

CHAPTER FIVE

Violence in Nairobi, Central and Coast Provinces

Nairobi

Introduction

The City of Nairobi has through the years provided the barometer for Kenya's volatile politics from colonial times to the present. It began as a temporary camp at the turn of the twentieth century upon a chance decision by George Whitehouse the engineer in charge of construction of the Uganda Railway who chose this location as the springboard for embarking on the challenging phase of laying the railway tracks across the Rift Valley. This temporary camp-the most unlikely of locations- by default became Kenya's capital city and a commercial hub for the East and Horn of Africa region.

The city which currently covers 684 square kilometres is divided into four districts- Nairobi North, Nairobi West, Nairobi South and Nairobi East with the main administrative divisions being Central, Dagoretti, Embakasi, Kasarani, Kibera, Makadara, Pumwani and Westlands. Nearly 2 million of Nairobi's residents (estimates put Nairobi's population at somewhere between 4-6 million¹⁴⁸) live in low income residential neighbourhoods and informal settlements like Kibera, Mathare, Dandora, Huruma, Korogocho, Kariobangi, Kangemi and Mukuru where crime and daily violence- including extortion, murder, illegal taxation and rape- has become something that ordinary citizens living here have had to live with.

¹⁴⁸ The total number of registered voters in Nairobi's 8 constituencies during the 2007 Elections was 1,275,021 (Source is Electoral Commission of Kenya voter registration figures)

The above areas which feature extremely high population densities and yet occupy less than one fifth of Nairobi's geographic area are of great significance to the city's politics and as we shall see, the ethnic differentiation in various quarters would become a defining feature of the character of violence in the post election period. Due to the neglect of most of these areas by the Central Government and the Nairobi City Council, organized criminal gangs have come in to fill the void left by the absence of the State and attendant services. Election contests are to a large extent influenced by these outfits whose members are available for hire by powerful political actors as instruments of intimidation against opponents. It is not surprising therefore that the NSIS in its security briefing of 24th December 2007 noted that all of Nairobi's 8 constituencies were potential flashpoints due to the fact that the stakes in the 2007 General Elections were extremely high and some politicians had consequently enlisted the support of multiple gangs like Mungiki to intimidate opponents.¹⁴⁹

Mungiki (a largely Kikuyu gang active in almost all of Nairobi's informal settlements), Siafu, Bukhundu and Jeshi la Darajani (active in various neighbourhoods of Kibera) and the Taleban (a Luo gang based in Mathare) had before the elections, gradually taken over and were administering parts of the city's informal settlements where they created extreme fear. They argue that they maintain security where the State has failed and in this way levy fees thus dominating the population through the intentional use of terror as a means and strategy to instill fear in the society, control matatu (public transport) routes, changa'a (an illicit alcoholic beverage) brewing, sanitation facilities, water and electricity supply, extract protection money from businesses and other extortionist activities.¹⁵⁰

¹⁴⁹ For example, in a briefing dated 5th February 2008 NSIS had observed that some parliamentary losers in Nairobi had allegedly funded Mungiki to eliminate parliamentarians.

¹⁵⁰ "Who Are The Mungiki?", presentation to the Commission, Exhibit 27A

As noted in evidence produced by the KNCHR, the above dynamics, tribal loyalties and the ethnic mix of politics in the city's poor neighbourhoods strongly contributed to the pattern of violence that Nairobi witnessed.

The rent disputes between mostly Kikuyu landlords and largely non-Kikuyu tenants are among the most serious underlying causes of ethnic conflicts in the poor neighbourhoods of Nairobi.

The Immediate Pre-Election Environment

The situation report dated 19th October 2007 showed that Kikuyu landlords in Mathare and Kayole had issued eviction notices to Luo tenants under the pretext of renovating their houses. According to NSIS, the landlords feared that the tenants could become uncooperative if the ODM presidential aspirant Raila Odinga won since he had reportedly promised that an ODM Government would regulate house rents. NSIS correctly pointed out that this issue was likely to foment ethnic tension in the area and undermine security in the post-election period. This alone should have forewarned police to make arrangements to prevent commission of crimes and maintain law and order in Mathare, which as we shall see later was never done.

Similar suspicion and acrimony among Kikuyu landlords on the one hand and Luo and Luhya tenants on the other was also reported in Kibera, Kawangware, Dandora and Pipeline Estate in Embakasi where tenants were likewise issued with quit notices out of fear from the landlords that the tenants would gang up and refuse to pay rent¹⁵¹. Further, talks of possible plans to rig the outcome of the election in Langata constituency against Raila Odinga, the area MP, had created anxiety and NSIS advised that the slightest suspicion towards that end would trigger unparalleled violence.

¹⁵¹ NSIS security briefing for the week ending 3rd December 2007

The Post Election Violence in Nairobi

Witnesses who spoke to Commission investigators narrated how the violence started in Kibera, Mathare, Dandora, Kariobangi and Kawangware upon announcement of the Presidential results and the subsequent swearing in of President Kibaki on 30th December 2007. From information gathered, violence in Nairobi occurred in 3 major phases; the first immediately after the announcement of the Presidential election results on 30th December which continued into the New Year as police prevented ODM supporters from holding a “million people” march to Uhuru Park within Nairobi’s Central Business District to protest what ODM and its supporters believed was a stolen election victory; the second wave of violence followed the announcement of a partial cabinet by President Kibaki and appointment of the ODM-Kenya presidential candidate Hon. Kalonzo Musyoka as Vice President on 9 January 2008 and the third phase occurred upon the killing of the late Embakasi MP-Hon Melitus Mugabe Were on 29th January 2008 in Nairobi’s Woodley Estate.

The Commission received evidence from many witnesses who suffered terribly during the violence both in terms of their own ordeals and in dealing with the devastating consequences especially the deaths of family members, trauma, and stress for families, displacement from their homes, the loss of income, businesses and property as well as coming to terms with living within IDP camps. Sexual and other forms of gender-based violence (SGBV) encompassing a wide range of human rights violations in the chaos of the post election period reached epidemic proportions in Nairobi and this area proved the most problematic in terms of determining the extent of violations. These issues are discussed at length elsewhere in this report. It is enough for now to note here that the sexual violence experienced demands immediate responses through the provision of more effective physical protection especially in the poorer environs of Nairobi where women and children were and continue to be most at risk.

A common thread in many of the accounts of the post election violence that we heard is the wanton destruction of property and the severe effect arson has had on people's lives. For instance, a witness narrated to the Commission investigators how she was forced to move from her house in Mathare 4A by a gang of Luo men who were evicting Kikuyu on the night of 30th December 2007 and she was forced to take refuge at the Mathare/Huruma's Chief's Camp. When she went to check on her property the next day, she found that all her belongings had been stolen and another person had already occupied her house which she had obtained through the Amani Housing Trust Mathare 4A Development Program. Another witness informed the Commission investigators that on 29th December 2007, gangs of Luo youth went around the Mathare 4A area yelling that Kikuyu must leave and fearing for her own and her family's safety they fled the next morning leaving all possessions behind during which many houses were set ablaze. She sought refuge at the Eastleigh Air Force Base and when she went back to her house on 3rd January 2008, she found that it had been razed to the ground.

A young man from Mathare 4A told our investigators how two of his relatives were killed on 30th December 2007 in Dandora by gangs of Kikuyu (Mungiki) youth who were moving from door to door flushing out and killing non-Kikuyu. He stated that in Huruma where he moved to, rival zones were created where one zone dubbed Othaya had pro-PNU Kikuyus while two other zones housed pro ODM Luo and Luhyas with each area being a no go zone for the opposing tribes.

Information made available to the Commission indicates that initial violence in Nairobi appeared to target the Kikuyu in areas where they were a minority and they in turn organized attacks in areas where they were a majority. We noted one insidious form of violence that was visited on members of the Luo community, the forced circumcision reportedly attributed to members of the Mungiki Sect. Dr Jotham Micheni confirmed that Kenyatta National Hospital attended to 2 such cases of forced or traumatic circumcision. Evidence was received from a Luo lady who was raped in Huruma by a gang of 10 men on 29 December 2007 who told her they were looking for ODM people who were giving

the Government trouble and that they wanted to circumcise them. After being violated she was forced to watch as the hooded men cut off her husband's penis with a panga (see chapter 6 on gender and sexual violence). According to evidence from KNCHR, on 1 January 2008 a 15 year old Luo boy was forcibly circumcised during fighting at Kiamaiiko. On 21 January 2008, eight Luo men had their genitals chopped off and even young boys, some as young as 11 and 5 years, had their genitalia cut with blunt objects such as broken glass.¹⁵²

As we have seen at the beginning of this chapter, Nairobi's informal settlement areas are balkanized largely along tribal lines and specific ethnic groups are dominant in specific areas within the slums. We received information from KNCHR that in Kibera for instance, the Luo are the majority in Kianda, Raila village, Gatwikira and Kisumu Ndogo areas; Makina is mainly populated by Nubians while Laini Saba and Soweto are dominated by Kikuyus. Luhyas dominate in Mashimoni and Lindi areas. We were able to establish some of these facts during our site visit to Kibera on 11th July 2008.

