.¹⁰⁶

In Naivasha and Nakuru, Mungiki members were guided by local youths, who identified houses of non-Kikuyu, especially those of Luo and Kalenjin. After the residents had been killed or fled, their property was taken outside and burned as a sign of cleansing before the house was reoccupied by Kikuyu IDPs.¹⁰⁷ Similar cases have been

reported in Thika and Ruiru. In Naivasha the sect is behind the ban on women wearing trousers. Operating from land which some of its leaders own along the highway, it wants to assert its authority over the Kikuyu population.¹⁰⁸ Next on its agenda would be to force (or at least request) women to be circumcised. In Kiambu a few years ago, the sect spread leaflets asking all women to do this voluntarily or be compelled. It is likely that thousands of adherents wish to leave the sect, but memories of beheadings of defectors in 2007 serve as a deterrent.¹⁰⁹

There are also reports of the sect being used to hit back at Kalenjin warriors in Molo, Nakuru and parts of Rongai, as well as in Nyahururu and Laikipia West districts, where the Kikuyu have also organised vigilante groups in villages. Since the latter is a multi-ethnic area, tension is growing between the Kikuyu and the Pokots, Turkana and Samburu, whom the Kikuyu accuse of stealing their animals. There has already been a strike against Kalenjin living in the Ol Jabit area of Laikipia West, who were controversially settled in the former Ngobit forest by Moi in the late 1990s.¹¹⁰

The group is also tightening its grip on Nairobi slums and public transport. Some city politicians, including former parliamentarians and defeated PNU candidates, now reportedly work with Mungiki so that they can deploy it against ODM and on behalf of Kibaki if the opposition continues protest actions. Perceived traitors to the Kikuyu cause have become prime targets for intimidation. Kikuyu civil society leaders and journalists who have been criticising the government and PNU¹¹¹ receive threatening text messages on their mobile phones and risk attack in Nairobi's streets. James Maina, from the People's Parliament organisation, suffered such an attack on 30 January.¹¹²

Mungiki also demands money from landlords in Eastlands in return for evicting Luos said to be taking advantage of the current crisis and refusing to pay rent. In Kibera, it has taken the battle to their enemy's home ground, penetrating the Laini Saba and Soweto areas dominated by Kikuyus and the Kamba, where some Kisiis, Luos and Luhyas live. Its threats to kill Luos have scared away tenants and led to creation of an IDP camp at High Rise estate along

¹⁰¹ On Mungiki, see among other publications, David Anderson, "Vigilantes, violence and the politics of public order in Kenya", *African Affairs*, vol. 101 (2002), pp. 531-555; Peter Mwangi Kagwanja, "Facing Mount Kenya or Facing Mecca? The Mungiki, ethnic violence and the politics of the Moi succession in Kenya (1987-2002)", *African Affairs*, vol. 102 (2003), pp. 25-49; and Peter Mwangi Kagwanja, "'Power to Uhuru': Youth identity and generational politics in Kenya's 2002 elections", *African Affairs*, vol. 105 (2005), pp. 51-75.

¹⁰² Crisis Group interviews, Nairobi, January 2008.

¹⁰³ Crisis Group interview, Nairobi, January 2008; and "Gang infiltrates Kenya police", *Mail and Guardian*, 3 February 2008.

¹⁰⁴ "37 Mungiki suspects arrested", *The Standard*, 18 February 2008.

¹⁰⁵ Crisis Group interviews, Nairobi, January 2008.

¹⁰⁶ Crisis Group interviews, Nairobi, January 2008.

¹⁰⁷ Crisis Group interviews, Nairobi, January 2008.

¹⁰⁸ Crisis Group interviews, Nairobi, January 2008.

¹⁰⁹ Crisis Group interviews, Nairobi, January 2008.

¹¹⁰ Crisis Group interview, Nairobi, February 2008.

¹¹¹ Journalists Linus Kaikai (KTN) and Paul Ilado (Nairobi Star, Kiss FM) among others and human rights activists Maina Kiai (KNCHR), Muthoni Wanyeki (KHRC), Ndungu Wainaina (NCEC) and Njeri Kabeberi (CMPD) have reportedly received such threats, "Civil society leaders get death threats", *Nairobi Star*, 25 January 2008.

¹¹² Communication to Crisis Group, civil society members, January 2008.

Mbagathi Way, where it was reported in early February that non-Kikuyu houses had been marked for eviction.¹¹³

There is a concerted move in government/PNU circles to justify Mungiki's involvement in the current mayhem in Rift Valley and the city by claiming that ODM has its own gang, called "Taliban".¹¹⁴ Originally a self-defence vigilante force, this outlawed, predominantly Luo group is said to operate in Mathare, Huruma, Kariobangi and Baba Dogo slums in the east of the capital.¹¹⁵ Within these areas, it levies protection and other fees and charges *matatu* and taxi operators. It brings together a few hundred mainly desperately poor youths native to the city. Taliban has no membership oath or cells throughout the country, but it does have squads in various slum locations. At the Dandora garbage site, it levies fees on dump trucks.¹¹⁶ Its leader was jailed in 2002 after skirmishes with Mungiki over control of these illegal activities, especially levies on *matatus* using Juja road. In those fights, the Mungiki used sheer numbers and ruthless tactics to push the Taliban back to the slums.¹¹⁷

Not all violence in Nairobi or Central Province can be blamed on Mungiki. Ethnic animosity has contaminated all sectors of society and is used to justify the illegal occupation of houses and forceful eviction of workers. Kikuyu youths can barely tolerate seeing non-Kikuyus holding jobs in their locality. Although Mungiki's Limuru cell is reportedly behind the killings of two Bata shoe company workers in that area, the incident was probably motivated by the desire for better job opportunities.

In the area of Legeni in Kinoo, non-Kikuyu workers from the local factories were targeted. Kikuyu youths in Thika and Limuru want the Luos out so they can secure the menial construction jobs Luo youths dominate and used the presence of IDPs from the Rift Valley as justification for the violence. Luo workers were forced to seek shelter at Kabete or Tigon police stations, and hundreds are now sending their families out of the city for fear of attacks while they remain behind alone. This trend is prevalent in Kikuyu and Kabete areas of Nairobi's outskirts, where many of these men work days and spend their nights in the relative safety of police stations.¹¹⁸

Reports also suggest that the use of Mungiki is deeply unpopular among the Kikuyu middle class and is dividing the PNU establishment. Ministers who are in the competition to succeed Kibaki see the sect as a threat

which could favour their rivals, and senior internal security officials have reportedly warned Central Province parliamentarians against supporting it.¹¹⁹ The sect is an obvious challenge to state authority and has reportedly infiltrated some sections of the police.¹²⁰ It is stepping up extortion of members of the Kikuyu business community and is likely to press middle-class estates and rural land owners for contributions.¹²¹

3. Coast Province: the next theatre of violence?

Another area affected by the violent post-election protests is the restive Coast Province, a key part of the country which has long been a hotbed of Islamist radicalism and land militancy and is where the narrative of grievance about land, marginalisation and regional and ethnic separatism now fashionable in the Rift Valley was born. Government insensitivity to an acute land problem has bred resentment against *watu wa bara* ("upcountry people").

The rebirth of *majimbo* as a political idea owes much to the Coast region. Within the area, the majority of violence has been concentrated in Mombasa, especially its ethnically mixed areas of Likoni, Changamwe and parts of the South Coast. Over a dozen people were killed when large Luo crowds turned on Kikuyus and Kambas.¹²² Those two communities have borne the brunt of the violence, mostly orchestrated by well-organised groups from mixed religious and ethnic backgrounds. There have been no reports of large-scale violence in recent weeks, but there is speculation that something is brewing.

Some reports suggest a militia group is training and re-organising in the dense coastal jungle of Mulungunipa. An ex-army captain, called Omari, is said to be in charge.¹²³ In a mirror image of what is happening in the Rift Valley, the militia, said to be largely made up of Digo but including members from the wider Mijikenda tribes, is using traditional rituals such as oathing to instil loyalty.¹²⁴ Some reports suggest it is raising funds by crime – the recent crime wave in Mombasa, largely hitting tourists and wealthy Europeans, is blamed on it. The militia's aim is said to be twofold: to destroy the tourism industry and raise money to buy weapons from Somalia.¹²⁵

¹¹³ Crisis Group interviews, Nairobi, January 2008.

¹¹⁴ Crisis Group interviews, PNU leaders, January 2008.

