

CHAPTER FOUR

Violence in Western and Nyanza Provinces

Western Province

Introduction

Western Province borders Uganda to the West, Nyanza Province to the South and Rift Valley to the East. The province is home to the Luhya ethnic group who are divided into various sub-groups. Though the rural parts are largely homogeneous, there are parts of the province which have settlement schemes inhabited by people from diverse ethnic origins. The urban centres are also ethnically mixed.

The Province comprises 19 districts, namely, Bungoma East, Bungoma West, Bungoma North, Bungoma South, Busia, Samia, Bunyala, Butere, Mumias, Kakamega South, Kakamega North, Kakamega East, Kakamega Central, Lugari, Mt. Elgon, Teso, Vihiga, Hamisi and Emuhaya.

Western Province is home to the mountainous and agriculturally-rich Mt. Elgon district, which is at the centre of a long standing dispute over land and cattle rustling between the Sabaot and other ethnic communities – Bukusu, Ndorobo, Teso, Kikuyu and the Luo. The dispute has pitted security forces of the Government of Kenya against a proscribed militia group, the Sabaot Land Defence Force (SLDF).

Because the problems associated with violence in Mt. Elgon predated the elections, the Commission was unable to establish any link with the 2007 PEV and therefore did not integrate it into investigation of PEV in the region. It was the evidence of General Mutinda Kianga, the Chief of General Staff of the Kenya Armed Forces, that the conflict in Mt. Elgon started long before the elections and continued even after the post-election violence. We were of the view that the issues concerning Mt. Elgon were of such magnitude that the Commission could not delve into them, given its limited mandate, time and resources.

Western Province has not been spared of the scourge of previous incidents of tribal clashes occurring particularly in 1992 and 1997. The *Kiliku Report* and *Akiwumi Report* identified some of the areas that were the subject of previous clashes in the Province.

In the *Kiliku Report*, the then Mt. Elgon sub-district in Bungoma was cited as having been rocked by ethnic clashes. The Report attributed the clashes to a number of factors including hunger for land by the Sabaot who felt neglected by the Government in that they had not, as a tribe, been considered for settlement schemes like other communities. The region affected by the clashes during the period covered by the Report now lies in Mt. Elgon District, which, for the reasons stated above is not within the ambit of this Report.¹²²

The *Akiwumi Report* indicated that the clashes in Western Province occurred in the old Bungoma District, and to a very large extent in the old Kakamega District, along the Nandi Escarpment which constitutes the boundary between Kakamega and Nandi Districts. The causes comprised the incessant disputes over land, which was then exploited by politicians at the introduction of multiparty politics in Kenya. There was also violence as a result of the spill-over effects of the neighbouring conflict-prone Trans Nzoia District in the Rift Valley.¹²³

Information presented to the Commission revealed a longstanding history of resentment against the Kikuyu ostensibly because of their perceived hegemony in political and economic areas at the expense of the indigenous communities.¹²⁴ When a heavy deployment of security officers, who were perceived to be agents of the PNU party, was noticed in the Province ahead of the elections, it only served to accentuate the rumours that the PNU party was planning to rig the elections, with the help of the State apparatus. The delayed release of the presidential

¹²² Kiliku Report, chapter 3, pages 22 to 40

¹²³ Akiwumi Report, chapter 2, pages 191 – 199

¹²⁴ See the evidence of CW No. 120 discussed elsewhere in this section.

results was therefore seen against this light and later, against that of the events occurring at the election tallying centre at the Kenyatta International Conference Centre, which served to heighten tensions.

Patterns of Post-election Violence in Western Province

The period before the elections was generally considered peaceful apart from incidences relating to political rivalry between candidates and their supporters.¹²⁵ From the evidence presented these incidents were within the competence of the security forces to control and were dealt with accordingly. Evidence was submitted to the effect that the violence in Western province predated the general elections.

On 18 December 2007 at Harambee market, East Kabras Location in Kakamega District, campaign vehicles belonging to Malava ODM parliamentary candidate Musavini Nambwa were burnt down when his convoy was ambushed at a roadblock created by youth allegedly allied to New Ford Kenya.¹²⁶ The angry youth also set ablaze a sugar plantation in search of Nambwa whom they believed had taken refuge in it.¹²⁷

On 23rd December, 2007, youths shouting PNU slogans stoned vehicles on the Eldoret-Bungoma highway as they tried to block ODM supporters from travelling from Bungoma to Webuye. This prompted intervention by police officers and running battles ensued.

Post election violence in Western province was characterised by burning, looting and vandalising of property belonging to the Kikuyu community and by those

¹²⁵ One such incident was in Khwisero Constituency where supporters of Mr. Bulimo of ODM Party and Hon. Julius Akaranga (NARC) clashed during an ODM political rally. See Minutes of Butere District Security and Intelligence Committee Summary No. 07/2007 for the Period Between 14th November and 24th December 2007.

¹²⁶ Exhibit 136 (c) (3).

¹²⁷ Above.

perceived to be sympathetic to PNU. The most affected towns were Kakamega, Mumias, Bungoma, Mbale, Lugari, Busia and Vihiga. The Provincial Commissioner, Mr Abdul Khalfan Mwasera,¹²⁸ noted in his evidence that during pre-election planning his team was mainly concerned about the violence erupting in the urban centres of Busia, Mumias and Kakamega as there had been pre-election tension.

The PC testified that post-election violence started in Mumias District on 27th December, 2008 following suspicion of ballot boxes having been hidden in the house of Joseph Mbacio Thiru, a businessman in Mumias town.¹²⁹ Members of the public proceeded to his premises, searched the house but found nothing. The public, composed of rowdy, stone wielding youths, chanting anti PNU slogans, began looting the house and in no time the rioters damaged his pick-up car and burnt down another one and set ablaze his house after emptying it of its contents.¹³⁰ According to the PC, the police managed to quell the disorder.

Tension and anxiety grew as the election results continued to trickle in. The Provincial Criminal Investigations Officer, Patrick Mugo Muhuni¹³¹ told the Commission that on 28 December 2007 youths assembled into groups and run along the streets of Kakamega town shouting ODM party slogans and praising the ODM party Presidential candidate, every time the television stations announced results in which their Party or candidate had emerged victorious.

