

**Recurrent Ethnic
Violence and Claims
of
Communities
Arming Ahead of the
2012
General Elections**



**KENYA HUMAN RIGHTS
COMMISSION**

2011

*Recurrent Ethnic Violence and Claims of
Communities Arming Ahead of the 2012
General Elections*



A KHRC Report, 2011

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About Kenya Human Rights Commission (KHRC)

KHRC is a national organization registered in '94. Its vision is a Kenya that respects, protects and promotes human rights (HR) and democratic values. Since inception KHRC has focused on monitoring, documenting and publicising rights violations and KHRC also supports HR actions led by 27 human rights networks across Kenya. We link community, national and international human rights concerns. KHRC's strategic plan aims to 'Secure civic-driven, accountable and human rights centred governance'.

Re-defining Kenya Human Rights Commission

A Board-staff retreat (Dec '10) deliberated on KHRC's past and its future especially in the context of the new Constitution. KHRC revised its mission to 'working towards a human rights state and society.' The addition of 'and society' reflects KHRC's focus on horizontal as well as vertical human rights demands. The discussions led to agreement that over the next couple of years KHRC should focus its work to:

1. Build state institutions and to act as a guardian to the implementation of the constitution;
2. Ensure that devolution is a positively transformational component of the new Constitution;
3. Provide comparative experience, Bills and legislative drafting and training for duty bearers;
4. Advise on proposed vetting procedures for constitutional offices and monitor implementation;
5. Litigate on areas that will ensure progressive interpretation of the constitution; and,
6. Address deprivation (Economic Social and Cultural Rights - ESCR) and exclusion (equality and anti-discrimination).

In order to achieve the five programme areas above, KHRCs work has been re-organised from its former programme dichotomy of Research and Advocacy and Civic Action Team into four broad thematic areas:

1. Access to Justice;
2. Economic, Social and Cultural Rights;
3. Equality and Non-discrimination; and
4. Publicity and Media.

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Acronyms

CIPEV	Commission of Inquiry into Post-Election Violence
CSOs	Civil Society Organizations
GoK	Government of Kenya
ICC	International Criminal Court
IDPs	Internally Displaced Persons
IIEC	Interim Independent Electoral Commission
IMLU	Independent Medico-Legal Unit
KACC	Kenya Anti-Corruption Commission
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
KNDR	Kenya National Dialogue and Reconciliation
MPs	Members of Parliament
NARC	National Rainbow Coalition
NCIC	National Cohesion and Integration Commission
NGOs	Non-Governmental Organizations
NSC	National Steering Committee on Peace Building and Conflict Management
ODM	Orange Democratic Movement
PEV	Post-Election Violence
PNU	Party of National Unity
SLDF	Sabaot Land Defence Force
TJRC	Truth Justice and Reconciliation Commission

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KHRC would like to thank all the people who, in one way or another, contributed to the success of the fact-finding mission into communities arming ahead of 2012. We would want to particularly thank our field team which travelled to various parts of the country to conduct interviews and gather the requisite information without which the production of this report would not have been possible. As well, we would like to thank the fact-finding committee at the KHRC for conceptualizing this mission and overall guidance in the production of this report.

Executive Summary

Kenya experienced political and inter-ethnic violence following disputed national elections in December 2007. At least 1,300 people died in a cycle of ethnic unrest, revenge killings and police raids across the country as rival PNU and ODM presidential candidates clashed over the outcome of the 2007 presidential poll. While the 2007—2008 post election violence was neither unique nor new in Kenya's political landscape, its magnitude and geographical spread was unprecedented. Since the re-introduction of multiparty politics in Kenya in the early 1990s, other general election periods have had their share of election-related violence. Indeed, many regions in the country, especially the Rift Valley, Western and Coast regions have experienced intermittent or recurrent violence at every election period since the re-introduction of multipartyism in Kenya.

Concerned with various indications and responding to information that communities were arming themselves in readiness for self-defence (read violence), particularly during the upcoming general elections scheduled to take place in 2012, the Kenya Human Rights Commission dispatched a team of researchers and investigators on a fact-finding mission to interrogate these claims. Through conducting field interviews, the fact-finding team examined the experiences of various communities with poll-related violence, their perceptions in relation to the possibility of electoral violence recurring in the near future and the measures that the communities were taking for self-protection or preservation should they be subjected to politically-instigated violence. By documenting communities' experiences with violence and their perceptions of self-protection, this report seeks to contribute to the debate on community arming within the context of a highly volatile political environment and what the same portends for human rights promotion and protection in Kenya, especially as we move forward towards a general election that will be conducted within a new constitutional dispensation.

The report shows that while the government is working towards the implementation of a number of benchmark reforms that were highlighted by the National Accord and Reconciliation Act 2008 as crucial ingredients to lasting peace in Kenya following the 2007—2008 post election violence, the experience on the ground presents a rather ominous picture in so far as Kenya's ability to tame the beast of election-related violence is concerned. In all the areas visited by the

KHRC fact-finding team,¹ informants reported that various groups were arming and organizing themselves in preparation for any future inter-ethnic violence that could be triggered by political rivalry among key actors of the contending ethnic political elite. It is apparent that instead of offering vital lessons anchored on a more tolerant inter-ethnic coexistence based on a resolve not to repeat what happened in the 2007—2008 post election violence promoted the idea that different ethnic communities must protect themselves should they suffer similar acts of politically-instigated violence in future. This notion is largely informed by experiences of the real or imagined inability of the government security agents to respond urgently to security alerts or to offer the much-needed security when the lives and property of the concerned communities have been threatened or destroyed in election-related violence in the past. The common verdict in so far as the security of the Kenya citizens is concerned is that the 2007—2008 post-election violence was a poignant illustration of the reluctance, inability or misplaced priorities of the security apparatus in dealing with politically motivated violence.

Highlights of the Findings

A key finding of this report is that at every general election since 1992, various communities in Kenya have suffered politically-motivated insecurity and violence. Because the intervention by the government to protect the victims of politically-related violence or to hold perpetrators of the said violence to account has always been slow or not forthcoming at all, the affected communities have devised mechanisms for self-protection. These mechanisms include the seeking of arms to attack perceived ‘enemy communities’ or to avenge the killings and destruction of both lives and livelihoods occasioned by the rival community. Therefore, the acquisition of arms ahead of the next general election is seen as some sort of ‘pre-emptive strategy’ based on developing a communal defence army made up of the youthful members of the community to keep the enemy community attackers at bay if or when the need arises. Although there is credible information to support the allegations that communities are arming ahead of the 2012 General Elections, there is no evidence that the Government is committed to a firm programme of disarming, demobilising and re-integrating the armed groups among different rival communities. In fact, in the few areas where the government started the disarmament exercise, the same have not been successful as they have been met by anger over alleged human rights violations carried out by members of the armed forces under the pretext of mopping-up arms from civilians.²

Other major findings in this report include the following:

- ~ In places like Nairobi, Kisumu, Eldoret, Nakuru, Kericho, Molo and other parts that were the epicentres of the 2007—2008 post-election violence, informants stated that rival groups were arming and organizing themselves in preparation for organized inter-ethnic violence in 2012. It is apparent that for the victims, the 2007—2008, post-election violence experience exposed

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¹ Key among these being Nairobi, Eldoret, Kitale, Kisumu, Nakuru, Kericho and Molo which were also the epicentres of the 2007—2008 post-election violence

² A clear case of security forces overkill in dealing with the issue of disarmament is the Kenya Army’s involvement in disarming members of the Sabaot Land Defence Forces in Mt. Elgon where many civilians suffered acts of brutality and collective communal punishment under the military.

the vulnerability of ethnic groups to attacks by rival communities and hence heightened the need for them to find ways of self-protection. As already noted, this is largely so because of what they [the communities concerned] see as the failure by the government to either respond to or offer the necessary security when their lives and property have been threatened in the past.

- ~ While the victims view self-arming as a legitimate way of dealing with politically-instigated violence in future, the perpetrators of the said violence, on the other hand, are encouraged to arm themselves so that they can repeat their mission of violence in future. This assertion is plausible, especially if one recalls the fact that some of those who were key perpetrators of the 2007—2008 post-election violence as well as earlier incidents of politically-motivated ethnic violence have not been held to account for their past crimes.³ The perpetrators could also be arming because they are equally concerned that the victims might organize revenge missions against them in future.
- ~ The degree of organization and control of violent groups appears to vary considerably depending on issues on the ground. In the Rift Valley, motivation for the Kikuyu and the Kalenjin – the two perennially warring communities since the early 1990s – to arm themselves revolves around the issues of land, protection of property, control of political power and a general drive for revenge. In Laikipia, protection of property, mainly cattle, remains the main driver of the arms race while in many parts of the Kenyan urban centres that were most affected by the 2007—2008 post-election violence, it is the concern for peoples' safety and the protection of property that has resulted in the growth of neighbourhood based armed groups.
- ~ Kenya is increasingly becoming a hub/conduit of illicit small arms and light weapons (SALW). In a region destabilized by conflict, the availability of illicit small arms and light weapons (SALW) among various communities, particularly amongst the pastoralist communities and the general public both in urban and rural Kenya, undoubtedly poses a great threat to the country's safety and security. According to an Institute of Security Studies (ISS-Kenya) report, 8,299 firearms were destroyed by the government in May 2003 while over 3,800 assorted SALW were destroyed through burning in Nairobi in June 2005. In March 2010, during a public ceremony to commemorate the signing of the Nairobi Declaration on Small Arms and Light Weapons, a total of 2,545 firearms were destroyed at Uhuru Gardens in Nairobi.⁴
- ~ Although the government has designed various mechanisms to reduce the circulation of such arms, including disarmament programmes (which mainly target pastoral communities), the outcome of such initiatives has not been necessarily positive. Affected communities have specifically highlighted lack of partnership between the government and the affected communities and taken great exception with the high-handed nature of the security personnel

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³ For more details on this, please see the Waki and Akiwumi Commissions of Inquiry Reports. Currently, six people have been charged at the ICC, The Hague, for bearing the greatest responsibility over the 2007—2008 postelection violence. While this move is laudable, it is important to note that both the PNU and some members of the ODM wings of government are strongly opposed to the Hague trials, while there has been no national mechanism to charge middle and low-level perpetrators.

⁴ Muchai, Augusta. *Disarmament and Destruction of Firearms not a Panacea to Insecurity in Kenya*. Institute for Security Studies. Accessed online in November 2010 at http://www.iss.co.za/iss_today.php?ID=934

who oftentimes resort to the use of force, fear-mongering, torture, rape and other forms of human rights violations as strategies for conducting the disarmament exercises. The KHRC fact-finding team received complains about excesses of the security forces in Laikipia, Isiolo and Mt. Elgon areas. Communities in the foregoing areas proposed for greater involvement of their leaders, the religious leaders, and the civil society in disarmament operations and asked that the underlying grievances that force people to arm themselves in the first place be addressed.

- ~ Other factors responsible for suspicion and ethnic tensions, particularly in the Rift Valley, include the rivalry for political power between Hon. William Ruto and Prime Minister Raila Odinga, the former being a former member of the “Pentagon”, which was the top organ of the Orange Democratic Movement (ODM), but parted ways with the Prime Minister soon after the formation of the grand coalition government in 2008. This is compounded by divergent views that the two leaders have articulated to their respective followers on weighty political issues of the day, like the evictions from the Mau forest, and the on-going International Criminal Court (ICC) case against Hon. Ruto. The KHRC fact-finding team was informed that some senior members of the Kalenjin community have made the argument that they viewed it as an affront when their kinsmen were evicted from “their land” in the Mau forest and that they will view it as an even greater affront to their community’s interests if the government allowed senior members of their community to be indicted by the International Criminal Court.
- ~ In parts of the Rift Valley, especially in Molo, Kericho, Burnt Forest and Eldoret, there were reports of fear of attacks on minority communities (with the Luo community being the most at risk) in these areas, as the dominant Kalenjin community vowed to vent on the target enemy community because of what they consider being unfairly targeted by the government at the alleged instigation of Hon. Raila Odinga.
- ~ Some cultural practices were variously described as offering a facade for ongoing arming in some parts of the country. For example, among pastoral communities, (especially in Laikipia and Isiolo areas) young men are expected to not only shoulder the responsibility of safeguarding their community, but also to prove their bravery by attacking their traditional enemies. The KHRC field research team was informed that in places like the Gucha-Maasai border, Laikipia and Isiolo, groups of young men are now engaged in the accumulation of more sophisticated weapons that they use when mounting their raids, which target all members of the perceived ‘enemy’ community contrary to the traditional rules of engagement that never targeted non-combatants like women and children. In other areas, like Central Kenya, the KHRC team found out that some cultural practices like *mburi ya kiama*,⁵ were exploited by unscrupulous groups to raise funds for shadowy community activities. Fears were raised that some of the money raised in these meetings ended up buying arms or promoting the activities of militia groups like Mungiki. In the Rift valley, some common cultural practices, like circumcision ceremonies among the Kalenjin, included sessions for young initiates on how to protect their communities

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⁵ This is a traditional ceremony marking the transition of a Kikuyu young man into the rank of a community elder. A certain “entry” fee is usually charged for this ceremony.

that inevitably included training on the use of weapons to attack “enemy” groups and the encouragement of the new initiates to be ready to act when called upon.