¹¹⁵ For more details, see Anderson, "Vigilantes", *op. cit.*

¹¹⁶ Crisis Group interviews, Dandora residents, January 2008.

¹¹⁷ *Ibid.*; and Crisis Group interviews, Nairobi, January 2008.

¹¹⁸ "Kenya: IDPs leave city for 'ancestral homes'", IRIN, 8 February 2008.

¹¹⁹ Crisis Group interview, ministry for internal security, February 2008.

¹²⁰ "Gang infiltrates Kenya police", *Mail and Guardian*, 3 February 2008.

¹²¹ Crisis Group interviews, business community representatives, January 2008.

¹²² Crisis Group interviews, Mombasa, January 2008.

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ Crisis Group interview, Mombasa resident, January 2008.

Most of the coastal people look at the tourism industry as something alien, arguing that the money does not trickle down and often ends up in the hands of wealthy foreigners and Kikuyu middlemen.¹²⁶ Among the Mijikenda and the Waswahili, it is rare to find anyone with sympathy for the hoteliers and tour operators who are now caught in the country's serious economic downturn.¹²⁷

IV. HUMANITARIAN AND ECONOMIC CONSEQUENCES

Due to the history of small-scale violence that has often flared around elections, NGOs, international organisations and the government were generally prepared to mitigate the immediate humanitarian effects of the crisis. However, the economic consequences are alarming and may durably harm prospects for recovery.

A. THE HUMANITARIAN CRISIS

Assistance to the displaced has primarily been coordinated through the Kenya Red Cross Society (KRCS, partnered with UNICEF), which was on standby in anticipation of violence during the election period, and the government. The presence of the bulk of UN and international relief NGO regional headquarters in Nairobi and the critical importance of Kenya as a political and economic partner in Eastern Africa and the Horn have been strong contributing factors to the speed of the international response to the crisis. The level of violence prior to the 27 December 2007 vote was considerably lower than what was anticipated, so a considerable pool of resources was still available.

However, the proliferation of IDP sites has presented a considerable challenge. As of 5 February, 310,643 IDPs had been registered by the Kenya Red Cross and its affiliates in 296 camps countrywide.¹²⁸ The initial violence directed mainly at Kikuyus from the North Rift and parts of Western and Nyanza Provinces precipitated flight towards major towns in the Rift Valley, Central Province and Nairobi's western outskirts.¹²⁹ That crisis was compounded by a second wave of displacements in late January, resulting from violence in new areas, primarily against members of tribes associated with the opposition but living in pro-government enclaves, and vice versa. Residents and agricultural labourers were evicted from tea, coffee and flower plantations in Central and Nairobi Provinces and parts of the North Rift and pushed back towards their western homelands. Similar evictions of trades people and farmers in Nyanza and Western Provinces forced an exodus in the opposite direction.

¹²⁸ "Humanitarian Update", OCHA-Kenya, vol. 3, 29 January-5 February 2008.

¹²⁹ According to a UN High Commissioner for Refugees (UNHCR) situation report summary from 9-11 January, 90 per cent of the displaced in the Eldoret area were Kikuyu. This may have changed, as reports from the North Rift indicate that non-Kalenjins in general are being forcibly evicted or driven away by violence and intimidation.

¹²⁶ Crisis Group interview, Mombasa resident, January 2008.

¹²⁷ Crisis Group interview, Mombasa resident, January 2008.

The current crisis has rekindled historical conflicts. Cattle raiding in Trans Nzoia and land clashes around Mt Elgon and between Kipsigis (Kalenjins) and Kisiis on the borders between Boma and Nyamira districts have taken on a new dimension in light of the breakdown of the rule of law, producing large numbers of IDPs. The premature closure of camps in Nairobi is reported to have contributed to the proliferation of smaller camps, particularly in churches and chiefs' compounds. Targeted displacement is strongly affecting basic services in health and education, as health professionals and teachers are not being spared. Many civil servants in communities where their ethnic group is not dominant have fled or asked for transfers.¹³⁰

The displaced are highly mobile, particularly on the East-West axis. In early January, most organisations that sent assessment teams often found only a few dozen IDPs at a site where hundreds had been reported the day before.¹³¹ Several agencies admitted that figures were likely inflated due to lack of coordination between the government, NGOs and faith-based organisations. The movement of persons from feeding sites during the day to more secure sites (like chiefs' camps and police stations) in the evening may have produced double counting. It is also suspected that churches and provincial authorities may have over-reported IDPs in order to secure more resources for their communities. In the early days, the government and the national alliance of churches may have also counted IDPs from earlier crises, like those at Mt Elgon and Burnt Forest (where there have been IDPs since 1992) and from flooding.¹³² Some donors also confirmed that figures have been over-reported in previous Kenyan crises, with the reality often being 20 per cent of the reported figures.¹³³

The collective effort has been hampered by resurging violence and transport disruptions, particularly affecting those in isolated rural areas.¹³⁴ To obtain better aid, IDPs with some resources are rapidly moving from site to site by private means, basing their movements on both rumours and reports of political developments. Many of those evicted from their lands and homes have sought refuge

with friends and family. Such IDPs often have not been registered, preventing official assistance from reaching them. However, the longer the crisis persists, the more quickly the pool of resources will dry up, and the pressures on support networks in host communities will become too great. The numbers seeking assistance will likely then increase.¹³⁵

According to the Food and Agriculture Organization (FAO), 75 per cent of the displaced in the Rift Valley are destitute.¹³⁶ Those who do not have access to support networks have been forced to wait, relying on charitable organisations and individual volunteers for transportation help. Upon arrival at ancestral homes, many do not know where to go and must rely on camps. Adding to the confusion are the mixed signals from government regarding mid- and longer-term camps.¹³⁷ The lack of central locations where IDPs can congregate and feel safe contributes to the difficulty in assessing IDP needs and providing support. Many IDPs prefer to stay in smaller, less formal camps thinking they will be lesser targets for retaliatory attacks.¹³⁸ However, this dispersal is likely to make them more vulnerable in the long run.

The KRCS opened a camp outside Naivasha for 6,000 IDPs, including IDPs hiding on the Naivasha Prison grounds. As of 3 February, however, IDPs have refused to move there citing insufficient security.¹³⁹ The government's inability to provide adequate security for IDPs is a recurring theme that needs to be addressed quickly. However, consolidation of camps must not raise the likelihood of further inter-ethnic violence. Profiling of specific groups' needs based on their reasons for displacement is also critical to direct adequate aid. The rate of sexual assault and rape against children, teens and women, often by more than one aggressor, is going up in camps and urban areas.¹⁴⁰ There is also mounting evidence that young girls in the camps are being forced to exchange sexual favours for food or clothing.¹⁴¹ Girls

¹³⁰ OCHA-Kenya, op. cit.

¹³¹ Crisis Group interview, member of NGO assessment team, Nairobi, January 2008.

¹³² In fact, when the Kenya Red Cross was publishing figures in the range of 103,000, government and church figures exceeded those by 50,000-70,000. According to the Kenya Red Cross, over 15,000 people were previously displaced in Mt Elgon alone.

¹³³ Crisis Group interview, head of a foreign donor agency, Nairobi, January 2008.

¹³⁴ "An unknown number of IDP sites in remote areas have not been accessed for assistance, sometimes because of difficult roads and the challenge of numerous small groups of IDPs. This is particularly problematic in Molo, Trans-Nzoia and Uasin Gishu Districts", OCHA-Kenya, op. cit.

¹³⁵ "There are probably as many displaced who are not in camps", statement by UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator John Holmes, in "UN: Up to 600 000 displaced in Kenya", *Mail and Guardian*, 11 February 2008.

¹³⁶ "Political unrest sparks food insecurity, livelihood losses", Food Security in Kenya, 14 January 2008.

¹³⁷ Crisis Group interview, head of a foreign donor agency, Nairobi, January 2008.

¹³⁸ OCHA-Kenya, op. cit.

¹³⁹ KTN News, 3 February 2008; and "Disaster looms in camps", *The Standard*, 2 February 2008.

¹⁴⁰ "Kenya: Unicef Warns of Abuses Against Children", UN News Service, 25 January 2008.

¹⁴¹ "Kenya: Women And Children Suffering in Camps," *The Nation*, 27 January 2008.

will likely have to drop out of school and marry to escape destitution, leaving them vulnerable to abuse by older men.