The Commission was told that the violence in Budalangi, Busia District, erupted on 29 December 2007 where it is alleged that armed supporters of the PNU candidate Raphael Wanjala shot one civilian in the area dead. This was followed by a retaliatory attack by supporters of the rival candidate, Ababu Namwamba, but police managed to control the latter's supporters and restore order. However, the patterns shifted on 30th December when it became obvious that the violence now targeted the property of the Kikuyu population, leading to

¹²⁸ CW No. 87.

¹²⁹ This incident is corroborated by KNHCR Report, Exhibit at p. 103 Para 426..

¹³⁰ See also Statement by JOSEPH MBACIO THIRU, CS 46.

¹³¹ CW No. 89.

mass evictions. At Site and Service Scheme Plot No. 100, in Mumias, a group of rowdy youths invaded the home of Joel Ng'ang'a Wairire, and burnt two of vehicles before looting his house and setting it ablaze. They also gutted a supermarket he owned at Shibale market, and had his 35 acres of sugarcane and 5 acres of eucalyptus trees smothered.¹³²

The road infrastructure in the province was affected as protesters burnt tyres on the roads and mounted illegal roadblocks. The major roads affected were Kisumu-Kakamega; Kakamega-Mumias; Kakamega-Eldoret. The road destined to Uganda was also greatly affected. The areas located near the Lugari/Uasin Gishu border were greatly and directly affected by the violence occurring in Uasin Gishu, hence when on 30th December, 2007, public transport at Kakamega-Turbo highway got paralysed with a large trench dug at Jua Kali in Turbo, the impact was felt in Lugari.

We were informed that Nambale recorded its first incident of violence on 27 December 2007. NARC candidate, a Mr. John Bunyasi (who was later arrested) was found with crude weapons in his car at a polling station. Earlier on, supporters of Bunyasi and those of his ODM rival clashed in Nambale's Urban Primary School polling centre, at which several people were injured.¹³³

On the 27th December 2007, a pick-up vehicle belonging to a Mr. Taabu Joingo was burnt in Budalangi Constituency and pushed into River Nzoia following a mix-up of Budalangi parliamentary ballot papers with those of Bura in Tana River District. The vehicle was heading towards Bumadeya Primary School when the driver ran into a crowd supporting the main parties.¹³⁴

In Kakamega North, a man was killed and another seriously injured when New Ford Kenya supporters and those of ODM clashed during a raid on the home of an ODM supporter.¹³⁵ According to information presented to the Commission by Edward Macharia Mukora, a victim of the violence and a resident of Mumias

¹³² CS 46.

¹³³ Exhibit 136(c) (3).

¹³⁴ Exhibit 136(c) (3).

¹³⁵ Above.

Township before and during the period of the post-election violence, his property was looted and vandalized. Stanley Ng'ang'a Gathirwa, a resident of Mumias Township and a victim of the skirmishes, also stated that the police did very little to rescue and protect his property, which was broken into and looted. On 31st December, 2007 when his property was being consumed in flames, the police just stood by and watched as the arsonists went on.

The violence in Lugari took a different character in its organisation and target. Lugari is generally a settled area occupied by several ethnic groups among them the Luhya, Kalenjin and Kikuyu. Violence in Lugari was affected by events in the neighbouring Uasin Gishu District where the attackers targeted and burnt property of persons belonging to the Kikuyu community. It is alleged that the attackers were armed with pangas and arrows and used matches to burn grass-thatched house

According to the PC the violence that engulfed Western Province, “started on 27th [December 2007] in Mumias and then reached its climax on 31st [December 2007] and that was the end of our violence. The climax of this violence spread all over the province, most parts of the province except Bungoma North, Bungoma West and Bungoma East.”

The Commission received evidence of opportunistic attacks by the youth who engaged in wanton looting and destruction of property. One victim told us that youths took advantage of the situation. She testified that before the elections, she together with her parents used to live in Kefinco Estate in Kakamega town. They had received eviction notices through anonymous calls and reported the incidents to the police. However, she was told that due to insufficiency of personnel, she could not get any protection, and was advised to seek refuge at the premises near Mama Watoto Supermarket, owned by a Mr. Tharao. On 28 December 2007, at around 6 p.m. a group of young men numbering about twenty forced themselves into their compound and demanded keys to the house, claiming to have taken possession of it. She was ordered to leave as others shouted her father's name. She ran and took refuge at a house where local brew was being sold and overheard a group of patrons plotting a raid on their house,

ostensibly on the pretext that Kikuyus had unfairly acquired wealth at the expense of the members of the Luhya community. After the departure of the patrons, the lady host called the witness's mother, who herself was hiding in a friend's shop. Mother and daughter proceeded to take refuge in a hostel. On 28 December 2007, the hostel was raided and they fled to a home adjacent to theirs and owned by a person called Jeremiah. Before they reached, they were however identified by two men. They managed to get into the house, but soon thereafter, Jeremiah's house was also the subject of attack for the reason that he had hosted unwanted people.

Additionally, the Commission was told that the violence in other parts of the country had a direct impact on the entire region. On 31 January 2008 a group of youths blockaded the highway between Timboroa and Turbo Trading Centre, a general shortage of commodities was felt in the province as supply lines had been cut.¹³⁶

Internally Displaced Persons

Most of the IDPs were members of the Kikuyu community and those sympathetic to PNU and its affiliate parties. An estimated 55, 862 people were displaced in Western Province. They sought refuge in police stations, schools, churches, district commission offices, district officers' offices, chief's offices and administration police camps. Initially, the IDPs were hosted in 32 temporary camps distributed among affected Districts-Kakamega North, Kakamega South, Butere, Lugari, Bungoma South, Teso, Hamisi, Emuhaya, Vihiga, Mumias and Busia.

The Mumias Special District Security Intelligence Summary No. 11/ 2008 for the period between 24/12/2007 and 2/1/2008 indicated that persons willing to relocate to safer destinations were escorted. The report also expressed concerns

¹³⁶ Minutes of Special DSIC Meeting held on 31st January, 2008 in the District Commissioner's Office, Uasin Gishu District, Min 20/2008.

of real threat of attack on IDPS at the police stations, and recommended deployment of security personnel at the stations to beef up security.

1,916 Kenyans crossed the border and sought refuge in Uganda, 500 of whom were children. As at the time of receiving his testimony, 342 refugees who had been camping at Mulanda and Kiryandogo had come back to Kenya.

