

**W**ITH KENYA'S RETURN TO MULTIPARTY POLITICS IN 1991, violent conflicts engulfed the Rift Valley and Western provinces of the country. This violence was variously christened 'ethnic' or 'land clashes'. Between 1991 and 1996, over 1,500 people were killed while over 300,000 were displaced.

In the run-up to the 1997 elections, violence at the Coast province claimed over 100 lives and displaced over 100,000, mostly pro-opposition up-country people.

Over the years it has become evident that these clashes are sponsored by the state with the aim of influencing electoral outcome in its favour or punish 'errant' groups. This form of violence, where the state employs marionettes to execute its intentions has been dubbed, 'informal repression' and is one of the newest threats to human rights in the multi-party era.

Killing the Vote examines the impact of this new form of violence on elections in Kenya, especially the 1997 General Elections. It examines the 1997 General Elections as a process rather than an event. Its verdict is that the state-sponsored violence coupled with other electoral malpractices such as bribery and technical hitches such as the lack of ballot papers in a large number of places made a complete farce of what should have been democratic elections.

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# Killing the Vote

## State Sponsored Violence and Flawed Elections in Kenya



A Kenya Human Right Commission Report

The KENYA HUMAN RIGHTS COMMISSION (KHRC) is a non-profit, non-partisan organisation established in April 1992 in both the United States of America, and Kenya and registered in Kenya in January 1994 under the Non-Governmental Organisation Co-ordination Act. Its purpose is to promote and protect the enjoyment by Kenyans of nationally articulated and internationally established standards of human rights.

To achieve this, it focuses its efforts and resources in advocacy and mobilisation initiatives that seek to:

- secure the protection of these rights for all Kenyans;
- empower Kenyans to advocate and mobilize for their inherent rights; and
- articulate the frustrations, aspirations, and endeavours of Kenyans as they struggle to incorporate democracy, respect for human rights, and good governance in their lives.

KHRC's work is carried out through a secretariat office in Nairobi that conducts a host of activities, including; an action-oriented research and publications programme; an activism and mobilisation programme that has organised several campaigns; a consciousness-raising and education programme; a land rights and advocacy project; and a women's rights and advocacy project.

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## Preface

With Kenya's return to multi-party politics in 1991, violence variously christened "ethnic clashes" or "land clashes" erupted in many parts of the country. Between 1991 and 1996, over 1,500 people died and almost 300,000 displaced in the Rift Valley and the Western provinces. In the runup to the 1997 elections, fresh violence erupted at the Coast killing over 100 people and displacing over 100,000, mostly pro-opposition up-country people.

By 1998, when violence broke out in the Rift valley again, it had become a handy election tool and an instrument by the state to reassert its absolute dominance over every sector of the Kenyan society. Over the years it has become evident that these clashes are sponsored by the government using surrogate agents to avoid responsibility.

This has given rise to a new deadly phenomenon dubbed, "informal repression". Akin to the "disappearances" of government critics in Latin America, informal repression styled along ethnic or land clashes is one of the newest threats to human rights in the multiparty era. As this report points out, this violence has been aimed at creating animosity between communities to split their political inclinations, to frighten whole communities into voting for the ruling party KANU as an insurance for their security, to drive out "politically incorrect" communities from specific electoral areas and even to kill off communities as a Final Solution to ensure the political survival of the ruling party and its leaders. Hence clashes have always invariably erupted on the runup or immediately after elections.

While one-party state repression centred on individuals considered a threat to the system, in the multi-party era, entire groups perceived as pro-opposition have been a target. Genuine grievances in multi-ethnic areas have been devilishly exploited to lend the violence an inter-ethnic-animosity tinge while painting the state as an honest arbiter in the conflict. Hence multi-ethnic areas with long-standing inter-ethnic rivalry over land, cattle rustling or simply competition for the scantily available resources have witnessed conflict and bloodletting.

*Killing the Vote* is an examination of the impact of this violence on the 1997 General Elections. During this period, violence engulfed such areas as the Coast and Nyanza provinces and northern parts of the Rift Valley which were either

not affected or were only slightly touched during the 1992 General Elections. The report notes that "ethnic violence" was used to depopulate opposition strongholds such as Likoni where just over 30% turned out to vote in the elections. Activation of violence in areas such as Gucha-Trans Mara, Migori-Gucha, Migori-Kuria, and West Pokot-Marakwet as well as the declaration of security operation zones in Nyanza and Trans Mara considerably undermined the entire electoral process.

The Kenya Human Rights Commission points out that whereas the Government has the resources to stop the ethnic violence, it has been totally lacking the political will to do so. This is in the stark violation of its obligations under the Kenya Constitution and other international covenants that Kenya is party to. If the Bill of Rights is to retain any meaning, those displaced from their land must be resettled, the perpetrators punished, adequate security offered and compensation made to the victims.

This report also points out that election monitoring groups need to redefine their parameters of monitoring to avoid the present treatment of elections as an event rather than a process. This is what happened in 1997 and it was what had influenced the monitors' verdict in 1992.

At the same time, Opposition parties must resist the temptation of polarising national politics on ethno-regional lines as this poses a grave danger to the very survival of the country.

This report is the product of extensive field research. Its principal finding is that in 1997, state-sponsored terrorism coupled with other electoral malpractices such as bribery and technical hitches like the lack of ballot papers in a large number of areas made a complete farce of what would have been democratic elections.

# Chapter 1

## Introduction

"KANU leaders were firmly resolved on either getting the country back to one-party status or keeping genuine democracy in cold-storage."

In December 1991, the one-party regime of President Daniel arap Moi capitulated to internal and international pressure to legalize a multi-party system. Having entered the multiparty era involuntarily, KANU leaders were firmly resolved on either getting the country back to one-party status or keeping genuine democracy in cold-storage. Following the legalisation of competitive politics an orgy of 'ethnic' violence erupted in the multi-ethnic Rift Valley and Western Provinces. Over 1,500 people perished and more than 300,000 were forced to flee their homes for safety. These formed the first wave of Kenya's disinherited and disenfranchised internal refugees. This heralded the dawn of a dark age in which the government was to increasingly revert to informal repression and extra-legal intimidation of its critics and opposition supporters in order to assert its authority in the political space.