Further, the Kenya Red Cross staff active in the IDP camps and in the confrontation zones are being targeted on the basis of ethnicity. The head of the organisation, Abbas Gullet, told a news conference his staff in Nakuru and other areas feared for their lives by the maelstrom of ethnic revenge killings in the region.¹⁴² Other aid agencies and NGOs operating in camps in Nairobi have voiced similar fears. Insecurity at the camps highlights another feature of the conflict: that IDP camps now risk becoming incubators of more ethnic jingoism and violence. Agent provocateurs see them as ideal locations for recruiting militants. They cynically manipulate the raw anger which violent displacement and traumatic experience have bred in the IDPs.

There are also reports that the Kenya Red Cross had been threatened in places like Limuru, on the outskirts of Nairobi, into giving aid to only Kikuyus from the Rift Valley. Luos, Kalenjins and Luhya who fled homes due to threats were reportedly denied assistance.¹⁴³ Many have since fled to the west, but it is still alleged that aid is unfairly distributed.¹⁴⁴ As Kikuyus were the majority of the IDPs in the early days, many Kenyans perceive the Early Recovery Programs as designed to help people from that community.

Many IDPs have independently returned to “ancestral homelands”, preferring to stay with friends, associates

and family rather than in IDP camps. These are fertile but already vastly overcrowded areas, hence the original exodus. Unless proper resettlement or reintegration programs are put in place – accompanied by land reform, peacebuilding and community reconciliation activities – many will inevitably re-settle in urban centres, increasing the tensions there. The gesture of solidarity based purely on ethnicity also contributes to polarising the country, while there is talk of rising crime in central Kenya caused by displaced youths roaming the region.

A potentially explosive land crisis might also erupt in Central Kenya with the arrival of IDPs. While many IDPs have never been there before, others are tracing their ancestry and identifying distant relatives from whom they intend to demand land that grandfathers and great grandfathers left when they set out for the Rift Valley. Some who left starting in the early 1960s and sold their little parcels to buy in the Rift Valley are now knocking on the doors of the buyers demanding at least a place to put up a house.¹⁴⁵ Land prices in places like Kinangop in Nyandarua district have shot up, and the problem can only be solved by the government buying alternative land for IDPs.

Several humanitarian organizations have confirmed the widely held view that most IDPs wish to return to their homes. The large proportion of children and women helps corroborate this theory as, in many areas, men have remained behind to protect their homes and to tend to fields. In the Cherangani and Endebess camps, most IDPs reportedly would be willing to return as soon as security can be guaranteed.¹⁴⁶ Many have title deeds or documents supporting their claims to their lands and thus do not fear losing their holdings. But it is widely believed the government cannot guarantee security, despite its claims and the announcement of 32 new police posts in the conflict-prone areas of the Rift Valley.

Return is undoubtedly premature at the moment and planning for longer-term IDP camps has been inadequate. The failure to adequately prepare sites has already led to critical health-support problems. According to the Kenya Red Cross, many farmers expect to recover from the crisis economically within one year if they receive adequate support to rebuild homes and put their land back into production. Nevertheless, they will need support that is not yet available.

¹⁴² KRCS news conference, Nairobi, 29 January 2008.

¹⁴³ Evelyn Ogutu and Kithi Ngumbao, “Hate Leaflets Causing Fear in Central Province”, *The Standard*, 8 January 2008; and Crisis Group interview, member of NGO assessment team, Nairobi, January 2008.

¹⁴⁴ ODM and PNU parliamentarians (Dr Oburu Oginga, ODM/Bondo; Olago Aluoch, ODM/Kisumu Town W.; Fred Outa, ODM/Nyando; Alfred Bwire, ODM/Butula; Ababu Namwamba, ODM/Budalang’i; David Eseli, PNU/Kilimini; and Eugene Wamalwa, PNU/Saboti) accused the government of biased allocation of the Ksh 1 billion (\$148 million) meant for humanitarian assistance to the victims of the post-election violence. After a fact-finding mission to Kisumu, they alleged that members of the Kikuyu community were favoured, while little was being done to assist the 78,000 displaced in Nyanza, forcing local leaders to set up a committee, dependent on private donations, to evacuate their people from Nairobi, Rift Valley and Central Province. The Nyanza provincial commissioner has downplayed the accusations, saying the situation in Nyanza was under control. “MPs Allege Unfair Funds to Chaos Victims”, *The Standard*, 10 February 2008. Parliamentarians Helen Sambili, UDM/Mogotio, and Luka Kigen, ODM/Rongai, separately said camps in their areas have not received tents, clean drinking water, blankets or food and alleged government bias, “IDPs Threaten to Strike”, *The Standard*, 12 February 2008.

¹⁴⁵ Crisis Group interviews, Nairobi, January 2008.

¹⁴⁶ Crisis Group interview, member of an NGO assessment team, Nairobi, January 2008.

B. THE ECONOMIC IMPACT

On 8 January 2008, Finance Minister Amos Kimunya announced that he estimated Kenya would lose Ksh 60 billion (\$885 million) due to the post-election crisis. In the early days, estimates put daily losses of tax revenues at approximately Ksh 2 billion (\$29 million).¹⁴⁷ This has likely increased over the past month as more and more sectors of the economy feel the effects of the crisis. Unrest in Nakuru, Narok, Kisii, Kakamega and Naivasha has in effect paralysed transport, with youths erecting road blocks at regular intervals on roads and burning lorries, commuter buses and private vehicles. Destruction of infrastructure like the railways in Kibera produces a multiplier effect in the region, which will require more time for recovery.

Despite the continuing crisis, Minister Kimunya has been downplaying the consequences, predicting rapid recovery in all sectors except tourism from what he projected as a six-month economic slowdown. The government apparently will use surplus revenues totalling Ksh 8 billion (\$115 million) to cushion some of the shortfalls and has sufficient foreign exchange reserves to prevent significant currency depreciation.¹⁴⁸ The privatisation sale of government shares in Telkom Kenya has provided a budgetary boost, which Kimunya says will help pay for emergency relief.

This relative optimism seems directed at restoring investor confidence rather than portraying reality. An independent economist has said a 2-3 percentage point reduction in economic growth from 2007's 6.1 per cent is likely.¹⁴⁹ Further unrelated, but natural, shocks like the rise in the price of oil and basic foodstuffs on world markets will likely also increase inflation and the country's trade deficit.

The western regions as a whole have been hurt badly from the violence. South Nyanza and areas of the North Rift Valley are already considered to be among the country's poorest and most vulnerable regions. Commercial transporters continue to be reluctant to send goods to Nyanza, North Rift and Western Provinces, further isolating them economically. The fishing industry – the primary source of income for much of lakeshore Nyanza – suffered because few lorries were willing to travel from Nairobi to collect catches. Whole maize and wheat flour prices have increased up to threefold in these areas. Shops and cafes have been hesitant to reopen for fear of looting.

The price of scarce petrol has skyrocketed. Malnutrition, a threat in the best times, is a growing danger.

Kisumu was hit particularly hard, losing an estimated Ksh 3 billion (\$44 million) in property damages since late December 2007. The business district was looted and torched, with three supermarkets, two petrol stations and countless restaurants and stalls of artisanal workers and hawkers destroyed. Many shops and businesses have been forced to close and may never reopen. Tuskys Supermarket Chain has suspended activities in the town. Over 1,000 formal-sector jobs have been lost. The Kisumu City Business Districts Association estimates the city may need twenty years to recover. The lucrative *matafu* industry has been crippled due to insecurity and high petrol prices. Trip costs have doubled and trebled in many parts.¹⁵⁰

The North Rift is the country's breadbasket, but as much as 20 per cent (300,000 tons) of the cereal crop has not been harvested.¹⁵¹ It is estimated that as much as 2,800 metric tons of maize, beans and wheat were either destroyed or stolen. Preparation of the land for the long rains should begin in January; however, due to displacement, as many as 20,000 families will be unable to cultivate their farms.¹⁵²

Initial estimates were that some 3 million tons of maize would be harvested in the 2007/2008 marketing year. It is now feared that a combination of poor rains and the political unrest will reduce that by as much as 15 per cent. In the south eastern lowlands, poor rains may contribute to the loss of as much as 70 per cent of the harvest. Despite projections that the national reserves would be able to sustain food needs for seven months, these shortfalls will likely affect long-term food security for the nation as a whole, with prices rising as supply declines.¹⁵³ The harvest this year was particularly bad, and provincial authorities were already relying on the government for food support, which is now not coming through.