Displacement of persons typically flowed as a consequence of the post-election violence, and was characterised by movement of people to ethnically homogeneous areas to which they were linked either because of their community lineage or their ancestral homelands. The region also witnessed the influx of returnees from other parts of the country, most notably, Kericho, Nakuru and Naivasha. Most of these returnees were absorbed back into the families of the locals or their kin. Apart from facilitation of their transport to their ancestral homes, we were not informed of any intervention from the Government or from any of the agencies that were concerned with the welfare of the returnees, save for the testimony of PC who informed us that the Government had been distributing relief supplies to those IDPs who had assembled at the IDP camps.

Response by Police and Provincial Administration

The Provincial Commissioner testified that the security agents responded against charged mobs with restraint in a bid to reduce the number of casualties. He recounted how at Sigalagala in Kakamega South and Lutonyi in Kakamega Central the security officers used civilian vehicles to arrest youths who were harassing motorists on the highway.

However, there was ample evidence from the data gathered at hospitals and from the police to suggest that the police used excessive force, and in particular, firearms, in dealing with the demonstrations to control crowds which, in some cases, had turned violent. Information on casualties and deaths submitted by Dr. Caleb Olang'o Onudi, the Provincial Medical Officer, provides sufficient ground for an inference that deaths in Kakamega, Busia and Mumias occurred

as a result of injuries secondary to gunshots, or those as a result of assault by the police.

The records which were collected and collated from 9 major hospitals in the Province and harmonized with the figures from the police indicated that there were 98 died as a result of PEV in the Province as follows;

- Kakamega 31 deaths;
- Webuye, 21;
- Vihiga, 18;
- Mumias, 12;
- Busia, 9;
- Bungoma 7.

Post-mortems carried out on the 98 bodies revealed that 74 of them died of gunshots. Thus gunshot comprised 73% of all fatalities in the province. We were informed that inquest files in these matters have been opened but no further steps have been taken to investigate the killings. We find this state of affairs wholly unsatisfactory.

According to the Western PCIO Patrick Mugo Muhuni, as early as October 2007, Provincial Police Headquarters had formed a Committee to monitor all election-related events. The committee was expected to collect information from the eight police divisions and report to the Provincial Police Officer and other senior police officials, who would then evaluate and analyse the information before directing on the right cause of action. The security officers in the Province had been instructed to be on high alert for any possible disorder during the electioneering period. All the eight Officers Commanding Police Divisions in the Province were to conduct rehearsals on control of riots and generally, in maintaining law and order during the period. While the content of this training was not revealed to the Commission, the expectation was that it ought to have reflected in the manner in which the police handled the rioters.

The totality of evidence suggests that the police were overwhelmed and unreasonably resorted to the use of firearms. It further reveals insufficient manpower and facilities available to the police to counter the magnitude of demonstrations witnessed in the period after the elections. Information from the minutes of Butere District Security and Intelligence Committee Summary No. 07/2007 for the period between 14 November and 24 December 2007 indicated that adequate security measures had been put in place and the polling stations sufficiently policed. However, of concern was that with only a few days to the elections and in the light of the anxiety that had gripped the region, concrete plans were yet to be finalized with regard to fuelling and servicing of the vehicles to be used. This pointed to the insufficiency of vehicles to respond to any distress call during that period, hence making it easy to conduct demonstrations, looting and destruction of property.

The PC testified that the peace building and reconciliation campaigns spearheaded by the Provincial Administration in the province yielded quick results. As a result of the reconciliation efforts of the PSIC and DSICs, 26,861 households moved out of the temporary IDP camps, with some returning to their farms and others opting to stay with relatives and friends.

Additionally, Peace and Reconciliation Committees were set up in all districts comprising elders from the various communities, religious leaders and civil servants in Vihiga, Busia, Teso and Kakamega Central Districts. Workshops were also held on diverse dates to address the issues of hostilities at the onset of the conflict.

The Provincial Administration also established six temporary AP posts in Lugari to assist in the resettlement exercise.

Planning and Organisation

From the evidence, it appeared that the violence in Western Province was spontaneous, save for Lugari, which bore the hallmark of a planned and carefully organised onslaught against their victims and their property. The Commission received no evidence to suggest prior preparation for the violence

that rocked Busia, Bungoma and Mumias and takes the view that the violence in these areas was a direct result of disaffection with the final tally of the Presidential election results.

In the case of Lugari, an inference of planning is buttressed by the evidence that the attackers were under a central command. Additionally, the attacks came from one direction, off the neighbouring Uasin Gishu District. There was also some uniformity in the outfit of the attackers and the mode of attacks. The youths were clad in black balaclavas and had their faces painted in white and divided themselves into smaller groups once they entered a targeted area. However beyond this, we did not receive any credible evidence pointing to the culpability of any individual or group and we therefore recommend further investigations be conducted to establish who the perpetrators and executors of the violence were.

Conclusion

The Commission established that the violence experienced in Western Province was distinct from that experienced in other parts of the country in the sense that it was a direct consequence of political differences. These differences led to riots which were quelled by the law enforcement agencies thus resulting in a high number of deaths. From the totality of the evidence received by the Commission, the wave of violence, apart from Lugari, was spontaneous and directly flowed from disaffection with the final tally of the presidential results.

The evidence the Commission received reasonably supports an inference of planning in the case of Lugari. However, the plotters, financiers and individuals engaged in whatever stage of the planning and execution process and where the attackers were trained, could not be identified from it, and remain obscure, hence the need for further investigation.

Nyanza Province

Introduction

“Luo Nyanza”, as it is popularly known, neighbours Lake Victoria, one of the Great Lakes of Africa; the continent’s largest lake, the largest tropical lake in the world, and the second widest fresh water lake in the world. It is the source of the longest branch of the River Nile and is a biological hotspot with great biodiversity which plays a vital role in supporting the millions of people living around its shores. While Nyanza Province is inhabited predominantly by the Luo, there are Bantu speaking tribes including the Kisii, Kuria and a few Luhya living in the province. The Province derives its name from the Sukuma, a Bantu-speaking tribe living on the Tanzanian side to whom the word *Nyanza* means a large mass of water. The provincial capital is Kisumu, Kenya’s third largest city. The climate in the area is tropical and humid.

Nyanza Province consists of 21 Districts of which 11 are predominantly Luo and which are the subject of this part of the report. The main economic activities in the region are crop farming focusing mainly on sugarcane, tea, coffee and bananas, animal husbandry and fishing. Luo Nyanza has been politically active since pre-independence times and tends to vote as a block for its candidate of choice, especially since the re-introduction of multiparty politics in 1991.