The wave of violence, which began in the run-up to the first multi-party election in December 1992, undermined the civil and political rights of thousands of Kenyans, especially their right to vote. Many displaced Kenyans as well as those in the clash-torn zones were unable to register as voters or were barred from voting by violence and intimidation. Although violence was suspended during the critical months of campaigning and balloting, it continued relentlessly in the post-election period until 1995.

Informal repression and violence had three purposes: First, to stem the tide of constitutional reforms campaign, which was aimed at consolidating a genuine multi-party culture. Second, to re-assert the government's authority in the political arena and, finally, to intimidate and perhaps punish those sections of

society which voted against it.<sup>1</sup>

As the December 1997 multi-party elections drew near, Kenya became a cess-pool of all genres of violence. Incidences of land clashes, cattle rustling, vigilante violence and their human casualties soared dramatically. The renewed wave of violence reached a feverish-peak on August 13, 1997 as 'ethnic' clashes

**Cabinet ministers, members of parliament and KANU officials from the Rift Valley province, most of them from President Moi's Kalenjin group, began to call for the forcible removal of other ethnic groups viewed as opposition adherents.**

erupted in several spots in Coast Province. Over 100 people died and more than 100,000 others were displaced in this province reputed for its ethnic and racial harmony.

Investigations by both national and international human rights organizations have centred on the question of the government's involvement in the violence. Some have bitterly indicted it for complicity and efforts to conceal its covert role.<sup>2</sup> Others have severely censured the Government for what they interpret as its laxity in dealing with the violence and its perpetrators.

As the clamour for pluralism gathered momentum in the early 1990s, President Moi 'predicted' that Kenya's return to a multi-party system would threaten the state, polarize the country along tribal lines and plunge it into ethnic violence. Cabinet ministers, members of parliament and KANU officials from the Rift Valley province, most of them from President Moi's Kalenjin group, began to call for the forcible removal of other ethnic groups viewed as opposition adherents. They advocated *majimboism*<sup>3</sup> as a federal vehicle for the protection of their ethnic rights. The policy, eventually, metamorphosed into a doctrine of

<sup>1</sup> The theme of post-election violence as government's revenge against those sections of society which voted against it is gaining popularity. See, for instance, "Elections Revenge on Nakuru Non-Kalenjins". *The Star*, January, 29 1998.

<sup>2</sup> See Human Rights Watch/Africa, *Divide and Rule: State-Sponsored Ethnic Violence in Kenya*, New York, November, 1993; Article 19, *Deadly Marionettes: State-Sponsored Violence in Africa*, London, October, 1997.

<sup>3</sup> The policy of *majimboism* emerged in the late 1950s and early 1960s. Based on the notion of 'group rights', especially the rights of ethnic minorities, as well as exclusive ethnic territory, the policy is akin to federalism. This Kenyan-style federalism has been associated with ethnic cleansing in the 1990s.

ethnic cleansing. And informal repression has become a handy tool for altering political demography, influencing the outcome of multi-party elections, rolling back the frontiers of democracy, and sustaining the restrictive structures of the one party era. This new form of repression and intimidation contributed greatly to the flawing of the two multiparty elections in 1992 and 1997.

This report endeavours to contribute to the understanding of the link between informal repression and violence, and the electoral process in Kenya. For, informal repression, is now one of the most deadly threats to multiparty democracy and human rights in Africa.

### **Informal Repression: A New Threat to Human Rights**

'Ethnic' violence is the most pervasive example of this 'informal repression'<sup>4</sup> which is sweeping across Africa. A response by African governments to their weakening authority in the political space during the transition from one-party to a multi-party state, this phenomenon is, no doubt, a crime against humanity. It has often taken different forms which range from the mobilization of members of the *Nyau* secret dance cult in Malawi to intimidate opposition supporters, especially during the 1994 elections, the use of arbitrary powers of the *lamibe* traditional chiefs in Cameroon to detain opposition activists, to arming of tribal militias in Kenya, Nigeria and Rwanda.<sup>5</sup>

**They exploit long-standing, but latent, inter-ethnic disputes to foment ethnic violence.**

By instigating violence, some governments seek to justify their claims that democracy cannot work in a multi-ethnic society and to fulfil their 'prophecy' that the adoption of pluralism would trigger inter-ethnic violence. They ex-

<sup>4</sup> The subject of 'informal repression' has been thrust to the centre-stage of the human rights discourse by a recent Article 19 report, *Deadly Marionettes: State Sponsored Violence in Africa*, (October 1997). Kenya is listed as one of the seven African countries where violence is undermining the transition to democracy. See pp.15—25.

<sup>5</sup> Article 19, *Freedom of Expression in Malawi: More Change Needed*, Censorship News, London, No.32, February 1994; G.Prunier, *The Rwanda Crisis 1959—1994: History of Genocide*, London and New York, Hurst, 1995. Human Rights Watch, *The Ogoni Crisis: A Case-Study of Military Repression in South-eastern Nigeria*, London and New York, 1995; Article 19, *Northern Cameroon: Attacks on the Freedom of Expression by Governmental and Traditional Authorities*, London, 1995.

plot long-standing, but latent, inter-ethnic disputes relating to land, religious rivalry, cultural differences, and political differences, sometimes within the same ethnic group, to ferment ethnic violence. Intimidation of opponents through the instrument of informal repression gives a new lease of life to the restrictive structures of the single party era which enable the party to continue to dominate politics at the local level.

Moreover, the incumbents have used such violence to alter political demography in their favour, pre-determine the outcome of multiparty elections and legitimize their power through massively flawed elections. Since the end of the Cold War, the spotlight of domestic and international human rights groups began to focus sharply on governments' human rights performance. Dictatorial regimes have, therefore, sponsored secret agents against their rivals in order to avoid international censure for gross human rights violations. Besides mobilizing traditional structures of violence such as 'warrior' bands, these neo-tyrants have recruited secret armies, mercenaries, refugees possessing military skills, or retired security officers in order to carry out their dirty work. For the purpose of disguising their true identity, these surrogate agents are often dressed in traditional attire or informal uniform and armed with traditional weapons such as arrows, bows, machetes and spears, although they often wield modern weapons.