Suba district faced critical health shortages (anti retro-viral drugs, antibiotics, anti-malarials and IV fluids) throughout January. That shortage of medical supplies was particularly problematic due to 205 reported cases of non-virulent cholera since early December,¹⁵⁴ along with some of the country's highest HIV/AIDS infection rates and endemic malaria. Although the humanitarian

¹⁴⁷ "Kenya turmoil may cost economy \$1billion, financial minister", Reuters, 8 January 2008.

¹⁴⁸ James Ayanzwa, "Kimunya warns of downturn", *The Standard*, 29 January 2008.

¹⁴⁹ "Kenya tourism, economy devastated by violence", CNN, 11 January 2008.

¹⁵⁰ Manga Mosota, "Kisumu crippled as the damage may take up to 20 years to repair", *The Standard*, 3 February 2008.

¹⁵¹ "Political unrest sparks food insecurity, livelihood losses", Food Security in Kenya, 14 January 2008.

¹⁵² OCHA-Kenya, op. cit.

¹⁵³ Jeff Otieno, "Kenya faces famine threat", *The Daily Nation*, 23 January 2008.

¹⁵⁴ Crisis Group telephone interview, health-care workers in Suba, Nairobi, January 2008.

crisis is currently under control, discrepancies in access to aid and the economic consequences of the violence risk turning the Rift Valley and the west into long-term disaster areas.

The government is likely to receive severely reduced tax revenues due to disruptions in manufacturing, transport, tourism, banking and horticulture, meaning it will have to resort to increased domestic and foreign borrowing. Road insecurity and loss of transport infrastructure have widespread ramifications on all economic sectors. The weakening shilling and rising cost of fuel are already causing rapid inflation. Protesters and criminals seem to be overwhelming police and military efforts to secure major transport arteries. Unshipped cargo containers are accumulating in the port of Mombasa,¹⁵⁵ while trucks are piling up at almost all major stops from Uganda to the coast. Prices for basic goods in isolated areas and urban slums have already trebled.

Companies which hire many employees from across ethnic lines are faced with setting up reconciliation processes, as growing distrust between colleagues is affecting productivity. Those with branches across Kenya have now been forced to transfer staff rapidly to areas deemed safe for particular tribes.¹⁵⁶ Flower farming, a major export sector, is already facing losses running into the millions of dollars, as employees have been displaced and flowers waste due to transport interruptions. While the Kenya Flower Council insisted that all farms were producing and exporting, those in Equator, Panacot, Maji Mazuri, Mt Elgon and Soloboit are forced to ship to Nakuru by armed convoys as the Nakuru–Eldoret road is considered unsafe. Increased investment in security, diminished production due to worker scarcity and alterations in transport have all increased production costs.

Flower income losses since early January are estimated to be in the Ksh 1 billion (\$14.5 million) range,¹⁵⁷ and overseas customers are expressing concern about Kenya's long-term supply reliability.¹⁵⁸ The violence in Naivasha, where 74 per cent of the rose exports originate,¹⁵⁹ does not bode well for the industry. The industry anticipates

cutting production and jobs if the situation does not improve.¹⁶⁰

The tea sector has similar problems, compounded by a pre-existing crisis arising from a strong shilling which reduced exports in late 2007. Despite the recent fall in the shilling's value, rising transport costs and diminished production due to worker scarcity has already resulted in losses in the billions of shillings.¹⁶¹ The transport sector's unreliability affects production areas. Nakuru, Naivasha and Kericho, the centres of milk production, are incurring heavy losses due to product wastage as the roads to the facilities are blocked.¹⁶² Central Province is unable to get its potatoes, tomatoes and other goods to markets. Passion fruit farmers in the North Rift have reportedly been forced to sell at a loss to Ugandan traders due to blocked routes and are said to be losing Ksh 4 million (\$59,000) weekly.

The hardest-hit sector has been tourism, which is the largest foreign exchange earner and was about to come into its peak season at Christmas. Coastal resorts and game parks are nearly deserted, with occupancy rates around 20 per cent instead of the usual over 85 per cent.¹⁶³ Cancellations are extending into the middle of the year. Layoffs in the 250,000-strong workforce have already begun and more are likely.¹⁶⁴ The industry normally generates roughly Ksh 20 billion (\$295 million) in annual tax revenues but is requesting Ksh 1 billion (\$14 million) from the government to help in the recovery.¹⁶⁵ The U.S., UK and EU are unlikely to lift travel advisories until a political resolution is reached, and the negative international publicity means it will probably be years before tourism returns to pre-crisis levels.

Fears of targeted violence against specific Kikuyu businesses are also gaining ground. On the third day of the ODM mass action (18 January 2008), rioters in Kibera uprooted 2km of the Mombasa–Kampala railway, which passes through the slum. This seems to have been a deliberate message to Kibaki associates who partly own the Rift Valley Railways,¹⁶⁶ combined with a desire to

¹⁵⁵ As of 29 January 2008, Mombasa port was said to be holding 18,000 containers, 1,000 short of its capacity.

¹⁵⁶ "Corporate Kenya finally faces reality of tribalism", *The East African*, 14 January 2008.

¹⁵⁷ "Horticulture players decry Naivasha violence", 98.4 Capital News, 28 January 2008.

¹⁵⁸ "Kenya flower buyers get jitters despite continuing supply", *The East African*, 28 January 2008.

¹⁵⁹ "Horticulture players decry Naivasha violence", 98.4 Capital News, 28 January 2008.

¹⁶⁰ "Flower industry reports heavy losses despite peace on farms", *The East African*, 14 January 2008.

¹⁶¹ "Tea sector limps on as workers trickle back", *The East African*, 14 January 2008.

¹⁶² "PS warns of milk shortage", *The Standard*, 29 January 2008.

¹⁶³ "Conflict threatens Kenya tourism." McClatchy News Service, 19 January 2008.

¹⁶⁴ The Kenya Tourist Board believes 120,000 jobs will be lost by March 2008, "Britain amends advisory to reflect improved security situation", *The East African*, 28 January 2008.

¹⁶⁵ "Kenya tourism sector seeks \$15 million for recovery", *The Economic Times*, 23 January 2008.

¹⁶⁶ The repairs alone are expected to cost the company Ksh 12.5 million (\$183,000), in addition to the estimated Ksh 400 million (\$27 million) lost earnings from service disruption, "Tanzania to benefit from Kenya's crisis", *The East African*,

loot wheat containers on the track. The destruction of the rail line disrupted supplies to western parts of the country and Uganda, forcing rerouting to insecure roads. It was followed by destruction of 2km of the Kisumu-Butere railway on 28 January. The vandals in Kisumu were reported to chant: “No Raila, No Railway!”¹⁶⁷ These events display the opposition’s capacity and willingness to destroy strategic economic assets and show how the situation could further deteriorate.

An unprecedented suspension in trading on the Nairobi Stock Exchange on 29 January 2008 strongly indicated a rapid decline in investor confidence. The suspension happened at 11:52am, when a lack of buyers and midday selling pushed the market near the fail-safe point of 5 per cent loss and invoked a previously unused rule to halt trading. The exchange lost Ksh 40 billion (\$590 million) that day. Even when business resumed after the midday halt, demand was low. Some of the biggest losers were East African Breweries, Barclays, Kenya Commercial Bank, KenGen, Equity Bank, DTB, CFC and Mumias.¹⁶⁸

The economic pressures of the crisis are being felt not only in Kenya but also in Uganda, Rwanda, Burundi, Congo and southern Sudan. Kenya is a transit point for a quarter of the gross domestic product (GDP) of Rwanda and Uganda and one third of Burundi’s. The targeting of Ugandan lorries in Kenya due to rumours of that country’s military involvement in the west has also posed problems. Fuel shortages at one point prompted Uganda to suspend domestic flights.¹⁶⁹ Dar es Salaam, the other major East African port, has been unable to handle additional trade due to slow clearance. The crisis will force landlocked East African countries to re-evaluate their dependence on Kenya for imports and exports and consider a Tanzanian route if that country’s infrastructure is improved. Meanwhile, the paralysing effect of the crisis on the rest of the East African Community prompted its chair, Uganda’s President Yoweri Museveni, to meet Kibaki and Odinga in Kenya on 22-24 January to press for a rapid resolution.