Raila Odinga, a presidential candidate during the 2007 Election though a parliamentarian representing Nairobi’s Langata constituency, has his roots in Bondo District and is the son of the late Jaramogi Oginga Odinga. The fact that Raila Odinga was the preferred candidate in the region and that the voters in the region believed that the results of the presidential elections had been rigged against him also contributed greatly to the wave of violence in Luo Nyanza that we shall shortly explore. As we shall see, Luo Nyanza rose up to protest what was seen as a rigged presidential election. Protestors thus suffered the brunt of police killings. Unlike in other parts of the country that were ravaged by violence

in the post election period, the majority of the deaths recorded in Luo Nyanza were as a result of shootings attributed to police.

Immediate Pre-Election and Election Period

Nyanza Province had been generally peaceful during the electoral period, although the ODM nominations were characterized by widespread violence. The Commission was informed by Grace Kaindi, former Nyanza Provincial Police Officer that as early as August 2007, reports of ethnic tension between the mainly Luo residents, who “unanimously” supported ODM, and non Luo residents, who were perceived to be sympathetic to PNU, had began filtering in to the authorities. They were sparked by an incident in Karatina in Central Province where the ODM presidential candidate Raila Odinga and his entourage had been unceremoniously thrown out of the Karatina Tourist Lodge (an establishment owned and run by an in-law of President Kibaki) in an incident that was widely reported in the media. In response, intelligence sources indicated that tension was building up in Rangwe, Siaya and Migori where ODM supporters vowed that politicians affiliated to NARC-K (PNU was yet to be formed) or any other party aligned to incumbent President Mwai Kibaki would face hostilities if they dared campaign in the ODM strongholds of Luo Nyanza. One such report indicated that a local ODM official had threatened to mobilize Homa Bay residents to evict the Kikuyu from the area should such an incident recur¹³⁷.

The Nyanza Provincial Commissioner informed the Commission that campaigns in Luo Nyanza were intense and the dominant ODM party was not keen to allow members from other political parties to campaign in the region. The Commission was told that from the month of October 2007, tension was heightened due to smear campaigns undertaken by rival politicians and that for instance in Rang

¹³⁷ Exhibit 97A

March, along the Kisii/Rongo border, some youth torched several sugarcane plantations belonging to both Kisii and Luo farmers. According to Ms.Kaindi,

“ as the polling day approached, we continued to receive intelligence reports to the effect that some Luo youths in Kisumu had threatened to take unspecified action against the Kikuyu who had registered as voters in the area should they exhibit any form of support for or attempt to vote against ODM candidates”.

On his part, Simon Kiragu, the Kisumu OCPD, stated that he did not notice any tension and therefore apparently made no preparation in anticipation of violence:

“We experienced no problems during the campaigns. We did not anticipate any problems after the general elections. It took us by surprise when on [29th] December 2007 a riotous mob stormed the provincial works offices and burnt the main office block and nine Government of Kenya Vehicles. Another riotous mob stormed the KBC office and burnt five motor vehicles. By then the political temperatures were very high, people demanding for immediate release of the presidential election results by the chairman of the ECK¹³⁸”

The Nyanza Provincial Commissioner, Mr. Paul Poland Olando, stated that the Provincial Administration had put in place mechanisms to ensure peaceful campaigns and through the police had

“made preparations for effective management of the campaign calendar up to just before polling day and on 24th of Dec 2007, the Provincial security team met under my Chairmanship to make sure that plans were complete for effective management of the polling day and thereafter the District Commanders were equally instructed to do the same”.

We heard that the elections in the province including announcement of parliamentary results and presidential tallies were conducted in a generally peaceful manner and that when the Provincial Security and Intelligence Committee (PSIC) team met under the PC’s chairmanship on 28 December 2007, they were satisfied that polling had been successful¹³⁹. While voting was peaceful, the PC stated that the PSIC received intelligence from NSIS on 28th December 2007 predicting that there could be high levels of excitement if the results were in favour of ODM or protests if the results were not favourable.

¹³⁸ Exhibit 95A

¹³⁹ CW90

The NSIS had forwarded the information to the authorities for “*information and necessary action*” and the PSIC accordingly instructed all Provincial Police officers to mobilize the police to be alert and also made arrangements to ensure law and order was maintained.

Eruption of Violence

The Commission heard diametrically opposing views as to the catalyst of the violence in Luo Nyanza. The testimony of most Government witnesses can be summed up thus, that the authorities were suddenly confronted by rampaging crowds and they had to restore law and order using all available means at their disposal. On the other hand a Catholic priest who testified before us expressed the view that “there were no indications of violence. As elections approached, more Police and security forces were deployed” and that the general feeling among the residents was that they had cast their votes peacefully and deserved an outcome amenable to their reasonable expectations namely a Raila Odinga win. The perceived delay to release the presidential results was therefore interpreted as a pointer towards rigging and the Luo community thus acted to pre-empt rigging but the police and the state machinery moved with recklessness and disregard to their lives in suppressing their freedom of expression during which serious crimes were perpetrated against the people fighting for recognition of their democratic rights.

These two discordant views were repeatedly enunciated by the authorities on one hand and the citizenry on the other. The priest told us that in his view, the demonstrations in Nyanza were peaceful but the police disrupted them leading to unnecessary violence. According to him, people went to the streets to demonstrate without violence or stone throwing but that police shootings provoked the residents who then turned violent as a way of expressing their displeasure with the police for using live ammunition. Throughout our hearings in Kisumu, we were confronted by these divergent views and we shall endeavour to distil the truth from those two extreme versions of events.

The Commission heard that the violence in Nyanza occurred in 3 distinct phases. The first was directly related to the context of elections and took place between 29 and 31 December 2007. It was characterized by demonstrations, riots, acrimony and discontent. The second phase occurred in the New Year and was reactionary apparently in protest against what was viewed as excessive use of force by police and also in response to calls for mass action by the ODM leadership which lasted until mid January 2008. The third phase was associated with two unrelated events, first the targeting of Luo by Kikuyu gangs in Nakuru and Naivasha leading to an influx of Luo IDPs from outside Nyanza and the murders, towards the end of January 2008, of two ODM politicians, Mr. Mugabe Were, MP for Embakasi and Mr. David Kimutai Too. Similar evidence was in fact tendered by the KNCHR in their report.