These governments have tactfully played on the Western caricature of a 'Dark Continent', rife with tribal violence and unsuited for democratic governance. The use of such epithets as 'ethnic' or 'land' is meant to conceal the involvement of the state and to shield it from international censure. Because governments are able to evade and deny direct responsibility for the mayhem and, therefore, there is no hard-and-fast evidence to pin them down, both Western governments and human rights lobbies have not been keen on investigating or campaigning against such abuses.

Informal repression has often resulted in gross violation of virtually every aspect of human rights, including the right to life, security, property, freedom of movement, and civil and political liberties. Its most visible signposts include the creation of an army of internal refugees or displaced persons, victims of murder, mutilation, torture, rape and savagery,<sup>6</sup> disruption of economic activi-

<sup>6</sup> The number of people displaced within their countries in Africa by far outstrip that of conventional refugees. While the latter are five million, the internally displaced total 16 millions. See Amnesty International, *In Search of Safety: The Forcibly Displaced and Human Rights in Africa* (London, June 1997).

ties, food security, education and the whole way of life.

Informal repression has a long pedigree in the culture of state-sponsored violence in apartheid South Africa in the 1980s and early 1990s. Indeed, it was in apartheid South Africa that the term was coined. Successive National Party governments used a wide range of covert methods to repress its opponents, including police and military 'hit squads' as well as training and arming sympathetic political factions such as the Inkatha Freedom Party-IFP. By encouraging 'Black-on-Black' violence, the regime endeavoured to justify its stand that Africans are innately fractious and, thus, unfit to govern.<sup>7</sup>

Ethnic militias in Africa are playing a similar role to 'death squads' which a score of Latin American dictatorships sponsored to carry out the 'disappearances' of their political opponents. 'Disappearances' of this nature have long since been recognised as human rights violations.<sup>8</sup>

From an international perspective, covertly organized violence is playing the same part as the phenomenon of 'low intensity warfare'<sup>9</sup> that ravaged a score of African countries, especially in Southern Africa, at the height of the Cold War in the 1980s. Low intensity violence was a military strategy of defeating Marxist regimes and national liberation movements in Africa without waging a full scale military war. It involved backing 'anti-communist insurgency' movements such as UNITA in Angola, RENAMO in Mozambique, *Kolwoet* (crow bar) in Namibia and *Inkatha* and *Ama Afrika* in South Africa.

Both apartheid South Africa and the West, and the United States of America in particular, covertly sponsored these wars which, in turn, they depicted as civil wars among Africans themselves, and even offered to mediate. Similarly, African regimes which are responsible for informal intimidation and violence

<sup>7</sup> See, Amnesty International, *South Africa: State of Fear*, London, June, 1992; Richard Carver, *KwaZulu-Natal: Continued Violence and Displacement*, London, Writenet, July 1996.

<sup>8</sup> Article 19, *Deadly Marionettes*, pp. iii—iv.

<sup>9</sup> Between five to seven million people were displaced in the Southern African region alone, two million lives lost and over US \$ 60 billion wasted, thanks to low intensity war in the 1980s. Mozambique alone lost \$17.5 billion between 1980 and 1988, and more than 750,000 children died in the war. See Christian Council of Namibia (Mimeo), *Low Intensity War in Namibia: New South African Strategies Employed in Namibia*; Klare, "Low Intensity Conflict: The War of the 'Haves' against the 'Have Nots'" in *Christianity & Crisis*.

in their own countries are turning around and offering to mediate between warring 'ethnic' groups.<sup>10</sup> Kenya is a fitting example of the extent to which this new form of state-sponsored violence is a threat to the nascent democracy and human rights in Africa.

### **Elections in a Shark-Tank: 1963—1988**

Since the May 1963 General Election which ushered in independence, elections were subsequently held in 1969, 1974, 1979, 1983 and 1988.<sup>11</sup> The initial elections in 1969, 1974 and 1979, were held during the *de facto* one party system of government. Although they were state-controlled, these elections were semi-competitive, reflecting what has been described as a culture of 'accountable authoritarianism'<sup>12</sup> which allowed a degree of freedom to the electorates to choose their members of parliament and civic leaders so long as this did not threaten the presidency.

The 1983 the 1988 elections were state-controlled and non-competitive. These were held in the context of the *de jure* one party state, established in 1982. The Moi government trained its guns against all dissenting voices in society and moved in to get the one-party system on an even keel. It shed all pretensions of fostering a democratic culture. KANU focussed more on those leaders and organizations of the civil society which challenged its monopoly over power. Leaders with a national clout such as Tom Mboya and J.M. Kariuki were assassinated. Others like Oginga Odinga were detained.

The civil society came under attack. The national women movement, *Maendeleo Ya Wanawake* and the workers' organization, the Central Organization of Trade

<sup>10</sup> Paul Kisembo, *Militarism and Peace Education in Africa*, Nairobi, African Association for Literacy Education, 1993, pp. 25—31.

<sup>11</sup> In 1966, the 'Little General Elections' were held when 28 parliamentarians defected from KANU and joined the newly formed opposition party, the Kenya Peoples Union (KPU), were required by a constitutional amendment to renew their mandate with the electorates. The elections were heavily manipulated by the state. *The Multi-Party Elections in Kenya 29 December 1992*, Nairobi, Report of the National Election Monitoring Unit (NEMU), 1993, pp. 7—8.

<sup>12</sup> Joel Barkan, "The Flawed Elections in Kenya", *Journal of Democracy*, 1993.

Unions (COTU), were involuntarily affiliated to KANU.<sup>13</sup> Organizations of academic and civil servants were banned by presidential fiat.<sup>14</sup> And the press was severely muzzled.<sup>15</sup>

In the high noon of KANU's power, politicians, lawyers, lecturers, students and all those who raised a voice against the government were either jailed, tortured, detained or forced into exile. Over 70 Kenyans, for example, were jailed for their alleged membership to Mwakenya, December Twelve Movement, among a host of other underground movements between 1985 and 1990.<sup>16</sup> While the KPU had been banned earlier in 1969, efforts to form a socialist opposition party in 1982 were nipped in the bud and those behind the idea either detained, put under house arrest or forced into exile. Interestingly, the elections held during these dark days of repression and tyranny were free of the state-engineered violence on ordinary citizens which has become the hallmark of the two multi-party elections in 1992 and 1997.