Once the violence broke out, looting, destruction of property and arson became rampant forcing people to move to the "ethnic enclaves" they perceived as safe as tribally aligned gangs took over and exercised total control. Toi Market in Makina area which prior to elections had housed over 3,000 traders was burnt down. During our site visit to Kibera we were informed by local residents and community organizers that this market provided employment to perhaps a similar number of people while thousands of suppliers depended on it for livelihood not to mention the tens of thousand of customers it served.

The violence was also characterized by forceful displacement and evictions while areas such as Dandora and Mathare North saw deep seated rent disputes escalating to violence. As earlier explained, there was a perception that landlords (mainly Kikuyu) over-charged in rent and discriminated tenancy on ethnic lines which brought an expectation among ODM supporters of rent reduction if ODM

¹⁵² Exhibit 125, paragraph 128

won. Some tenants therefore took the opportunity provided by the catechism of post election chaos to evict landlords and started charging reduced rents while a new round of violence ensued when the owners hired gangs to reclaim their property¹⁵³.

Information was provided by the NSIS security briefing dated 21st February 2008 that tension was high between the Kikuyu and the Luo residing in Mathare following a police operation to evict people who had illegally occupied other peoples' houses. The briefing went on to state that Luo youth were preparing to resist future attempts to evict them and threatened to blow up such buildings. In this state of affairs, the NSIS noted that the Mungiki had "taken advantage to settle their differences with the Taliban largely composed of Luo and thus violent confrontations were predicted to continue with devastating effects". NSIS further noted that Mungiki adherents were assembling at Lucky Summer Quarry, Gituamba, Gitare Marigo and Dandora Dumpsite in preparation to attack residents of Babadogo, Glue Collar, Kariadudu, Mugure and Kasabuni areas.¹⁵⁴ Other areas that NSIS received intelligence as being targets for Mungiki attacks were Mathare North, Kariadudu and Ngomongo where the objective was to evict those who had forcefully occupied houses and refused to pay rent. Incidentally, an NSIS briefing after the violence broke out points out that jailed Mungiki sect leader Maina Njenga warned Mungiki members against being misused by politicians in response to their being hired in Mathare, Kariobangi, Kibera and Huruma to cause terror¹⁵⁵

Noting that NSIS had forewarned on the potential conflict that was set to be sparked by the rent disputes prior to elections, we fail to see why the police did not take measures to prevent this from happening. The chaos in these informal settlements could have been avoided if the police had taken contingency measures as advised by NSIS and this attitude of indifference to the plight of

¹⁵³ Exhibit 125

¹⁵⁴ NSIS Security briefing for 22nd February 2008

¹⁵⁵ NSIS security briefing dated 25th January 2008

those the police were meant to protect depicts a force that was perhaps incognisant that their motto is “utumishi kwa wote” (service to all). Instead, the police chose to deploy massively, not where they were most needed, but concentrated at Uhuru Park to prevent the ODM rallies. In this respect, we agree with the conclusion by the Kenya Human Rights Commission (KHRC) Executive Director Ms. Muthoni Wanyeki who told us that “It’s our summation that prioritization should have been more in line to the responsibility to protect”. Issues related to policing priorities and strategy during the post election violence are discussed in more details elsewhere in this Report. It will be enough to observe here that it would appear that, based on available intelligence which was already in possession of the Commissioner of Police, the obvious choice ought to have been quick containment of the violence in the slums for protection of life and limb and freeing more police officers for deployment to the Rift Valley where carnage of extreme cruelty was unfolding with the police numbers unable to contain the situation.

In mid January 2008, NSIS reported that non-Kikuyu residents of Mathare slums were alarmed by the migration of the Kikuyu community from the area which made them apprehensive that this movement out of Mathare could be a precursor of attack by Mungiki members¹⁵⁶. In the meantime, as the Kenya National Dialogue and Reconciliation Process went on, tension remained high and NSIS noted that ODM councillors were mobilizing for mass action in case the Kofi Annan led talks collapsed¹⁵⁷

Dr Jotham Micheni the Director of Kenyatta National Hospital told the Commission that they had not anticipated the kind of violence that gripped Nairobi and the country. Though they were prepared for some element of violence, the scale and form it took was unexpected which was compounded by the fact that a good number of staff had travelled upcountry to vote and those who had travelled to the western part of the country were unable to come back

¹⁵⁶ NSIS briefing dated 15th January 2008

¹⁵⁷ NSIS Security Briefing for 26th February 2008

for a whole month due to blockage of roads. Moreover, some staff members became IDPs and in general the hospital staff was not immune from what was happening to other members of public.

While it was the Police Commissioner's testimony that 28 people died in Nairobi from election related violence, the statistics the Commission was able to compile tell a different story. It is incomprehensible that the Commissioner of Police should state with finality that the police were the only source of facts in terms of accurate figures when he produced statistics that purported to be the definitive figures of deaths. The figures were contradicted by other figures obtained from Government sources. For example, Dr. Daniel Mulwa Nguku head of the Nairobi City Mortuary¹⁵⁸ provided information showing that between 30 December 2007 and 30 January 2008 a total of 111 bodies were booked in by police who categorised them as "Post Election Violence Bodies." As we discuss elsewhere in this report, we find it problematic that it is the police themselves who determined that some deaths were due to the election violence without a formal announcement to this effect other than the advice from the officer who booked in a body. Incidentally, no body brought in by the police after 30th January was designated as having died from post election violence and no reason was given

Response by Police

With ODM calling for countrywide mass action to protest what they deemed as theft of their election victory, police were deployed to cordon off Uhuru Park to prevent the ODM and its leader Raila Odinga from holding its meeting there. This effort to prevent ODM's meeting took a severe toll on the police and had devastating consequences on law enforcement and maintenance of law and order elsewhere in the city. The NSIS reported that police officers deployed on security

¹⁵⁸ The facility has a capacity to store 250 bodies though most time it holds more than three times this number, in the words of Dr Nguku, "Ours is a facility which...cannot afford to say it is full"

duties at Uhuru Park complained of being overworked, delay in payment of allowances and being unable to bathe or change uniforms and thus NSIS recommended that police welfare be addressed in appreciation of their role in maintaining law and order.

We received evidence that police action in various locales appeared uneven and disjointed. As early as 13th December 2007, NSIS had warned that police officers planned a go slow on voting day to protest the Government's failure to award them salary and allowances increments. This security briefing further noted that police planned to report to assigned polling stations and do nothing more and thus the NSIS warned that such action was likely to compromise security during the election period. It is not understandable why this information was not acted upon and it is not surprising therefore that a number of victims perceived the police as either indifferent or missing in action when they were most needed. For instance, a businessman in Huruma told our investigators that

“There was no police presence in the estates...The Kikuyu tribe most of whom owned businesses started organizing themselves to defend their businesses. There were Kikuyu zones and Luo zones and no one was allowed to venture into others “territory”...The Kikuyu eventually vacated their premises and left the houses to the Luo who started renting out the houses for as little as Kshs 500/-. Some of them are still occupying the houses to date. Most of those who perpetrated the violence were gangs who took advantage of the situation”

On the other hand where the police were present, we received evidence that citizens going about their business suffered just as much at the hands of police. A pastor in Kibera (Darajani/Makina) stated how on 17th January 2007 within Kibera, he had witnessed a police officer kicking some goods left behind by some women one of whom was arguing with the officer asking him to stop destroying her wares. He explained:

“As the argument ensued, I saw the policeman beating the woman with the butt of his gun. The woman fell down and the policeman stepped on her neck and started firing his gun upwards...since I knew her I rushed out towards them”

When he tried to intervene, the police officer “asked whether I was the messiah who came to save” and the pastor was warned that he would be shot. The pastor

tried to help the fallen woman but all of a sudden fell down and woke up to find himself in hospital where he was told he has been shot and had been in a coma for 2 days. This story was corroborated by the victim who narrated how this particular police officer hit her with the butt of his gun when she went to ask him not to destroy her goods,

“It was a very hard blow. It made me fall down...I was very frightened and shocked. When I was on the ground, this policeman stepped on my neck. He was wearing boots. He had his weight down on me...I saw the pastor coming towards me. I know this man...Even though I was yelling and begging the policeman not to kill me, he didn’t stop with the boot hard on my neck...I could hear him [pastor] calling out as he came-asking the policeman why he was destroying [my] things... I lost consciousness then... Next I remember a [woman] was trying to pick me off the ground...I looked and saw the pastor lying on the ground...The [woman] told me the pastor had been shot”

Likewise, a resident of Kibera stated that she was in her house in Kibera Laini Saba on Monday 31st of December 2007 when she felt something hit her on the left breast and she fell down bleeding. It was only then that she realized she had been shot. She stated that good Samaritans were unable to take her to hospital immediately since there were gunshots everywhere but she was eventually taken to Mbagathi Hospital and referred to Kenyatta National Hospital where she remained for a week after having been operated on to remove the bullet lodged in her breast. Upon discharge from hospital, she found her house had been looted.