V. THE SEARCH FOR POLITICAL SOLUTIONS

The Kenya violence was triggered by the rigging of the presidential elections. The election dispute created a crisis of authority and legitimacy for all government institutions, particularly in opposition-dominated areas. Law enforcement, the judiciary, and the electoral commission itself appeared immediately so compromised that for ODM supporters violence was perceived as the only option for resolving both the electoral dispute and other longstanding grievances. Government institutions could no longer be part of the solution but were seen as part of the problem. Only a political settlement that restores both state legitimacy and state authority throughout the country, therefore, can offer a viable end to the crisis.

A. FIRST ATTEMPT AT A POLITICAL SETTLEMENT

Soon after the violence started, a discreet attempt at a political deal between ODM and PNU was initiated with the support of influential members of the Kikuyu business community, facilitated by the World Bank resident representative, Colin Bruce.¹⁷⁰ A significant section of that elite understood at once the economic damage the crisis could cause and its longlasting implications. This group of CEOs and owners of flower farms, hotels and coffee estates has benefited from the Kibaki administration’s economic liberalisation, improved infrastructure, a tourism boom and exponential growth of agro industry and the Nairobi Stock Exchange. It is generally supportive of Kibaki’s policies and funded his campaign, but it is not the prime beneficiary of his patronage. The initiative was intended to operate between the parties through trusted intermediaries and so bypass the hawkish gatekeepers who guard access to the president and benefit most from his patronage. The go-betweens, chosen for ability to interact one-on-one with Kibaki, emphasised that the need for power sharing with Odinga.¹⁷¹

The negotiation was well advanced when African Union (AU) Chair John Kufuor, arrived in the country on 8 January 2008. A document detailing “Principles of Agreement” was to be signed in the parliament on 10 January 2008, the day of his departure, in order to establish the basis of a process designed to address the root causes of the violence and the electoral dispute, as well as provide

4-10 February 2008. Several board members of Trans-Century Ltd., a private investment firm and the largest minority shareholder in Rift Valley Railways, are known Kibaki allies.

¹⁶⁷ “Paralysis as roads cut off”, *The Standard*, 29 January 2008.

¹⁶⁸ James Makau, “NSE in big plunge”, *Business Daily*, 30 January 2008.

¹⁶⁹ “Kenya tourism, economy devastated by violence”, CNN, 11 January 2008.

¹⁷⁰ “Kenya: Kufuor’s Whistle-Stop Diplomacy Was Only to Pave Way for Annan”, *The East African*, 14 January 2008; and Crisis Group interviews, senior diplomats, Nairobi, January 2008.

¹⁷¹ Crisis Group interviews, senior ODM officials, Nairobi, January 2008.

a political settlement. But before the ceremony could take place, hardliners in the Kibaki camp convinced the president to disown the document.¹⁷²

That document, which went through ten rounds of negotiations in the full knowledge of and with the apparent support of Kibaki,¹⁷³ detailed a mutual commitment to restore the rule of law and stability rapidly. It recognised that the electoral commission's tallying, compilation and declaration of results was problematic and proposed a "credible, independent and impartial [process] which shall not be subject to control by either party, and whose findings and recommendations [the parties] agree to be bound by". The goals of that process notably included:

- to inquire into the conduct of the ECK and the role of the observers in the conduct of the presidential elections including the declaration of results; to identify remedial action to ensure the ECK independence, impartiality, capacity and effectiveness in discharging its constitutional and statutory mandate; to determine whether a rerun of the presidential election is necessary and if so to provide the timeframe and modalities; and
- to make recommendations on the government structure pending a new election or otherwise.

The document also included agreement that the process would be carried out by a panel of eminent Africans, who would submit their findings and binding recommendations within 30 days. In the interim, it provided for a coalition government based on equal representation of both parties in numbers and portfolio. Government activities would be subject to mutual agreement, and both parties committed to pass the laws required for implementation in parliament. The document was to be signed by Kibaki and Odinga, witnessed by the AU's Kufuor, UK High Commissioner Adam Wood, U.S. Ambassador Michael Ranneberger and French Ambassador and local EU President Elisabeth Barbier.¹⁷⁴

This document appeared to provide two of the essential pillars for resolution of the crisis: an independent investigation into the electoral dispute, with recommendations on the measures and time frame needed to organise a rerun if the first count was found to be invalid; and a power-sharing arrangement between ODM and PNU while reforms and preparations for a rerun were to be carried

out. But the PNU camp was unwilling to accept a process that risked invalidating Kibaki's election.

The imbalance of power between an entrenched head of state and a leader of opposition has made the negotiation of a political settlement extremely difficult. Kenya's institutions are weighted towards the PNU coalition despite its defeat in the parliamentary elections. The constitution does not provide a credible judicial process for resolving electoral disputes. While presidential and parliamentary candidates may need to prepare for lengthy court proceedings if petitions are filed, they enjoy all the benefits of office once declared winners and have no incentive to make concessions.

B. THE BALANCE OF FORCES

President Kibaki and his aides are firmly in control of the state machinery. They have appointed most senior officials over five years in the judiciary, police, intelligence services, administration and army. Even if discontent exists in the lower ranks, the prospect of a mutiny, coup or rebellion of a section of that machinery is unlikely at this stage. The most significant disobedience that has occurred and may continue is the turning of a blind eye to the violence or refusal of repressive orders by a segment of the security services. The group that controls decision-making at State House¹⁷⁵ and benefits from state patronage seems determined to stay in office for the next five years with little changes to its system. The PNU leadership's strategy appears to have five key components:

- tame the ODM and its allies through heavy-handed repression against demonstrators, extrajudicial killings if necessary, intimidation and occasional corruption¹⁷⁶ so as to show the opposition it can expect no concessions;
- claim that ODM prepared the Rift Valley violence in advance,¹⁷⁷ and give priority to peace, dialogue

¹⁷⁵ Five individuals are reputed to control access to Kibaki and be responsible for the decision-making process: Minister for Constitutional Affairs Martha Karua (Kikuyu); Minister for Finance Amos Kimunya (Kikuyu, with close connections to hawkish businessman and Nairobi University Vice-Chancellor Joe Wanjui, also Kikuyu); Minister for Roads John Michuki (Kikuyu); former Minister of State for Defence Njenga Kanume (Kikuyu); and presidential adviser Nathaniel Kang'ethe (Kikuyu).

¹⁷⁶ ODM feared the buying of its parliamentarians by PNU ahead of the election of the speaker and tried to impose a public vote so that any defector would immediately identified.

¹⁷⁷ "Government is investigating pre-meditated murder", statement by the government's spokesperson, Dr Alfred Mutua, 7 January 2008. A questionable document entitled "Executive brief on the positioning and marketing of the Orange Democratic Movement and 'the people's president' Raila

¹⁷² Crisis Group interviews, senior diplomats, Nairobi, January 2008.

¹⁷³ Ibid. This was, however, vehemently denied by the government's spokesperson, "Principle of Agreement fake", statement by Dr Alfred Mutua, 11 January 2008.

¹⁷⁴ The "Principles of Agreement" memorandum.

and reconciliation¹⁷⁸ while maintaining that electoral disputes can only be settled in courts;¹⁷⁹

- return to “business as usual”, so as to progressively weaken the internal and external pressure on the government and increase its legitimacy;¹⁸⁰
- invalidate any claim of illegitimate election results, using allies within the electoral commission and supporters in the print and electronic media;¹⁸¹ and
- consolidate a political alliance with the leadership of the central and eastern parts of the country (Musyoka, ODM-K’s presidential candidate, was appointed vice-president on 8 January 2008), while reinforcing its own power base.

The assassination of the ODM Nairobi Embakasi parliamentarian Melitus Were on 29 January was widely perceived as a key element in the hardliners’ intimidation strategy.¹⁸² Claimed by members of the Mungiki sect, it

Odinga” and dated 8 September 2007 also started to circulate on the internet in early January 2008, purporting to show that ODM included incitement to ethnic hatred as part of its electoral strategy.

¹⁷⁸ “Dialogue: President Kibaki invites Raila Odinga for a meeting”, statement by the government’s spokesperson, Dr Alfred Mutua, 7 January 2008.

¹⁷⁹ “Kibaki tells African leaders he represents Kenyan majority”, Agence France-Presse, 1 February 2008.

¹⁸⁰ “Government restoring security and stability in the country”, statement by the government’s spokesperson, Dr Alfred Mutua, 31 January 2008.