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### **Repression Against Multi-Party Crusaders: 1990—1991**

From 1990, pressure mounted on the KANU regime to legalize pluralism. In retaliation, it turned its wrath on those segments of the population perceived to have supported the pro-democracy movement. The Nairobi City Commission's *askaris*, KANU youth wingers and Provincial Administration demolition squads targeted the urban poor. Armed with whips, clubs, machetes, guns and bulldozers, they descended upon the Muoroto, Kangemi and Kibagare slums in surgical pre-dawn raids. In Muoroto, they battered the residents, demolished their houses, destroyed their property and

<sup>13</sup> See Mwangi Kagwanja, "History, Law and Democracy in the light of COTU's Affiliation to KANU", *Nairobi Law Monthly*, No. 25, 1990; "Trade Unionism and Democratization: A Case for the Revitalization of the Civil Society", *The Nairobi Law Monthly*, No.66, January 1997.

<sup>14</sup> D. Throup and C. Hornsby, *Multi-Party Politics in Kenya: The Kenyatta and Moi States, and the Triumph of the System in the 1992 Elections*, Oxford: James Currey, 1998.

<sup>15</sup> KHRC, *Shackled Messengers: The Media in Multi-Party Kenya*, Nairobi, 1997.

<sup>16</sup> *Ibid*, pp. 2—3.



seven people were reported killed.<sup>17</sup> Between July and December 1990, raids on slums generated over 50,000 internal refugees.<sup>18</sup>

Throughout the 1990—1991 period, harassment of slum dwellers, hawkers, touts and taxi owners by KANU youth vigilantes and City Commission *askaris* became the norm. According to the government, the demolition of slums was 'a process of cleansing Nairobi to its former glory'.<sup>19</sup> But as one journalist put

**Harassment of the poor was an attempt by the government to reassert its authority in the country's politics, through the instruments of violence and intimidation.**

it cuttingly: "... if keeping the city of Nairobi clean, is the *raison d'être* for demolishing the slums, then we have a classic example of misdirected effort. Nairobi is a decaying city, even for the relatively well-off neighbourhoods."<sup>20</sup>

There were strong links between the demolition of slums and the changing political scene of 1990—1991 period. The demolitions occurred after the *Saba Saba* protests of July 7, 1990. This was a high point of the campaign for pluralism which was sparked off by members of the clergy, including Rev. Timothy Njoya and Bishop Henry Okullu, and lawyers, in the open

months of the year.

Two cabinet ministers, Messrs Kenneth Matiba and Charles Rubia, resigned and publicly called for the dismantling of the one-party system and Kenya's return to multi-partyism. They invited Kenyans to a public rally at the historic Kamukunji<sup>21</sup> grounds to deliberate on the country's future on July 7, 1990.

<sup>17</sup> *Daily Nation*, April, 1990.

<sup>18</sup> Chris Ndolo, "The Poor Too, Have Rights: We Created the Shanties, We must Let them Be", *Nairobi Law Monthly* 28, 1990, pp. 16—18.

<sup>19</sup> *Ibid.*

<sup>20</sup> Musyoka wa Kyendo, "Is Demolition the Answer to Slum Dwellers?", *Finance*, February 1—15, 1991.

<sup>21</sup> Kamukunji grounds were the venue of numerous nationalist rallies during the colonial period. The grounds are now in the heartland of Nairobi's Eastlands where a sizeable section of low income earners and the city's poor live. Hence, its choice as a venue of multi-party rallies was politically strategic. Matiba and Rubia sought to link the multi-party campaign or 'second liberation' to the magical sentiments of nationalism and to infuse a mass element by bringing it to the people and drawing their support.



July 1990, Saba Saba Rally

In its efforts to forestall the July 7 rally, the government detained Matiba and Rubia without trial. But the political volley they had set rolling was unstoppable. Over 20 people were killed and more than 60 others injured by security forces in Nairobi and its environs on July 7, 1990, after people defied government threats and gathered at Kamukunji without their leaders.

Viewed in this light, the demolition of slums and harassment of the poor was an attempt by the government to reassert its authority in the country's politics, through the instruments of violence and intimidation. As one commentator succinctly argued:

*After the (Saba Saba) incidents of July 7th, the government felt threatened by the existence of these shanties. It saw in the slum dwellers a vulnerable and ready tool in the hands of crafty revolutionaries who might offer a better deal. Apparently, it is the government's feeling that shanty-dwellers were the main players in the July 7 incidents. To forestall a repeat performance, these low-income estates had to be brought down. The government dreaded facing an organized people with common grievances.*<sup>22</sup>

By late 1991, the movement for democracy was on the threshold of victory. In order to retain its power in a shifting political terrain, KANU resorted to a variety of informal methods of intimidating its opponents. The most pronounced of these methods has been the instigation of 'ethnic' violence, especially in Kenya's multi-ethnic and multi-racial provinces.

### Majimboism: From Regionalism to Ethnic Cleansing

In late 1991, the KANU elite invoked the *Majimbo* card in response to the mounting tide of the multi-party crusade. *Majimboism* appeared in the late 1950s and early 1960s. It was espoused by the Kalenjin,<sup>23</sup> Maasai and the Mijikenda, among other groups, as a Kenyan-style federal policy aimed at defending the political and economic rights of these groups from being encroached upon by other larger groups. It was also meant to protect the economic and political

<sup>22</sup> Ndolo, "The Poor Too, Have Rights...", p. 18.

