

## **CHAPTER TEN**

### **Findings**

The findings we make in this Chapter are derived from the facts collated and analysed from oral and documentary evidence submitted before the Commission. There are 4773 pages of recorded sworn testimony from 156 witnesses and 144 other witnesses who submitted depositions and recorded statements. There are nine volumes of exhibits running into more than 3500 pages and we had at our disposal, in terms of our terms of reference, official reports of previous investigations, investigations from other institutions or organizations and research material from our own researchers and investigators. It must be said that the Commission had only a limited period to carry out exhaustive investigations and we do not doubt therefore that there may be information out there which did not reach the Commission. We were nevertheless encouraged by the enthusiastic support and response we received from members of the public and we believe the information gathered enables us to state with confidence that our findings are made fairly and fully.

The preceding chapters make various findings in relation to the topics discussed and those findings remain valid. What follows is a summary of the broad findings as distilled by the Commission. On the basis of those findings the Commission has made its recommendations as required in the terms of reference.

#### **Findings in Relation to the Extent of Violence**

- 6.● A total of 1,133 people died as a consequence of the post-election violence. The geographical distribution of the deaths was unequal, with most of the post-election violence related deaths concentrated in the provinces of Rift Valley (744), Nyanza (134) and Nairobi (125). The districts of Uasin Gishu (230), Nakuru (213) and Trans Nzoia (104) in the Rift Valley Province registered the highest number of deaths related to post-election violence.

- 7.● A total of 3,561 people suffered injuries inflicted by or resulting from sharp pointed objects - 1229, blunt objects -604, Soft tissue injury - 360, Gunshot - 557, Arrow shots - 267, Burns -164, Assault - 196, etc.
- 8.● A total of 117,216 private properties (including residential houses, commercial premises, vehicles, farm produce) were destroyed, while 491 Government owned properties (offices, vehicles, health centres, schools and trees) were destroyed.
- 9.● Gunshots accounted for 962 casualties out of whom 405 died. This represented 35.7% of the total deaths, making gunshot the single most frequent cause of deaths during post-election violence. It was followed by deaths caused through injuries sustained as a result of sharp pointed objects at 28.2%. The Commission has received no evidence to suggest that where gunshot was recorded as the cause of death or injury, it was from a source other than the police. This calls into question the contention that post-election violence was a citizen-to-citizen violence, and it validates the view that police action accounted for a good part of the post-election violence.

### **Findings In Relation to the Causes and Patterns of the Post-Election Violence**

1. In contrast to the pre-election violence, which was mainly between candidates and their supporters, the post-election violence had a distinct ethnic dimension.
2. Initially, the violence witnessed was spontaneous and was in part a reaction to the perceived rigging of elections. In areas like the Rift Valley and the Coast, it targeted members of the Kikuyu and Kisii communities perceived to be

associated with the PNU party and with President Kibaki who were seen as the beneficiaries of the “rigged” election, while in Nyanza and Western, the spontaneous violence was mostly directed towards government facilities and gradually took the form of looting and destruction, and while it also targeted Kikuyus and Kisiis, the intention appeared to be not to kill them but rather to be expel them and destroy their property.

3. Subsequently the pattern of violence showed planning and organization by politicians, businessmen and others who enlisted criminal gangs to execute the violence. That was the case particularly in Rift Valley and Nairobi. In places like Naivasha, Nakuru and the slum areas of Nairobi, Kikuyu gangs were mobilised and used to unleash violence against Luos, Luhyas and Kalenjins and to expel them from their rented residences and, similarly, organised Kalenjin youth particularly in the North Rift attacked and drove out Kikuyus living there.

4. Some of the pointers to the organisation include the fact that:

- In instances, warnings were issued to the victims before the attacks;
- The violence involved large numbers of attackers, often mobilized from areas outside the location of the violence;
- Petrol and weapons were used in various places to carry out the attacks and destruction, which required arrangements as regards acquisition, concealment and transport; and
- Sometimes the attacks specifically targeted only members of given ethnic groups to the exclusion of others.

5. Some responsibility for the violence must also be laid at the feet of the country’s politicians who precipitated the violence by among other actions and omissions:

- (i) Conducting the election campaigns in a strident and confrontational manner, thereby creating an atmosphere of tension;

- (ii) For party political ends, casting the *majimbo* debate in ethnically divisive terms; and
- (iii) Failing to create confidence among voters around the electoral processes and institutions.

6. The administrative authorities, including the police, the security forces and the provincial administration, must also take responsibility for various omissions and commissions in regard to the violence arising from:

- Failure to act on intelligence regarding the possibility of violence following the elections;
- Failure properly to respond appropriately and adequately to the violence and its effects, thereby aggravating the suffering of the victims;
- In the case of the security agents and the police, resorting to an unjustified use of force and causing death and injury unnecessarily; and
- Failure to act with discipline and impartiality and at times descending into acts of serious crime against civilians.