Introduction

This report is a product of a fact-finding mission commissioned by the Kenya Human Rights Commission to verify claims that different Kenyan ethnic communities are arming themselves ahead of 2012 General Elections. All the initial interviews were conducted in April, May and June 2010 while follow-up interviews were conducted between August and November 2010. Post-mission visits and subsequent verification of information was carried out with select informants in the months of April, May, June and July 2011. The KHRC fact-finding team visited various parts of the country including Nairobi, parts of Rift Valley specifically Nakuru, Narok, Molo, Burnt Forest, Eldoret, Kericho, Kitale and Kilgoris and Kisumu and Kisii in Nyanza province; as well as Rumuruti (Laikipia), Mombasa (Coast), Bungoma and Webuye (Western) and Isiolo in the Eastern Province where they conducted hands on investigations to verify the information by the media and other institutions that various communities, especially in areas that were most affected by the post election violence, were arming ahead of the 2012 General Elections. The following terms of reference guided the fact-finding mission

1. To find out if there is arming along ethnic or inter-ethnic lines and to interrogate reasons behind the formation of ethnic alliances if or where they exist;
2. To find out if individual communities are arming and the reasons for the same as well as how the arming process works. Specifically, to find out if the funds for the arms are contributed on communal basis or whether members of the community buy the arms through individual self-financing;
3. To Find out if the fall-out between William Ruto and Raila Odinga has contributed to the arming process or not, and if yes, how so. As well, to interrogate the emerging political realignments following the naming of the Ocampo Six and the impact of the same, if any, on the arming process
4. To find out the role of organized groups and militias in the arming process;
5. To investigate claims that the Men Welfare Associations that have sprung up (particularly in Central Kenya) are/were used to raise for funds for arming

The KHRC field visits sought to accomplish two main objectives. The first objective was to document observations and perspectives of opinion leaders and other informants at the local community level on the veracity of claims that communities were arming ahead of 2012. The information obtained from the visits would then provide a basis for KHRC to call for remedial measures from the government and other organizations to stem any schemes or plans aimed at fanning violence during the 2012 General Elections. The second objective is to situate the various communities' concerns and perceptions of safety and self-protection within the national security framework (where the right to security for every Kenyan is guaranteed by the Constitution) and how these relate to the need or desire for self-defence, which is the key motive for ethnic or inter-ethnic arms race amongst various communities.

This report is divided into four sections. The first section provides a global picture on conflict with a specific focus on some of the main conflicts that have been experienced in Africa in the recent past. In the second section, the report proceeds to provide an overview of conflict in Kenya and how the same has contributed to the quest for self-arming among certain communities in the country. The third section consists of a review of the information gathered from field visits on community arming following in-depth interviews with informants from the different regions in the country visited by the KHRC fact-finding team. The fourth and final section of the report concludes with a brief summary of the post-mission findings.

Methodology

This report is based on information collected through interviews with key informants in the areas listed above, which consisted of regions most affected by the post-election violence as well as other areas identified as potentially volatile or as being the arms-supply corridors in the country. NGO contacts, government officials and community and church leaders were some of the main sources of the invaluable information contained in this report. Additional information was derived from analysis of secondary data sources (including published academic work, publications from key institutions working in the peace and security sector as well as reports of government commissions and task forces) on politics and electoral violence in Kenya.

The fact-finding team from the Kenya Human Rights Commission visited various parts of the country that were mapped out prior to the commencement of the visits. The areas consisted of those that were most affected by the post-election violence. A qualitative approach to information gathering was adopted as the most suited for the field visits because it emphasizes on the human factor approach, which heavily relies on the collecting information based on the intimate first-hand knowledge of informants drawn from the research setting. This method also allows the researcher to be personally engaged with the people being studied. In addition, the information-gathering method used in this report needed to be flexible and sensitive so as to accommodate the loosely structured interview format that was adopted during the fact-finding mission. Hence, the method of inquiry chosen provided each informant the opportunity to relate his or her story in a free-flowing conversational manner carried out in an environment of openness and spontaneity.

It is worth noting that the rule of thumb for the informants was that they had to be people living in or working with the communities that were visited and who had a good grasp of the socio-economic and political issues affecting the said communities. They included community contacts provided by civil society organizations working at the target communities. The fact-finding team also contacted government officials – like the provincial administration and the police – for information on arming or to verify information on claims of arming.

To build relations of confidentiality and mutual trust that would allow the informants feel comfortable enough to tell their stories, the KHRC team explained the purpose of the study and told the informants why they were sources of very useful information that would inform the study. The informants were also assured of strict ethical principles guiding the study, including confidentiality.

Following every field visit, researchers reviewed the information gathered for the purpose of compiling field reports. The information was analyzed by noting patterns and emerging themes. Additional information was collected through content analysis of secondary sources to compliment data from key informants. A preliminary report was then prepared by the research team and presented to KHRC for review. KHRC comments and observations on the preliminary report formed the basis for the follow-up as well as the post-mission visits where informants got an opportunity to clarify or provide up to date information or validate their earlier comments and statements.

Challenges Encountered During the Fact-finding Mission

In the course of the investigations, the team relied on established civil society groups where an official would be identified and requested to offer an interview. However, in some instances, such officials declined to get involved saying that the team was undertaking a risky assignment and suggested that they (civil society organisations on the ground) be left to conduct the fact-finding mission themselves before submitting a report to the KHRC. Fortunately, such demands were minimal and efforts were made to identify individuals or representatives of organizations who would voluntarily give their views.

The team was also conscious of the likelihood of exposing informants to danger, especially if their identity was disclosed in the final published report. The team, in such circumstances ensured that interviews were carried out in areas that informants considered secure and informants were assured of strict confidentiality. KHRC also ensured that names and other identity markers were not included in the final report. The research team committed to build a relationship based on trust with the informants through follow-up visits, even though such visits were time-consuming and costly.

Despite the foregoing challenges, a notable observation made during the study was that some Government officials were very open with the team but were constrained in terms of how much information they were mandated to disclose. They were also of the opinion that the KHRC team and other civil society organizations should focus on what they considered more urgent matters, that is, suggesting practical ways to suppress the animosity between communities rather than carrying out a research on communities' arming.

Information Management

The research team followed a strict guideline on handling and dissemination of all the information collected during the visits. Under the terms of reference, all documented information remains the property of KHRC and as such all hand-written and printed materials compiled were handed over to KHRC upon completion of the task.

Section One: Causes of Ethnic Conflicts: A Global Overview

The existence of and the long-lasting effects of conflict in different parts of the world, especially those prone to constant flare-ups, is well documented. According to the United Nations High Commissioner for Refugees, at the end of 2009, there were an estimated 27 million Internally Displaced Persons (IDPs) around the world and about 10.5 million refugees, about half of whom lived in urban areas.⁶ Refugees and IDPs flee their homes for similar reasons, namely armed conflict, generalized violence, or human rights violations. Like other parts of the world, conflict and civil wars in Africa continue to contribute to loss of lives and livelihoods while at the same time adding on to the global world refugee and IDP population.

Conflicts or civil wars in Africa can be attributed to similar or varying factors depending on the affected country. Conflict in the Democratic Republic of Congo (DRC) (formerly known as Zaire) for instance has been associated with a number of complex reasons, including conflicts over basic resources such as water, conflicts over access to or control over rich mineral deposits and other resources as well as general acts of conflict driven by various political actors of agendas. Various national and international corporations and other regimes, which have an interest in the outcome of the conflict, have fueled the Congolese conflict. Fair trade and environmental issues as well as human rights violations are some of the key drivers of conflict in the Niger-Delta in Nigeria. The Niger-Delta conflict was cast in sharper relief in the global arena following the trial and subsequent hanging of environmentalist Ken Saro-Wiwa and eight other members of the Ogoni ethnic minority. In Sierra Leone, the 1991 civil war erupted as both rebel and government forces sought to control mineral resources (diamonds) and political power. According to the Human Rights Watch, over 50,000 people were killed in the Sierra Leone conflict, which also saw over one million people displaced.

Closer home, in the Horn of Africa region, conflict between Eritrea and Ethiopia and in Somalia continue to affect peace and stability in the region. For three decades, conflict marked the relationship

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⁶ UNHCR Website, <http://www.unhcr.org/pages/49c3646c146.html>, Internally displaced people, or IDPs, are often wrongly called refugees. Unlike refugees, IDPs have not crossed an international border to find sanctuary but have remained inside their home countries.

between Eritrea and Ethiopia as the former attempted to gain independence that finally resulted in an April 1993 internationally monitored referendum, where 98.5% of the registered voters voted. Of the total registered voters, 99.8% voted for independence, which gave birth to the State of Eritrea, albeit with new challenges key among them being the issue of lack of clearly defined borders between Ethiopia and Eritrea.⁷ While the two nations seemed to get on fairly well, relations deteriorated into war a couple of years later for various reasons.

In the case of Somalia, the country has been without a functioning government since January 1991 when the civilian administration of President Siad Barre collapsed. Barre's administration assumed the reins of power after Somalia gained political independence in 1960. However, as was the case with most newly independent African countries, the post-colonial government did not enjoy a popular mandate as some sections of the population were not happy with independent Somalia's political arrangements. From the onset, the Northerners felt they did not get a fair share of representation in the post-colonial government. They alleged that the Southerners dominated key government institutions, including the military and police forces. This resulted in regional and ethnic antagonism. The government reacted to the Northerners dissatisfaction with brutal retaliation against the civilian population. This ignited the outbreak of the civil war in Northern Somalia in mid-1988, and the generalized violence that engulfed Somalia following the collapse of civil society led to the internal displacement and flight of Somalis to different regions of the globe. The escalation of violence in the post-1990 era particularly generated a dramatic rise in the flight and displacement of Somalis⁸.

Within the East African region, the January 2011 Referendum in the South Sudan⁹ marked a major milestone towards the resolution of the conflict in the Sudan that was Africa's longest running civil war having started in 1983, although it was largely a continuation of the First Sudanese Civil War of 1955 to 1972. The 21-year conflict whose root causes included disputes over resources, political power, the role of religion in the state and self-determination devastated a significant part of Africa's largest country depriving it of stability, growth and development. The Sudanese people paid a terrible price. More than two million people died because of war, famine and diseases caused by the conflict; four million were uprooted; and some 600,000 people sought shelter beyond Sudan's borders as refugees.¹⁰ The nature and size of the country's problems have frequently overblown into neighbouring countries and brought misery and insecurity to the region. Perhaps, the establishment of South Sudan as a new state will mitigate and bring to an end Sudan's protracted conflict. However, the lingering embers of conflict in the contested oil-rich places like Abyei means that a new South Sudan will still have to contend with a more powerful Northern neighbour (Sudan) who might still be smarting from the break-up of what was once Africa's biggest country.

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⁷ For more information on this please refer to the Waki Commissions (CIPEV) report; KNCHR report, "*On the Brink of the Precipice*", as well as KHRC's report "*Killing the Vote*".

⁸ *Global Issues: Conflicts in Africa* by Anup Shah, <http://www.globalissues.org/issue/83/conflicts-in-africa>, Last Updated Saturday, August 21, 2010.

⁹ The impact of Past and Potential Ethnic Conflict on Kenya's Stability and Development. Nyukuri, Barasa. Department of History, University of Nairobi. Accessed on-line at <http://www.payson.tulane.edu/conflict/Cs%20St/BARASFIN1.html>

¹⁰ Danso, R. (2002). "*From 'There' to 'Here': An investigation of the Initial Settlement Experiences of Ethiopian and Somali Refugees in Toronto*". *GeoJournal*, 56(1), 3

The other conflict in the East African region that still sends waves of shock and awe is the Rwandese genocide where it is estimated that over half a million people perished and millions were displaced. Typically, the genocide has been explained in simplified terms. For instance, it has been explained away as being a reincarnation of ancient tribal hatreds. However, other scholars have vouched for the existence of deeper and modern causes, such as international economic policies, power politics and corruption of the elite, as being some of the more credible explanations for the outbreak of the genocide¹¹.

At home, the December 2007 electoral conflict in Kenya put the country in the international limelight when post-election violence threatened the stability of the country, which was hitherto, considered an oasis of peace in the conflict prone Great Lakes region. Kenya's 2007—2008 electoral violence has been attributed to various factors. Some of the main factors include: a deeply entrenched and ethnically-driven brand of politics; disputes arising from the outcome of the 2007 presidential elections by the main protagonist parties (i.e. the Orange Democratic Movement or ODM and the Party of National Unity or PNU); long-standing historical injustices (particularly on issues surrounding land access and use); a deeply entrenched culture of impunity (especially from the political elite that wields power either directly or through proxy); and a flawed electoral process¹². Some of these factors are discussed further in the next section.

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¹¹ Ibid.

¹² Following this referendum, the people of South Sudan voted overwhelmingly for secession from the larger Sudan headquartered in Khartoum under President Omar Bashir. South Sudan joined the league of newly independent states in Africa on July 9, 2011.

Section Two: Inter-Ethnic Conflict in Kenya: A General Overview

Concerned with recurring inter-ethnic conflict in Kenya, researchers, historians, parliamentary select committees and even government sponsored commissions have examined the causes as well as the consequences of ethnic conflicts that have occurred both in pre and post independent Kenya. Barasa Kundu Nyikuri singles out colonial legacy as one of the long-term causes of inter-ethnic conflicts in Kenya. He argues that though Kenya's colonial experience is essentially historical, its ramifications can still be keenly felt in the post- independence era¹³. Nyikuri contends that the indirect rule administered by the British colonialists later turned out to be the “divide and rule” strategy which polarized various ethnic groups in Kenya¹⁴. This in turn contributed to the subsequent incompatibility of these ethnic groups as actors within one nation-state called Kenya. To illuminate the foregoing assertion, he notes that the early political parties in Kenya that championed the nationalist struggle against colonial establishments were basically ‘distinct ethnic unions’¹⁵. The Kikuyu, for instance, formed the Kikuyu Central Association (KCA), the Akamba formed the Ukambani Members Association (UMA), the Luhya formed the Luhya Union (LU), the Luo formed the Young Kavirondo Association (YKA), the Kalenjin formed the Kalenjin Political Alliance (KPA), the Coastal tribes formed the Mwambao Union Front (MUF), the Taita formed the Taita Hills Association (THA), in that order of ethnic conglomerations¹⁶. As a result of the foregoing ethnic trends, a situation prevailed in this country in which a common political voice was not possible. At the dawn of independence, African leaders not only ascended to governmental structures which had been intended to preserve the colonial administrative legacy but also inherited from the colonialists scarce national resources, inadequate infrastructure, inadequate human resource capacity, inadequate capital, inadequate education and health facilities among others as tools with which they were expected to govern the newly independent states. As the scramble for the control of scarce national resources and facilities intensified, ethnicity became the main vehicle through which the dominance and preservation of power as well as resources could be achieved¹⁷.