<sup>23</sup> The Kalenjin group consists of 11 distinct ethnic groups that share similar linguistic and cultural traditions: Kipsigis, Nandi, Pokot (or Suk), Elgeyo, Marakwet, Keiyo, Tugen, Sabaot, Sebei, Dorobo and Terik. The term Kalenjin was first used in the late 1950s. It means 'I tell you' in all Kalenjin languages. They are estimated at 11% of the country's population. See Ben E. Kipkorir, 'People of the Rift Valley.' Lagos: *Kenya's People Series*, 1978.

power of the white settlers in Kenya which appeared threatened by the radicals in the KANU. The Kenya African Democratic Union (KADU) was the political vehicle through which the policy was articulated. At that time, *Majimboism* was a ploy meant to reduce the power of the KANU groups – the Kikuyu, Luo and Kamba.<sup>24</sup>

**Table 1: Kenya's Major Ethnic Groups**

Group	Percentage of Population
Kikuyu	21.0
Luhya <sup>25</sup>	14.0
Luo	13.0
Kamba	11.0
Kalenjin	11.0
Kisii	6.0
Meru	5.5
Maasai	1.5
Turkana	1.5
Teso	1.0

Source: Republic of Kenya, *Population Census 1989, vol. 1*, March 1991.

In the 1990s, however, a refurbished *majimboism* has metamorphosed from a policy of regionalism to an ideology of ethnic cleansing. The agenda of the Majimbo crusade was set by two high-profile rallies held in Kapsabet, Nandi District and Kapkatet, Kericho District, on September 8 and 21, 1991, respectively.<sup>26</sup> Its initial objective was captured by Joseph Misoi, the then member of parliament for Eldoret South and one of the convenors of the rallies: "We are saying that unless those clamouring for political pluralism stop, we must devise

<sup>24</sup> See Y.P. Ghai and J.P.W.B. McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government From Colonial Times to the Present*, Nairobi and London, Oxford University Press, 1970, pp. 178–219.

<sup>25</sup> The Luhya consists of sixteen distinct groups; Bukusu, Idakho, Kabras, Khayo, Kisa, Marachi, Maragoli, Marama, Nyala, Nyore, Samia, Tachoni, Tiriki, Tsotso, Wanga and Isukha.

<sup>26</sup> The most virulent advocates of *majimboism* were the then Vice-President George Saitoti, MP Nicholas Biwott (President Moi's confidant), Cabinet Minister, William Ole Ntimama and then MP for Eldoret South Dr. Joseph Misoi. See Republic of Kenya, *Report of the Parliamentary Select Committee to Investigate Ethnic Clashes in Western and Other Parts of Kenya*. Sep., 1992, pp. 9–10.

a protective mechanism by launching this movement.”<sup>27</sup> He further warned that if the proponents of a multiparty system continued with their campaign, a *Majimbo* constitution would be tabled before parliament.

The campaign for pluralism, however, continued unrelentingly and Kenya reverted to multi-party status in December. Correspondingly, *majimboism* turned into a policy of ethnic cleansing. The Kalenjin were called upon to arm themselves with bows and arrows to destroy any multi-party advocate. Nicholas Biwott, for instance, declared that the opposition members would be ‘crushed’ and that KANU youth wingers would fight to the last person to protect President Moi’s government.<sup>28</sup>

The ideologues of *majimboism* set up an informal ethnic coalition, KAMATUSA, an acronym for the Kalenjin, Maasai, Turkana and Samburu.<sup>29</sup> The combined ethnic demographic power of this coalition in the province was 60.7 per cent or two thirds of the province’s 2.5 million eligible voters in the 1992 elections.<sup>30</sup>

The Rift Valley was declared a ‘KANU zone’. Multipartyism was demonized as an anti-Kalenjin movement aimed at removing President Moi from power simply because he was a Kalenjin.<sup>31</sup> Pro-opposition groups were cast as ‘alien’

**A refurbished ‘majimboism’ has metamorphosed from a policy of regionalism to an ideology of ethnic cleansing.**

**Violence was meant to alter the political demography ... ahead of the multi-party elections, to the advantage of President Moi and KANU.**

or ‘foreign’ oppressors of the ‘natives’ or ‘indigenous’ owners of the Rift Valley<sup>32</sup> – the KAMATUSA. *Majimboism* was projected as ‘the only way out to safeguard the interests of the smaller tribes and check the colonization and oppression experienced presently’.<sup>33</sup>

In the Rift Valley, violence was partly meant to alter the political demography of this multi-ethnic province, ahead of the multiparty elections, to the advantage of President Moi and KANU. As Table 2 shows, in 1989 the Kalenjin totalled 2.31 million or nearly 46.4 per cent of the inhabitants of the Rift Valley Province. On the other hand, the non-Kalenjin groups – Kikuyu, Luhya, Luo, Kisii, among other non-KAMATUSA stood at 1.8 million or 35.4 percent of the total population.

**Table 2: The Population of the Rift Valley Province by Ethnic Groups**

Group	Population	% of the Total
Kalenjin	2,309,577	46.36
Kikuyu	962,341	19.32
Luhya	484,547	9.73
Maasai	365,007	7.33
Luo	193,862	3.89
Turkana	260,311	5.23
Kisii	123,692	2.48
Samburu	90,656	1.82
<b>TOTAL</b>	<b>4,981,613</b>	<b>100.00</b>

Source: Republic of Kenya, *Population Census 1989*, Vol.1, March 1994.

<sup>27</sup> Cited in Human Rights Watch/Africa, *Divide and Rule*, pp. 12–13.

<sup>28</sup> For a detailed exposition of the role of KANU youth wing see Human Rights Watch/Africa, *Taking Liberties*, (July, 1991), p. 14. The Kanu Youth vigilante was created in the 1980s, at the height of KANU’s monopoly of power, to hunt down ‘anti-party elements’, monitor and punish public dissent. The vigilante group is dreaded for its use of indiscriminate violence, thuggery and extortion. In the multi-party era, it has been used as an extra-legal instrument of intimidating and repressing pro-opposition sectors of society.

<sup>29</sup> “Towards a KAMATUSA State”, *Finance*, October 15, 1994, pp. 18–22.

<sup>30</sup> NEMU, *The Multiparty General Elections in Kenya 29 December, 1992: The Report of the National Election Monitoring Unit*, Nairobi, 1993, p. 94.