The Director of Kenyatta National Hospital told the Commission that 61 people were treated for gun shot wounds at the facility, adding:

“what I can say is that a lot of gunshot wounds came from Kibera... Mathare, Kariobangi and Dandora. Those are the areas that had a great number of patients. But as I said, 61 patients out of 462 contributed to a percentage that was 13%.”

We therefore find that during the post election violence, the brunt of the suffering in Nairobi was borne by poor people living in low income neighbourhoods. It is the obligation of the State to ensure that all its citizens, irrespective of social status, have a right to live in a wholesome environment free

from the fear of crime and it is the duty of the Government to ensure that this right is not infringed by State neglect or acts of extreme cruelty perpetrated by its agents on a segment of society. The citizens of some of Nairobi's poorest neighbourhoods found themselves in a quandary since those who were entrusted to protect them were either not present, did not seem to care and in the cases where they were present, they were just as brutal as the marauding gangs causing the violence. This is particularly worrying since the Police Commissioner when asked if, with wisdom of hindsight, there was anything he would have handled differently, he retorted without hesitation or any iota of embarrassment or regret that,

“If similar situations occurred today, I would do exactly what I did. I would not change a thing my Lords that is the honest truth because in the enforcement of law and ensuring that law and order is brought about in the protection of lives and properties, there is nothing that we shouldn't do to ensure that our people are safe. That is the incidences as to why there is police in the first place. And in doing so my Lord we take pride in ensuring that we have protected lives and taken all measures necessary to ensure that people are safe. If anything was to happen like it did last time, we would do it exactly the same way”.

A Luo man who ran an electronic business in Kijiji cha Chewa (a predominantly Kikuyu settlement), told us that on 29th December 2007, the OCS Muthaiga had posted 2 lorry loads of police to guard the area:

“but the youth were so many they overpowered the police who ran away from the scene. After the election was announced ODM youth overpowered PNU youth and the police...They came with paraffin and [set fire to] the whole estate...The estate was burnt by idle youth in the estate...I was targeted by the Youth because I was trying to restrain them from doing bad things like looting and stripping women naked...I lost business worth Ksh 70,000/-...I reported everything to the police at Muthaiga Police Station, after recognizing the Youth [but] nothing was done. The police said they were busy with post election work and to date nothing has been done”

Not only did the police appear overwhelmed, but we were given evidence that police were divided along ethnic lines and victims confessed to having received assistance from police officers from their ethnic groups while facing hostility from officers who were not from their tribe. According to the KNCHR:

“Some officers from the Kalenjin and Luo communities when asked to stop the looting are reported to have told the victims ‘wacha kazi iendelee’ (let work go on, drawing from the PNU slogan). Some police officers also took advantage of the situation to charge victims for safe passage. This was fairly widespread in Dandora Phase 4, Mathare and Ghetto. Police officers demanded money from people who wanted to escape hostile environments or who had fled and were returning to retrieve property...”

In hearings before the Commission, the police adopted an unduly defensive attitude which in our view clouded any objectivity expected of them in assisting the Commission in its investigating public inquiry. From the totality of the evidence tendered before us, we find on a balance of probability that the institution of the police failed the citizens of Nairobi at large and the residents of the less privileged neighbourhoods in particular.

While there will be no doubt protests that we had no right to condemn the police without conducting trials during which the police could defend themselves in detail against all charges made, it is our considered view that full due process protections of the type that are required in criminal trials were not necessary for the purpose of stating whether or not the police as a public institution performed to the expectation of Kenyans in their hour of need. In Nairobi, it is our view that they did not.

Central Province

Introduction

Central Province is located in Central Kenya, bordering Rift Valley Province to the North West, Nairobi province to the South and Eastern Province to the West. It covers an area of about 13,220 sq. kms. and has a population of approximately 4,226,515 persons and a population density of 320 persons/sq. km.

The province comprises 11 districts: Nyeri South, Nyeri North, Nyandarua North, Kirinyaga, Thika, Muranga North, Muranga South, Kiambu West, Kiambu East, Nyandarua South and Gatundu.

Central Province is the ancestral home to the Kikuyu community and has in the past not experienced the ravages of election-related violence owing to its ethnically homogeneous composition. The urban areas, particularly those close to Nairobi, tea, coffee and sisal estates in the larger Kiambu and Thika Districts have a large number of non-Kikuyu. The province voted overwhelmingly for the PNU candidate and incumbent president, Mwai Kibaki, during the 2007 General elections.¹⁵⁹

Build up to the Violence

Information submitted by the Provincial Commissioner, Japheth Rugut,¹⁶⁰ reveals that the period leading to the elections was peaceful but highly charged both at parliamentary and civic levels, with the majority overtly in support of the PNU and its affiliate parties. Candidates from the other parties conducted their campaigns in a non-confrontational and peaceful environment.

There were incidents of violence reported to have taken place in period leading to the elections. One such case is an incident took place on 24th November, 2007 at around 6.00p.m when supporters of Ephraim Maina Mwangi and those of James Nderitu Gachagua, both of whom were contesting the Mathira Constituency seat, clashed at Muberethi area. Many people were injured and one person died as a result.¹⁶¹ In yet another incident which occurred on 10th December 2007, supporters of James Nderitu Gachagua allegedly attacked and

¹⁵⁹ Exhibit No. 125, para 488.

¹⁶⁰ See also presentation by Mr. L.N. Lenayapa, District Commissioner, Kiambu East to the Commission of Inquiry into Post Election Violence.

¹⁶¹ ECK Submissions to the Commission of Inquiry into Post-election Violence, ECK Preparedness and the Security Arrangements during the 2007 General Elections. This was the subject of proceedings before the ECK.

injured one of the supporters of Peter Ngibuini Kuguru, an aspirant for the Mathira parliamentary seat.¹⁶² Other reports reveal incidences of harassment of persons sympathetic to Raila Odinga and the ODM party.¹⁶³

Patterns of Post Election Violence in Central Province

The Provincial Commissioner gave evidence to the effect that the news of the final tally of the presidential results, which declared PNU candidate Mwai Kibaki the winner, was received with jubilation and fanfare. However, soon thereafter, this was replaced with gloom as information started trickling in to the effect that violence had erupted in other parts of the country and members of the Kikuyu community had been targeted. This news was given a human face when the province started receiving IDPs from other parts of the country and from within. Thirty people, majority of whom were of Luhya and Luo descent had pitched camp at Karuri Police Station in Kiambaa Division. As the wave of violence in other parts of the country billowed, Kiambaa division hosted a total of 8000 IDPs. Kiambu Municipality Division received a total of 1435 IDPs while Githunguri Division hosted 2100 IDPs.

The Provincial Commissioner informed us that during the first three weeks of January 2008, there was a state of anxiety, uncertainty and worry in the entire province. This state of affairs had been caused by, “reports that things were moving from bad to worse.”¹⁶⁴ The PC recounted how around 18th January 2008, rumours started circulating that by Monday, 21st January 2008, “members of other communities resident in Central Province would be attacked to avenge the atrocities meted out on Kikuyus in Nyanza, Rift Valley and Western Provinces.”¹⁶⁵ These rumours were exacerbated by the harrowing tales

¹⁶² Above.

¹⁶³ Exhibit 125.

¹⁶⁴ Presentation by Mr. Japheth K. Rugut, the Provincial Commissioner, Central Province to the Commission of Inquiry into Post Election Violence, p.5.

¹⁶⁵ *Id.*p.6.

narrated by the IDPs, who had fled from those regions and had arrived in the Province.¹⁶⁶

It is in these circumstances, the Commission was told, that the local Kikuyu community started threatening people from other communities. These prompted members of those communities, mainly Luos, Luhyas, Kalenjins and Kisiis to vacate their houses and camp in the various police stations.

On 3rd January 2008, rioting mobs blockaded the Nairobi-Nakuru Highway, but the barricades were removed after the intervention by the Limuru DO, who convened and addressed a public meeting at Ngarariga.¹⁶⁷

On 4th January, 2008 at Gakeu Village, Kirima sub-location, Nyandarua North District, 12 houses belonging to persons from the Kalenjin community were torched. The police arrested seven suspects and charged them with the offence of arson.¹⁶⁸ On the same night, persons of Kikuyu descent displaced from the Rift Valley, notably Molo and Nakuru, started arriving in Limuru Town and the D.O. earmarked Kirathimo Red Cross Centre as a camp where they would be accommodated.