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¹³ Wikipedia http://en.wikipedia.org/wiki/Second_Sudanese_Civil_War

¹⁴ Global Issues: Conflicts in Africa – Rwanda, by Anup Shah <http://www.globalissues.org/article/429/rwanda>

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

The issue of land ownership and allocation was another long-term problem that was either ignored or exacerbated by those who assumed political power from the departing British colonialists¹⁸. According to the Human Rights Watch, the land seized by British colonists cut a swathe through Kenya's modern-day provinces of Rift Valley, Nyanza, Western, and Central, creating an area that became colloquially known as the 'White Highlands'¹⁹. In total, the British and other European settlers took up to twenty percent of Kenya's land, most of it in the prime agricultural spots. At Kenya's independence in 1963, though some of this land was handed over to the newly independent government, it was not handed over to the people from whom it had been originally taken. The new government continued to rely on the colonial laws it had inherited from the British to adjudicate land matters. These laws made no provision for the collective land rights of communities. The introduction of the concept of private individual property, without the recognition of collective land rights, upset the traditional land-ownership arrangements of many indigenous groups. During the colonial period, most of Kenya's African communities had based their land occupation and use on traditional collective practices, such as pastoralism. After independence, the new government under Mzee Jomo Kenyatta did not value customary land use in law or practice but instead sold the land it acquired from British settlers under the principle of 'willing seller, willing buyer'. Kenyatta's government also used land for patronage purposes and for building political alliances. The foregoing land use system continued and in fact, was further consolidated under Kenyatta's successor, Daniel arap Moi.²⁰

Other than scholars and international human rights organisations, the government through various commissions, has also attempted to find out the reasons for inter-ethnic conflict in Kenya. The Ndung'u Commission of Inquiry (established in 2004 by the National Rainbow Coalition (NaRC) government to investigate patterns of corruption and unfair allocation of land and to propose remedies) report concluded that the practice of illegal allocations of land increased dramatically during the late 1980s and throughout the 1990s. During this period, land was granted for political reasons or simply subjected to outright plunder by a few people at the expense of the public. The Ndung'u report found out that a common problem was corruption in the allocation of trust land for 'settlement schemes' established by the government and that in the establishment of settlement schemes, the interests of the landless were ignored in favour of those of district officials, their relatives, Members of Parliament and other influential people²¹.

Other causative factors for the recurring patterns of violence were explored by parliamentary committees and national commissions that were established to investigate the root causes and consequences of ethnic violence especially after multiple political parties were allowed to operate in Kenya in early 1990s. The parliamentary committee which investigated the ethnic clashes in 1992, for instance noted that the 1992 ethnic violence took place against a backdrop of political and ethnic instigation by mainly KANU leaders, notably from the Kalenjin and Maasai communities, from the Rift Valley. In response to the push for political pluralism in Kenya, the leaders from these

¹⁸ Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance. The 2008 Human Rights Watch Report accessed online at: <http://www.hrw.org/en/reports/2008/03/16/ballots-bullets-0>

¹⁹ Ibid, quoting the Ndung'u Commission Report at p147

²⁰ Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance. A 2008 Human Rights Watch Report accessed online at: <http://www.hrw.org/en/reports/2008/03/16/ballots-bullets-0>

²¹ See the Ndung'u Commission Report: p.147

two communities responded with calls for “majimboism”, which they understood to be “the rule by the ethnic majority in a region”, i.e. ethnic-regionalism. The Parliamentary Select Committee to Investigate Ethnic Clashes, also known as The Kiliku Commission, found out that KANU politicians stated their intention to push through a Majimbo Constitution which would require all ‘outsiders’ living in the Rift Valley province to be repatriated back to their “motherlands”. During the 1991 multi-party elections and following the foregoing interpretation of majimboism, KANU youth groups and Kalenjin-associated militia groups perpetuated a cycle of violence aimed at pushing out all those who were perceived as outsiders from the Rift Valley. The ensuing inter-ethnic conflict resulted into the displacement of thousands. According to a report of the International Displacement Monitoring Centre, some of the perceived outsiders (mainly members of the Luhya, Luo, Kisii and Kikuyu communities who were turned into internally displaced persons—IDPs), who were fleeing from violence in the Rift Valley were forced to sell off their land and property below market value while others simply abandoned everything they had²². Those with share-holding certificates in land-buying companies were thrown out and their plots redistributed. By early 1993, this wave of ethnic clashes ended, leaving in its wake over 1,500 people dead and an estimated 300,000 displaced and dispossessed²³.

After a short five-year interlude, clashes erupted again during the 1997 General Elections. Prior to this General Elections, the then President of Kenya, Daniel Arap Moi, appointed a Judicial Commission of Inquiry to Investigate Ethnic Clashes in All Parts of Kenya, commonly known as the Akiwumi Commission. The Commission found out that violence was triggered by unaddressed land ownership issues dating back to the colonial administration, which pitted pastoral groups such as the Maasai and Kalenjin ousted from the fertile ‘White Highlands’ of the Rift Valley by British settlers, against agricultural groups, mainly the Kikuyu, Kisii, Luo and Luhya, who came to ‘occupy’ the land after independence. The Akiwumi Commission recommended that those who had been displaced during the clashes be identified and assisted to resettle back on their farms, with appropriate security arrangements made for their peaceful stay thereon²⁴.

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²² Background to Displacement in Kenya. Special Report, December 2006. Internal Displacement Monitoring Centre (IDMC). Accessed online at [http://www.internal-displacement.org/idmc/website/countries.nsf/\(http Envelopes\)/39230B5A4350F889C125724800515B56?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(http%20Envelopes)/39230B5A4350F889C125724800515B56?OpenDocument)

²³ Ibid.

²⁴ See the Akiwumi Report for details.



The Mau IDP camp at Oljororok in August, 2011. Source: KHRC field team.

Following the 2007—2008 post-election violence and at the recommendation of the Panel of African Eminent Persons led by Kofi Anan, yet another Commission, the Commission of Inquiry into Post Election Violence (CIPEV), was established by the Government of Kenya in February 2008. This Commission was led by Justice Philip Waki and its key mandate was to investigate the facts and circumstances surrounding the disputed general elections in Kenya in 2007, where more than 1,300 people died and thousands were violently displaced. In its final report, the Waki Commission notes that although Kenya has experienced occasional violence during elections since multi party politics was re-introduced in early 1990s, the violence that erupted after the 2007 elections was more widespread, more destructive and affected more communities across the country.²⁵ The Waki Commission prepared a detailed report that among other things highlighted the following key factors as the main contributors to the 2007—2008 electoral violence in Kenya.²⁶

i. The growing politicization and proliferation of violence in Kenya

According to the Waki Commission, there has been institutionalization of violence specifically following the legalization of multi-party democracy in 1991. Over time, this deliberate use of violence by politicians to obtain power since the early 1990s, plus the decision not to punish perpetrators has led to a culture of impunity and a constant escalation of violence. This, in turn, has caused a further diffusion of violence in the country, which now is largely outside of the control of the State and its security agencies. Thus, violence has become a factor not just of elections but of everyday life. What this means in practice, the Commission argued, is that violence is widespread and can be tapped for a variety of reasons, including but not exclusively, winning elections.

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²⁵ See the Waki Report, 2008.

²⁶ Ibid.

The Waki Commission concluded that the 2007—2008 post election violence was more than a mere juxtaposition of citizens-to-citizens opportunistic assaults. Rather, there were systematic attacks on Kenyans based on their ethnicity and their political leanings. Attackers organized along ethnic lines, assembled considerable logistical means and travelled long distances to burn houses, maim, kill and sexually assault their occupants because they were of a particular ethnic group or were thought to subscribe to an offending political party or persuasion. The commission further observed that “guilty by association” was the guiding force behind the deadly “revenge attacks”, with victims being identified not for any perceived wrong but solely on the basis of their ethnic association to other perpetrators. This free-for-all was made possible by the lawlessness stemming from an apparent collapse of state institutions and security forces.

Other groups, including civil society organizations, the government-funded KNCHR, and international organizations have similarly conducted independent studies and fact-finding missions on the conflict and identified several factors that have contributed to recurring violence in Kenya. The United Nations Office of the High Commission for Human Rights is one such organization that deployed a fact-finding mission (OHCHR Mission) to the Republic of Kenya to look into the violence and allegations of grave human rights violations following the disputed presidential elections in December 2007. The OHCHR fact-finding mission that took place from the 6th to 28th February 2008, conducted onsite visits to the affected areas and met with a wide range of actors in the government and among the opposition, the victims, human rights defenders as well as the diplomatic community. They also analysed underlying civil, political, economic, social and cultural rights issues and formulated recommendations on possible accountability mechanisms. The mission concluded that while most alleged that 2007—2008 post election violence was a predominantly spontaneous reaction to the election results, the mission observed that actual patterns of violence varied from one region to the next, greatly depending on region specific dynamics. The first observed pattern of violence, most notably the burning and looting of shops, houses, commercial outlets in the slums of Nairobi by youth groups, seemed spontaneous to most observers but it stemmed from the cumulated frustrations generated by poor living conditions and historical disenfranchisement and was triggered by the anger of the opposition supporters at what they perceived as theft of the presidential elections. In a second pattern of violence, perpetrators mainly targeted communities of small farmers and land owners perceived to be government supporters in the Rift Valley with the sole aim of driving and keeping them away from the region. The OHCHR evidence suggested that the violence was partially organized by local political/or traditional leaders seeking to settle long held grievances over land issues and other real or imagined acts of discrimination. The third pattern of violence occurred slightly later and was retaliatory. Violent reprisals targeting mainly communities of internal migrant workers – like the Luos – perceived to be opposition supporters were reportedly carried out by government supporters and militias mainly in Nakuru, Naivasha, Central province and in the slums of Nairobi (Kibera and Mathare).

Other factors that contributed to the violence, the mission was told, included the actual and perceived discrimination in the distribution of wealth, economic and political power amongst various communities and social segments together with the absence of adequate social protection and effective remedies for the vulnerable, which has in turn fed into a host of other serious grievances within the Kenyan population. Additionally, the recurrence of politically instigated violence –

particularly during the elections – coupled with the prevailing culture of impunity has contributed to generation of an environment with a high potential for violence. The OHCHR mission also heard that the consistent failure to embrace institutional reforms and the failure to reform the police and civil service had left the Kenyan state with a diminished ability to tackle the root cause of violence and human rights violence and little credibility that it would do so²⁷.

ii. The growing power and personalization of power around the Presidency

This was identified as having a twofold impact. First, it was noted that a highly centralized and powerful presidency had given rise to the view among politicians and the general public that it is essential for the ethnic group from which they come to win the Presidency in order to ensure access to state resources and goods. Second, it was noted that a powerful presidency also led to a deliberate denunciation of the authority and legitimacy of other oversight institutions that could check abuses of power and corruption and provide some accountability, while being seen at the same time by the public as neutral arbiters with respect to contentious issues, such as disputed elections results. As a result, in many respects, a powerful and overbearing presidency made it difficult for the other state actors and agencies to be seen as legitimate.

iii. A Feeling of Historical Marginalization Among Certain Ethnic Groups

This feeling arises from perceived inequalities concerning the allocation of land and other national resources as well as access to public goods and services. This feeling has been tapped by politicians to articulate grievances about historical injustices which resonate with certain sections of the public. This has created an underlying climate of tension and hate, and the potential for violence, most of the time waiting for the slightest ignition to explode.

This grievance is particularly reported to have informed the formation of the Sabaot militia group in Mt. Elgon region. Composed largely of a sub-group of the larger Kalenjin ethnic community, the Sabaot Land Defence Forces was formed in 2006 to seek redress for alleged injustices during land distribution in a settlement scheme known as Chebyuk which pitted two main clans of the Sabaot: Mosop, who are also known as Ndorobo, and Soy against each other. The group was accused of carrying out an increasing number of atrocities on civilians, killing many and stealing livestock in the area from mid 2006. In March 2008, the Kenyan government launched an enormous military operation targeting the SLDF. The military and police forces engaged in Operation *Okoa Maisha* (Operation Save Lives) whose publicly stated intent was to disarm the Sabaot Land Defence Forces (SLDF) and protect civilians in and around the district of Mt. Elgon in the Western Province. However, investigations by human rights organizations in Kenya including the Kenya Human Rights Commission, the Human Rights Watch, the Independent Medico-Legal Unit and the Kenya

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²⁷ On August 27, 2010, Kenyans finally concluded their long-search for a new constitution with the promulgation of the Constitution of Kenya 2010. If properly implemented, this constitution is likely to resolve most of the issues identified as drivers of conflict by the OHCHR mission.

National Commission on Human Rights concluded that the army used systemic torture to extract information from local citizens not involved in the SLDF.

iv. The Unholy Alliance between Government Security Agents and Militia Groups

The Waki Commission noted that some militias and organised gangs interact with some organs of the Government, more so the security forces. According to the Commission, these groups now have become “shadow governments” in the slums and even in other parts of the country and have been used by politicians to attack their opponents; to secure their own security, and to gain power. Furthermore, it was noted that these proliferating militias are sometimes known to dovetail with the State and its security apparatus thereby not only reducing the State’s capacity to control the violence but also increasingly threatening the integrity of the State and the nation. This underlying endemic situation creates a climate where violence is increasingly likely to be used and where its use is increasingly unlikely to be checked.

One such militia group that has been associated with extortion and human rights violations including torture and bizarre killings is *Mungiki*. This sect is a quasi-religious militia allegedly formed to protect the interests of Kenya’s largest ethnic group, the Kikuyu. The government had largely ‘cracked down’²⁸ on Mungiki prior to the 2007 elections in December. However, the advent of post-election violence led to the revival of the illegal group. Unfortunately, the use and abuse strategy adopted by some powerful politicians in dealing with the Mungiki has resulted in the death or disappearance of hundreds and possibly thousands of Mungiki suspects from Nairobi slums and other parts of Central province.