¹⁸¹ Moses Kuria, Dr Josephine Odhiambo and Danson Mungatana, “Kibaki won fair and square”, advertisers’ announcement, *The Standard*, 16 January 2008; Electoral Commission of Kenya, “ECK response to allegations contained in a newspaper advertisement published in the *Sunday Nation* and *The Standard* Newspapers on January 19, 2008”, *Daily Nation*, 25 January 2008; and Government of Kenya, “Let us respect ECK’s verdict”, *The Standard*, 25 January 2008.

¹⁸² Kenya has a long and unfortunate history of political assassination of opposition leaders (including Tom Mboya, Pio Gama Pinto, JM Kariuki, Robert Ouko and Archbishop Alexander Muge). The perception that PNU is using such a tactic is specifically related to two incidents which occurred during the Kibaki presidency. First was the assassination of Dr Crispin Odhiambo Mbai, an Odinga adviser who was killed in unclear circumstances during the negotiations for the Bomas constitutional conference. Second were the press revelations regarding the “Artur” saga: the arrival into the country of two Armenian criminals sought by Interpol, allegedly to execute opposition politicians among other criminal activities. The movements of the two Armenians appeared to have been facilitated by senior government officials; they had government number plates on their stolen cars, obtained Kenyan passports and were responsible for a violent raid against *The Standard* Group of newspapers in what was “a Government operation”, according to the former internal security minister, John Michuki. “Gideon Moi on top of Artur’s list”, *The Standard*,

provided the first casualty among ODM senior figures but was soon followed by a second. On 31 January, David Kimutai Too, another ODM parliamentarian, was killed by a police officer in unclear circumstances. The two deaths reduced ODM’s majority in parliament, leaving the coalitions almost equal.¹⁸³

Simultaneously, the government used the humanitarian crisis first to create international leverage against the opposition and then to support its claim that it was in control and had quickly restored calm. The movement in early January of a few hundred IDPs out of the North Rift by government-sponsored convoys and airlifts served to divert international media attention from the flawed election to the ethnically based violence. The official figure of 250,000 IDPs released during the second week of the month was questionable: senior humanitarian officials believe there might not have been more than 50,000-60,000 such persons at that time.¹⁸⁴ The closure of camps in Nairobi and Mombasa and the downward adjustment of IDP figures in the week of 24 January, rather than reflecting a trend towards voluntary return, was similarly a government signal to the international community that it was fully capable of stabilising the situation, and one timed to coincide with the heightened media attention produced by the arrival of Kofi Annan’s mediation team.

A propaganda campaign was launched in the national media at the same time, including multiple “peace messages” blaming the crisis on ODM. In one offering from the Office of Government Communication, a child was heard saying, “Mummy says mass action will stop tourists from coming to see our beautiful country....Please ODM stop mass action”.¹⁸⁵

Despite its victory in the election of the parliament speaker, ODM seems to have concluded it had little option for putting pressure on the government other than a combination of mass action, violence and internationalisation of the crisis. Its calls for mass action did not bring large numbers of demonstrators on to the streets of the capital but produced enough negative media images to keep

16 April 2007; “Artur – we were hired to take out leaders”, *The Standard*, 12 February 2007; and “Kenya: Murder most foul again”, *Africa Confidential*, vol. 44, no. 19, 26 September 2003.

¹⁸³ Emuhaya parliamentarian Kenneth Marende was elected speaker, 105-102. ODM has a small lead over the PNU coalition as a result of the division of seats made on the basis of party strength, from which it gains an additional six against the PNU’s three, ODM-K’s two and KANU’s one. “Kenya: ECK Now Gets Final List of Party Nominees”, *The Standard*, 7 February 2008.

¹⁸⁴ Crisis Group interview, senior international humanitarian officials, January 2008.

¹⁸⁵ TV spot broadcast on national media, January 2008.

international attention alive, maintain travel advisories and generate continuing diplomatic pressure. However, senior ODM officials remain convinced that unless they hurt the Kibaki establishment's property and sources of income, it will not make concessions. They believe time is against them and that they need quick progress to have a possibility to achieve a power-sharing agreement.

Their strategy started with invalidation of the presidential results, the first step in claiming a share of executive power. If the results were declared invalid and the principle of power sharing was accepted, they would be in a position by virtue of their control of parliament to expand their parliamentary majority by sharing the spoils of power. A constitutional amendment would limit presidential prerogatives to formal state functions, and cabinet posts would be distributed based on parties' parliamentary strength. A political parties act would prevent legislators from changing parties without the consent of their leadership, and all senior official appointments would be vetted by a parliamentary commission. These prerogatives could be distributed to smaller parties, possibly enough to reach the two-thirds majority needed to produce constitutional review. The position of prime minister could be created, and any action of the defence council would require parliamentary approval.¹⁸⁶

The ODM team has learned that a repetition of the Rift Valley violence against Kikuyu communities would endanger its political legitimacy and lose it international sympathy and thus leverage. Nevertheless, the situation on the ground remains extremely tense; the Kalenjin warriors are unlikely to accept the return of displaced Kikuyu families to lands they covet. Kalenjin politicians are giving lip service to peace initiatives and appealing for calm in public meetings, but local leaders and traditional chiefs are making highly inflammatory statements.

Similarly, Odinga is under pressure from his extremist base in Kisumu to settle for nothing less than the presidency so the recent violence – and 40 years of perceived Luo marginalisation – can be avenged. Extremists and militias are preparing for a new confrontation in both camps, and ODM believes that if international mediation fails, its only protection against repression and hope for a settlement will be its capacity to raise the stakes through violence.

C. ROUND TWO OF THE NEGOTIATIONS

Before leaving Kenya, the AU chair announced he would leave the mediation to a Panel of Eminent African Personalities, led by former UN Secretary-General Kofi Annan and including former Tanzanian President Benjamin Mkapa and human rights leader and former first lady of Mozambique and South Africa Graca Machel. It arrived on 22 January 2008 and immediately restored hope in the possibility of a negotiated settlement. After an intensive consultations and visits to the areas affected by violence, it arranged a Kibaki-Odinga meeting, followed by rapid agreement on the format and agenda of negotiations.

On 28 January, the parties committed to finalise within two weeks' negotiations on the first three items of the agenda: immediate action to stop violence and restore fundamental rights and liberties; immediate measures to address the humanitarian crisis and promote reconciliation and healing; and how to overcome the political crisis. The fourth agenda item – long-term issues and solutions – which should address “the underlying causes of the prevailing social tensions, instability and cycle of violence”, would be settled within one year. Both camps rapidly named delegations.¹⁸⁷

Learning from the failure of the first initiative, the panel's strategy seems to have been to build confidence in the process by reassuring PNU and the government on its objective. Both the name given to the talks – “Kenyan national dialogue and reconciliation” – and the sequence of the issues on the agreed agenda were concessions which put emphasis on the violence and downplayed the importance of a settlement to the electoral dispute. The agenda states, for example: “The current crisis revolves, in large measure, around the issues of power and the functioning of state institutions. Its resolution may require adjustments to the current constitutional, legal and institutional frameworks”.¹⁸⁸ It has no mention of the possibility of reviewing the election outcome.

By 4 February, there was progress on general principles. As the country seemed to return slowly to calm, the mediation obtained commitments in principle from both sides on ending the violence and addressing the humanitarian crisis.

¹⁸⁷ Minister for Justice and Constitutional Affairs Martha Karua (PNU), Minister for Education Sam Onger (KANU), Minister for Foreign Affairs Moses Wetangula (FORD-Kenya) and ODM-K's Mbooni parliamentarian, Mutula Kilonzo, for Kibaki; “Pentagon” members Musalia Mudavadi and William Ruto, new Aldai parliamentarian Sally Kosgei and Ugenya parliamentarian James Orengo, for Odinga.

¹⁸⁸ “Kenya National Dialogue and Reconciliation: Annotated Agenda and Timetable”, mimeo, 28 January 2008.

¹⁸⁶ Crisis Group interview, senior ODM official, January 2008.

Despite the absence of a reference to modalities such as institutional framework, division of labour, timetable and external guarantees required to implement pledges such as “all illegal armed groups and militias should be demobilised and disbanded”, the mediation seemed to be moving the process and building confidence.