The Provincial Commissioner stated that while violence began on 29 December in Kisumu town, reports of violence were also received by the PSIC from Rachuonyo, Migori, Siaya, and Nyando districts. He informed us that most of this violence was particularly urban based and also concentrated along the highways in the Province. The PC added that there was a perception among the Luo community that the announcement of the presidential results had been delayed, which raised suspicion that the delay could lead to mixing up and rigging of the results.

The PSIC therefore instructed the provincial police officers to mobilize the security personnel to be on the ready, to ensure that officers who had been used on the polling day were available and that those who had been on leave were recalled. Pertinently, the PC stated that it was not possible to engage political leaders since at the time they were not on the ground. By 30 December 2007, we heard that many business people and families had moved out of Nyanza and virtually the whole of Luo Nyanza was engulfed in violence and security personnel had been deployed everywhere. Mr. Olando further told us,

“All government offices were closed, communication channels were not functioning, roads were blocked, telephone lines, land lines were

dismantled. It was just practically impossible to assemble any people for any kind of discussion and as a security committee; we were concerned with bringing down the situation because you need to bring down the situation before you can go into discussions...”

One of the main targets of the violence was the Government on the perception that the polls had been rigged by Government agents and the feeling against the institution of government, government facilities, and Government personnel was extremely intense and hostile. According to the PC, it became difficult for Government officials to discharge their duty:

“My Lord, at that time it was practically difficult to engage the people in this Province about their perception because first of all, accessibility was difficult. Our main mode of conduct with the people which is public barazas was not possible, was not functioning, the people could not turn up and so it would have been difficult at that point, My Lord, the results have just been announced, people are taking great exception...The leaders are not there, you want to bring them together and according to them, you are the personification of the Government in the area, My Lord, it was difficult.”

While the PC regretted the loss of life and property especially in Kisumu, we were surprised when he told us that there had been no indication there would be violence of the magnitude that arose after 29 December 2007. There was intelligence which he acknowledged to have received from the NSIS had already been made available to him indicating the possibility of an explosion of violence. Evidence was received that the Nyanza PSIC sought reinforcements because the magnitude of the violence and the time it was taking to suppress it had exerted fatigue on police officers. Further, as a result of the violence many idle youth resorted to criminal activities and at one point in time, the rioters and hooligans overwhelmed the security officers.

In spite of the security forces being stretched, the PC emphatically stated that there were no foreign soldiers called in to assist and that indeed there never was need to bring in foreign assistance to Nyanza. This was confirmed by the Kisumu OCPD, Mr. Simon Kiragu. The perception of there being foreign soldiers according to the PC and OCPD resulted from the deployment of the Rapid Deployment Unit (RDU), a unit within the Administration Police whose unique

uniforms and gear (red helmets with an upper green coats both back and front) the area residents were not accustomed to, doubting instead that these were indeed Kenyan police officers. We established that the rumours about the presence of foreign soldiers in the country were unfounded; instead it was the appearance of the Rapid Deployment Unit of the AP whose uniform the local population had not hitherto seen and thus wrongly tionally assumed to be detachments of Uganda's People Defense Force (UPDF).

The PC was of the view that the magnitude of violence that erupted after the disputed elections pointed to the need for Government to consider preparedness for large disasters that may occur in future.

Kisumu

Mr. Simon Kiragu, the Kisumu OCPD told the Commission that on 29 December 2007 a mob stormed the Public Works office, burning the main block and nine GK vehicles. Another group attacked the Kenya Broadcasting Cooperation (KBC) office and burnt five motor vehicles as tensions rose over awaited presidential election results prompting the police to move in and disperse the crowds using teargas. In the course of this violence, the Grand Kimwa Hotel was attacked. The next day, on December 30th, violence erupted again in the entire city of Kisumu. More than 4,000 people converged at Kondele market as early as 8.00 a.m demanding the immediate release of national presidential results while disturbances also erupted in other parts of the town with riotous mobs vandalizing and looting from shops perceived to belong to people who were "non-indigenous". Mr. Kiragu informed the Commission that riots then spread to Kondele, Nyalenda, Otongolo, Nyamasaria and Manyatta. The rioters were initially dispersed but they regrouped and violently stormed into the center of the city where they engaged in vandalism and looting of property. On the same day 7 people were burnt to death inside Minoki Building when there was massive looting within the town.

Mr. Kiragu's evidence concurs with the PC's testimony that from 30 December 2007, violence would start during the day and the rioting mobs would retreat at night and assemble the following day to start again. According to the PC, Kisumu City was targeted from three directions where the rioting mobs blocked the main entry points to the city: Kisumu-Nairobi highway at Karoki; Kisumu-Kakamega at Kondale; and Kisumu-Busia at the railway junction. Violence was then directed to Kondale area and the other outskirts of Kisumu.

The violence then assumed an ethnic dimension where it was targeted at residential buildings, commercial buildings, business centres and enterprises particularly belonging to the Kikuyu and Meru and later the Kamba and Kisii communities. Similar evidence was also given by KNCHR. The burning and looting of business premises belonging to some non-Luo individuals and also companies that were deemed as foreign affected Crater Auto Motors, Minoki House, Ramgharia Singh Rabha, Ukwala Supermarket, Imani Cycle Hardware, Bata shoe shops, Alpha House, Gamorager Singh Server, Imani Cycle Hardware, East African Cables Stockist, Njari Enterprises, Allkohols, Brontex House and the ground floor of Swan Center.¹⁴⁰

By 30 December 2007, with presidential results yet to be announced the Government, according to Father Charles Oloo K' Ochiel of the Catholic Peace and Justice Commission, became a target for ventilation of public anger since

“ the people felt that the only language that they could speak was by acting against the system that did not address their plight, their kind of suffering, their kind of pain and I would say that it is not that the people were prepared to destroy any Government institutions but I think they were reacting to the excessive force used by the police and the GSU”

¹⁴⁰ Exhibit 95B

There were attempts to immobilize Government operations through the digging of trenches and barricading of roads, burning and overturning of Government vehicles. The Commission heard that rioters invaded the water company's offices where they looted, set ablaze the main office and burnt 17 motor vehicles and one motor cycle. Police managed to disperse the rioters before they could set the entire building on fire.