<sup>31</sup> Paul Muite (the then chair of the Law Society of Kenya and a leading multiparty crusader) was specifically ordered never to set foot in the province. The late Masinde Muliro, a founding member of the Forum for the Restoration of Democracy (FORD) was ordered to move his home out of the Rift Valley. See “Memories of 1991”, *Weekly Review*, April 9, 1992, p. 9.

<sup>32</sup> “Indigenous or Native? How Ntimama Sees It”, *Daily Nation*, June 30, 1993.

<sup>33</sup> “Can *Majimboism* work?”, *Kenya Times*, May 20, 1993; “*Majimboism*: The Pros and Cons”, *Kenya Times*, May 21, 1993.

## Chapter 2

### The 'Ethnic' Clashes in the Rift Valley and Western Provinces

"The clashes were partly meant to fulfil President Moi's 'prediction' that Kenya's return to a multiparty system would plunge the country into tribal violence."

On October 29, 1991 'ethnic' clashes erupted, for the first time, at Miteitei farm, Nandi District on the border of the Rift Valley, Nyanza and Western Provinces. At their peak, the clashes affected 3 out of 8 provinces and nearly 20 out of Kenya's 62 districts.<sup>34</sup> By November 1993, over 1,500 people had been killed and more than 300,000 others displaced.<sup>35</sup>

Apparently, the clashes were partly meant to fulfil President Moi's 'prediction' that Kenya's return to a multiparty system would plunge the country into tribal violence. But there was a more pressing agenda which was realized with astounding success: the need to influence the outcome of the December 1992 multi-party elections. The linking of 'ethnicity' to the violence was meant to conceal the fact that the KANU administration was a key player in the clashes. Some of the party's top officials were directly involved in the engineering of the violence with the aim of changing the electoral demography or intimidating opposition voters and thus, pre-determining the outcome of elections in violence hit zones.

At the core of the clashes were the so-called Kalenjin warriors and Maasai

<sup>34</sup> Kenya is divided into eight administrative provinces: Nairobi, Coast, Eastern, North Eastern, Central, Rift Valley, Western and Nyanza, each headed by a Provincial Commissioner. A notch below are 62 districts headed by a District Commissioner. Further subdivided into Divisions, Locations and Sub-locations, these form the basis of the provincial administration widely perceived as an obstacle to the realization of full democracy.

<sup>35</sup> Human Rights Watch/Africa, *Divide and Rule: State-sponsored Ethnic Violence in Kenya*, New York, November, 1993, p. 71.

morans. Usually clad in traditional costumes (*shukas*) wielding traditional weapons such as bows, arrows, spears, machetes and clubs, and were painted with clay-markings often used during traditional initiation rites these bands conveniently cut the very image of celebrants in a traditional ceremony. The government was able to disclaim any knowledge or responsibility for the violence and instead blamed it on ethnicity. In this way it was able, for a while, to avoid international censure for unleashing violence against its own citizens.

As Human Rights Watch/Africa aptly puts it:

*(T)he government has relied on different tactics, such as extra-legal intimidation and violence, to silence and disempower critics. The change in tactics appears to be a deliberate move on the part of the government to avoid international censure. A growing culture of state-sponsored harassment and vigilante violence against opposition leaders and other critics is being encouraged and fostered by the government. The chilling aspect of the violence is that the government usually denies any knowledge of or responsibility to it, attributing it instead to unknown vigilantes.<sup>36</sup>*

**The report names senior government ministers, Members of Parliament, government officials and senior KANU leaders in financing and organizing the orgy of violence.**

According to one source, among the so-called warriors were junior military, police, General Service Unit (GSU) officers and ex-servicemen. They trained at camps in secret places, including Doinett, Nesuit and Marigat forests as well as Kerio Valley, and gave leadership to the 'warriors'. The source further estimates that the number of trained 'warriors' at the peak of the clashes stood at 60,000 strong.<sup>37</sup> While the authenticity of the report may be difficult to confirm, reports by the National Council of Churches of Kenya (NCCCK) seemed to corroborate these views. The organization's report of June, 1992, for instance, observed that:

*The attackers appeared disciplined and obeyed instructions. These constituted regimented discipline usually found in those who have undergone rigorous military training,*

<sup>36</sup> Human Rights Watch/Africa, *Divide and Rule: State-sponsored Ethnic Violence in Kenya*, (New York, November, 1993), p. 11.

<sup>37</sup> "The Ethnic clashes and the KAMATUSA connection: Statement issued by Concerned Citizens from the Rift Valley Province in 1993", *Finance*, October 15, 1994, pp. 23—24.



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military helicopters were involved in the operations...<sup>38</sup>

More damning was the evidence of a parliamentary report published in September 1992. The report asserted that:

*Evidence received by the Committee... indicates that the fighters were on hire and were paid sums ranging from Ksh. 500 (\$ 6.50) for safe return from the clashes front, Ksh 1,000—2,000 (\$ 12.50—\$ 25) for killing one person or burning a grass-thatched house and Ksh. 10,000 (\$ 125) per permanent house burnt.*<sup>39</sup>

The report mentions names of senior government ministers, Members of Parliament, government officials and senior KANU leaders who were involved in financing and organizing the orgy of violence.

The government persistently denied any complicity in the clashes. In March 1992, for instance, an unsigned and undated statement released by the government claimed that the opposition was responsible for instigating the clashes through the recruitment of Libyan-trained 'terrorist squads'.<sup>40</sup> In a recent interview, President Moi has denied the government had any role in the violence, saying: "(A)ny President or leader who encourages tribal confrontation is digging his own political grave."<sup>41</sup> He did not, however, offer any evidence that his government had done anything to prevent ethnic violence, or that it has not been involved in previous violence.

### Violence and the 1992 General Election

Kenya held its first multi-party general elections since independence, and the first ever presidential elections, on December 29, 1992. KANU and President Moi won the elections, garnering about 36 percent of the Presidential vote and 100 out of 188 parliamentary seats.

<sup>38</sup> NCKK, *Report of Task Force* (Nairobi, June, 1992); NCKK, *The Cursed Arrow: Organized Violence Against Democracy in Kenya* (Nairobi, April, 1992); *Financial Times*, March 23, 1992.