In some cases, the centres holding IDPs from other communities were threatened with burning by members of the Kikuyu community who demanded that the camps should be broken up and those in the camps should leave and go to their homeland. On 5th January 2008, fracas started in Limuru town outside Bata Shoe Company gate and outside Kirathimo Red Cross Centre which was accommodating the IDPs. Security personnel dispersed the riotous mobs who were angered by the presence of the IDPs. It was the intention of the mob to attack the Bata workers, majority of who were persons of non-Kikuyu origin.¹⁶⁹

¹⁶⁶ The statement by the District Commissioner, Kiambu West District, Peter Leley, indicated that in his District, the first group of 14 IDPs of Kikuyu origin and their families arrived in Limuru Town on 4th January, having traveled from different parts of the Rift Valley province like Nakuru and Molo where post election violence had started.

¹⁶⁷ Above, p.4.

¹⁶⁸ Nyahururu Law Courts file 46/08 Cr. 242/6/08.

¹⁶⁹ See Statement by Peter Leley, DC, Kiambu West District.

The attack on 5th January 2008 instilled fear on people of non-Kikuyu descent, prompting them to camp at the Railways Go-Down, opposite the Bata Shoe Company. The next day, fracas erupted after youths clashed with the persons taking refuge at the Railway Station. Once again it took the intervention of the DO and the OCS Tigoni Police Station to quell the violence. However, the DC assessed the gravity of the situation and directed them to evacuate all non-Kikuyus to Tigoni Police Station.

Information from the DSIC reports indicates that in Limuru Town, about fifty rowdy youths armed with crude weapons set ablaze business premises owned by Nelson Oluoch Owegi, the Limuru ODM coordinator. Later the youths attempted to attack members of the Luo community who had fled their homes and were camping at the Tigoni Police Station, but were repulsed by police.

There were cases where business enterprises belonging to non-Kikuyus were targeted for looting and destruction. In Kiambu West District, a commercial building estimated to be worth Kshs. 800,000 and whose tenant was Odhiambo Oluoch, the ODM Chair, Limuru, was gutted on 16th of January 2008.

On 22nd January, 2008 in the same district,¹⁷⁰ a group of unknown arsonists razed down 3 houses belonging to members of the Kalenjin community and one belonging to a Turkana. The case, we were informed, was still pending under investigations at Ol Kalou Police Station by the time of the testimony.

On 23rd January, 2008, PC Joseph Kiplangat of Tigoni Police Station was shot by an unknown gunman from a roof top. He broke his leg and was taken to Kiambu District Hospital. At around 7 p.m. on the same day, three men were shot by police while in the act of looting the Limuru Bata Shoe Company display shop.¹⁷¹

On 23rd January, 2008 youths assembled outside Bata Shoe Company demanding that the non-Kikuyus being accommodated by the Company be asked to leave. They were addressed by the security personnel but they refused

¹⁷⁰ The Statement did not indicate the exact place of the incident.

¹⁷¹ The matter was still under investigation at the time of the testimony and an inquest file has since been opened (Inquest No. 2/2008).

to budge. The intervention of the MP-elect did not bear fruits as the youths, armed with crude weapons and numbering about 2,000 positioned themselves on a fly-over, on top of buildings and in the area outside the factory. About 60 security officers established a buffer zone between the Company's premises and the youths.

At some point, the surging youths set ablaze the security guards' office and broke into the Bata Shoe Factory shop, looting the shoes inside. A scuffle ensued and seven police officers sustained minor injuries and were treated at Tigoni sub-district hospital and discharged. In the process of trying to control the crowd, three people died.

On 24th January, 2008, one Peter Odhiambo, a member of the Luo community from Bondo was found slashed to death along a foot path within Karanjili area, Limuru.¹⁷² On the same day, 2 people were forcefully circumcised using a blunt tool, and were taken to Tigoni Sub-District Hospital where they were treated and discharged.

On 30th January, 2008, a group of youths numbering about 100 from the Holding Estate, Kiambu East, armed with crude weapons barricaded the roads to the Estate intending to attack persons belonging to other communities. They were however dispersed by Administration Police personnel.¹⁷³

Previously on 28th January 2008, within Nyandarua South District, a group of persons set on fire 104 houses, 1 tractor, 1 harrow, 10 sheep and 6 cows belonging to persons from the Kalenjin community. On the same day, a mob lynched Lukas Matete, a Luhya casual labourer to death. Information from the DSIC reports indicates that in Kiambaa and Nderi areas a group, mostly of youth staged a demonstration to the DO's office in Kikuyu town, demanding among other things, the immediate stoppage of the Rift Valley killings and evictions and destructions targeting their people; the immediate evacuation of the Kikuyu people to safe places by the government and guarantee of their security wherever

¹⁷² The matter is still the subject of investigation in Inquest File No. 3/2008 at Limuru Police Station.

¹⁷³ See Presentation by L.N. Lenayapa, p.4.

they were. The demonstrators also demanded that the Government issues them with vehicles to transport their kin back to the Central Province away from the conflict areas.

On 7th February, 2008, youths barricaded the Nairobi-Nakuru highway, but it was opened by a joint operation by the regular police and Administration Police. Three people were injured by the mob but were rushed by good Samaritans to Thogoto Hospital where they were treated and discharged. On 8th February 2008, two semi-permanent houses were burnt in Nderi, Kiambu West and the fence surrounding the compound of Steel Rolling Mills partially destroyed.

According to the KNCHR report produced to the Commission as evidence, there were threats and actual evictions of non-Kikuyu people in Nyeri in early February. The report states that unsigned notices were circulated in Nyeri town in estates occupied by non-Kikuyu such as Majengo, ordering non-Kikuyu people to leave. This led to the exodus of non-Kikuyu people out of Nyeri, especially when more leaflets started circulating. One of the leaflets read: *“No more clashes but war. Luo, Luhya, Nandi, we give you 24 hrs you pack and go, failure to that we need 200 heads before peace holds once more.”*

Internally Displaced Persons

The Commission was informed that the inflow of the IDPs was received with mixed reactions, with some residents empathising with the incomers and providing food and shelter. In areas such as Kikuyu township, the incoming persons would be absorbed into the society by the local residents. This explains the absence of major camps in the Kikuyu township area and other areas of the province such as Muranga North. In other places, they would be left to fend for themselves or settle in the camps, for example, in Ruringu, Nyeri. Yet still, there were individuals who hosted them. In one such case widely reported in the

media a woman hosted around 90 IDPs in her two-bedroomed house in Othaya.¹⁷⁴

Further, there were instances when youths within Central Province took advantage of the unrest to engage in unlawful activities. There were instances when non-Kikuyu employees working in various companies were targeted for attacks and eviction so as to create employment opportunities for themselves in those companies. Such companies included Universal Corporation Limited (UCL) and Steel Rolling Mills, both in Kikuyu; KARI and KEFRI and other research institutions also situate in Kikuyu; Tea Estates and Bata Shoe Company in Limuru; BIDCO and other industries in Thika; flower farms in Ol Kalou.¹⁷⁵

Nyeri Police station hosted 900 IDPs; Tigoni Police Station, 5,390; Ruiru Police Station, 620; Juja Police Station, 600; Thika Police Station 552; Maragua Police Station 68; Kinangop Police Station, 66; Karatina Police Station, 193; and, Kikuyu Police Station, 500. The cumulative total was 8,889. Those persons willing to leave were facilitated by the Kenya Red Cross to their ancestral homes which they considered safer, although many others were left to fend for themselves and received no assistance or other support.

Meanwhile the number of IDPs ejected from Rift Valley, Nyanza Provinces increased, with the figure of 18,406 recorded on January 31st, 2008 rising to 86,314 by the 5th day of March, 2008. The PC also tendered figures indicating the number of IDPs hosted by each of the districts in the Province, Kiambu West hosted 19,096 IDPs; Thika 5,437; Kiambu East, 8,164; Nyeri South, 2,236; Nyeri North, 3,872; Murang'a South, 2,503; Murang'a North, 2,910; Gatundu, 3,452; Nyandarua South, 16,800; Nyandarua North, 19,605; and Kirinyaga, 149.

It was the PC's evidence that the majority of the IDPs remained within the Province until the tension subsided on around February 29, 2008.

¹⁷⁴ Exhibit 125, paras 492 and 501.

¹⁷⁵ Above.

Response by Police and Provincial Administration

The heightened tensions at the time and episodic violence before the elections reported pointed to the potential eruption of violence in isolated parts of the Province. The expectation therefore was that the police and provincial authorities would put in place adequate security measures to pre-empt any breach of peace and order. However, it is our assessment that they were ill prepared to satisfactorily handle the overwhelming influx of IDPs. The security arrangements seemed to be trained on elections and more. The PC told the Commission that in the light of the rising tensions in the Province, and in view of the need to prevent the eruption of violence, he mobilised all security agencies and local leaders in the district to be on high alert. From the security intelligence reports, the DSIC had planned coverage of election campaigns as early as September and attended each and every political rally within the district.