Other Forms of Community Based Violence in Kenya

Over and above the politically-motivated violence of 1992, 1997 and 2007 in Kenya, other forms of violence have dotted various aspects of community lives in Kenya. For instance, a fact-finding mission by KHRC explored the forms of violence that impacted pastoral communities in the arid and semi- arid regions of Kenya²⁹. The report noted that pastoral communities in Kenya have since time immemorial mounted livestock raiding expeditions amongst themselves as part of their traditional socio-cultural practice. Such raiding expeditions were, for example, conducted to enable restocking for a community whose livestock had been depleted by diseases or drought. As well, cattle-raiding missions were conducted as a rite of passage into Moranism – a traditional army that ensured adequate defence numbers for the community in times of external threat – or as a means of raising the requisite dowry to pay for bride price³⁰.

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²⁸ This is a euphemism for the blanket approach that the security apparatus used to target mostly young Kikuyu men for summary execution under the pretext of fighting the Mungiki group.

²⁹ For details see, *Morans No More: the Changing Face of Cattle-Rustling in Kenya*. KHRC 2010 Report

³⁰ *Ibid.*

However, the report noted that the current livestock raiding expeditions – commonly referred to as cattle-rustling – are no longer carried out within the traditional parameters that governed such expeditions. In traditional cattle-raiding expeditions, women and children were never targeted for killing. The current practice indiscriminately targets all members of the perceived enemy community. Attackers engage in wholesale attacks against women and children as well as against the Morans who carry out the raids and the counter-raids. According to the report, cattle-rustling has become highly militarized, with guns and bullets being the preferred weapons of engagement³¹. Hence, the raids are no longer carried out within the traditionally set norms where bows and arrows were the main weapons of engagement and where the main driving motivation for the raid were either restocking or raising enough cattle for bride wealth. This was illustrated by attacks in the Kanampiu region of Samburu on September 15th 2009 where 31 people – including women and children – were killed by Pokot raiders, which is a clear manifestation of the changing face of cattle-rustling. What is even more worrying, the KHRC mission found out that the current practice of cattle-rustling has a strong commercial motivation in that it is backed up by powerful personalities in the political, the security and the provincial administration sectors³². Oftentimes, these interests are involved in the confiscation of livestock under the pre-text of fighting cattle-rustling only to channel the same to markets in Nairobi, Nanyuki, Nyeri and Meru among other areas. The continued marginalization of pastoral communities in the ASALs – with poor infrastructure and lack of adequate social amenities – KHRC concluded, remains a big contributor to conflict in these areas.

Political Violence and the Culture of Impunity in Kenya: To Act or Not to Act?

The various organizations that have assessed the main reasons for conflict situations in Kenya have also highlighted a raft of measures that need to be put in place to avert future conflicts. To start with, there is a common agreement that the 2007–2008 post-election violence was bigger in scale because of the institutionalization of violence in Kenya. Over the years, armed militias, most of whom developed as a result of the 1990s ethnic-clashes but were never demobilised, led to the ease with which political and business leaders reactivated them. It is important to note that though the government has been slow to act, a number of key human rights organisations have remained firm in their conviction that the only way of addressing violence and conflict in Kenya on a long-term basis is through breaking the cycle of impunity. This can only happen through the establishment of a functional institutional and legal framework that can be trusted by the Kenyan citizens as acting in their best socio-economic as well as political interests.

Indeed, barring the occasional hiccups here and there, the political elite in Kenya appears to have wholesomely woken up to the fact that the only way of avoiding a repeat of the 2007–2008 violence is through a total transformation of the governance of the Kenyan state. The need to undertake reforms and promote sustainable peace, stability and justice in Kenya cannot be gainsaid. The two principals, Mwai Kibaki of the Party of National Unity (PNU) and Raila Odinga of the Orange Democratic Movement (ODM) committed to address the root causes of conflict in Kenya

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³¹ Ibid.

³² Ibid.

as part of the agreement, The Kenya National Dialogue and Reconciliation mediation agreement (KNDR) that was arrived at to end the conflict. The KNDR agreement was subsequently passed into law as the National Accord and Reconciliation Act 2008 allowing for not only a power sharing arrangement between the protagonists but also the commitment to oversee the implementation of the four main agendas that would ensure sustainable peace in the country. The four agendas under the KNDR agreement included a commitment to immediately end the post-election violence and restore fundamental rights and liberties. This was under Agenda I that also carried a proviso for the government to ensure that militia and vigilante groups were dismantled to avoid a repeat of the post-election scenario in the future³³.

Agenda II focused on putting in place immediate measures to address the humanitarian crisis, and promote healing and reconciliation while the third agenda addressed the political crisis and how to overcome it. The final item, Agenda IV, relates to addressing long-term issues including constitutional and institutional reforms, land reforms, poverty and inequalities, youth unemployment, national cohesion, and transparency and accountability and finally the establishment of a Truth Justice and Reconciliation Commission³⁴.

Implementation and Impact of the Four Agendas on the Peace Process

From the onset, the political solution where the two principals agreed to a power sharing arrangement was a successful outcome of the mediation process by the Eminent African personalities led by Kofi Annan. This led to the dissipation of two months of violence in Kenya that had spread to a majority of provinces in Kenya disrupting peace, business and other forms of livelihoods throughout Kenya and the neighbouring countries. However, the challenge of maintaining lasting peace was a huge task and was pegged to the successful implementation of the four main agendas of Kenya National Dialogue and Reconciliation mediation agreement (KNDR).

One organization that has consistently monitored progress made in the implementation of the four main commitments (Agenda I—IV) that the two principals promised to put in place to ensure lasting peace in the country is South Consulting. The organization has, through field surveys, interviews with key informants and a review of secondary data produced regular reports on the progress made by the government regarding the four agendas has in the past concluded that while progress has been made in some of the agenda four items, more time would be needed to implement all aspects of the four agendas. South Consulting stated that in some cases, especially in regard to addressing the so-called long-standing historical grievances, even more time will have to pass before the implementation and impact of this agenda item is fully realized.

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³³ Although the main part of Agenda 1 has been largely accomplished, the proviso, which calls for the demobilization of militia groups, has not been accomplished. On the contrary, as the KHRC fact-finding mission found out, new militia groups could be forming, especially in areas that were most affected by the 2007—2008 PEV.

³⁴ The Constitution of Kenya 2010 is a key outcome of the Agenda IV items, which is expected to provide the foundation for other reforms including institutional reforms, land reforms as well as addressing issues of poverty and inequalities. Although the TJRC was formed as part of Agenda IV items, it has not achieved much, especially given the fact that it remains steeped in a crisis of legitimacy following the appointment of Bethwell Kiplagat as its Chair.

Section Three: Findings from the Field Visits

This section describes responses by informants in the areas visited about their experiences, observations and perceptions regarding community arming following in-depth interviews. KHRC researchers interviewed community leaders, contacts provided by community based organizations and government officials, specifically provincial administrators and police, working in the various regions visited.

Inter-Ethnic Conflict and Arming in Nairobi and its Environs

In Nairobi's informal settlements of Kayole, Mathare, Huruma, Kangemi and Kawangware where the research team visited, the outlawed Mungiki group³⁵ continues to exert power over communities and has considerable influence on local political proceedings. In Nairobi, the group has a network that controls public transport, construction, real estate and other business operations. Although there was no direct evidence of communities arming along ethnic alliances, investigations and interviews from the field indicated that business people who were mostly affected during the PEV have devised measures to safeguard their property in case of future violence by arming youths who can be quickly activated in case of need.

One informant, who lives in Masimba area in Kayole³⁶ claimed that though the militia group (Mungiki) appears to be dormant now, it actively participated in spreading mayhem in Kayole during the 2007—2008 post-election violence through its members who were mostly armed with machetes, illegal guns and home-made guns. He stated that he has been a resident of Kayole for the last 10 years operating as a butcher and an electrical technician. He further noted that during the 2007—2008 post-election violence some local businessmen bought arms and other weapons for their loyalists or hirelings who were consequently used to protect their property from destruction. The armed Mungiki youth were also used to attack members of the Luo and Luhya communities who were perceived to be ODM supporters. The informant told the KHRC team that as far as he can recollect, the arms that were used during the 2007—2008 violence in the area have

³⁵ The Mungiki sect is a quasi-religious militia, whose followers are largely drawn from members of the Kikuyu community

³⁶ Interview done on 14th February, 2010. Name of informant withheld

never been removed from the community. He was thus convinced that the community still retained the guns, machetes and homemade guns.

The informant further asserted that some members of the Kikuyu community living in the Eastlands area of Nairobi are now capable of making homemade guns which can fire up to five bullets. He also stated he too was capable of making a home-made gun. He further confirmed that they normally got support from retired servicemen from the military who live within Kayole area. In Huruma, those interviewed told the KHRC team that suspected Mungiki members seemed to have moved out of the area and nobody seemed to know where they had moved to. However, the informants claimed that guns and ammunition were readily available in the neighbouring Eastleigh area.

In the peri-urban areas of Kikuyu, Wangige, Gachie and the wider Kiambu district, one informant observed that Mungiki is so entrenched in the community that its activities include settling personal disputes and maintaining law and order.³⁷ Accordingly, Mungiki is a “parallel government,” argued the Wangige resident who asked for anonymity for fear of retribution. Another resident explained why they lived in fear of Mungiki. “We are at their mercy because it is common knowledge that failure to comply invites guaranteed reprisals. We have witnessed assassinations of people who have dared defy them”³⁸, the resident added. On the question of whether Mungiki is armed, residents were nuanced in their response. They stated that they have seen and heard enough of the group’s enforcement capacity to doubt reports that they were armed.

A phenomenon that was being actively enforced by Mungiki in Kiambu district during the initial deployment of the KHRC fact-finding team is *Mburi cia Kiama* ceremonies. This is a popular traditional custom of the kikuyu community where young men offer and slaughter goats for their elders at an initiation ceremony meant to welcome qualified young men into eldership. Respondents described how this practice was being exploited to extort or coerce young Kikuyu men, including those living in the diaspora, to make financial contribution to the group that was enforcing this custom. This practice, our informants stated, provided a vital cover and a rallying ground for seeking financial support from the Kikuyu community mainly for retaliatory missions to avenge the evictions of members of the community from the Rift Valley during the 2007—2008 post election violence.

In Limuru, Banana, Gachie, Wangige and Kikuyu, the ceremonies gained popularity and it was in such meetings that issues of safeguarding the Kikuyu community were discussed. According to one interviewee, these groupings of “goat-eating” sessions became increasingly common in the period following the cessation of ethnic hostilities. The informant observed that these subsequent goat-eating sessions got utilized for purposes of mobilizing the Kikuyu community for self-defence if or when a need arose. The informant rationalized that it is good to be prepared since “once beaten twice shy”.³⁹

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³⁷ Interviewed on 15th February 2010. Name of informant withheld.

³⁸ Interviewed in Wangige on 13th February 2010. Name of informant withheld.

³⁹ Interview in Gachie on 13th February 2010. Name of informant withheld.

Similar observations of regular meetings by members of the Kikuyu community in Nairobi and its peri-urban areas to discuss alleged community issues were made by another informant who argued that the “goat-eating” sessions have since become common. These groups, he suggested can be utilised for the purposes of mobilising communities for any actions in the line of community self-defence. In one of the sessions where he participated, the informant alleged that an inter-ethnic conflict survivor from the Rift Valley indicated that given the solidarity that had been created through the goat-eating sessions among the Kikuyu community in Central Province, he was confident that the community would be able to repulse any aggression from any community or communities that attempted to evict them again from the Rift Valley in future. According to the informant, there are many youth in Central Province who are both idle and bitter at the victimisation of their community. The source of the alleged bitterness was described as follows:

“They are bitter because they have been victimised for just being Kikuyu. They were victimised for 24 years during Moi era and they have not received any protection during the 7 (seven) years of “their government”. They will not allow anybody else to victimise them again.”



A man brandishing a machete during the 2007—2008 PEV in Kisumu. Source: Daily Mail, February 12, 2008

The biggest factor in both intra as well as inter-ethnic conflict among the Kikuyu and other ethnic communities in Kenya is Mungiki’s continued existence despite it being a proscribed organization. The Mungiki group has continued recruiting and expanding its criminal networks, particularly among the Kikuyu community, and the group presents a fertile ground for arming, in turn providing an avenue for the perpetuation of both intra and inter-ethnic conflicts. What is more, the fact that Mungiki is highly organized makes it an easy target for mobilization and hire to serve the interests of local politicians and business people. Given the history of the group and its role as a vanguard of ethnic retaliation in the 2007—2008, it is likely that should there be an out-break of ethnically-motivated electoral violence in 2012, the group will be called upon to defend ‘its people’.

Inter-Ethnic Conflict and Arming in the Central Rift Valley

In the Rift Valley province, the KHRC team was informed of long-standing inter-ethnic hostilities. Those interviewed, predominantly members of the Kikuyu and Kalenjin communities, expressed suspicion towards each other and openly discussed better preparations to deal with each other “next time.” The KHRC fact-finding team noted that there was widespread fear and expectation of violence in the 2012 General Elections. Indeed, most of the respondents were of the opinion that the ongoing initiatives for peace by various organizations were not able to address the underlying issues beyond the surface and are therefore not helpful in preventing a recurrence of violence.

In Nakuru and Molo, the fact-finding team visited and interviewed respondents from Menengai, Mauche, Ndeffo, Kaptembwa, Njoro and Molo town areas. Those interviewed included community leaders, members of the civil society organizations and religious groups. In Menengai, some of the people interviewed were direct victims or escapees of the 2007—2008 post-election violence. They stated that they would not sit back and wait to be attacked in the future as was the case in 2007—2008. One informant summarized his sentiments thus:

“At least this time we are wiser since we know the cost of guns and where to get them. This time I am not waiting for them to come for my two cows. I will sell one to acquire a gun to protect the remaining one and my family”.⁴⁰

He was interviewed by the fact-finding team at his home in Menengai village, Mang’u sub location. He was candid that there is no love lost between the Kikuyu and Kalenjin residents in the area near his home and that both have learnt to be wary of each other. The informant captured the mutual suspicion among the two communities as follows:

“When we shake hands, we always check the other hand to see what its holding and when they look at you in the eye, you carefully note what the second eye is indicating”.

