



Kenya National Commission on Human Rights

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ON THE BRINK OF THE PRECIPICE: A HUMAN RIGHTS ACCOUNT OF KENYA'S POST 2007 ELECTION VIOLENCE

LAUNCH OF THE PRELIMINARY EDITION OF THE REPORT

SUMMARY OF THE REPORT

BACKGROUND

1. The Kenya National Commission on Human rights (KNCHR) is the country's lead agency with the statutory mandate to protect and promote the human rights of all individuals living in Kenya. Following the post-election violence in Kenya after the 2007 General Election, the National Commission commenced an investigation into the character and scope of the human rights violations which happened following the December 2007 election results crisis.
2. The overall aim of the investigation was to document the post-election violence to ensure that there would be a comprehensive record of the violations committed during that period as a basis for enabling redress of such violations. The investigation was framed in terms of Section 16 of the Commission's constitutive Act, the KNCHR Act, which empowers the National Commission to; investigate on its own motion or upon a complaint, any human rights violation in the country.
3. In undertaking these investigations, KNCHR teams comprising commissioners and staff undertook over 36 missions to more than 136 constituencies across the country and to Uganda, with an average duration of eight days per mission. During a period of four months, 1,102 statements recounting over 7,500 episodes of violence or incitement to violence were gathered from individuals with whom interviewers spoke. This information was complemented by hundreds of secondary data, including media stories, reports from organisations such as the Kenya Red Cross and internet materials among other sources that have been gathered from a variety of credible sources in Kenya and abroad.

KEY FINDINGS

Patterns of the post-election violence

8. The violence was widespread. It erupted immediately (almost within minutes) after the announcement of the presidential election results on 30 December 2007. This immediacy was apparent in most of the theatres of violence – Nairobi, Rift Valley, Coast and Western regions. The violence eventually impacted up to 136 constituencies in six of Kenya's eight provinces.
9. Forcible evictions and mass displacements of people not indigenous to particular regions took place. About 350,000 Kenyans were displaced. There were multiple instances where some politicians from the Kalenjin community urged their constituents to evict non-Kalenjin communities from their midst. Some Kikuyu politicians also rhetorised and sought action on the need for the community to defend itself against attacks by other communities.
10. The ideology and infrastructure of the post-election violence predated the 2007 General Elections. The character of the post-election violence was akin to election-related violence which had happened during the 1992 and 1997 general elections. The violence which happened during these two elections was driven by political objectives. There was a clear nexus between elections and commission of violence, and the intention to perpetrate violence for political objectives was clearly discernible. Violence became a strategy for remedying political and resource grievances which the electoral process might have been unable to resolve.
11. There was organisation and method to the violence. The attacks and counter-attacks were carried out with military discipline. For example, attackers in the Rift Valley participated in oath-taking ceremonies and donned a semblance of uniform; their attacks anticipated the need to mobilise reserve forces to assist the main attackers. Both the attacking Kalenjin forces and the counter-attacking Kikuyu forces were transported into areas of operation in vehicles. A strategy common throughout the theatres of conflict was the barricading of roads by young men intent on identifying, killing or otherwise injuring travellers from non-local communities. This pattern of behaviour was particularly notable in the Rift Valley, Nyanza, Western, Coast and Central regions.
12. The violence was characterised by widespread or systematic ethnically-targeted killings of people, and looting and destruction of property belonging to communities aligned with PNU by ODM aligned supporters; and counter-attacks similarly intent on killing people and destroying property owned by ODM aligned communities. We found at least 1,162 instances of deaths and many other instances where buildings, property and homes were burnt down across the country. The counter-attacks, organised by the Kikuyu community, particularly in Central Province and in the Central Rift against ODM-aligned communities such as the Luo, Luhya and Kalenjin, were also premeditated. Attackers were armed and transported to strategic points such as Nakuru and Naivasha where they unleashed coordinated terror against specific communities. In this instance, violence became a strategy for avenging the fatalities and destruction of property which PNU-aligned communities had sustained.

13. The infrastructure of violence was financed and sustained mainly by local politicians and business-people to support costs such as transport of attackers, weapons and other logistics.
14. The violence was largely instigated by politicians throughout the campaign period and during the violence itself via the use of incitement to hatred.
15. Sexual and gender-based violence occurred throughout the theatres of conflict. In Nairobi's informal settlements, women and children were particularly targeted for rape on account of their ethnicity, although some men too were similarly raped. A lot of opportunistic rape happened in the camps for internally displaced persons (IDPs).
16. A number of egregious or gross human rights violations were perpetrated during the post-election violence. Key among these was the Kiambaa church burning in Eldoret where 35 Kikuyus were killed, the burning of a house in Naivasha where 19 individuals from the Luo community were killed, the forcible circumcision of Luo men in Naivasha and parts of Central, Nairobi and Rift Valley Provinces, Police shootings in places including Kisumu and Kericho, and the rape of women and girls.