By 11 February, there was some progress on the details of the third agenda item. Following a third meeting between Kibaki, Odinga and Annan, agreement was reached that only a political settlement could end the crisis. The PNU camp dropped its argument that ODM’s only recourse on the election result was to go to court. ODM dropped its demand for Kibaki to step down and for a rerun of the presidential election within three months.

Despite these concessions, the parties remained far apart, as ODM proposed an arrangement close to the Westminster system of government, with an executive prime minister and two deputies, separation between the functions of head of state and head of government and a government formed proportional to each party’s strength in parliament and responsible only to parliament. PNU rejected any sharing of executive powers, which it insisted should remain largely vested in the presidency, but agreed to include ODM ministers in a government of national unity.

The most concrete agreements were creation of a truth, justice and reconciliation commission to investigate the violence and propose solutions to end it; and establishment of an independent review commission of national and international electoral experts to investigate all aspects of the 27 December presidential elections and recommend a better process.¹⁸⁹ The mediation strategy contributed to restoration of temporary calm but left unaddressed the process of implementation necessary to consolidate the temporary lull, thus giving the government leeway to proceed with its own policies in the Rift Valley in the absence of control from potential national or international guarantors of the negotiated agreement. As the negotiations reached a deadlock on power sharing, one side was able to run the country free from checks and balances and to ignore the electoral dispute.

D. REBUILDING THE FOUNDATIONS OF STABILITY AND DEMOCRACY

The formal phase of negotiations ended on 12 February but, since a consensus had emerged that negotiations were the only way out of the crisis, they continued. The panel announced a breakthrough was anticipated. Annan confirmed to the parties that he would personally lead the negotiations for several more weeks if necessary.¹⁹⁰ At the same time, the mediation began consultations with donors for establishment of a permanent secretariat over six months and in two days received commitments from Sweden, Norway and the U.S.¹⁹¹

1. The challenges of a power-sharing agreement

The negotiation on power sharing has drawn the concentrated attention of the mediation, the international community and, to a large extent, Kenya as a whole. The U.S., the EU and the AU have all thrown their weight behind the mediation team and the negotiations “as the only game in town”.¹⁹² Attempts at diversions initiated by the government through a regional summit or creation of a national process have been contained.

Still, a power-sharing agreement will not be enough to restore the democratic process and genuine stability. Time plays in the government’s favour. Every day that passes makes the Kibaki administration more comfortable in its position and gives the impression that the country has returned to normal, making it increasingly difficult to obtain genuine PNU concessions. The government’s rejection of well-respected South African negotiator Cyril Ramaphosa was most likely intended to disturb Kofi Annan’s work plan, bring the talks to a standstill and wear out both ODM’s and the international community’s resolve to find a political settlement. Since the government would likely have rejected any other negotiator, Annan’s only option was to lead the talks himself.

A genuine power-sharing agreement within the executive may itself require a fairly detailed and comprehensive negotiation process, the principle of which has not yet been agreed. It not only involves concurrence on the creation and distribution of positions, but also implies the clear definition of responsibilities for each, of relations between the head of state and head of government and of accountability modalities to parliament. It further requires agreement on a reshuffling of senior civil

¹⁸⁹ “Annan deal could be struck in 48-72 hours”, *The Standard*, 12 February 2008.

¹⁹⁰ “Annan’s rapid diplomacy confounds sceptics”, *The East African*, 4 February 2008.

¹⁹¹ Crisis Group interviews, foreign missions, Nairobi, February 2008.

¹⁹² Crisis Group interviews, senior U.S. and EU officials, February 2008.

servants, especially within the treasury and security services, and clear agreements of the decision-making process for allocating resources and using the security services. The only genuine guarantee for implementing such a comprehensive agreement would be a constitutional amendment.

Such a negotiation, if between parties of equal strength and committed to a speedy resolution, might require several weeks. But again, the government has a strong interest in dragging its feet as long as it does not endanger its credibility. So far, neither the loss of life and damage to the economy nor international pressure have cost the hardliners surrounding the president significantly.¹⁹³ If the talks drag on with no concrete results, ODM may eventually conclude it has no option but to go back to the streets and increase the costs through violence. If there is to be a genuine breakthrough, therefore, it is essential that the mediation and the international community create both incentives and costs for the parties. The imbalance of power between ODM and PNU is such that pressure and targeting of individuals responsible for delaying and blocking the process will remain an absolute necessity. Unless the international community rapidly increases the costs for the known hardliners and spoilers of the negotiations, the chance of their successful conclusion will remain small.

2. Incentives and dividends

Three complementary negotiations are required to provide both incentives for the continuing negotiations on power-sharing details and guarantees that their outcome will meet the requirements of peacebuilding. Lessons have to be learned from the experience of the 2002 MoU on the election platform that originally brought Kibaki to power. Implementation of that document produced disagreements over carrying out power sharing, the constitutional review process and economic policy. If power sharing is sealed this time by a constitutional amendment, all these matters should already have been negotiated as a matter of priority, not put off to a year-long process. For this to happen, continued international pressure will be essential.

¹⁹³ The Kikuyu establishment is known for paying little heed to the suffering of its own tribe. "They could not care less", a well-informed observer of the national political scene said. "At the peak of the crisis, you would find them totally unconcerned, commenting on their golf performance and enjoying their usual drinks in the confines of their expensive clubs". It is generally assumed it supported the rigging of the presidential election, in knowledge of the consequences for the settlers of the Rift Valley. Crisis Group interview, senior political analyst, Nairobi, January 2008.

Constitutional and legal reforms

Both sides have already agreed that constitutional and legal reforms are necessary, including a complete review of the electoral framework. However, the parties are likely to be more interested in consolidating their own share of power than providing the new foundations for Kenya's democracy. Constitutional review has been on the political agenda for fifteen years without significant results, thanks to presidential manipulation. Negotiation on the details of the reforms that need to be passed during the transition period and on the exact process of their adoption should start immediately and involve civil society stakeholders, who have actively engaged on these matters in the past and can balance the narrow political interests of ODM and PNU.

The constitutional reforms should include rebalancing power between the three branches of government and address the issue of devolution. Further, the confusion over *majimbo* greatly contributed to the rise in tensions, and it would be dangerous to move to new elections without clarifying that issue. Its satisfactory settlement in the context of an internationally supported negotiation would also be a major incentive for ODM to stay committed to the process and refrain from violence. Simultaneously, constitutional provisions should be introduced to guarantee the independence of the Central Bank and thus reduce the influence of electoral politics on macro-economic management. This would be a major incentive for PNU to remain committed, since constitutional guarantees could protect economic liberalisation against ODM's regulatory and statist tendencies.

As noted, there is agreement to an internationally supported investigation into what happened during the 27 December election that will also make recommendations for the future. This process should address the legal and constitutional reforms necessary to prevent another such fraud and to restore the credibility of the electoral process. The keys are to strengthen the ECK's budgetary and administrative independence, including detailed, apolitical procedures for appointment of its commissioners and to empower the judiciary to become a credible arbitrator of electoral disputes, including by reforming the process for appointing judges. To ensure political stability, the electoral system itself might also need to be modified to require the president to obtain at least 50 per cent of the vote, if necessary in a run-off election.

Economic reform

An agreement on the economic policies to be implemented during the transition period, determined in consultation with major economic stakeholders, is essential for national and international confidence in the transition process. It is also necessary as an incentive for the

hardline constituencies behind both Kibaki and Odinga. Kikuyu business leaders require assurances about ODM's economic policies, its commitment to liberal reforms and the honouring of legal and transparent contracts awarded under Kibaki's presidency. Such an agreement would guarantee the stability of the Nairobi Stock Exchange and confidence in national economic management. Simultaneously, as an incentive to the ODM constituencies in Western Kenya and the Rift Valley, job creation policies and allocation of resources for the least developed regions of the country must also be included.

Private sector representatives, including the Kenya Association of Manufacturers and Kenya Federation of Employers, have indicated they would be ready to implement vigorous job creation policies in lesser developed areas if they received tax rebates. They should be brought into the negotiations on the transitional government's economic policies. A land acquisition and redistribution framework beneficial to the communities which have been most aggrieved since independence must be on the transition's agenda as an immediate peacebuilding incentive. The "willing buyer, willing seller" policy, which favours the richest communities, needs to be ended. While respecting property rights, the government, with donor help, must allocate resources, such as land and basic services, to address inequalities.