The PC testified that he also convened several meetings in the districts with the members of the public with a view to promoting peaceful coexistence and appealing against retaliation. He held meetings on 25th January 2008 in Nyandarua North, Ol Kalou, Ngorika and Limuru. On 1st February, 2008 he attended a peace meeting in Nyeri South and on 5th February, he convened a similar meeting in Kiambu West.

There were peace meetings convened by the DSIC on 1st February 2008 in Limuru town and Wangige town of Kikuyu division, and attended by several MPs including Fred Gumo (Westlands), Uhuru Kenyatta (Gatundu South), Lewis Nguyai (Kikuyu), Peter Mwathi (Limuru), Elias Mbau (Maragwa), Johnstone Muthama (Kangundo), Eugene Wamalwa (Saboti), and Momoima Onyonka (Kitutu Chache). This may have pacified the situation. In total, the PC said 37 peace and reconciliation meetings were held across the Province.

According to him, these meetings down-scaled the hostilities towards other communities. As a result, a significant number of them were able to report to their places of work in the day and get back to the camps in the evening.

Incitement

Witnesses informed the Commission that there had been several planning meetings that had been convened in the Kikuyu-dominated parts of the Central Province/Rift Valley Province border. These meetings had been used to recruit fighters, to coordinate communal violence and to organize funding. There have been reports that a pastor, a former MP and sitting one urged people to take up arms in self-defense in the Limuru area.¹⁷⁶The allegation is corroborated by the intelligence reports covering the period between 15th January to 15th February, 2008, in a mammoth rally attended by some Kikuyu MPs and politicians. They blamed the killing of youths on police officers hailing from Rift Valley and Nyanza and called for their transfer from the area. The report states thus: “One politician called on the Kikuyu community to be ready to defend themselves and urged the rich to contribute money towards the cause. Another politician alleged that ODM was being backed by Western countries to destabilize the Government.”¹⁷⁷

There were claims of prior planning of the violence in some parts of Central Province. The Commission received reports alleging that a group of business persons met on 26th January 2008 at Kikuyu Country Club to fundraise for the eviction of non-Kikuyu residents. Weapons to be used in raids were supplied by persons whose names were made available to the Commission. Small businesses all in Kikuyu, supplied weapons such as machetes.¹⁷⁸

The reaction from the security agencies to the crisis had been *ad hoc* and lacking in direction. From the reports, it could be discerned that the DSIC did not see any need to follow up on what appeared to be an overt call to arms, and instead subjectively dismissed them as outbursts of anger. The report says thus: “The

¹⁷⁶ Exhibit 21J, Special Brief: Civil Society Responses to the Kenyan Crisis, Kenya Human Rights Institute, p.4.

¹⁷⁷ Central Province Security Intelligence Committee Report for the Period between 15th January to 14th February, 2008, p.3

¹⁷⁸ Exhibit 125.

leaders were reacting out of anger following the killing of three youths who were protesting the displacement of their kinsmen from Rift Valley”.¹⁷⁹

The Central Province Security and Intelligence Committee Appreciation for the period between 15th January to 14th February, 2008, reports that there was hate mail circulated by unknown persons on the Kenya Power and Lighting Company Limited web mail in Nyeri, calling upon the Kalenjins to rise and defend their ancestral land, and to deliver them from the Kikuyu dominance.

The Resurgence of Mungiki

The resurgence of the Mungiki could be seen as a form of encouragement to retaliatory attacks or, in the alternative, a response to the call to arms by the politicians to defend the Kikuyu community against aggression by non-Kikuyus. Further, despite noting the resurgence of the outlawed militia grouping, Mungiki, there is little else in the appreciation by the Central Province Security and Intelligence Committee indicating a decisive response to the threat to security posed by the proscribed sect.¹⁸⁰

*The Kikuyu community seems to be slowly accepting the Mungiki sect following aspersions that the government was unable to protect them against hostile communities during the post election violence. This could pose a challenge to security agencies, hence calls for concerted efforts to stem the same.*¹⁸¹

The resurgence is consistent with the claim as to the politicization of militia as a vehicle through which ethnic hatred and animosity could be driven. Many of the acts of violence perpetrated by this militia outfit at the time may be explained as retributive violence that was specifically targeted at members of ethnic

¹⁷⁹ Above, p.4.

¹⁸⁰ Central Province Security and Intelligence Committee Appreciation for the Period between 15th January, 2008 to 14th February, 2008.

¹⁸¹ Central Province and Intelligence Committee Appreciation, “Upsurge of Mungiki Activities Noted”, MIN 22/2008. The Report proceeds to identify specific areas of increased activity. For example, it says, “In Nyandarua, the Mungiki spiritual leader has directed sect members to recruit ten thousand (10,000) new members to defend Kikuyu in the Rift Valley. Consequently, theSect Recruitment Officer, has recruited one hundred and thirty (130) youths from Dundori and Ol Kalou”

communities perceived to be supportive of the ODM Party, and against whom accusations had been made for targeting members of the Kikuyu community in other parts of the country.

Some of the encouragement to attacks also had a coercive aspect to them. A report titled Special Brief on Civil Society Response and submitted to the Commission as Exhibit 21J cites a witness as saying that,

*there [sic] have also been reports of intra-ethnic violence in the Wangige area of Kiambu District where Kikuyu men have been attacked by gangs for “failing” to “defend” their own community from “aggressors”. Local human rights defenders are being “screened” and the security and safety of those of Kikuyu origin are at risk.*¹⁸²

There were reports that landlords also became targets of the attackers. They were forced to give notices to their non-Kikuyu tenants to vacate.¹⁸³

Hate Speech

There were reports of the circulation of malicious cell-phone text messages that propagated hate speech and alarming rumours. This had the effect of poisoning an already tense political environment. The statements revolved around the denigration of individual political actors and their affiliate political parties. Examples are the hate leaflets on Raila Odinga found at Ndaragua, Nyandarua North District. The leaflets read: “*Raila is planning a revolution christened December 28 Orange Revolution*” with the assistance of Dick Morris and Prof. George Ayittey of Ghana.” Similar leaflets found at Kahuro in Muranga, accused Raila of being a terrorist, devil worshipper, communist, expert in overthrowing governments, tribalist, and deceptive, dishonest, practising witchcraft to win presidency.¹⁸⁴

¹⁸² Exhibit 21J, p.4.

¹⁸³ Exhibit 125

¹⁸⁴ DSIC Reports Min 94/2008.

Additionally, there were also reports of demeaning references by the Kikuyus to persons of other tribes as *nduriri* (an imperious reference within the context of the speech to people of non-Kikuyu descent) and specific references to the ODM presidential candidate and the Luos as *kihii* (loosely translated as an uncircumcised man in the Kikuyu language). The KNCHR reports one prominent Kikuyu politician and former MP as having said that the Kikuyus cannot be led by a *kihii*.¹⁸⁵

The Commission also received information to the effect that religious leaders in areas such as Limuru and Nyeri used the pulpit to convey messages amounting to hate speech against non-Kikuyu communities, ODM and generally whipping up Kikuyu ethno-nationalist passion. The leaders uttered phrases such as “*ciaigana ni ciaigana*” (enough is enough), suggesting that the Kikuyu community should no longer simply stand by while attacks against them continued. The report continues, “In Kirathimo IDP Camp in Limuru, which hosted returnees from other provinces, one religious leader urged the people that, “*The Kikuyu should be armed the way I am armed with the Bible.*” Gospel artistes performed in Limuru at rallies attended by the local community where hate messages were disseminated.”¹⁸⁶

KNHCR reported as follows on hate speech:

*Local language media also disseminated hate speech to Kikuyu audiences in Central Province and in the diaspora. Call-in shows on radio stations enabled individuals to make unregulated hateful statements. Inooro FM put on air highly emotional and distraught victims of violence, a factor that tended to whip up the emotions of its audience. Music in the Kikuyu language played on Kameme and Inooro radio stations also engendered or raised ethnic tensions. One such song variously played by Inooro FM, lyricised about Raila Odinga and the Luo community in very negative terms.*¹⁸⁷

¹⁸⁵ Exhibit 125, Para 502.

¹⁸⁶ Exhibit 125, para 512.

¹⁸⁷ Above, Para 513

Findings

The totality of evidence received by the Commission suggests that the violence in Central Province was mainly targeted against persons perceived to be unsympathetic to the PNU presidential candidate, Mwai Kibaki, and therefore responsible for the evictions of non-Kikuyu from conflict-stricken areas across the country.

The re-emergence of Mungiki and associated criminal gangs followed the killings and evictions Kikuyus in ODM party strongholds in western Kenya. The turbulence, in our view, provided a perfect opportunity for these proscribed militia to reinvent and package themselves as instruments for the advancement of political and ethnically motivated violence.

The Commission also notes the distinct nature of the post-election violence with respect to Central Province. In the past ethnic clashes, the major protagonists were the Kikuyus and other the other tribes on the one side and the Kalenjin on the other. This was a reflection of the political alignments of the day when the Kalenjin who enjoyed the patronage of the regime of the time. Subsequent political events saw the Kikuyu community isolated by the other ethnic groups hence when post 2007 elections violence erupted in Central Province, the communities from other parts of the country bore the brunt of violence in the Province.