The Commission heard that the police kept chasing the crowds and using tear gas until they eventually realized they could not contain them without using live fire, and Mr. Kiragu took the decision that live ammunition was to be used:

“This is the time we now decided to use live fire to ensure that buildings do not continue being burnt and by so doing, we managed to chase the rioters out of the town and they retreated to the estates...”

The PC stated that instructions to the Administration Police were channelled from Nairobi through him and in the course of 30 December, a GSU platoon, 50 regular police and 50 officers from the Rapid Deployment Unit (RDU) of the Administration Police were jointly deployed under the command of the OCPD Mr. Simon Kiragu, bringing his total manpower to more than 300 security personnel supported by ten vehicles. The RDU and GSU were assigned specific sectors to cover and worked independently while the Administration Police officers were put together with the regular police. After the lessons of the previous day's running battles and the difficulty of controlling the huge crowds, the OCPD embarked on a deployment pattern which would lock the people from entering the main city and containing them within the slum estates of Nyalenda, Manyatta, Nyamasaria, Kondele, Mamboleo, Otongolo, Bandani and Kanyakuor.

In order to ensure that the crowds did not enter the central business district, the OCPD placed “lock-ups” to prevent people from passing and going on into the town center at various entry points, including Obunga next to Kenya Breweries depot, Busia road at the railway crossing to contain the people from Bandani and Otongolo and at the Railway station. Other lockups were placed at Swan

centre (which was targeted and burnt by rioting mobs on December 29th), Kamasi, Makasembo Road, Meru, the main bus stop, Kashok Junction, Tuskys Supermarket, Kibuye and at Kondele city clock. According to the OCPD, ten vehicles supported the lockups and patrolled the roads within the estates to monitor the situation.

In the meantime, the roads heading to Kakamega, Busia and Nairobi were heavily barricaded by rioters who used big rocks, posts and burning tyres which made it difficult for anybody to pass through unless under police escort. Mr. Kiragu stated that the orders on the use of lethal force remained applicable. On 30 December, Mr. Kiragu informed the Commission that over 1,000 rioters armed with pangas and rungus forced their way into the Lake Basin Authority offices within Migosi area near Kondele where they stole unknown quantities of rice, beans and maize. Police were forced to use live ammunition so that these stores could be protected from being burned and 3 rioters were shot dead.

Later, more than 3,000 rioters attempted to storm Mega City Supermarket where they burnt a Kenol petrol station located along Nairobi Road while also attempting to storm the offices of the water company but were dispersed by officers under the OCPD's command using live ammunition and though none died at the scene several were believed to have been wounded by the bullets. Mr. Kiragu further stated that some victims of the above shootings were shot accidentally by stray bullets and killed while in the safety of their houses. Kisumu Central Police Station recorded 38 cases of shooting, Kondele Police Station 20 while 6 cases were from outside Kisumu municipality. Several of the victims had multiple gunshot wounds. The appropriateness or otherwise of the police tactics are dealt with at length in volume 2 of this report.

According to Mr. Kiragu, Kisumu experienced the worst violence on 31 December 2007 which was of extremely high magnitude and 25 rioters were consequently shot dead by police. The witness described the mobs as being "very aggressive", charging towards police officers and stoning police vehicles and police officers.

This, he said, prompted the police to use live ammunition to disperse the rioters and to make sure that the roads were passable:

“This included ensuring that the fuel meant for Uganda...had to pass through the Busia road which was heavily barricaded with burning tyres, posts and even sometimes shells of motor vehicles. The Government of Kenya was also under pressure to ensure that fuel meant for Uganda reaches the destination safely...it was very difficult for us.”

Part of the Kenya Uganda railway within the town was also uprooted. Mr. Kiragu stated that at the time and while the police had anticipated a scenario of celebration which could have turned violent, the crowds which engaged the police in running battles from street to street were so huge such that the police were overwhelmed. It was the OCPD’s testimony that the situation did not ease and riots continued on a daily basis from 31 December with mobs retreating each evening and re-converging on the following day which became a daily routine only ebbing on 21 January 2008 when an Ecumenical prayer meeting was held in Kisumu city stadium where religious and political leaders appealed for peace. With the mediation talks proceeding in Nairobi, calm was slowly returning to Kisumu and the situation only subsided after the National Accord was signed. In total, police acknowledged having shot dead 48 people in Kisumu though Father K’ Ochiel took the view that the number of alleged police shootings were under-reported. We agree with that assessment since the Commission received reports and post mortems confirming that at least 69 people were shot dead in Kisumu in this period. Mr. Kiragu informed the Commission that police had arrested and charged a total of 98 suspects.

Homa Bay

Mr. Jimmy Munene a Senior Superintendent of police in charge of Homa Bay divisional police headquarters stated that prior to elections; he had received a total of 50 new officers from a total of 78. He stated that violence in Homa Bay commenced on 29th December, 2007 at 6.00 p.m. and took the police by surprise. The confrontation between the rioters and the police which marked the

onset of conflict that was to rock this part of Luo Nyanza lasted more than a month. On this day, the protesters were dispersed using tear gas though the OCPD admitted receiving information that one person, Samuel Otieno Okungu, was shot dead by police at Shauri Moyo Estate¹⁴¹.

The OCPD stated that on 30th December, 2007 he deployed all his available officers to all vital places- the Bank, Hospitals, Cereal Board, Water Sections, petrol stations and two supermarkets within the town. That notwithstanding, violence erupted in all corners of the town, with a crowd of more than 5,000 people barricading roads, looting and vandalizing business premises owned by Kikuyu, Kisii and Kamba. After announcement of the presidential election result, rioters stormed the Divisional offices and burned the main office block, 3 GK vehicles and a motor cycle. Another mob stormed the fisheries' offices where they burned three vehicles and the main office and one person was reportedly killed.

All available 300 regular police officers also drawn from the rural areas and prison warders from Homa Bay Prison were deployed within the town centre where violence was concentrated with a view to securing the main town from total destruction. The Commission was told that violence continued in the town virtually each and every day until the National Accord was signed in late February 2008.

The witness further stated that he had instructed all the officers not to use live ammunition and at first only tear gas was used but once the situation deteriorated, police were forced to use live ammunition to scare the mobs though the instructions remained that the officers were not to shoot at people but in the

¹⁴¹ On the same day the OCPD acknowledged having received similar reports that one Kennedy Otieno Odoyo had also been shot at the pelvic area and had died at Shauri Yako estate while Wycliffe Ochieng Olela was found lying dead along the Rangwe – Oyugis road with gun shot wounds in the abdomen.

air. In spite of these instructions 3 deaths were reported as a result of gunshot wounds and Mr. Munene agreed that his orders were disobeyed.