In his opinion, the Kalenjin community had taken them (the Kikuyu community) for granted for so long but this had to come to an end. His community, he argued, was determined to defend itself in the event of any future attacks. The informant stated that in the past, the Kikuyu community simply packed up their belongings and left their homes whenever they were threatened of attacks or attacked by their neighbouring Kalenjin community. Said he:

“In the past, they (Kalenjin) only had to burn a few houses and the Kikuyu would be seen trooping to the safety. This time we have said no. Instead of waiting for them to come and steal your two cows, you can sell one cow and use the money to defend the other.”

Other informants in the area similarly stated that it was no secret that communities had been buying arms for self-defence in future. They alleged that the price for buying a bullet had shot up from Kenya Shillings twenty (KES 20) to about Kenya Shillings 200 (KES 200) at the time the KHRC team was in the area. They further alleged that among their sources for the ammunition

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⁴⁰ Interviewed on February 16th, 2010 at Menengai. Name of informant withheld.

were the Gilgil army barracks and the Eldoret ammunitions factory. They explained that initially, people in the areas most affected by the 2007—2008 violence collectively acquired firearms to protect their community from attacks; however they soon realized that the arms were used for unscrupulous purposes. Other members of the community sometimes informed the police about the arms leading to arrests. Because of such experiences, individuals decided to work alone in acquiring arms to protect their property when necessity demanded in future.



Looters racing through a Nairobi slum. Source: AFP, January 2, 2008

Mauche Division in Nakuru district was one of the hotspots during the 2007—2008 post election violence. When the KHRC fact-finding team visited this area, it found out that emotions were still very high as members of the Kalenjin and Kikuyu communities traded accusations regarding the cause and impact of the violence in the area ever since multiparty politics was introduced in Kenya in early 1990s. The KHRC team carried out interviews in this area around the same time when the government had declared that people would be evicted from the designated forest land in the Mau region to conserve the environment and protect a key water tower in the country. Mauche area was said to be part of the area marked for reforestation.

The eviction of mostly members of the Kalenjin community from areas designated as Mau forest further aggravated the situation with the Kalenjins arguing that the government policy had unfairly targeted their community. Some of the people interviewed (from the Kalenjin community) indeed vowed that following the eviction, they had started thinking of ways of pushing the Kikuyu to make room for them, which could be interpreted as a thin-veiled threat to forcibly evict members of the Kikuyu community in the neighbouring areas. With respect to communities arming in the area, a Councillor from the area stated that as far as he was concerned, it is the Kikuyu who were arming themselves. The Councillor made his claims by stating that:

“The Kalenjins have nothing to fear because if the Kalenjin move out of Likia and Mauche, the Kikuyu should also move out to make space for us”.⁴¹

Although the Councillor did not describe the method that the Kalenjin would use to ensure that “Kikuyu created room for the Kalenjins evicted by the government from Mau area to re-settle”, he alleged that it was the Kikuyu community that were buying guns noting that members of the Kikuyu community openly said that they would defend themselves if they were attacked by the Kalenjins.

Arming among IDPs returning to their Farms?

During the fact-finding mission, the team also sought to clarify allegations that returnees from camps for internally displaced persons (IDPs) in Nakuru had acquired arms. The research team interviewed two returnees at Munyaka farm. They were among the few IDPs who had agreed to return to their farms. Other members of the Kikuyu community from the area had not returned to their farms for fear of reprisals. The two informants said that considering that members of his community in the area was very small, the community, with or without arms was not able to defend itself. “Buying arms is an exercise in futility” they stated. “We were greatly out-numbered [during the 2007—2008 post-election violence] and would have to leave in case of fresh attacks,”⁴² they said.

The two informants further discussed why they believed the Kalenjin community was arming itself. They stated that the Kalenjin living in parts of Mau next to Kuresoi had indicated that once they were evicted from Mau forests they would ensure that no Kikuyu remained in Kuresoi, Keringet, Kamara and Olenguruoni areas. Instead, they would evict and occupy land belonging to the Kikuyu community when they are evicted by the government from Mau forest⁴³.

One informant, who is the Chairman of one of the IDP camps, was however categorical that the Kalenjin community was engaged in arming and preparing for conflict. At the time the KHRC team carried out an interview with this informant, he alleged that like in the past years where Kiptororo, Doinet and Saino forests were reported to have been used as training grounds for Kalenjin warriors, there were fears that similar activities were taking place. He cited early warning signs of ongoing trainings and planning for attacks that included an upsurge in cattle-rustling in the area. He alleged that the stolen cattle were consequently used to feed the warriors. The informant further shared with the KHRC team that a prominent Kalenjin politician from Molo, who had apparently encroached into the ADC Asante farm, was suspected of being responsible for inciting the Kalenjin against the Kikuyu community as well as being behind the arming of Kalenjin warriors.

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⁴¹ Interviewed on 17th February 2010. Name of informant withheld.

⁴² Interviewed on 18th February 2010. Names of informants withheld.

⁴³ While this threat didn't come to pass, it would be foolhardy to wish it away, especially given the fact that a major contributing factor to inter-ethnic conflict in Rift Valley is perceived historical injustice. The highly politicized Mau evictions, where members of the Kalenjin Community saw themselves as victims of unfair government machinations to evict them, and the bungled nature of the whole eviction exercise, means that the seeds of revenge embedded in the threats issued to members of the Kikuyu community from the evicted members of the Kalenjin community could easily blossom and explode into inter-ethnic conflict between the two communities in future.

The KHRC fact-finding team also held discussions with government officials on allegations of communities arming within the wider Molo and Nakuru areas ahead of the 2012 General Elections. On February 19, 2010 the research team met with OCS Kuresoi Police station. During a discussion, the officer stated that his office had not received reports of communities re-arming themselves. The OCS noted that although the area under his jurisdiction was expansive, his officers tried their level best to gather intelligence throughout the area as well as to respond timely to security situations.

Inter-Ethnic Conflict and Arming in the North Rift: Eldoret and Burnt Forest Areas



Armed members of the Kalenjin community advance to attack non-Kalenjins living in the Rift Valley province. Source: www.kenyadecides.com

The KHRC fact-finding team visited Eldoret and Burnt Forest areas. These areas have witnessed recurrent violence at every election period ever since 1992. This cycle of violence was repeated in 2007—2008 where a lot of atrocities were reportedly committed as ethnic communities considered supportive of the Kibaki-led government were violently displaced. The KHRC team was informed that rival communities in this area, namely the Kalenjin and the Kikuyu communities, were arming to protect themselves should they experience ethnic-conflict in the future.

At Burnt Forest the team met an informant, a resident of the area who is also a member of an inter-community peace choir based at the local Anglican Church of Kenya⁴⁴. The informant confirmed that members of his peace initiative had shared information with him that members of the Kikuyu and Kalenjin communities were arming for 2012. He gave an account of an incident that happened in Burnt Forest whereby a young woman died when a “gift” package that she had been asked to

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⁴⁴ Interviewed on 19th February 2010. Name withheld.

carry exploded when she unwrapped it. The police found the package to be a homemade bomb. Police recovered six other similar items from a young man in the area.

The informant offered that members of the Kikuyu community had every motivation to arm themselves. The members of the Kikuyu community were bitter because they lost a lot of property and that the government had not done enough to protect them. They were also concerned that while the Kalenjin politicians publicly defended their kinsmen, including those who had committed serious crimes during the post election violence, the Kibaki-led government and Kikuyu politicians from Central Kenya had neglected them. Without other forms of protection and considering how much they had invested, they had to devise ways of guarding their property. There were also the allegations that displaced members of the Kikuyu community had not been resettled or offered assistance. Instead known Kalenjin warriors had benefited from assistance, like getting iron sheets, which were meant for genuine IDPs. The informant claimed that members of the Kikuyu community had confided in him that they were willing to sell their property in order to buy arms for self defence.

The informant also told the KHRC team that some of the land-related grievances that members of the community had raised as the causes of the conflict had not been addressed and could inform future conflict. He cited allegations by members of the Kalenjin community that the land that the Kikuyu had bought and occupied at Kimunyu, Rurigi, Ng'arua, Munyaka, and Kondoo among others was their traditional ancestral land. Additionally, the Kalenjin community were unhappy that the Kikuyu community had used Kikuyu names to name some of the farms that they predominantly owned for example Munyaka and Nyakinyua farms. The informant recalled that some people had threatened to burn down a school which was rebuilt after being burnt down during ethnic violence and which was named Ruku-ini Primary school unless the name was changed to a Kalenjin one.

Another pointer to the presence of arms in the Burnt Forest area, especially among members of the Kalenjin community, was the fact that during the 2007—2008 post-election violence, some Kalenjins were armed with firearms and some received training in the use of firearms from an ex-serviceman in the area. There were allegations that a former army officer⁴⁵ who hails from the area offered training on the use of arms at Sing'aru, Kipkiret, and Aisley Forests from where gunshots were sometimes heard. The informant claimed that despite the fact that this information had been passed on to various government agencies, no arrests or surrender of arms has ever been reported.

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⁴⁵ Name withheld



Members of the public armed with bows and arrows following the outbreak of the PEV along the Kisi-Kipsigis border. Source: AP, February 3, 2008

In Eldoret, the research team met separately with two informants: an official of the Centre against Torture (CAT) and another official from the Centre for Human Rights and Democracy (CHRD). The official from CAT confirmed that there was community-driven arming going on in the region. He singled out members of the Kikuyu community as the most aggressive in this agenda saying that, following the violence they suffered in the 2007—2008 post-election violence, they have vowed never to be caught unprepared again in future. The sentiments of the official from CAT were echoed by those of the CHRD official who stated that there were many weapons in the hands of communities in region. The official claimed that weapons are brought to Kenya from Uganda via Mt. Elgon. The official further opined that members of the Kikuyu community as well as the Kalenjin community were engaged in arming themselves. He alleged that a senior police officer⁴⁶, assisted members of the Kikuyu community to procure weapons. These weapons came to western Kenya through Tororo. He further alleged that the Kalenjins on the other hand got their weapons from Mt. Elgon with the assistance of a Member of Parliament from the Mt. Elgon region. The official explained that members of the Bukusu community had been exerting pressure on their leaders to get them weapons. He recalled a meeting that he attended where members of the community asked their MP to lead them in raising money to buy arms. The crowd was jubilant over the request.

A member of the Release Political Prisoners Pressure Group-RPP, who is currently based in Eldoret, was another key informant who provided information to the KHRC team regarding community

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⁴⁶ Name withheld

arming in the region.⁴⁷ According to this informant, the Kikuyu in the area were arming themselves. He further claimed that the Kalenjin were acquiring arms through the help of two businessmen in the area who acted as linkmen to the politicians and mobilized during the 2007—2008 post-election violence. The informant stated that Mt. Elgon was the source of weapons in the region and that an MP⁴⁸ from the Mt. Elgon region was an important link in this respect.

Stolen Items as a Factor in the Conflict

When the KHRC team interviewed random groups of post-election victims in Uasin Gishu Nakuru and Kitale areas, one thing that those who were interviewed consistently echoed was the fact that some of the items stolen during the post election violence are still in the hands of those who took them especially domestic animals, farm machinery and building materials. This has led to a heightened sense of grievance for those affected.

In one instance, the aggrieved group complained bitterly that when they reported the matter to the police, no action was taken against the culprits. The group swore that one day, it will have its chance to exact revenge. In other instances, the interviewees stated that certain groups took over their residential houses from where they had been collecting rent. Some of those interviewed also claimed that their farms had been taken away by well connected individuals from the regions mentioned above.

Inter-Ethnic Conflict and Arming in Trans Nzoia: Kitale and Mt. Elgon Areas⁴⁹

Kitale is a cosmopolitan region in the Western region of Kenya. During the visit to this region, the KHRC team was informed of unresolved grievances over land that have continued to negatively impact on relations between ethnic communities inhabiting Trans Nzoia region. One such case, according to an official⁵⁰ who works for the Kitale Diocese Justice and Peace Commission involves a massive piece of land given to an MP to sub-divide among the Marakwet. The Marakwet never got settled on this land. Instead, in the 1970's members of the Kisii were settled there. This has been the bone of contention between the two communities who have been trading accusations and escalating ethnic tension to varying degrees since then. The KHRC team was told that the accusations have now taken an ethno-cultural dimension, with the Marakwet associating the Kisiis with witchcraft and vowing to seek compensation for the loss of their land. The official further told the KHRC team that he had received reports that communities in the area were arming themselves. Further, the Pokot youth were receiving training on how to fight using illegal guns and home-made guns within Kabarnet forest and that the police had been trying to flush them out.

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⁴⁷ Interviewed on February 16th 2010. Name withheld.

⁴⁸ Name withheld.

⁴⁹ The bulk of this Section has been drawn from the KNCHR report, *Mountain of Terror*, backed up by field interviews by the KHRC team.

⁵⁰ Name withheld.

The Sabaot Land Defence Forces (SLDF) as an Armed Ethnic Group

According to the informant⁵¹, the group which took inter-ethnic conflict to a different level was the Sabaot Land Defence Forces. The group that was largely composed of members of a sub-group of the larger Kalenjin ethnic community allegedly seeking to avenge alleged injustices during land distribution in a settlement scheme known as Chebyuk which pitted two main clans of the Sabaot namely, the Mosop (also known as Ndorobo) and Soy. The group had been carrying out an increasing number of atrocities on civilians, killing many and stealing livestock, and was reportedly responsible for some 600 deaths in the area from mid 2006 to 2008.