The conduct of state agencies

17. The Government's response to the post-election violence was slow and ineffectual. The rule of law nearly collapsed in large swathes of the countryside and informal settlements in urban areas. Where the Government acted, its responses tended to be unwieldy and disjointed.
18. Throughout the period of the post-election violence, there were multiple instances where Kenya's security forces (including the Regular Police, Administration Police [AP] and General Service Unit [GSU]) used excessive and lethal force in actual or apparent endeavours to quell violence. Multiple instances of this, including in Kisumu, the Rift Valley and the Coast, may be cited.
19. The institutional integrity of Kenya's security forces was compromised in a number of instances where security officers opted either to protect individuals from such officers' ethnic groups; or in the alternative failed to protect endangered individuals from other communities.
20. At the same time, some security forces on occasion showed great restraint as they sought to manage the post-election violence. This was the case respecting a GSU officer in Nairobi who negotiated with demonstrators not to cause violence. Further, police stations, AP posts and chiefs' camps were one of the first ports of call for persons fleeing the violence. The Kenyan army also participated in the ferrying of IDPs from trouble spots to safer parts of the country.
21. The character of the violence indicates either a failure on the part of the National Security Intelligence Service (NSIS) to provide good intelligence or a failure of the government to act on intelligence provided by the NSIS.
22. The Government provided or facilitated the provision of some (although not adequate) relief support to IDPs, including food and tents. It also endeavoured to put infrastructure to enable displaced children to continue schooling.

The role of non-state agencies

23. The media, and particularly local language media, influenced or facilitated the influencing of communities to hate or to be violent against other communities. Radio stations broadcasting in Kalenjin languages as well as in the Kikuyu language were culpable in this respect. Live phone-in programmes were particularly notorious for disseminating negative ethnic stereotypes, cultural chauvinism and the peddling of sheer untruths about the political situation or individual politicians.
24. Faith-Based Organisations (FBOs) played both positive and negative roles during the post-election violence. The partisanship of some FBOs had become apparent during the 2007 election campaigns; and such organisations lost the credibility necessary for them to be impartial arbiters of the post-election violence. Even after the violence began, some FBOs simply chose to defend the positions of the ethnic communities with which they were associated. At the same time, however, some FBOs were at the heart of efforts to provide succour to the population of Kenya which became internally displaced as a direct consequence of the post-election violence.
25. The Kenya Red Cross and other humanitarian organisations performed in an exemplary manner to ameliorate the suffering of IDPs.

Criminal culpability of alleged perpetrators

26. Many acts constituting crimes under Kenyan domestic law were committed during the post-election violence. These crimes include murder, manslaughter, attempted murder, conspiracy to murder, grievous bodily harm, robbery with violence, arson, malicious damage to property, theft and related offences, incitement to violence, illegal oath-taking, illegal possession of firearms, and sexual crimes such as rape.
27. The Kenyans we talked to gave us names of many people whom they alleged played a role in inciting, funding, organising, or participating in the violence. The Commission has compiled a list of such people—numbering more than 200—who include five cabinet ministers, thirteen current Members of Parliament, several former Members of Parliament, several senior police officers, eight officials of the provincial administration, five religious leaders, three FM radio stations, and many ordinary citizens spread across the regions that experienced violence.
28. The list is not comprehensive and does not present a complete picture of all who may have been involved. It makes mention of various alleged perpetrators and includes some background information on them, and the allegation(s) and information supporting the allegation(s), which the National Commission believes provides a basis and a good starting point for further investigations. The Commission is providing this list, together with the report, to the President, the Prime Minister, the Attorney General, and the Commissioner of Police and with a view to further investigations and prosecution where crimes have been committed.

Was the crime of genocide was committed?

29. Kenya presently exhibits characteristics which are prerequisites for the commission of the crime of genocide. One such feature is the dehumanisation of a community using negative labels or idioms that distinguish the target group from the rest of society. Communities such as the Kikuyu and Kisii resident in the Rift Valley were referred to by some Kalenjin politicians as "madoadoa" (stains) before and during the post-election violence. Another characteristic present in Kenya is the impunity subsequent to which past acts of violence in 1992, 1997 and 2005 have gone unpunished. Consequently, unless the state and Kenyans take remedial measures, the probability of genocide happening in Kenya at some future point in time is real.

Were crimes against humanity committed?

30. Crimes against humanity as defined under international customary law took place. Acts such as murder, deportation or forcible transfer of population; and rape and other forms of sexual violence, were committed. Further ingredients for these acts to amount to crimes against humanity are that they be systematic or widespread, be in the knowledge of the victims and be pursuant to state or organisational policy. We have determined that the listed acts were not performed randomly and hence they were part of a policy. We have been able to infer that policy from the extent to which the violence was systematic, i.e. planned and organised.

Extent of human rights obligations

31. The post-election violence heralded violation of fundamental human rights such as the right to life, the right not to be forcibly evicted or displaced from one's home, the right to hold opinions without interference, the right to participate in public affairs and to vote in periodic elections, the right to property, the right to education, the prohibition not to engage in incitement to discrimination, and the right to freedom of movement.
32. In view of the above, at a point when Kenyans required the most protection, the Government of Kenya retrogressed in the fulfilment of its obligations under various human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on Elimination of Racial Discrimination (ICERD), Convention on the Rights of the Child (CRC) and Convention on Elimination of Discrimination Against Women (CEDAW).