Ending the violence and resettling IDPs

It will also be critical to initiate separate consultations on how to implement the commitments already made for ending the violence. The negotiating teams in Nairobi and the national political leaderships do not control the drivers of the violence on the ground. They can only influence them if local leaders perceive that their grievances are being addressed. Engagement with community leaders who have authority over those carrying out the violence is essential. The outcome of these consultations should be brought back to the central negotiating table, so that political agreements will be realistic and informed by ground truth.

A credible institutional framework for disarming and dismantling all party-supported militias is also required. Kenya cannot have Kalenjin warriors and the Mungiki sect armed and organised when new elections are held. Mungiki is not a legitimate interlocutor. Its structures should be disbanded and its leadership prosecuted, but reintegration processes have to be designed for its large, mostly urban and rural poor following. Such structures should not legitimise local criminals and undermine state authority, but they should provide concrete means for restoring state authority and legitimacy. An opportunity, with incentives, should be given for voluntary disarmament and dismantlement of all armed groups before the full arm of the law is brought to bear.

3. Costs and punitive measures

Fighting impunity

Evidence to date suggests that atrocity crimes¹⁹⁴ may have been committed in the violence that started on 29 December 2007. The parties have already decided to establish an internationally supported truth, justice and reconciliation commission (TJRC) with a mandate to collect information on responsibility for that violence. In addition, the Office of the UN High Commissioner for Human Rights (OHCHR) has deployed a fact-finding mission to investigate allegations of grave human rights violations and will issue findings and recommendations including on appropriate accountability mechanisms.

These measures are no guarantee against impunity or further atrocities, however. As an initial matter, the TJRC should be mandated to recommend a vetting mechanism to prevent any politician or civil servant found implicated in crimes against humanity or seriously involved in the violence that started on 29 December 2007 from holding any public office, pending the conclusion of criminal proceedings. Further, domestic and international pressure must ensure that those responsible for atrocity crimes are prosecuted. The UN Security Council should do its part by considering the report of the OHCHR mission and endorsing the accountability mechanisms proposed, including, if recommended, robust domestic justice processes.

The International Criminal Court (ICC) also has a role to play. Because Kenya is a state party to the Rome Statute of the ICC, the Court has jurisdiction over atrocity crimes committed within the country or by its nationals.¹⁹⁵ Both parties reportedly have taken their complaints to the ICC, and the Office of the Prosecutor has already made a statement noting that Kenya is a party to the statute and that it considers all alleged crimes within its jurisdiction regardless of the individuals or groups involved.¹⁹⁶ The Prosecutor should take the next step and open a preliminary

¹⁹⁴ Crisis Group uses the term "atrocity crimes" advisedly, to refer to serious war crimes, crimes against humanity and genocide. The type of crime that mass atrocities amount to in any particular case is best left to prosecutors and judges. See Gareth Evans, "Genocide or crime? Actions speak louder than words in Darfur", *European Voice*, 18 February 2005; also David Scheffer, "How to bring atrocity criminals to justice", *Financial Times*, 2 February 2005.

¹⁹⁵ Though the ICC has jurisdiction, whether it ultimately proceeds against alleged perpetrators depends on whether Kenya's own justice system is willing and able to carry out genuine investigations and prosecutions. The presumption and expectation is that a state party should have and make use of this opportunity.

¹⁹⁶ "Annan: Solution must be found in Kenya", Associated Press, 22 January 2008.

examination, carefully considering the factual information gathered by the OHCHR. Such a move could at the very least deter any further atrocities should the negotiations falter.

Sustaining the pressure

The EU and the U.S. have threatened to cut aid due to concerns over the disputed election and the post-election violence. The EU has planned €383 million for the period 2008-2013, but in response to events, the European Parliament voted to suspend this aid pending a satisfactory resolution of the crisis. The U.S. signed a statement with fourteen bilateral donors warning that there will be no “business as usual” until a political settlement is reached.¹⁹⁷ The World Bank and African Development Bank also stated that they are considering suspending or cutting some aid, which if it happened could severely affect development projects in the region.¹⁹⁸

In comparison to other countries in the region, Kenya is relatively independent of donor support, relying more on taxes, domestic borrowing and privatisation proceeds to fund its programs. Nevertheless, more than 40 per cent of its \$2.3 billion development budget is funded by donor flows.¹⁹⁹ The programs most likely to feel the effects of penalties are education,²⁰⁰ health and roads. In addition, the UK, the U.S., France, Italy and Germany control voting and veto rights in the IMF and World Bank.²⁰¹ The disbursement of all international aid should be tied to progress in the transitional government’s implementation of the negotiated political and economic agenda. While

one should not penalise those in the Kenyan community who least deserve it, it is important that international disapproval be clear and pressure be maintained: aid conditionality is one of the few mechanisms available for conveying that message.

More importantly, international pressure applied to specific targeted individuals to end the violence and commit to the negotiation process needs to be sustained and increased. The U.S. sent letters informing thirteen individuals suspected of involvement in organising and supporting the violence that they risked visa denials for themselves and families. Thirty others are reportedly under investigation. Canada, the U.K., France and Switzerland all issued similar warnings. All EU member states and South Africa should adopt the same approach and raise the cost for those blocking the negotiation process. The wealth of many PNU hardliners depends on the capacity of their enterprises to raise funds on national, regional and international markets and the confidence of investors that they are trustworthy business partners. Revelations that they are under investigation for roles in the crisis and at risk of travel bans, asset freezes and prosecutions would make them international pariahs and increase pressure for them to abandon their hardline positions.

There remain viable alternatives to ensure that the violence in Kenya remains contained. Further, the ranks of the army have so far has not been politicised. However, should peaceful alternatives fail, widespread violence resume and escalate, and the army be brought in by the government, there is no guarantee that the chain of command would be able to withstand internal divisions. The responsibility for protection of civilians against mass atrocities would then fall to the international community, perhaps through external intervention. The way to prevent such a scenario is to apply decisive pressure immediately and obtain a political settlement which will keep Kenya out of the list of countries requiring foreign peacekeeping operations to save the lives of its citizens.²⁰²

¹⁹⁷ Jaindi Kisero, “Aid cut by donors likely to result in budget shortfalls, financial instability”, *The East African*, 21 January 2008.

¹⁹⁸ “As of January 2008, the World Bank’s portfolio in Kenya consists of 16 active operations (including a grant from the Global Environment Facility), with a total commitment of US\$1,003.8 million. In addition, the Bank is financing three regional projects with a total investment of US\$260 million for Kenya: the Transparency and Communications Infrastructure Project (US\$114.4 million), the East Africa Trade and Transport Facilitation Project (US\$120.6 million); and the Regional Trade Facilitation Project (US\$25 million). Kenya will also benefit from a regional Southwest Indian Ocean Fisheries GEF grant”, World Bank Kenya, Projects and Programs, at www.worldbank.org/external/default/main?menuPK=356542&pagePK=141155&piPK=141124&theSitePK=356509. Paul Redfern, “World Bank may cut aid if no political solution is found”, *The East African*, 28 January 2008.

¹⁹⁹ Jaindi Kisero, “Aid cut by donors likely to result in budget shortfalls, financial instability”, *The East African*, 21 January 2008.

²⁰⁰ This would be particularly problematic, since the government has promised to pay public secondary school fees for students starting in 2008.

²⁰¹ Kisero, *op. cit.*

²⁰² The one-day visit of U.S. Secretary of State Condoleezza Rice on 18 February 2008 was one such useful reinforcement of the efforts for a political settlement.

VI. CONCLUSION

The current uneasy calm in Kenya should not be misunderstood as a return to normalcy. The protracted political crisis has deep roots and could easily lead to renewed extreme violence. More is at stake than the collapse of Kenya itself. Kenya is the platform for relief operations in Somalia and Sudan, a haven for refugees from throughout the region, a regional entrepot, and a key anchor for long-term stabilisation of Rwanda, Uganda and Burundi. Paralysis of its infrastructure would deprive those countries of access to basic commodities, reduce trade opportunities, hamper foreign investment and see economic growth crippled. The quicker a comprehensive solution to the crisis in Kenya is found, the better the prospects will be for the entire region. The alternative – a collapsed economy, the evisceration of the democratic process and ethnic and territorial conflict – would have severe consequences for the whole of east Africa, and well beyond.

Nairobi/Brussels, 21 February 2008

APPENDIX A

MAP OF KENYA



Map No. 4187 Rev. 1 UNITED NATIONS
January 2004

Department of Peacekeeping Operations
Cartographic Section

APPENDIX B

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