A young girl flees from a blaze caused by arsonists. Source: AFP, Roberto Schmidt, January 2008

The official pointed out that the proximity with Uganda and its porous borders had largely contributed to the proliferation of arms in the region. He said that during the General Elections in 1992 and 1997, former President Daniel arap Moi is said to have settled members of the Sebei community at Kitalale farm near Mt. Elgon. This community has since formed a route through Mt. Elgon forest which they use to cross the border into Uganda to smuggle weapons into Kenya. These are mainly supplied by former combatants and supporters of the National Resistance Movement (NRM) who readily sell them to their neighbours, the Sabaot.

Background to the Mt. Elgon Conflict

Mt. Elgon district falls within the Bungoma County of Kenya. The district headquarters is Kapsokwony. Mt Elgon district covers an area of about 944 sq. km and has a population of about 135,055 (2010 Census Report) Mt. Elgon is predominantly occupied by the Sabaot communities

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⁵¹ Ibid.

who are further sub-divided into several clans comprising of Kony, Bok, Sebei, and Bongom sub clans. Other communities include Iteso and Bukusu. Administratively, Mount Elgon District is divided into four divisions, namely Cheptais, Kopsiro, Kapsokwony and Kaptama. The district is further divided into 16 locations. Its administrative headquarters are located in Kapsokwony, but Cheptais is the main economic centre of the district. Politically, Mount Elgon District is represented in parliament as one constituency while at local government level is divided into 13 wards. The district shares geographic borders with Bungoma (South), Trans-Nzoia (East) and Teso (Southwest) districts in Kenya, and Mbale (West) and Kapchorwa (North) districts in Uganda.

Generally speaking, the district has rich, loamy agricultural soil and a favorable climate that makes it a major food basket for Western Province and beyond. Economic activities involve various forms of trade that concentrate around the major centres of Kapsokwony, Cheptais and Kaptama, as well as Chwele in the neighboring Bungoma West and Kimilili in Bungoma North districts. Chwele market, in particular, is the most important outlet for agricultural produce from Mount Elgon. The market is the second largest (after Karatina) open-air market for agricultural produce in Kenya and brings together traders from all over the country, including the country's capital, Nairobi, over 400 kilometers away. The bulk of the agricultural products traded in Chwele actually originate from Mount Elgon. In terms of physical and social infrastructure, the district is generally underdeveloped, lacking a good road network, housing and social amenities such as educational and health facilities. There are no all-weather roads, and the sloping terrain makes mobility a challenge even for the most determined. One of the implications is that the region remains largely inaccessible to the outside world, a situation that is worsened by the district's general marginality in geographical terms relative to the rest of Kenya. Another noteworthy administrative aspect, which in part relates to the remoteness and marginality of Mount Elgon District, is that the government has over the years not been able establish an effective administrative presence in some of the more remote parts of the area. These factors have combined to engender feelings of neglect and marginalization by the state among the local population. The Sabaot community has also been marginalized in terms of national Kenyan politics, which mean that the region has never produced a politician of national standing, nor has it attracted the consistent attention of one. This point is important if one considers patterns of national resource distribution in terms of the patronage networks that have defined the Kenyan politics since independence.

Since pre-independent and at various times in independent Kenya, the Mt. Elgon region has experienced one form or another of conflict. The latest conflict in the region started in 1992 after the general election with the most recent violence occurring between 2006 up to about March 2008. Disagreements over the distribution of land have been the major cause of violence in the region. In 2006, the conflict took a different dimension and mutated into criminal activities from "Chebyuk Phase III contentions". In 2008, the government responded to the SLDF atrocities by deploying joint military and police operations. The operation was dubbed "*operation Okoa Maisha*" (Operation save lives) intended to curb the activities of SLDF and maintain peace and security in the area. However, the operation was conducted under a veil of secrecy and resulted in mass arrests, disappearances and subsequent prosecutions of almost one thousand people. Most of the people arrested have raised complaints of torture and exhibited injuries that remain to be accounted for by the state agents. Many residents who were not charged have complained of torture, cruel, inhuman

and degrading treatment or punishment from Kenyan security agencies. According to a report by the Kenya National Commission on Human Rights military officers engaged in acts of torture and other human rights violations.⁵²

The latest conflict in Mount Elgon District must be understood against the broader background of unresolved land issues in Kenya. However, while the ethnic factor may have been dominant in explaining the conflicts of the 1990s in the Mount Elgon area (which pitted Sabaot against the other communities and notably the Bukusu), it has not been as dominant an explanatory factor in the current conflict. In the latest conflict, the main combatants firstly belong to the same ethnic community, and secondly the circumstance of the escalation of the conflict did not initially directly relate to politics of the state in general and political competition in particular. It is partly for this reason that while the Bukusu and Tesos form significant minorities, they were not part of those initially targeted for attack. The Sabaot community comprises two main clans, the Mosop (Ndorobo) and the Soy, of which the Mosop are the minority comprising of just about 20 000 members or about 20 per cent of the Sabaot. With different histories of origin and subscribing to different versions of and justifications for their rights of occupation and ownership of land in the region, the same groups have coexisted in an atmosphere of lingering suspicion made permanent by a wide array of stereotypical views of each other.

Inter-ethnic Conflict and Arming in Laikipia

On February 22, 2010, the KHRC fact-finding team travelled to Kinamba in Laikipia West District. This region is home mainly to pastoral groups like the Tugen, Pokot and Turkana, as well as the Kikuyu, a farming community in the Laikipia District. When the KHRC team visited the area, it found out that the government was in the process of completing a disarmament exercise in the area where over 2,500 guns had been recovered. During interviews with informants from the region, the KHRC team was informed that communities in the region had arms while others were in the process of acquiring them because of rampant insecurity. A Tugen youth who was interviewed stated as follows:

“There was a time we were told that guns were available and we, Kalenjins, almost started purchasing them, but one of our chiefs told us not to do so because when disarmament comes, the Kalenjins are likely to be victimised. In any case, guns can be snatched from those who already have them when the situation demands. We Kalenjins believe in our bows and arrows. If you ask me about those, I can show you what I have and I have increased my stock. The Kikuyu are arming themselves because they fear us.”

While pointing an accusing finger at the Kikuyu community as the ones who were arming, informants from the Kalenjin community argued that they had numerical strength and could get reinforcement from the Tugens in Baringo and Pokots in East Baringo in case of conflict. Members of the Kikuyu community told the KHRC team that they had reasons to arm themselves as they were a minority

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⁵² *The Mountain Of Terror; A Report on Investigation of Torture and Related Violations in Mt. Elgon by the Military*. Nairobi: KNCHR Report May 2008

population surrounded by neighbours who have attacked them in the past and are likely to do so in future. A Forest Officer⁵³ who works in Laikipia West was emphatic that it was the Kikuyu, and not the Kalenjin, who were arming because according to him, the Kalenjin had a good collection of bows and arrows that they had confidence in. The Kikuyu on the other hand were arming in anticipation of attacks from the greater Rift Valley, he reasoned.

An Acting District Commissioner, Laikipia West, Mr. Lincoln Njun'ge informed the KHRC team that his security team in the area had recovered guns in an ongoing community disarmament exercise in the district. He indicated that a number of homemade guns had been returned by the Kikuyu while most of those returned by other communities were old guns. A brand new G3 rifle was brought to Rumuruti police station on 23rd February 2010. He indicated that 551 rifles were handed over to government officials during the disarmament exercise. According to the D.C., the pastoral communities especially the Kalenjin, had acquired arms.

Other people involved in disarmament process in the area were members of the peace committee in the area. According to an official⁵⁴ of the Laikipia Peace Committee, peace and reconciliation efforts were gaining popularity in the area. The official was happy that the efforts of his team were beginning to bear some fruits as he had received five homemade guns from members of the Kikuyu community. However, he regretted instead of surrendering their arms, members of the Pokot community had hidden their automatic rifles in a neighbouring district. At the same time, he noted that most of the guns surrendered were faulty and wondered where the functioning ones were.

The long-standing nature of arming in Laikipia District was highlighted by a retired chief⁵⁵ who traced the origin of the problem to the former Moi Kanu regime.

“That time I was the local chief and I noted that there was an influx of armed Pokot herders in the 1990s. However as the Chief, at the time, there was little I could do since the Kanu regime wanted them there to counter the perceived growing influence of the Kikuyu.”

The former chief said that the demand for arms was driven by many factors, key among them being weak governance and the brutality of state security agents, which inevitably led pastoralists to seek arms for protection. In addition, lack of access to grazing land and adequate water coupled, exacerbated by with regular droughts, forced people to develop survival measures including dealing ruthlessly with rival groups in the fight for survival. Some cultural practices of the pastoralist communities, like emphasis on communally-validated bravery marked by the ability to invade neighbouring communities, has stoked the need to own more superior weapons among these communities.

Regarding the government disarmament efforts, the retired chief argued that the exercise was unpopular because of its approach where, rather than target criminal elements, the military

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⁵³ Name withheld.

⁵⁴ Interviewed on February 10th 2010 at Rumuruti. Name withheld.

⁵⁵ Name withheld.

indiscriminately harassed entire communities, contributing to the perception that the disarmament is a form of community punishment. This had resulted in mistrust between communities and the security forces with the consequence that security forces lacked the intelligence they needed in order to find weapons and arrest criminals, while community members were not comfortable reporting crimes or identifying criminals due to their lack of confidence in security forces.

The Laikipia West Deputy Police Division Commander, Mr. Otieno stated that the police had not received information that indicated that the communities were arming. However, he noted that through the disarmament exercise that was being undertaken by the government in Laikipia District, five hundred and fifty one (551) firearms had been recovered, including one brand new G3 rifle. The OCPD was confident that the communities that have been perennially in conflict as a result of cattle-rustling were gradually coming together after the intervention of elders. He noted that these communities could now be seen meeting in the market, a rarity before. Mr. Otieno however, indicated that new land conflicts could come up in Ol Moran Division, mainly as a result of Pokots grazing their cattle on unoccupied farms belonging to the Kikuyu community.

Inter-Ethnic Conflict in Narok, Kilgoris and Kisii

At the time the KHRC fact-finding team was visiting Narok, the area was in the news following a discovery of a huge cache of arms in Narok town. This consisted of a container with over 100,000 assorted armaments⁵⁶. Another consignment with reportedly over 30,000 assorted armaments was also recovered. This fuelled speculation that the arms cache was part of a wider scheme to unleash ethnic violence in the region.

Narok, Kisii and Kilgoris areas have experienced conflicts between the Maasai, Kisii and Kikuyu, the Maasai and Kalenjin communities and further south, between the Maasai and the Kisii. The conflict is triggered by a broad array of issues ranging from land to local politics as is exemplified by the case between the Maasai and Kipsigis in Narok South Constituency. In the Transmara area for example, the Kipsigis who are viewed as foreigners by the Maasai happen to be more populous and have started to take political advantage of their numerical superiority. During the last 2007 general elections, the Kipsigis fielded a candidate against the wishes of the Maasai who claim that there exists a gentleman's agreement between the Maasai and the Kipsigis that the latter should not field a candidate. As a result, some members of the Maasai community are said to have violently disrupted the counting of votes at Kilgoris and eventually burnt the counting hall and the ballot boxes.

During an interview with a Catholic priest⁵⁷ in Kilgoris the KHRC team was informed that there was tension between the two communities that was encouraging each community to seek and acquire

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⁵⁶ Although some suspects were arrested in regard to the discovery of this arms cache, the case seems to have stalled and the public is still not aware as to who was behind this huge consignment of weapons and to what end the same was to be used.

⁵⁷ Name withheld.

arms⁵⁸. These were allegedly easily acquired from Tanzania through the Kuria community. During recent conflicts, the priest noted, some of the victims suffered deep cuts as well as gunshot wounds.

An informant⁵⁹, who is close to the area Member of Parliament Hon. Gideon Konchella, discussed the tension between Maasai and the Kipsigis. He observed that the influx of members of the Kipsigis community into areas considered traditional Maasai land was the main cause of conflict. He informed the KHRC team that in the early 1970s, the Maasai, in a written agreement with the Kipsigis, accommodated 40 families in Maasai land because of congestion in Kipsigis areas. These families settled at Kirindon area. But gradually, the numbers have grown and the Kipsigis are now even able to field their own candidates, something which the Maasai feel is not acceptable because they feel that they must retain political power. Accordingly, this informed the skirmishes during the 2007 general election where the Maasai were concerned that their candidates could not win against the Kipsigis candidate. They brought chaos in the counting hall at Kilgoris and eventually set the building on fire burning all the ballot boxes in the process.

According to the informant, the Maasai will do everything in their power to see that no Kipsigis contested and won an election in Transmara. He attributed this to the fact that Transmara is considered a 'Maasai zone' and they feared being dominated by other communities including the Kuria who were encroaching from the south, the Kisiis from the north and the Kipsigis who were now threatening to take over land and political power. The conflict between the Maasai and the Kipsigis saw the government deploy military personnel to ensure cessation of the same shortly after the disruption of the vote-counting exercise.

When the KHRC team interviewed some residents of Junction (mainly Kipsigis) trading centre along Kirindon-Dikir road, they confirmed that there was tension and conflict at the border area and acknowledged that some people from the Kipsigis side of the border had crossed deeper into areas considered traditional Maasai land. Another informant⁶⁰ told the KHRC team that the plan by the government to remove people (mostly Kipsigis) who had settled in Mau complex had also impacted on relations between the Kipsigis and Maasai. He noted that on the one hand, the Maasai supported the evictions while the Kipsigis were against it.

Simmering Tensions in the Transmara Area

In Transmara, at Kirindon junction, one informant, a Kalenjin youth described the problems of insecurity in the area started in 1992 but escalated in 2007 when the parliamentary elections were disputed. He informed the KHRC team that members of the Kalenjin community were allegedly attacked at the shopping centre (Junction) by people armed with guns following the disruption of vote-counting in Kilgoris town. The informant claimed that the attacks were carried out by the Maasai who wanted to drive away the Kalenjin from the Trans Mara District. The informant

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⁵⁸ Through a local informant, the KHRC team was given a list of some people from both the Maasai and the Kipsigis communities who are armed.