Coast Province

Introduction

Coast Province consists of 13 Districts and 21 Constituencies with a population of slightly over 3 million people according to the Kenya Bureau of Statistics projections of 2007. The main ethnic groups are the Mijikenda comprised of nine culturally and linguistically inter related sub groups among them the Rabai, Chonyi, Giriama, Mjibana, Kauma, Kambe, Digo and Duruma. Most of them profess the Christian faith save for the Digo who are mainly Muslims. The non

Mijikenda in the province are the Taita – Taveta, Orma, Pokomo, Munyoyaya, Malokote, Bajuni, Swahili and people of Arab descent; the last 3 of whom mainly inhabit the Coastal towns. In total there are 15 Coastal ethnic groups and members of Caucasian communities living in the Province.

However, over the years there has been a significant migration of Kenyan citizens from upcountry regions drawn to the Coast in search of better economic prospects. The region has therefore become a mosaic of various identities. This has had a profound bearing on the socio-economic and political relations within the Province. Some ethnic groups have been classified as ‘insiders’ or indigenous communities, while other communities are routinely referred to as ‘outsiders’. These are the Kamba, Kikuyu, Luo and other upcountry people resident at the Coast.

Mombasa town is the capital of the province whose mainstay is tourism and related activities. Fishing and agriculture also offer livelihoods to a substantial part of the residents. Over the years the indigenous communities residing in the Coast have consistently complained of exclusion from the hinterland and exploitation of their resources without reward which issues explain some of the political dynamics. The persistent claims and allegations of exploitation and exclusion are blamed on the so called non indigenous communities commonly referred to in the Province as ‘*watoka bara*’ or *wabara*. Since the re-introduction of multi – party politics in 1991, the politics in the region has become polarized along tribal lines and politicians have exploited the existing latent tribal animosity to intimidate certain communities giving rise to violence against other communities depending on the prevailing political climate. For example, the Likoni and Kwale violence of 1997 was premised on the stereotyping of upcountry people as having appropriated to themselves local resources and having benefited unfairly at the expense of the indigenous residents and they were thus targeted in the violence whose sole aim was to drive them from the region and achieve an intended poll result¹⁸⁸. The polarities and tensions created

¹⁸⁸ For further reading, see the Akiwumi Report at 233 – 278.

by this episode remain evident between the so called local 'insiders' and upcountry 'outsiders'.

As we shall see, these parameters surfaced in 2007 only that this time round, the indigenous communities joined hands with some upcountry communities like the Luo (themselves targets of the 1997 violence) to target the so-called GEMA communities – composed of the Kikuyu, Embu, Meru. The Kamba who have a significant presence in the province were also targeted. Many GEMA community members thus suffered a double blow since they had been victims of election violence in 1997 and had barely recovered from their losses when they were again targeted and attacked in the 2007.

Local communities have for years decried the perceived marginalization and under development of the region without tangible action being taken by successive Governments since independence to deal with these deep rooted feelings. The issue of land at the Coast has specially been problematic and has been described as a ticking time bomb. More recently other factors like perceived mistreatment of residents at the hands of police in the name of fighting terrorism, poor education levels and bad infrastructure have all served to fuel feelings that successive Governments do not care about the region.

While the perceived manipulation of the presidential results was the trigger for the 2007 violence in the Province, it is clear that there is deep underlying resentment which has never been addressed by the State over the years. The situation is further complicated by economic competition for resources with migrant upcountry communities seen as benefiting at the expense of the indigenous people and this background explains the salient issues, causes and manifestation of the violence in the region as will be expounded in detail hereinafter. As noted by King'ori Mwangi Coast PPO,

“My Lords, our assessment of the Coast Province was that there was a potential violence much higher than any other part of the country because of the underlying issues of poverty, their political feeling of being excluded and a lot of unemployment. All these going by the

*history of the Coast... we felt the issues here, the threats were higher than other parts of the country”.*¹⁸⁹

Pre-Election Period

The Commission heard from various witnesses that Coast Province was generally peaceful in the run up to the elections and residents eagerly waited to cast their votes. Many arrived at their respective polling stations as early as 4.00am on the morning of 27 December 2007. The only hitch reported by voters was the discovery at the last minute that voter registers had been split alphabetically and this unannounced change created a lot of confusion and delays. Surprisingly, and also commendably, this did not lead to any violence. In Garsen constituency of Tana River District the Commission was told of some low level violence on 27th December after voting which was confirmed by Mr. Wilfred Mbithi, ACP. In that incident, a police helicopter had brought in ballot papers for tallying purposes sparking rumours that the incumbent MP Hon. Danson Mungatana of PNU had flown in foreign ballot boxes with marked ballot papers.

There was clear evidence of a high level of competition between the two leading presidential candidates, Mwai Kibaki and Raila Odinga and therefore a palpable divide between PNU and ODM supporters in the Coast. Witness testified that the pre-election period had been characterized by a political environment that was greatly polarized since the Constitutional Referendum of November 2005. We heard that the Referendum had created very high expectations and the majority of the Coastal people saw real hope for positive change in the ODM party and its presidential candidate Raila Odinga who was widely expected to win the presidential poll. The common belief in the region was that Raila could only lose if the poll was rigged.

In the meantime, the NSIS was apprehensive and viewed the Coastal area as a potential flashpoint where political party supremacy, religion and race had

¹⁸⁹ CW 141.

ignited violence in the past¹⁹⁰. Another fear cited by NSIS was the land problem between squatters and landlords where sentiments were high that the Coastal people had been marginalized by outsiders. Tana River District featured consistently in Intelligence reports where there was an ongoing conflict between the Orma and Wardei communities within Bura and Galole Divisions and also between the Pokomo and Somali over a disputed 3-mile strip along the banks of River Tana. Finally, intelligence was furnished by NSIS regarding the activities of an outfit by the name Revolutionary Republican Council (RRC) that was reportedly training its militia within Mwagulu Forest of Kwale District with the help of ex-military servicemen allegedly with the aim to “disenfranchise upcountry people and later reclaim land owned by perceived outsiders”.

It was noted in Intelligence reports that the RRC had identified a training ground for Digo, Duruma, Taita and Taveta communities in Kilibasi area of Kinango Division, Kwale District. Indeed the Coast PPO did confirm the existence of the RRC which he stated, *“claims that they would like to have the Coast Province declared as a republic, independent from the rest of Kenya...we did consider them to be a threat to our security operation and we had taken measures to make sure that they did not disrupt the election or wage violence against other people after the election, my Lords.”* Accordingly the authorities had neutralized the group by the time of elections.

NSIS also noted that there were threats of eviction of upcountry people especially Kikuyu, Luo and Kamba residing within Kipini Settlement Scheme in Malindi District. NSIS reported that the *majimbo* debate had elicited a strong anti-Kikuyu sentiment in Coast Province and that some unnamed politicians planned to use *majimboism* as an excuse to mobilize local youth to attack perceived outsiders. Consequently, the Kikuyu community inside and outside the province robustly opposed the proposed *majimbo* system¹⁹¹. As the PC put it:

¹⁹⁰ NSIS evidence, Exhibit 20

¹⁹¹ Exhibit 20

“In the way it was being put was that Majimbo would ensure that local people would benefit from the resources accrued from local enterprises the revenue generated in Coast province would be for the benefit of Coastals. I think this is how they were looking at Majimbo. That key positions, revenue accrued from tourism, from the ports, would be- will remain at the Coast here and benefit the Coastal people”

Given the Intelligence that was available, we discern that there was reason to prompt the authorities to make sufficient security arrangements early enough to address these security concerns and perhaps this was done which is why the Coastal region remained peaceful during the campaign period. This was also alluded to by the Coast Provincial Commissioner Ernest Munyi when he stated that due to the high level of competition during the campaign period, he had found it “proper and imperative to put in place precautionary measures just to ensure that his office could be in better control of the situation in the Province in the event of any violence”. The PC further stated that in making these arrangements, he had relied on NSIS security reports which information was supported by the Coast PPO Kingori Mwangi and Wilfred Mbithi the Mombasa Urban OCPD.

After the completion of voting, the Commission heard that people in the province keenly followed the vote counting peacefully from various places through television and radio broadcasts. Exhibit 149 was tendered containing information showing that initial tallies indicated Raila Odinga in a clear and widening lead over Mwai Kibaki before 30 December 2007. It was expected therefore that this trend would continue and ODM supporters who were the majority in the region started early celebration for the expected victory of their candidate.