Migori / Rongo

On his part, Mr. Edward Mwamburi the Senior Superintendent of Police in charge of Migori – Rongo police divisions stated that he was involved in pre election security arrangements from August 2007. He said he was required to provide 2 police officers each to a total of some 1,238 polling stations within his division for the polling day on 27th December 2007. Since he only had at his disposal 174 police officers, he requested for additional reinforcements and received some 400 National Youth Service men and women from Nairobi, 204 Administration policemen from Migori and Rongo Districts, 122 Prison Warders from Migori GK Prison and 8 forest guards from the District Forest Office who were all appointed special police officers in accordance with the powers conferred on the Commissioner of Police; which gave him a total of 1,274 police officers.

It was his testimony that he had prepared an operation order with regard to some precautionary measures in anticipation of what could happen after the elections mainly involving guarding of vital installations such as Hospitals, Banks and Commercial undertakings within Migori District. After peaceful polling and receipt of results, he stated that the 29th of December 2007 brought a rude shock with a huge crowd of people descending first on the Migori-Isebania-Kisii Highway and then on Migori Township chanting ODM slogans. The Commission heard that this crowd swelled within a short time and started looting within the shopping center. The police tried to use teargas but the crowds would not relent and that around the same time, similar events were taking place in Awendo and Rongo Districts. Since tear gas was not effective, Mr. Mwamburi stated that he issued an order for the officers to use firearms¹⁴².

¹⁴² The Operation order directed that first, officers were to use teargas and if that was not effective, then they were to switch on to the rubber balls and later on if there was real danger to loss of property and life, then would proceed to use firearms.

While the OCPD had anticipated dealing with lawful demonstrations he was shocked once the initially peaceful demonstrators numbering about 4,000 attempted to move to the Migori Prison. Some in the crowd were carrying sticks, pangas and stones and Mr. Mwamburi decided he would not let them reach the GK Prison in Migori upon which he intervened. As the violence progressed, he stated that he found it absolutely necessary to use live ammunition to fire in the air if only to scare the demonstrators whose magnitude threatened to overwhelm the 300 officers at his disposal. In his view, the situation was so unusual that a baton charge was inapplicable since the crowd was almost overwhelming the police and some fatalities eventually resulted when live fire was used.

The Commission heard that this first demonstration triggered off a series of demonstrations from 29 December onwards including the barricading of the Migori/Awendo/Rongo/Kisii Highway which is a major gateway to the Tanzanian border town of Isebania. According to the OCPD,

“My Lords, they kept on going every day and barricading the road everyday and whenever we made some moves to remove the stones, the place that we had cleared, when we go to the other direction on coming back those stones were back in place if not more than the initial ones that were placed on the roads”

Mr. Mwamburi informed the Commission that 11 people were killed¹⁴³ in the process of quelling these riots. A total of 612 IDPs, majority of them business people in the area, camping in police stations were threatened with attack by the locals and a decision to move them to Nakuru was taken after mobs attempted to invade Kamagambo Police Station with this intention. The Commission heard that a police officer was killed at Sori in Karongo division by mobs who perceived

¹⁴³ According to Mr. Mwamburi, some of the bodies were collected from the hospital and buried by relatives secretly without notice.

him to be from a particular tribe. A total of 62 people, mainly youth, were arrested but most were released except for 18 who were arraigned in Court.

On 3 January 2008, at St. Camilla's patrol base, demonstrators attacked police officers and snatched a G3 rifle from one of the officers who was injured. The firearm was recovered 5 days afterwards without the ammunition. Further, four police officers were injured during the period of the violence. Mr. Mwamburi told us that he was transferred to another station on 4th February 2008.

Impact of the Violence

We heard from the Nyanza PC that by 11th February 2008, 102 people were reported dead and 685 people injured in the province while 40,000 non-Luos had exited the province. 9 government offices, 73 business premises and 415 residential houses were looted or burnt across the Province. 50 government vehicles were destroyed, 16 public service vehicles damaged mainly on the roads or where they had been parked and another 16 vehicles were damaged¹⁴⁴. 2,886 people sought refuge as IDPs within the town. The Commission heard that the province received 126,821 returnees from outside Nyanza because they had been ejected from other provinces or they feared continuing to stay in those places most of who were taken in by friends and relatives or hired places to stay within the province.

The PC did not dispute the fact that a large percentage of the people who lost their lives did so through gun shots and/ or bullet wounds which was confirmed by the Provincial Medical Officer of Health Dr. Jackson Kioko who gave evidence that 90% of the deaths in New Nyanza General Hospital were from gun shots. We further heard that three security personnel were killed in the course of suppressing the violence.

¹⁴⁴ The majority of these vehicles were destroyed in Kisumu, Rachuonyo, Migori and Homa Bay Districts.

Dr. Jackson Kioko stated that though the Province had put in place systems in the health facilities for disaster preparedness, they had not anticipated violence of the magnitude that occurred in the post-election period. He also provided a breakdown of casualties from the various districts¹⁴⁵. According to him, the total number of deaths recorded at the New Nyanza Provincial General Hospital was 64 while another 53 bodies were brought in from outside the hospital. He further stated that 129 people bearing gunshot wounds were brought in. However, in the Masaba Borabu area, he stated that most of the casualties received bore lodged arrow heads and were referred to Kisii. Doctor Kioko therefore acknowledged that medical facilities in Nyanza were overstretched and overwhelmed during this period and the number of cases that needed attention was such that there was not sufficient human resources to attend to the cases forcing surgeons to spend hours on end in theatres, “because in some situations we had only one theatre and one operation was taking close to twelve hours...”