<sup>39</sup> Republic of Kenya, *Report of the Parliamentary Select Committee to Investigate Ethnic Clashes in Western and Other Parts of Kenya*, September, 1992.

<sup>40</sup> Cited in Human Rights Watch, *Divide and Rule*, p. 29.

<sup>41</sup> Interviewed by B. Nderitu, *Sunday Nation*, December 28, 1997.

**Table 3: December 1992 Parliamentary Election Results**

Political Party	Number of seats
KANU	100
FORD-KENYA	31
FORD-ASILI	31
DPK	23
Others	3
TOTAL	188

Source: NEMU Report, 1993, pp.191—202.

Divisions between the three main opposition parties—the Forum for the Restoration of Democracy-Kenya (FORD-K), the Forum for the Restoration of Democracy-Asili (FORD-A), and the Democratic Party of Kenya (DP)—partly contributed to the triumph of the KANU regime. Moreover, there was the perennial problem of gerrymandering which worked in KANU's favour. With a mere 36 percent of the vote, KANU bagged 100 out of 188 seats while the Opposition took only 88.<sup>42</sup>

**Table 4: December 1992 Presidential Election Results**

Candidate	Votes scored	% of total
Daniel Moi	1,831,592	34.8
O. Odinga	927,133	17.6
K.N. Matiba	1,439,076	27.4
M. Kibaki	1,032,676	19.6
Others	41,543	0.6
TOTAL	7,861,237	100.0

Source: NEMU Report, 1993 pp.204—217.

Election monitors, however, did not give the government a clean bill of health for conducting a free and fair election. They particularly singled out violence, harassment, intimidation, declaration of 'KANU zones' and 'ethnic' clashes as contributing factors to the massively flawed elections. While election monitoring groups were of the opinion that the elections represented the will of the Kenyan voters, they held the government responsible for what experts, have described as a 'C-minus' election: fraught with obstacles for the opposition in the run-up to the elections, but relatively peaceful on the election day when

<sup>42</sup> NEMU Report, 1993.

international election monitors jetted in.<sup>43</sup> 'Ethnic' violence and intimidation were the major obstacles to the opposition and profoundly undermined their performance in the clash-torn areas, and on the other hand, skewing the outcome of the elections to KANU's and President Moi's advantage.

The clashes distorted the prevailing voters distribution pattern in the affected regions and, in the process, disenfranchised thousands of voters, mostly opposition supporters. There were damning reports that thousands of young people who had attained the age of 18 and intending to acquire the mandatory identity cards, were turned away by local administration officials if thought to be sympathetic to the opposition.<sup>44</sup> Most of them were told to go and obtain IDs in their 'home' provinces.

The voter registration exercise began on June 6, 1992, just when hundreds of Kenyans had been killed and thousands displaced from their homes. Ethnic violence in Numubila, Lwandanyi, Sirisia, and Chwele in Bungoma District, for instance, occurred before the voter registration exercise commenced.<sup>45</sup> This denied many displaced persons the chance to register as voters. In its June 1992 report, the NCCK observed that:

*Most of these displaced (people) had their identification documents and papers relating to land ownership destroyed. So, they were unable to register to vote or to claim their land.*<sup>46</sup>

The voter registration exercise was marred by violence and intimidation perpetrated by KANU leaders. Many Kenyans were, thus, denied the chance to register as voters. William Ole Ntimama, a cabinet minister and KANU national official is reported to have ordered that non-Maasai in Narok should join the Maasai in voting for KANU or quit the area altogether. Maasai 'morans' vowed not to allow the Kikuyu to register as voters.<sup>47</sup> And on June 10, 1992,

**Election monitors did not give the government a clean bill of health. They singled out violence, harassment, intimidation, declaration of 'KANU zones' and 'ethnic' clashes as contributing factors to the massively flawed elections.**

<sup>43</sup> See Joel Barkan, 'The Flawed Elections in Kenya', *Journal of Democracy*, April, 1993.

<sup>44</sup> NEMU, *The Multi-Party General Elections in Kenya*, 29 December, 1992, p. 43.

<sup>45</sup> Ibid.

<sup>46</sup> NCCK, *Report of Task Force*, (Nairobi, June, 1992).

<sup>47</sup> NEMU, *The Multi-Party General Elections...*, p. 44.

they killed three Kikuyus at an Enoosupukia registration centre in Narok.

Largely because of factors relating to ethnic violence and intimidation, only an estimated 75 percent of the eligible Kenyans registered as voters.<sup>48</sup> The International Commonwealth Monitoring Team observed that as many as 1.5 million eligible voters did not register to vote in the 1992 elections.<sup>49</sup> Most of these were in clash-torn areas.

**Table 5: Voter Registration and Displacement, by Districts (1992)**

District	Eligible Voters	Reg. Voters	Displaced Pop.
Elgeyo-Markwet	102,896	87,089	22,300
Bungoma	270,732	206,549	6,725
Busia	191,121	153,465	1,800
Mt. Elgon	51,027	32,607	14,375
Kisumu	324,723	245,970	8,975
Nyamira	144,449	122,658	750
Kisii	340,661	266,250	2,300
Turkana	94,519	57,397	16,625
Trans Nzoia	176,091	133,665	18,525
Uasin Gishu	215,368	181,920	82,000
Nandi	199,387	142,960	17,850
Kericho	228,034	192,880	6,550
Narok	173,369	128,636	900
Nakuru	410,575	386,110	40,700
Laikipia	103,201	101,772	600

Sources: NEMU Report, pp. 96—104; Government of Kenya/UNDP, *Programme Document: Programme for Displaced Persons*, Inter-Agency Joint Programming, October 26, 1993, p. 8. NB: The figures for Kakamega, Vihiga, Kuria and Bomet where clashes also occurred are not given.

Table 5 compares the figures of the registered voters and those of the displaced persons in clash-hit districts. These figures allow for a margin of error. The degree of disenfranchisement was high in those areas where people were displaced outside their electoral zones and where displacement occurred before voter registration commenced.

<sup>48</sup> NEMU, *The Multi-Party General Elections...*, p. 45.