The Election Results Trigger

The Commission was then told that tension, anxiety and fear started gripping the region and particularly Mombasa on the 28th and 29th December 2007 when tallying of the final results had not been completed and when Raila Odinga’s

margin over Mwai Kibaki was suddenly drastically reduced. From the various witnesses, we were able to establish that the trigger for the chaos that rocked the region was the declaration of President Mwai Kibaki as the winner coupled with the suspicious manner in which the Electoral Commission handled the situation. Indeed there were early signs of trouble when on the 29th December 2007 groups of young men gathered from 3.00 pm along Kenyatta Avenue, Abdul Nassir road and Digo road roundabouts chanting slogans and expressing disquiet. This early trouble appeared intended to share their feelings on the prevailing political situation as it then was.

In the meantime, there was a lot of tension in many other places at the Coast as people waited peacefully for the final presidential tally results. For instance, in Kisauni, tension was reported to be very high with the youths contemplating to hold a public protest on 29th December 2007 against the delay by ECK in releasing the presidential poll result. We heard that many youth gathered in various spots eagerly awaiting the announcement of the presidential results and some in their conversations tried to envisage what a Raila Odinga win would portend and how his Government would be.

Hussein Khalid, Programmes Coordinator for a Mombasa based NGO Muslims for Human Rights (MUHURI), testified that violence in the region was triggered by the announcement of the presidential results against a background of long standing underlying issues which had not been addressed over the years and by the conviction of many people at the Coast who happened to be ODM supporters that they had been robbed of victory. After ECK announced Kibaki as the winner, extremely disappointed, angry and frustrated youth were primed for violence since the general feeling was that Raila Odinga had been robbed of a victory and this bitterness was expressed in slogans such as, “*Haiwezekani*” (it is not possible), “*Haki Yetu*” (our right), “No Raila No Peace”, “*Tutamaliza wacky*” (We shall finish the Kikuyus), “*Maisha Bora*” (Better Life), “*Wakikuyu ni waizi*” (Kikuyus are thieves); as avenues to express anger while also singing in praise of their favourite candidate Raila Odinga and ODM.

A religious leader however told the Commission that the violence appeared to have been planned prior to elections. He gave reasons for his belief that a Member of Parliament from the Coast Province was responsible for organization of the violence that rocked the area. This sentiment was further echoed by other witnesses; for instance, a witness told us:

“I witnessed the violence that was going on at that time within Bokole. At a shop we call Safaricom Building owned by a Kamba known as Philip Kiluko, I found a group of youths trying to break in. They were all former security guards for a politician during the campaign period. I talked to them. I enquired from them why they were doing that and one of them told me that each of them had been paid Kshs 300/- to cause the mayhem to express disgust at the election results and that even if ODM could have been declared the winner, the violence would still have (happened)...I met a friend of mine and he told me that since he had seen me during the ODM nomination, we should go to the politician’s home with him at Mikindani to get funds for the violence...”

Another witness, appeared to lend credence to those accusations. He stated:

“I was told that the MP funded the youth to loot and burn all businesses belonging to non ODM members so that they remain as poor as themselves. One time during the violence, I accompanied some to the MP’s home ... he addressed us and told us that he is happy with our actions meaning the violence and further told us that it should continue until President Kibaki relinquishes the presidency. Therefore, I believe the MP fully supported the youth’s action”

The foregoing are important leads to further investigations into the role played by a local politician in the post-election violence considering that there were intelligence reports from NSIS about the potential of violence in the area.

According to Hussein Khalid, some of the violence at the Coast was actually caused by the police. He produced exhibit 149 stating that

“there were instances where we felt some of the skirmishes that were witnessed could have been avoided, for instance had the police acted in a more civil manner, where they dispersed meetings or processions that were legally organized, where notices had been issued and they had to come in to disrupt peaceful processions. We also felt that a number of issues that came to the fore were ethnic in nature. There were people or a certain community that were being targeted by others and that very little was done or they were disjointed efforts by

the Government. The Provincial Administration was calling meetings to discuss and deliberate issues with local leaders, women leaders, it was a bit disappointing to actually note that the police were actually out shooting people, killing, sometimes injuring individuals to the extent of even having them admitted to the hospital”.

His evidence was tested in cross examination, and he maintained that violence broke out on 30th December 2007 at various points in the Province simultaneously and that a particular community was targeted though, in his view, there was no planning. People simply captured the moment and decided there and then what to do with absolutely no prior arrangements. This contradicted what the PC Earnest Munyi told the Commission, that during the violence leaflets were circulated saying that *“The Kikuyu community should leave their properties and their lands and go back to where they came from”*. It was thus the PC’s view that

“there was an element of feeling... that this could have been planned. Because on 31st (December 2007) at exactly 11 in the morning groups of people were converging simultaneously at that particular time in Kisauni, Changamwe and were trying also to cross from the Likoni side of the ferry trying to come to Island ...so that kind of situation one can conclude that there was some element of planning”.

Nature and Extent of Violence

As we have seen, the violence in Mombasa Town erupted on 30th December 2007 and continued unabated for 3 days. We were told that huge groups of youth armed with crude weapons engaged the police in running battles including stoning police in Mishomoroni and Changamwe’s Bangladesh area. The main highway to Nairobi was blocked at Mikindani and the OCPD reported that riots also broke out in Chaani, Bokole, Magongo Mwisho and Miritini. In the meantime, the whole of Likoni was engulfed in violence.

According to the Police, 25 deaths occurred though Dr. Anderson Kahindi the Provincial Director of Medical Services gave a figure of 32 people as having been

killed¹⁹². Of these one died of arrow wounds, 5 from gunshots, 11 died in a house fire, another 11 had multiple injuries, 2 were indicated to have been lynched by a mob while it was not possible to ascertain the cause of death in 2 cases.

Further, we heard from the OCPD that 24 vehicles were burnt, 29 residential houses destroyed and 240 commercial buildings, including kiosks and other temporary structures were destroyed. The youth targeted property belonging to the Kikuyu community as an expression of anger against them for allegedly supporting Mwai Kibaki. In order to escape the onslaught, many residents found it prudent to paint the letters 'ODM' on their property and motor vehicles as a measure to avoid being attacked¹⁹³.

We were informed by several witnesses that most of the youths appeared to be intoxicated.¹⁹⁴ The PC observed that the Coast had a drug problem especially among the youth and it was probable, therefore, that drugs were bought for the youth to engage in violence. The further presumption is that the youth had the benefit of leadership and coordination.

The Commission was told that demonstrators first vented their anger pulling down unoccupied structures then lit bonfires and tyres and then barricaded roads thereby paralyzing transport and leading to most people staying indoors. What had started as protest demonstrations over the presidential outcome took an ethnic twist with demonstrators targeting for destruction property belonging to the GEMA communities, especially the Kikuyus whom they felt had contributed to their marginalization.

By Monday 31st December 2007 about 20 shops had been broken into and 4 houses had been burnt in Changamwe. Most of them belonged to members of the Kikuyu and the Meru communities who by this time were fleeing to safety and seeking refuge at the Moi International Airport, Mombasa. This gave an

¹⁹² Exhibit 143

¹⁹³ Exhibit 150

¹⁹⁴ Testimony of PC Ernest Munyi, CW 140.

opportunity to criminals to engage in an orgy of looting and destruction. We heard that crowds shouting slogans of “*Maisha Bora*” (Better Life) and No “Raila No Peace” invaded business premises belonging the Kikuyu and Meru communities where they looted all the stock. The extent of the violence was also felt as far as the Mombasa mainland shopping centre and Soweto where 4 public Motor Vehicles were burnt and bars were looted. The orgy of looting was dubbed “ODM shopping”.

Likoni, a largely peri-urban area bordering Kwale District and inhabited predominantly by the Digo and other Mijikenda communities and a small number of upcountry GEMA residents was not spared. Testimony was furnished that 2 petrol stations were burnt down while Mt. Sinai Primary School and some businesses owned by Kikuyu were destroyed. In this area, the Ngombeni Chief’s camp was attacked and razed down on 5 January 2008 evoking memories of the 1997 pre-election violence where the Likoni Police station had similarly been invaded.¹⁹⁵ The Kenya Ferry services business stalls were vandalized and looted and for 3 days the South Coast was cut off from Mombasa town which is linked by the ferry service that was rendered un-operational due to the prevailing mayhem.

In Kisauni, the Commission heard that there was low level violence on 30th December 2007 where youths burnt tyres at the roadside at Mlaleo and GEMA community members started to move out. We were further told that the police did absolutely nothing to contain the situation and these protests continued in Mlaleo, Mtopanga and in Bamburi Mwisho. Between 30th and 31st December 2007, Mshomoroni, Kadogo, Mtopanga, Bombolulu, Mwandoni, Kiembeni, Bamburi, Mtongwe, Shikaadabu, Miritini, Bomu and Migadini areas remained no go zones. On 31st December 2007 and subsequent days, there was massive destruction of property especially those belonging to members of the Kikuyu community. Furniture shops, supermarkets and select bars were attacked and looted with the violence spreading to Mshomoroni and even Nyali west. On 1st

¹⁹⁵ See the Akiwumi Report as above note 188.