## **Findings In Relation to Sexual Violence**

### **General**

7. Because of the context in which it took place, the sexual violence experienced took the form of gang and individual rapes, many of which were ethnically driven, as well as horrendous female and male genital mutilation. Women and children's labia and vaginas were cut using sharp objects and bottles were stuffed into them. Men and boys, in turn, had their penises cut off and were traumatically circumcised, in some cases using cut glass. Furthermore, entire families, including children often were forced to watch their parents, brothers and sisters being sexually violated.

8. Aside from the above life shattering events, many victims of sexual violence experienced other injuries, lost family members, their houses, property,

had no place to go or to turn for help, and have ended up alone or in IDP camps without a means of earning a living.

### **Perpetrators**

9. The Commission found that perpetrators of sexual violence were not just ordinary citizens, neighbours, and gang members, but also significant numbers of security forces. These included members of the General Service Unit (GSU) as well as regular and administration police. Many victims let members of the security forces into their houses assuming they would help them. Instead, they found themselves being attacked by those they thought would help them. This entailed a gross betrayal of trust.

10. Members of the security forces also participated in gang rapes. In addition, they colluded with each other, including having some of their own standing guard outside victims' houses while they raped and mutilated inside victims' dwellings.

11. Even when victims told perpetrators (whether members of the security forces, gangs or individuals) that they were HIV positive, perpetrators chose to rape. This is likely to result in an increase in HIV AIDs in Kenya.

12. Perpetrators often told victims the sexual violence inflicted upon them was punishment for belonging to a specific ethnic group or purportedly having supported a particular political party.

### **Victims**

13. For a variety of reasons, many victims were not able to access timely medical care, including obtaining the drug PEP, which if taken within 72 hours, prevents HIV AIDS and sexually transmitted infections. The reasons for not obtaining medical care included the following: a breakdown in security and the fear of leaving home, lack of transport, ignorance about PEP and not knowing they would not have to pay and could receive free medical care, fear of being stigmatized if it were known they had been raped, and an overriding concern to

protect, feed, and shelter their children and family members at their own expense.

### **Response by Authorities**

14. Authorities in general were totally unprepared to respond to sexual violence. Although the police took many victims of sexual violence to hospitals, the Commission also received evidence that in other instances they were unprepared either to record or investigate criminal complaints of sexual violence. This was exemplified by the Commissioner of Police, Hussein Ali's testimony to the Commission, where he stated "We will determine whether those crimes are fit and whether the people have been arrested and charged".

15. The void created by the lack of official response to sexual violence was partly filled by private hospitals, including the Nairobi Women's Hospital, some government facilities, and a number of NGOs, including the Kenya Red Cross.

### **Effects**

16. Other than the extraordinary physical and psychological trauma stemming from being a victim of sexual violence, victims also suffered acute injuries, permanent disabilities, contracting incurable diseases like HIV AIDs and hepatitis B, ostracism, abandonment by their husbands and parents, loss of abode and income, as well as extreme feelings of humiliation.

17. The Commission learned from its own psychologist that many female victims still are alone, unable to cope with the above traumas and in need of help which is not available to them. A number of victims who had not received medical attention by the time they came before the Commission only managed to do so as a result of the Commission's intervention.

## **Findings In relation to Internally Displaced Persons**

18. As a result of the PEV approximately 350,000 persons were displaced from their normal abodes of residence and or business. IDPs were concentrated in Western, Nyanza, Rift Valley, Central, Nairobi and Coast Province. About 1,916 Kenyans sought refuge in Uganda.

19. People were displaced as a result of violence and threats of violence. They moved from their places of residence and business to places considered safe like police stations, administrative posts, churches and trading centres. 20.

Thereafter they moved to formal camps or were integrated with their relatives and friends in urban centres or their ancestral homes.

21. Conditions in the IDP camps were less than satisfactory. We found that security was wanting as IDPs were always subjected to threats by criminal gangs. We also found complaints about the inadequacy of food, shelter and sanitation. Most of the inhabitants of IDP camps were women and children.

22. Government and administrative response to the problems of IDPS was initially slow and *ad hoc*. The Kenya Red Cross Society, local and international NGOs and CSOs, faith based groups and individual volunteers played an important role in alleviating the suffering of IDPs by offering refuge, food, shelter, security, education, medicine, counselling and other needs.

23. The Government initiated “*Operation Rudi Nyumbani*” in April 2008 aimed at removing IDPs from camps and where possible resettling them back to their homes. Due to constraints of time and resources, the Commission could not fully make an assessment of the efficacy of this programme but found the following inadequacies;

- (i) The sum of Kshs. 10,000.00 was considered inadequate by the IDPs to meet their need once they left the camps.
- (ii) The so called “integrated” IDPs (i.e. returnees who went to live within the community) felt neglected as the program concentrated mostly on those who were settled in camps.

- (iii) Security for those who wish to return to their farms and homes, particularly in the Rift Valley, is not fully assured and is therefore a hindrance to resettlement.
24. The IDP problem is likely to persist phenomenon until the Government and people of Kenya address the political problems that led to eviction of men, women and children from their homes and businesses.