He further presented statistics containing data from 33 public health institutions in the province but did not include data from over 200 private health facilities in the province clarifying that his records may not have been very reliable during the period of post election violence as record keeping in public health institutions was not conclusive and as such statistics given to the Commission may not represent the complete picture. We can nevertheless summarize his presentation as follows;

District Hospital	Casualties received	Gunshot Injuries	No of Deaths
Gucha	7	2	
Homa Bay	27	35	6
Rongo	21	3	-
Nyamira	29		-
Nyando	55	30	3

¹⁴⁵ The Doctor stated that Kisii General Hospital treated patients brought in from neighbouring districts while Migori District Hospital recorded a total of 19 deaths and 28 gun shot victims

District Hospital	Casualties received	Gunshot Injuries	No of Deaths
Kisumu	47	-	
Siaya	-	6	10
Rachuonyo	18	3	-
Kisii	58	12	6
Bondo	12	9	-
Masaba-Borabu	63		6
Suba	6	6	1
Provincial Gen. Hospital-Kisumu	256	71	64
Migori	47	28	1

The Commission was told by Dr. Margaret Oduor, a pathologist based at the Kisumu Provincial and General Hospital, that 56 bodies and 8 body parts were taken to the Nyanza Provincial General Hospital out of which 50 bodies had indications on the cause of death as gunshot wounds. 53 out of the 56 bodies were male, 3 were female while 3 were of children aged less than 14 years. Out of the 56 bodies, 50 were Luo. According to Dr. Oduor 53.6 % of the gunshot casualties had been shot from the back pointing to the inference that police shot people who were already in flight and not with an aim to immobilize but for purposes of killing and maiming. After examining the bodies she was able to recover 5 bullets.

Mr. Isaac Okero, a representative of the West Kenya Law Society, stated that his organisation was galvanized into action sometime in mid January 2008 following the killing of one George William Onyango whose shooting was broadcast on the KTN news. Following that event and the police reaction through Police spokesman Eric Kiraithe suggesting that this incident was a concoction, they contacted the deceased family members' and facilitated media access to highlight that this incident was not a 'movie' as alleged by police.

The Society furnished evidence comprising of depositions from affected members and informed us that there was a marked reluctance from victims to come forward and tell their stories. They attributed this to a very strong suspicion against law enforcement agencies and the justice system. The Society further

noted apathy from many victims who did not feel confident that recording statements would result in any justice. Further, victims especially of sexual violence were too fearful to seek the help of the police because not only were the police otherwise engaged but also due to a feeling of discomfort filing complaints with the institutions that they felt were associated with the perpetrators of the violence.

Among the depositions presented by the Society were some highlighting the crimes perpetrated by gangs of youths who were taking advantage of the lawlessness that prevailed. Other depositions related to attacks characterized by ethnic identification of the victims in various locales in Central and Rift Valley provinces. Mr. Okero indicted Government institutions charged with maintaining internal security for the failure to contain the post-election violence in Kisumu, “Well, more I think could have been done to arrest the escalation of violence at that time. There seemed to have been other priorities that they seemed keen to be engaged rather than to stop the violence and to protect those who are exposed to violence”.

Notwithstanding the police version of events that they were confronted by violent mobs prompting them to use live fire, Gregory Onyuro Ngoche testified that he was shot outside his home and that when he went to report the issue, the police officer on duty declined to record the incident at first on account of the complaint being a gunshot wound. A senior police officer however intervened and authorized the officer on duty at the report desk to take and record that information. Similarly, Alice Atieno, a former security guard, was shot in the head after arriving home from her place of work. She had as a result lost hearing and sight on the left side and was unable to eat save for liquids¹⁴⁶.

¹⁴⁶ In spite of a pledge by Government that all post election violence related cases would receive free medical attention, this witness stated that she had been unable to access treatment at Kenyatta National Hospital due to the cost involved and which she was not able to afford.

It would appear to us that the indiscriminate use of live ammunition by police by design or default targeted vital organs, for instance John Opiyo Ondiek a security officer with the Kisumu Municipal Council at Kibuye Market informed the Commission that he was shot by police from behind at his place of work sustaining injuries on his private parts. It would also appear that little or no effort was made at all to use non lethal means in riot control. Live ammunition was used indiscriminately to disperse peaceful crowds and /or demonstrators armed only with crude weapons. As described by Father K'Ochiel,

“The situation was terrible. Whichever place I passed through there were bodies and you could see the police everywhere and a lot of people and chasing of people by police, shooting there was looting going on.”¹⁴⁷

Ms. Grace Kaindi the former Nyanza PPO stated that the security forces were overwhelmed and that is why they sought reinforcements. Though many Government witnesses did not mention the use of live ammunition and where they did they pointed out that gunfire was used with the intention of scaring rowdy mobs bent on looting, the catastrophic humanitarian effects of this type of crowd dispersal tactics speaks volumes for itself and is a pointer to the dysfunction within the police.

Response by Police and Provincial Administration

The Nyanza PC informed us that once the violence erupted, the PSIC issued instructions to District commanders to stop the violence but the guidelines on how this was to be achieved was left to the individual commanders to manage the security situation. To sum up the view of the police and provincial administration, they were under a duty to maintain law and order and to protect life and property and as such, the rioting mobs had to be kept at bay and the vandalism they orchestrated from the 29th December 2007 had to be contained using all legal means available.

¹⁴⁷ Exhibit 101 A

When the Kisumu OCPD was asked whether he had issued warnings before using live ammunition, he answered that the situation was so chaotic and the circumstances could not allow such a procedure and further, the situation was neither conducive to issuing any warnings neither would anybody in his view have abided by such proclamations. In such circumstances, he considered that the law allowed police to obviate the need for issuing a proclamation and proceed to use lethal force without even attempting a baton charge which he deemed to be impossible:

“People in thousands trooped in the town in the morning engaged in looting, breaking people’s premises...we were trying to chase them using tear gas until when they became chaotic and started burning buildings, that is the time we decided that we should use any lethal fire...”

Allegations were made before the Commission that the police had been responsible for burning some of the buildings recorded to have been burnt through the indiscriminate use of live ammunition and tear gas that could have come into contact with inflammable material in some of these buildings. But this was denied by the OCPD Kisumu who was categorical that neither the use of tear gas nor live ammunition could have been a possible cause of a fire in the event that they landed on inflammable matter. He did, however, concede that there were inflammable substances in Ukwala Supermarket which were exploding when the building was burning.

The Commission noted that most police officers had to work 10-12-hour shifts in particularly very difficult circumstances which tested their quality, training, discipline, experience and ability in what were clearly very difficult operations. Though Mr Kiragu agreed that where there was no threat to life-either of citizens or police officers by rioting mobs-or a threat to property, then there was no justification for using firearms, it is difficult to explain why over half of the gunshot casualties had wounds from the back which suggests to us that they were in flight and could not in such circumstances be construed as presenting any tangible threat.