January 2008 in Mshomoroni, Changamwe, Likoni and Kisauni there was massive destruction of property, looting and burning of houses and kiosks. 20 shops were reported looted in Changamwe, four houses burnt and a young boy reportedly shot by a 'stray' bullet.

Similarly, some violence was experienced in Taita and Taveta districts where on 2nd January 2008, ODM youths angered by the presidential poll result went on rampage in Taveta, Mwatate and Voi towns. In Taveta, 15 shops were broken into, goods stolen and or looted and some of these shops burnt amongst them a popular establishment known as 'Makuti'. Several people were injured in the skirmishes and one person was killed.

Some Coastal areas did not experience any level of violence in spite of earlier NSIS fears. For instance, though Malindi District remained tense following announcement of the presidential poll result, no incidents of violence were reported at all. In Lamu district, we received evidence that people merely expressed their anger and disappointment through discussions and no violence was experienced.

While Government witnesses stated that violence had been brought under control by 1 January 2008, we did hear testimony that the situation only became controlled sometime in mid January 2008.¹⁹⁶ For instance, we heard that on 3 January 2008 violence was reported in Kisauni, Maweni, Bombolulu and Changamwe areas where kiosks were destroyed and used to block roads. The demonstrators were dispersed by police using tear gas and shooting in the air. In this incident, one man was reportedly shot in the head and many others were seriously injured. On 5 January 2008 youth leaders in Mvita organized a demonstration which disrupted shops, markets and matatu transport. The Commission further heard that in Ukunda, shops were burnt while others were marked with an 'x' as a sign that they would be attacked and 2 German tourists were killed in Diani.

¹⁹⁶ Exhibit 149

On 10th January 2008 in Mvita, demonstrations were called after the Friday prayers leading to the closure of shops as police dispersed the demonstrators who then resorted to running battles with the police. This was repeated again on 18th January 2008 and we heard that organized demonstrations by youth and some civil society organizations became the order of the day. One youth was reported to have been shot dead in this mayhem and many people were injured, shops remained closed while police fired in the air and employed tear gas to disperse the demonstrators. Overall, we heard that a measure of calm returned to Mombasa by 25th January 2008 as the Koffi Annan mediation process gave many people hope of lasting peace.

The post election violence left 303 families homeless in Kisauni, Changamwe and Likoni. 6 people were burnt to death in a house in Miritini and Dr. Anderson Kahindi CW 143 informed us that the Coast Provincial General hospital handled 109 casualties while Jocham Hospital attended to 16 cases. 5 people died of the bullet wounds in the province.

Response by Police and Provincial Administration

The PC stated that security forces who were deployed to quell the skirmishes did their level best and that he was *“satisfied because the violence was quite intense in the two days and especially the second day and were it not because of the presence of security personnel, then the violence could not have been controlled within that limited period of time.”* While we shall shortly revert to this issue, we commend the PC’s decision to call a meeting of local leaders who appealed to the public through the 5 FM stations in Mombasa to help bring peace back to Mombasa and Kilindini. This action made a big contribution in bringing peace in Mombasa and Coast Province in general. This was confirmed by the PPO who

added that the voice of a bishop and particularly that of the Chief Kadhi¹⁹⁷ was very important in appealing to people to maintain peace.

The PPO felt that the police had dealt with the situation to his satisfaction and that by 1st January 2008 the violence had largely been contained. He also acknowledged that he had received a lot of complaints from citizens lamenting that “*our officers were not protecting their premises adequately enough*”. He explained that in response to the looting, the police had resorted to the use of *Albadiri*, which in local terms is “*giving people a number of days to return what they had taken and they will not be prosecuted; a lot of property was returned.*”

We heard that almost 10,000 people were displaced on the first night of violence and sought refuge in various police stations. Not surprisingly, the police through the PPO and the OCPD Wilson Mbithi told us that though they expected election related problems at the Coast they had not imagined violence of the magnitude that occurred. It is our finding that serious efforts were put to securing vital public installations such as the Kenya pipeline depots, the port of Mombasa, the Kenya Petroleum Refinery and fuel depots in Shimanzi which meant that with the available security personnel, it was not possible to provide reasonable protection to others’ property. This is borne by cross-examination of the OCPD,

Q.: Bwana OCPD, you're almost telling this Commission that the police will be there to protect the bigger assets, the bigger installations and that is why the pipeline - nobody - I mean the oil depots, the ports, the banks were not touched, But *mwananchi's* kiosk their shops were broken into. And you explain the logic behind guarding that and not the *mwananchi's* kiosk.

Witness: My Lords without giving any other details, it was not possible for the police to provide security to every individual's business premises.

While obviously appreciating that police could not be everywhere all the time, we were repeatedly told that police took too long to come to the rescue of citizens

¹⁹⁷ The PPO further stated that on a night when people had come out with *pangas*, he had talked to the Chief Kadhi who went on air on the radio station Radio Rahma and by talking to the people he was able to cool down the situation without any violence.

and property under threat and sometimes did not appear at all, in spite of giving assurances that everything was under control. For example, a witness testified that:

“The same day on the 31st December in the evening around 6 p.m, I was called again by neighbours in Likoni, who told me that shops of Kikuyus were being broken into and things were being looted. I also called the police there and they assured me things are okay there (are) no problems but within a short while I was told the shop was broken into but they were even unable to open the doors so they had to break the concrete. The steel door they were unable to open it so they broke the walls.”

When he received news that another of his shops was under attack, he called “the Nyali police Station and they told me everything was okay but within minutes the shop was broken into and everything taken away.” He lost property and goods estimated at Kshs 3 million. The witness furnished the Commission with video footage capturing the looting of one of his shops which evidence he also stated he had put in the hands of the police together with posters which clearly depicted the faces of people who were looting his shops.¹⁹⁸ By the time he appeared before us on 1 September 2008, he said no action had been taken by police against the perpetrators, some of whom could clearly be identified from the footage and posters.

The lethargy and incompetence experienced by the witness and others depict another hallmark of poor policing in addition to other negative allegations including taking part in the violence and even worse, of having taken sides. The evidence points to a serious degree of inefficiency and dysfunction within the police, and we cannot therefore in such circumstances help but come to the conclusion that either the police did not bother to prevent the commission of crimes in this region or if they were willing to, then they were obviously overwhelmed by the magnitude of the unfolding chaos. Surprisingly there was no concession by the police that there were any lapses in their policing duties.

¹⁹⁸ Exhibit 144 (a)

Further, we heard from two witnesses that prior to elections, it was openly discussed amongst the Coastal people that they would attack Kikuyu and Kamba business premises if the election results were flawed. One would therefore have expected that the administrative arm of the Government in collaboration with the police and other security agencies would have verified such warning signs and moved very swiftly to put in place some measures to ensure that such eventuality did not occur. Of course no precautionary measures were put in place despite the acknowledgement that some areas were dubbed as hot spots. The information produced in Exhibit 150 is therefore credible that security forces did not make any preparations to address the anticipated violence, to forestall looting, destruction and other forms of chaos.

We were concerned by evidence tendered before us that there was a big presence of GSU officers in Likoni but that they were only visible and not active. This gave the impression to the residents that these particular officers were there with specific instructions to protect tourists along the main routes but had no brief to quell the violence and so they just watched as the tragedy unfolded. However as stated by Hussein Khalid, the Provincial Administration led by the PC Ernest Munyi made an effort at some point to meet the local leaders with a view to finding a solution to the situation if only to avoid the escalation of violence. That aside given the attitude of the security forces at this point in time we are not surprised that a fairly manageable situation escalated into full blown violence that took an ethnic angle and that not only were security forces caught unawares but they were completely overwhelmed. Further, it emerged that the riot drill pamphlet providing guidelines to the suppression of riots “was last issued in October 1962 and if there is any one that came after this one I may not be aware about it my Lord¹⁹⁹”.

The OCPD said it was:

“just a show of force meaning that your presence at a scene of disturbance is assumed to be enough to make the rioters disperse, that is the first one. Number two, if they don't disperse after show of

¹⁹⁹ Testimony of CW 143

force then you are required to use the teargas. The third one if they would not disperse after you throw teargas to them then the pamphlet allows the use of the button, the truncheon now. And finally if they do not oblige and the situation is so bad that is the only time you can resort to the use of firearms my Lord”.

Another troubling aspect regards the evidence we received that in numerous instances where the police arrived on time, “they allowed these people to loot items but implored them not to cause any bodily harm to other persons”²⁰⁰. The PC, the PPO and the Mombasa Urban OCPD categorically denied being aware of a ‘loot but not kill’ order. They also rejected the suggestion that they were overwhelmed for lack of adequate preparation, which would justify them seeking to appease the mobs by allegedly telling them to loot but not to kill. However, testimony was consistent from a number of witnesses that police who were patrolling in Land Rovers gave the protesting crowds a go ahead to loot but not to harm or kill anyone.

²⁰⁰ Testimony of Hussein Khalid CW 149