⁵⁹ Name withheld

⁶⁰ Name withheld.

explained that the Maasai are determined to make the Kipsigis vacate to their part of the subdivided district, which is Trans Mara East. Following this conflict, about a hundred Kipsigis houses were burned by the Maasai. The Kipsigis retaliated, resulting in the death of one Maasai elder.

The informant noted that guns were used during the attacks. This was evidenced by the number of people who were either treated of gunshot wounds or shot dead. The KHRC team was informed of about 70 deaths as a result of gunshot wounds. On inquiries about who provides the guns, informants alleged that this was done by a former special branch officer and a former parliamentary candidate⁶¹. The informant also indicated that the guns could be coming from Kuria district and Tanzania. When asked whether the Kalenjin had acquired arms, the informants from the Kalenjin community denied having any guns claiming that if they had, they would have already attacked the Maasai using them⁶². A Kipsigis informant at Chepseon stated that should the Kipsigis in Trans Mara continue feeling threatened by the Maasai, they will also get guns for self-defence. He blamed some prominent Maasai leaders for inciting the community against the Kipsigis.

During the visit to Transmara, the KHRC team talked to the DC of Trans Mara. This interview session was also attended by an official from the Kenya National Human Commission on Human Rights. At this meeting, the D.C. indicated that both the Maasai and the Kipsigis communities had guns that were likely obtained both from the Tanzania border and Mt. Elgon region.

The Perennial Gucha-Transmara Inter-Ethnic Conflict

On its visit to Gucha and Transmara, the KHRC team interviewed a primary school teacher and a member of the National Convention Executive Council⁶³, a partner of the Youth Agenda, who is familiar with the Gucha/Transmara Border conflicts. He informed the team that before the 1990s, the Kisii used to cultivate land in Transmara without many challenges. At first, the system was that of share-cropping, where the proceeds from the farms would be shared equally between the land owner (Maasai) and the cultivator (Kisii). However, after 1990, Kisii farmers started facing hostilities from the Maasai who would start wars and thereafter harvest the crops or graze their cattle on the farms cultivated by the Kisii. According to the informant, this resulted in regular fighting between the two communities. The Kisii realized that their rival community, the Maasai had guns which were used to kill members of the Kisii community. Following the initial huge losses to the Maasai who had superior weapons, our informant stated, Kisii started making contacts with the Kurias asking for assistance to acquire guns. The Kisii eventually acquired arms. In one incident, the informant claimed that the Kisii warriors used their new weaponry to raid the Maasai and take their cattle. When the two communities realized that both had acquired weapons, the inter-ethnic attacks dramatically reduced.

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⁶¹ Name withheld.

⁶² The KHRC team found information on armed members of the Kalenjin (read Kipsigis) as noted in footnote 57 above.

⁶³ Name withheld.

Inter-Ethnic Conflict in North Eastern and Eastern Regions

When the KHRC team visited Isiolo to assess if communities there were involved in arming, an informant who is a local journalist told them that the issue of dealing in arms was not uncommon in Isiolo. He argued that in the absence of or reluctance by police and other security forces to offer protection to different communities had fuelled ethnically-driven arming in the region. The informant stated that people who dealt in arms in Isiolo were well known but everybody was scared of confronting them. He mentioned that a local businessman⁶⁴ was suspected of being a big arms-dealer in Isiolo town.

Another informant⁶⁵ described an incident where a bomb was discovered outside a supermarket in Isiolo town. Security experts concluded that it was a gun-propelled bomb. The incident, confirmed that people were moving from the acquisition of common arms like guns to the acquisition of more sophisticated weapons. The informant argued that because the region had a long history of armed inter-ethnic conflict, particularly over pasture and cattle rustling, in Merti, Garbatulla and Ol doinyo and among the Samburu, Borana and Turkana, guns were readily available for sale at a cost of between KES 25,000 and 30,000.

Another informant⁶⁶ concurred that there were illegal arms in the region that most were transported along the Isiolo-Mandera route before finding their way into underground markets in Central province and Nairobi. The informant stated that though Government officials in Isiolo insisted that they were tackling the influx of illegal arms, he was concerned that the security personnel condoned arming activities because of corruption. The informant claimed that Lorries, which are used as the main mode of transport in the area, were often used to transport illegal arms from porous Kenya-Somalia border into the country.

Disarmament Exercises in the North Eastern and Eastern Regions

With respect to regular disarmament exercises in the region, the informants argued that it was effective to some extent but noted that those with arms, including the Borana, managed to hide their weapons during the disarmament exercises and the same guns usually re-emerged whenever it was safe to do so. The informants told the KHRC team that since most communities had sold their camels and cattle to purchase arms, it would be hard for them to surrender the arms freely.

During the mission, the local communities interviewed observed that the general security situation seems to have improved in most of Samburu and Isiolo. This was described as the result of an ongoing disarmament operation by security forces which had made it hard for people to conduct cattle raids and drive away with animals for hundreds of miles without encountering security forces.

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⁶⁴ Name withheld.

⁶⁵ Name withheld.

⁶⁶ Name withheld.

At the time of the visit, there was evidence of the ongoing disarmament along Isiolo-Wamba areas where the KHRC fact-finding team spotted camps being set up by regular and administration police involved in the exercise. This had allegedly forced people who were not willing to surrender guns to hide them while some gun owners had left home to seek refuge with kin living far away for fear of losing their arms to police.

Other Emerging Issues from the Eastern and North Eastern Regions

Informants in the area also discussed tensions over power and control of resources by key actors in the area. There are the local communities composed of the Borana, Meru, the Somali and Turkana on the one hand and the foreign communities mainly the British army all with diverse and often conflicts interests to guard, which obviously leads to tensions. The foreign interests are felt more in the town of Isiolo where one informant indicated that there is a fear that some plots in the town have been allocated to persons other than the local residents. It is feared that many people are going to lose their plots of land to the more financially endowed Somali elites in Nairobi and the diaspora thus promoting a sense of insecurity that would likely trigger conflict since some communities, like the Boranas, who consider Isiolo area to be their traditional territory are already feeling threatened.

With respect to the availability of weapons among the different communities in the region, our informants confirmed the existence of small arms in the area but were hesitant to divulge further information about the armament process, where the weapons came from, who supplied them, the prices etc. However informants indicated that the available weapons were no longer being used in the traditional conflicts over water and pasture. They argued that the weapons were instead being used to acquire and consolidate power by the local communities. In this respect the Borana and the Somalis were identified as the main protagonists while the Turkana and the Meru were co-opted by either side to solidify their interests. Thus the Borana would arm the Turkana and get them to fight the Somalis with a view to solidifying their leadership over the Boranas. If the Turkana do not feel adequately rewarded with power positions e.g. a seat in the council, they could easily change sides and back the Somalis. At times, the Turkana feel disillusioned with both the Borana and Somali communities and engage in forms of organised banditry against them. The Meru, on the other hand, who are mostly traders in Isiolo town are likely to be provoked by boundary disputes with the Boranas considering that Meru and Isiolo county share a common border.

Another emerging conflict-issue in Isiolo regards who is likely to benefit from the drilling of oil that was allegedly discovered in the area. Local communities are concerned that such a discovery would marginalize rather than benefit them. These speculations are heightened by lack of information and the secrecy in which the whole process of oil exploration is being done in Isiolo, particularly by the contracted Chinese company. The issue of oil and its proceeds if or when it is finally discovered, could be a source of conflict in this area.

Arming in the Coast Region

At the Coast region, the research team discussed arming with key local informant. One informant⁶⁷ told the KHRC team that unlike Nairobi where the rich were allegedly arming militias to defend their property, in the coastal areas especially Mombasa, businessmen were individually devising ways to defend their property. The informant noted that:

“What they (business people) are doing now is arming to defend their property but would not attack because they are greatly outnumbered”.

He claimed that just as illegal drugs were readily available in Mombasa, the same was the case with guns. The arms, according to the informant, were available in Mombasa from the many Somali immigrants who arrived in the Coastal city through the Kiunga border.

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⁶⁷ Name withheld.

Key Observations from the Fact-finding Mission

This study explored allegations that communities in Kenya, particularly in areas mostly affected by the post election violence in 2007—2008 were engaged in arming themselves in readiness for violence in the future, most likely during the general elections in 2012. Through discussions with key informants consisting of contacts provided by civil society organizations in the field, church leaders and government officials particularly police officers and provincial administrators, the KHRC fact-finding team documented various issues and concerns that according to our informants, were responsible for or contributed heightened ethnic tensions and general insecurity or conflict in the country.

The KHRC recommends that the different issues raised by various communities must both be urgently and addressed. One thing that the fact-finding mission confirmed was that there exist high levels of mistrust, suspicion and hatred among rival ethnic communities that have in one way or another been affected by conflict in the past. Despite ongoing peace building efforts by the government and civil society organizations, the scale and magnitude of the 2007—2008 post-election violence has made those communities which bore the brunt of the violence wary of the government's ability to protect them. Hence, for these communities, self-arming as opposed to relying on government security is the best guarantee for their future protection. What is more, the KHRC team found out that communities are engaged in blame games, accusations and counter accusations as little or no dialogue has been initiated between members of rival communities.

During the mission, members of one community were willing to disclose about alleged wrongdoing of their protagonists, including of acquisition of weapons, organization of militia groups and alleged planning for war. They were however very guarded when it came to disclosing what their own communities were doing. The positive outcome of the scenario for the KHRC team was that they were able to get a lot of information about the "other community", which was then corroborated with other studies and interviews from other informants.

Some of the informants who participated in KHRC's fact-finding mission expressed serious concerns and uncertainty regarding Kenya's national cohesion as ethnic polarization has left people

fearful of the continued existence of a united country, especially in the face of serious national disagreements, as was witnessed following the disputed presidential poll of 2007. These concerns are not far-fetched considering the fact that the country's political elite does not seem to be overly concerned with establishing sound legal and political mechanisms to avert future crises. For the Kenyan political leaders, rather than invest in national healing and building a solid foundation for the continued existence of a national body politic that is not held ransom by narrow ethnic considerations, most are already preoccupied with preparing for an electoral confrontation in 2012 elections where the ethnic arithmetic that almost brought this country to its knees in 2007—2008 remains the only *modus operandi*.

Tents for people internally displaced by Kenya's 2007—2008 post-election violence dotting various parts of the country where the KHRC team visited, are a clear confirmation that the government has not only been unable to resettle the people who were violently displaced, but also failed to assure them that they can return home in safety. Indeed the KHRC team met with the people who were violently displaced but are unable to return home because those who evicted them in the first place threaten to unleash more terror on them should they dare return. In a nutshell, the government is either unable or unwilling to provide security for returnees. These factors, coupled with an upsurge in criminal and gang violence, corruption, and lack of economic opportunities especially among the youth, compounds the endemic lack of confidence in institutions of the government with the consequence that people are reverting to their communities, and not the central government, for survival.

The Kenya Human Rights Commission is concerned that the factors that triggered the violence, as outlined in the Waki Commission consisted of growing politicization and proliferation of violence in Kenya over the years, the growing power and personalization of power around the Presidency, a feeling among certain ethnic groups of historical marginalization, arising from perceived inequities concerning the allocation of land, other national resources and access to public goods and services, as well as the increasing problem of a growing population of poor, unemployed and youth, educated and uneducated, who agree to join militias and organized gangs⁶⁸ were not effectively addressed. This, together with the fact that the communities who were armed prior to the post election violence were never disarmed or made to account for atrocities that they committed should awaken the government to the reality that the communities are arming themselves and must address this issue urgently and diligently to preempt occurrence of violence in the future.

As evidenced by the fact finding missions conducted by KHRC, various ethnic communities are arming themselves – or rather re-arming since the instruments that were used to unleash terror were never retrieved. They are doing so or are planning to do so to protect themselves from anticipated aggression by others. Communities do not seek self-armament for the sake of it but rather for reasons – in their eyes – that are legitimate. KHRC researchers found out that while several benchmarks have been established at the national and to a certain extent at the local level towards peace building, experience on the ground is rather wanting. There is a pervading feeling of disconnect between the people and governance structures, strained relationship among ethnic communities that are characterised by fear, anger, suspicion and hatred, and the feeling that the government is

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⁶⁸ Report of the Commission of Inquiry on Post Election Violence (CIPEV) in Kenya

unwilling or not able to offer communities needed social security and protection from aggression by rival communities. Because of these and other factors, communities have elected to revert to community safety nets including through arming for survival.

Conclusion and Key Recommendations

By documenting cases of community arming and perception of lack of protection by the state, KHRC is communicating early warning signs of impending conflict and attendant human rights violation in conflict situations. We urge the political leaders, parliamentarians, the cabinet and other non state actors like the civil society and the media to be focused on understanding the grievances, develop mechanisms for resolving them early enough to prevent conflict and champion the reform agenda, rather than be obsessed with debating the 2012 presidential elections. In addition, KHRC makes the following recommendations:

- ~ State and non-state actors needs to progress on all four agendas agreed under the KNDR process in order to nip in the bud the threat of further militia activity. Whilst some progress has been made towards key reforms agreed upon under The National Accord and Reconciliation Act 2008, the coalition government has been unable to deliver on a number of areas, especially in the setting up of appropriate criminal justice mechanism to prosecute suspected perpetrators of the post-election violence. The prevailing condition of real or perceived impunity of perpetrators of crimes has the negative consequence of bolstering communities resolve to organize and carry out repeat violent displacement or encouraging the victims to arm themselves for self-defence. The government must establish a local justice mechanism that will prosecute perpetrators of the various human rights violations that took place in 2007—2008 to complement the role that the International Criminal Court is playing of indicting a few leading suspects. Prosecuting high, middle and low ranking suspects through a local tribunal would most certainly force prospective offenders to reconsider their involvement in tribal and militia violence. Furthermore, the planned reform of the justice system must ensure that politicians who hire militias as well as leaders and members of such militia groups in Kenya who have long played a role in supporting candidates who hire them must be held to account.
- ~ The overwhelming support for the new constitution by the people of Kenya was a major milestone for the country and achievement of one of the promise under Agenda four. Among many agreements in the constitution is development of decentralization of power and resources, reforming of various institutions to better serve the people, and above all the dedication to general provisions relating to the Bill of Rights. The section on the Bill of Rights (Chapter IV) provides a comprehensive list of rights and fundamental freedoms that every

person shall enjoy, including civil, political, economic social and cultural rights (43.1). It also states that every person has the right to make a claim to a right or fundamental freedom that is denied, violated or infringed, or is threatened (22.1). But mere documentation of such important provisions are of no consequence to the people for as long as they are ignorant about them, what it means for them or when the government is doing nothing towards their realization. KHRC urges the government, civil society organizations and international partners to develop or support ongoing civic education projects on the new Constitution well as its **** and full implementation.