Governance issues

33. Kenya's political leadership failed to prevail on their supporters not to perpetrate violence against other Kenyans. In instances where leaders intervened, violence did not escalate to the levels experienced elsewhere. This was the case in Narok where elders prevailed on the Maasai community not to involve themselves in violence, and Mombasa where religious leaders and the Police prevailed on local youth to desist from violence.

RECOMMENDATIONS

34. The Attorney General of Kenya and or the Kenya Police Force should undertake investigations in terms of Section 26 of the Constitution on the list of alleged perpetrators set out in Annex 1 of this report to determine their criminal culpability for human rights violations under Kenya's penal law.
35. Since our list of alleged perpetrators is not comprehensive, the Attorney General and the Commissioner of Police should provide concrete assurances to Kenyans that post-election violations are being investigated even-handedly across all the regions of Kenya and across all ethnic communities.
36. The crimes allegedly committed by members of the security forces should be investigated by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose. The President should cause these two special offices to be established.
37. The Minister in the Office of the President responsible for security should fulfil the pledge he made early this year that a civilian board to oversee the Police Force would be established as a matter of urgency. This Board should be established without further delay.
38. The Chief Justice should establish administratively special courts in theatres of violence where many crimes may have been committed to expedite the determination of post-election violence related criminal cases.
39. The Prosecutor of the ICC should open investigations on Kenya to determine who bears the greatest responsibility in the commission of crimes against humanity detailed in this report.
40. The Government should speed up the establishment of a forensic laboratory to assist investigation and prosecution of sexual crimes. The Treasury, the Ministry of Health, the Ministry of Gender and the Kenya Police Force should facilitate this.
41. The Government in partnership with Civil Society Organisations should facilitate efforts to heal the country by taking deliberate steps towards enhancing coexistence. Community based systems should be established to spearhead reconciliation.
42. Parliament should enact hate speech legislation within this year. The Ministry of Information, that of Justice, National Cohesion and Constitutional Affairs, and the Attorney General are already aware of draft legislation on hate speech which the KNCHR prepared last year; this draft can be the basis for hate speech legislation.
43. Recommendations arising from the Commissions established under the Kenya National Dialogue and Reconciliation initiative, including the Commission of Inquiry on Post-election Violence (CIPEV), should be implemented expeditiously.
44. The constitutional review process should be finalised expeditiously as a basis for enabling the resolution of the inequalities which have been such a fundamental source of conflict in the country.
45. The Communications Commission of Kenya should be empowered to monitor the content of local language as well as other media.

46. Legislation should be passed by Parliament barring from appointive or elective offices leaders who are found liable for perpetration of gross human rights violations.
47. The Ministry of Justice, National Cohesion and Constitutional affairs and the Ministry of education should revitalise the nation-building project so as to enhance unity in diversity – the idea that Kenya's communities can live harmoniously together in one country in spite of their ethnic differences.
48. A more concerted and sustained program of human rights education should be undertaken by public institutions, CSOs and FBOs to enable Kenyans to have better regard for humanity.
49. The Ministry of Special Programmes should effect and communicate to Kenyans a time-bound programme to resolve the IDP question. The ministry should ensure that IDPs are fully appraised of and actively involved in making the decisions that affect them.
50. IDPs should be provided with reparations, either in the form of restitution (return of what has been taken away); or compensation (financial and moral); or satisfaction (apology); or Rehabilitation; or guarantees of non-repetition; or a combination of all or some of the above.

CONCLUSION

51. From the foregoing, it is evident that Kenya's post-election violence had a historical preface that fed into the more immediate events and issues. The ideological infrastructure was already in place and only needed to be activated. Similarly, the physical infrastructure for the violence was already in place in areas such as the Rift Valley where violence had remained intermittent since the early 1990s. It is the combination of these factors and conditions with the political and electoral events in the run-up and during the December 2007 General Election that lit the match and set the fire of political violence that engulfed the country.
52. In the coming days, the Commission will be presenting this report to among others the President, the Prime Minister, the Minister for Justice, National Cohesion and Constitutional Affairs, the Attorney General, and other key officials with a request that they study the findings and recommendations and implement them. We will also be making the report available to the *Waki Commission* on Post Election Violence.
53. The Commission gratefully acknowledges the many Kenyans who talked to us on the post-election violence. It was not easy for many of them to narrate their painful experiences, but they did so with great courage. The Commission in a special way acknowledges the technical co-operation of *No Peace Without Justice (NPWJ)*, an international non-profit organisation that supported the conceptualisation and implementation of the documentation and investigation work on the post-election violence. National experts supported the analysis of the information gathered; many others spent long hours filling and inputting information and data received. We are grateful to them. The Commission appreciates the support of many development partners who supported this work through their Nairobi offices. Lastly, we acknowledge the dedicated participation and contribution of our Commissioners and staff.



FLORENCE SIMBIRI-JAOKO
CHAIRPERSON

8 August 2008