- ~ Commentators on ongoing disarmament programmes especially amongst pastoralist communities argue that while it is critical that illicit arms that are a threat to human security should be removed from circulation, interventions like disarmament must be carried out in concert with programmes that address the primary causes that lead to community self-armament. In addition the disarmament programme must be humane and human rights respecting – not punitive. The process should ensure adequate participation of communities and the disarmament process must be continuous, targeting all communities so that the disarmed groups are not left vulnerable to attacks by other armed groups. The government must work with respected community leaders, civil society groups, and religious leaders in a disarmament programme that is driven by, not imposed on the community.
- ~ The unresolved displacements of communities in Rift Valley have continued to fuel the hatred and mutual suspicion between Kikuyu, Kisii and Kalenjin communities. The boundary issues between the Kisii, Luo, Maasai and Nandi in the Southern part of Central Rift is an issue that has continued to be an impediment to peaceful co-existence in the region. Leaders in the area must engage in reconciliation of their neighbouring communities particularly traditional methods that have historically ensured harmonious co-existence.
- ~ The government must review, for the purpose of implementing the recommendations of the Akiwumi, Kiliku and Waki commissions on political and ethnic clashes and post election violence in Kenya.
- ~ The disarming operations that the government has continued to exercise on several occasions appears to have been a blot and never effective as most militias are never disarmed in total. In Mt. Elgon, for instance, information regarding the government plan to send the military in the area to disarm communities a mission by the Kenya Again, such exercises must be conducted following massive community awareness of its intended purpose, involve the community and must be human rights respecting.

Section Four: The Post-mission Brief

When the KHRC embarked on this fact-finding mission, a central plank of the investigations rested on going to the field to verify claims that communities were arming ahead of the 2012 General Elections. The findings from the field indicated that some of the key motivations behind the communities arming included the following:

- ~ The need to take security matters into their own hands especially in the face of the prevailing perception by the affected communities that the state security machinery failed to protect them at their hour of need during the 2007/08 violence thereby leaving them vulnerable to attacks from ‘enemy communities’.
- ~ The desire by the different communities to be better prepared so that they are not caught unawares should there be an outbreak of ethnically motivated violence in the next general election as was the case in 2007/08. As well, the insider-outsider political dichotomy that saw the forced eviction or repatriation of certain communities from areas not considered their ‘ancestral’ homes.
- ~ The bitter political rivalry between key Orange Democratic Movement (ODM) luminaries—read Raila and Ruto—heightened by opposing public stances taken by the two politicians on weighty political matters like the International Criminal Court (ICC) process, the eviction of squatters – mainly from the Kalenjin Community – from the Mau forest.
- ~ Political-representation supremacy battles, particularly between the Maasai and the Kipsigis communities in the Trans-Mara region.
- ~ The perennial problem of insecurity among pastoralist communities.

From its field mission visits, the KHRC fact-finding mission interviewed a broad-spectrum of state and non-state actors who informed the team that the foregoing factors were the main drivers and motivators for arming among different communities. During its first visit to the field, there was palpable tension and hostilities between the different ethnic-communities affected by the post-election violence. However, from its post-mission visits undertaken in Nakuru, Naivasha, Molo

and Nairobi in the months of April, May, June, and July 2011, the KHRC team found out that communities had toned-down their ethnic hostility rhetoric on their perceived 'enemies' as well as their willingness to share information on the arming activities that they were undertaking. A number of factors may have contributed to this apparent change of attitude and tact but three are germane. The first is anchored on the quicksand nature of Kenyan politics founded on ever-shifting political alliances. The second revolves around the politics of the ICC and the ensuing re-alignments among politicians following the summons issued to six individuals to appear before the ICC over the 2007/08 post-election violence. The third and final has to do with political rapprochement between the Kikuyu and the Kalenjin, the two main protagonists in the perennial ethnic-violence witnessed in the Rift Valley. The foregoing three factors and their likely impact on communities arming ahead of the next general elections are discussed next.

In most established democracies, political representation of the electorate is based on the contest of political ideologies among different political parties, which compete for the right to represent the electorate based on clear party policies and manifestos. The same cannot be said to be true for fledgling democracies like Kenya where, oftentimes, politics and political representation is based on the quicksand of ethnically driven politics. The main goal of the foregoing brand of politics is advancing the narrow interests of a given ethnic community. The defining feature of this kind of politics is the ever-shifting ethnic alliances among the prominent ethnic elites who front their political interests behind the facade of a political party.

In the recent past, the ethnic-elite led political pact-building brand of politics has prominently reared its ugly head in Kenyan politics. A recent assemblage of ethnic barons posing as national leaders is what was put together under the so-called 'Pentagon' of the Orange Democratic Movement (ODM) that preceded the catastrophic 2007/08 general elections. Equally ethnically-driven and though not as well-choreographed and sophisticated as ODM, the Party of National Unity (PNU) was largely conceived as an ethnic-pact by prominent ethnic elites meant to provide a political anti-dote to ODM ahead of the 2007 General Elections. As the next general elections draws near, Kenya's ethnic elite has already engaged the top gear in designing all manner of political alliance-building permutations. From the coronation and anointing of individuals⁶⁹ as the sole bearers of the ethnic offering at the altar of national politics, to attempting to popularize ethnic-led political outfits like the G7⁷⁰ or the G3⁷¹, it is clear that Kenyan politics is still in the firm grip of narrow ethnic interests devoid of an overarching national political agenda.

Perhaps the most defining moment of the short-lived nature of Kenya's ethnically driven political alliances came with the aftermath of the disputed 2007 presidential poll. The post election violence that rocked parts of the country resulted in the loss of over 1,000 lives, the massive destruction of

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⁶⁹ For some time now, some prominent politicians from Central Kenya, Embu and Meru regions have consistently made public pronouncements to the effect that Uhuru Kenyatta is the sole appointed leader to lead their communities bid for the Presidency in the next general elections. For more information, please visit <http://allafrica.com/stories/201105031151.html>

⁷⁰ The Members of the G7 are: Deputy Prime Minister Uhuru Kenyatta, Vice-President Kalonzo Musyoka, suspended Higher Education minister William Ruto, Saboti MP Eugene Wamalwa, Trade minister Chirau Mwakwere, Dujis MP Aden Duale and former South Mugirango MP Omingo Magara. For additional information on the politics of the G7, reference, please see <http://www.standardmedia.co.ke/columnists/InsidePage.php?id=2000042112&cid=650&>

⁷¹ The latest talk of alliance-building now involves the so-called G3 made up of Uhuru Kenyatta, Kalonzo Musyoka and William Ruto

property, and the displacement of over half a million people from their habitual places of residence. Following the violence, the Grand Coalition government formed on February 28 2008 was advised by the Waki Commission to form a credible local tribunal to address the gross injustices committed on or by different people in election-related violence. The Commission of Inquiry into Post Election Violence (commonly referred to as the Waki Commission) added a caveat to the foregoing recommendation. It recommended that if the government failed to form the said tribunal, then those who bore the greatest responsibility for the violence and whose names were contained in the infamous Waki envelope would stand trial at the International Criminal Court (the ICC).

Kenyan Parliamentarians strongly resisted attempts of establishing a local tribunal and instead rooted for the Hague-based ICC process. In fact, they came up with a clarion call, “Don’t be Vague Support the Hague!” to make their stand on the matter crystal clear. Opinion polls showed that the Kenyan public, on its part, largely supported the ICC process. Why the politicians were so hell-bent on the Hague-led process as opposed to the local process is a matter opened to conjecture and interpretation. However, the biggest reasons seemed to be their reasoning that the ICC process would take a long time and would therefore not adversely affect their political careers. Another plausible explanation is that some politicians might have seen the Hague-led process as a tool to fix their political opponents ahead of the next general elections.⁷² Whatever the reasons were for the politicians strong support of the Hague-led process, there was a sharp about-turn on this support when the ICC made public the names of six individuals deemed to bear the greatest responsibility for the 2007/08 post-election violence. Suddenly, politicians who had hitherto supported the ICC, especially those aligned to Uhuru Kenyatta, William Ruto and Kalonzo Musyoka, became the most acerbic critics of the ICC. Yesteryear political combatants – read William Ruto and Uhuru Kenyatta – became bosom-buddies knotted together by the ICC garment of fate.

The Ruto-Uhuru Hague initiated political alliance saw the two traversing various parts of the country soliciting support against the ICC. As is the case with Kenyan politics, their strongest support came from their respective ethnic bases. So strong was the support that when the Hague returnees (also called the Ocampo Six) came back to the country from the Hague following their initial appearance before the ICC, their supporters had mobilised a huge crowd to accord them a hero’s welcome at Nairobi’s Uhuru Park.⁷³ The success of the campaign could also be gauged from the reduced support for the ICC from the Kenyan public.⁷⁴ But perhaps the most important outcome – i.e. for purposes of this report – of the Kikuyu-Kalenjin rapprochement as fronted by the respective political ethnic elites from these communities was that people from these communities were now less willing to openly talk about their arming activities. Hence, when the KHRC team sought information from them on allegations of arming on its post-mission follow-up visits, they were not as forthcoming with the same as had been the case in the initial visits.

However, it must be noted that the unwillingness of the communities to talk openly about their arming activities in the post-mission visits does not minimize the weight of the allegations that

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⁷² This claim has been repeatedly made by some of the politicians who face trial at the on-going confirmation hearings at the ICC.

⁷³ For details, please visit:
<http://www.standardmedia.co.ke/InsidePage.php?id=2000033037&cid=4>

⁷⁴ For details, please see: Poll-Support for Trial of Six in Hague Wanes, available at <http://allafrica.com/stories/201108230075.html>

communities are arming ahead of the next general elections. In fact, the latest government-sanctioned report on the availability of arms in the country confirms that Kenya is awash with small arms among the pastoralists, the urban and the rural populations.⁷⁵ The latest government findings, coupled with KHRC findings on communities arming should provide a genuine and legitimate concern to all those who care about the socio-economic and political stability of our country.

During the 2007/08 post-election violence, our country sat dangerously on the brink of the precipice.⁷⁶ Our fact-finding team found out that the bitter lessons of the 2007/08 violence have led people, especially from the communities most affected, to resort to acquiring arms for self-defense in future. We must all guard against the possibility of the next, or subsequent, elections being the push that finally rolls us over the cliff into the unenviable abyss of total socio-economic and political destruction. Concerted efforts must be made to mop out illegal guns – and this must of course be carried out within the acceptable human rights parameters – from the hands of civilians. What is more, we must start by addressing one of the deepest root-causes of our socio-economic and political tensions and conflict. As discussed above, narrow political interests advanced by Kenya's ethnic-minded political elite is what most ails our body politic. As we look forward to the next general election, we must remind ourselves that if we are to avoid the pogrom of ethnic and political violence, which befell us in 2007/08, we must strive to establish a new brand of politics that accommodates diversity and creates space for all to thrive anywhere within the borders of our great nation. If properly implemented, the Constitution of Kenya 2010 provides us with renewed hope and a reference point for a new beginning.

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⁷⁵ For details, please see *The Second National Small Arms Mapping Survey Report* as carried out in the Daily Nation, September 18, 2011 under the following headline: Anxiety as more Kenyans in urban centres and villages acquire illegal guns

⁷⁶ For details, see the KNCHR report, *On the Brink of the Precipice: A Human Rights Account of Kenya's Post-2007 Election Violence*

References

1. *Background to Displacement in Kenya (Special Report, December 2006)*. Internal Displacement Monitoring Centre (IDMC). Accessed online at [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/39230B5A4350F889C125724800515B56?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/39230B5A4350F889C125724800515B56?OpenDocument)
2. Human Rights Watch 2008 Report. *Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance*. Accessed online at <http://www.hrw.org/en/reports/2008/03/16/ballots-bullets-0>
3. IMLU August 2008 Report. *Double Tragedy: Report of medico-legal investigation of torture by the military at Mount Elgon "Operation Okoa Maisha"*
4. KHRC 2009 Report, *Morans No More: the Changing Face of Cattle Rustling in Samburu and Isiolo*
5. KNCHR Report May 2008. *The Mountain of Terror; A report on investigation of torture and related violations in by the military at Mt Elgon*. Nairobi.
6. Muchai, Augusta. *Disarmament and Destruction of Firearms not a Panacea to Insecurity in Kenya*. Institute for Security Studies. Accessed online in November 2010 at http://www.iss.co.za/iss_today.php?ID=934
7. Nyukuri, Barasa. *The impact of Past and Potential Ethnic Conflict on Kenya's Stability and Development*. Department of History, University of Nairobi. Accessed on-line at <http://www.payson.tulane.edu/conflict/Cs%20St/BARASFIN1.html>
8. Waki Report October 2008. *Report of the Commission of Inquiry on Post Election Violence (CIPEV) in Kenya*.
9. Simiyu, Robert. 2009. *Militianisation of Resource Conflict*. Institute of Security Studies report
10. South Consulting October 2010 Review Report: *The Kenya National Dialogue and Reconciliation (KNDR) Monitoring Project*