<sup>49</sup> Commonwealth Secretariat, *The Presidential, Parliamentary and Civic Elections in Kenya, The Report of the Commonwealth Observer Group*, December 29, 1992. (London, 1993), p. viii.

The nomination process in the clash-hit areas was also marred by the most bizarre incidences of violence and intimidation. There were numerous reports of kidnaps, blockades, beatings, abductions and snatching of nomination documents from opposition agents. In Baringo North constituency, for instance, agents of the Democratic Party candidate were beaten and the candidate's nomination papers snatched from them, thus preventing him from participating in the elections. His home was razed to the ground by arsonists a few days later.<sup>50</sup> While KANU fielded the maximum 188 parliamentary contestants opposition parties were unable, largely because of violence. None of these KANU candidates was a victim of harassment and nomination violence. As the Commonwealth Observer Group notes in its report, KANU bagged 16 parliamentary seats unopposed in the Rift Valley, thanks to violence and intimidation.<sup>51</sup>

By the time the elections were held, thousands of Kenyans in the violence-hit areas were unable to cast their ballots. The Commonwealth Observer Group's report, observed that:

*(L)and clashes marred the period immediately preceding the polling day and exacerbated the distrust which prevailed among tribal groups, other communities and the political parties. Members of our Group were made very much aware of the pervasive effects of the violence, particularly in the Rift Valley, and were able to gain a ready appreciation of the volatility of the areas where violence had occurred.*<sup>52</sup>

As pointed out earlier, the election day was relatively peaceful.

As Table 6 shows, majority of the registered voters were able to cast their votes. Hence, the high voter turn out, even in clash-torn constituencies. The violence also contributed to this high voter participation in two different ways. Most victims of the clashes viewed their participation in the elections as an opportunity of removing the government – their aggressor – from power. Inversely, most Kalenjin voters as well as other KAMATUSA groups participated over-

**None of the KANU candidates was a victim of harassment and nomination violence.**

<sup>50</sup> NEMU, *The Multi-Party General Elections*, pp. 51—52.

<sup>51</sup> *Ibid*, p. 18.

<sup>52</sup> *Ibid*, p. 23.

whelmingly in the elections in order to give the government a new mandate against the threat of opposition groups.

Many displaced persons were unable to return home to vote. Neither did the government put mechanisms in place to enable the displaced to cast their votes while in the camps nor did it facilitate their return to their farms before the voting day. Even those who were not displaced were so intimidated that some opted not to vote. Many joined relatives outside the clash areas in fear of violence during the election day while others shifted their support from the opposition to KANU in order to 'buy' their peace.

**Table 6: Voter Participation by Province in the 1992 Elections**

Province	Registered Voters	Votes Cast	%Valid/Reg.
Nairobi	674,562	375,070	55.60
Coast	660,211	317,318	48.06
North-Eastern	141,069	67,165	47.61
Eastern	1,230,081	800,615	65.09
Central	1,209,054	1,040,410	86.05
Rift Valley	1,901,003	1,294,777	67.97
Western	847,575	560,853	65.87
Nyanza	1,197,682	809,058	67.55
<b>GRAND TOTAL</b>	<b>7,861,237</b>	<b>5,259,777</b>	<b>66.91</b>

Source: NEMU Report 1993, pp.204—217

It would be an exaggeration, however, to imagine that if all the displaced population, estimated at 300,000 people, voted this would have fundamentally changed the results of the 1992 elections. Displacement and the attending intimidation was one of the several mechanisms which KANU used to pre-determine and flaw the elections. For instance, the elections were held at the end of December when many Kenyans travel home for the Christmas holidays. This accounts for the low turn-out of voters in urban areas where government support was minimal. Almost a half of the 674,562 registered voters in the populous Nairobi

**KANU bagged 16 parliamentary seats in the Rift Valley, thanks to violence and intimidation which left the seats to KANU unopposed.**

Area never cast their votes.<sup>53</sup> Out of 258,368 registered voters in Mombasa, only 95,017 or 36.7 percent voted.<sup>54</sup>

Again, KANU dominated in the North Eastern Province, thanks to banditry and harassment by the administration which made it impossible for the opposition to campaign there. Thus a combination of violence, intimidation and manipulation of votes ensured the triumph of the regime.

<sup>53</sup> NEMU, 1993, p. 204.

<sup>54</sup> Ibid. p. 205.



# Chapter 3

## Violence in the Inter-Election Period

“Having lost heavily in urban centres, the government was determined to reassert its authority in these important areas...Violence also flared with aim of punishing those who voted against it.”

Violence raged on unabated even after KANU’s victory in the elections. Continuing violence targeted the urban population and the internal refugees in camps. Having lost heavily in Kenya’s main urban centres, the KANU government was determined to reassert its authority in these important areas (see Table 7). Moreover, the continued presence of the displaced in camps was becoming an eyesore to the government, especially as international spotlight increasingly focused on them.

Violence also flared in such areas as Narok and West Pokot with the aim of punishing those who voted against the local power barons. The aim was to alter the prevailing political demography to ensure KANU’s victory in future elections. In order to achieve these objectives, the KANU elite mobilized vigilante groups against the urban poor and the displaced in camps. These groups harassed opposition members of parliament and their supporters as a government ploy of weakening political opposition and, ultimately, voiding democracy.

**Table 7: Results of the 1992 Elections in Kenya’s Principle Towns**

Town	Parliamentary Seats	KANU	Opposition
Nairobi	8	1	7
Mombasa	4	1	3
Nakuru	5	1	4
Kisumu	5	0	5
Eldoret	3	3	0

Source: NEMU Report, 1993, pp. 204—217

### Maasai ‘Morans’ Come to the City

In March, 1993 a group of Maasai ‘morans’, dressed in traditional attire (*shukas*), attacked opposition supporters with whips and clubs at the state opening of parliament. Responding to the consequent public outrage, Cabinet Minister William ole Ntimama, held a press conference and defended the ‘morans’ arguing that they had acted in self-defence.<sup>55</sup> A month later, KANU’s Secretary-General J.J. Kamotho, publicly admitted that the *morans* were part of a 3,000 strong youth squad hired by KANU for the occasion ‘to deal with the opposition supporters’.<sup>56</sup>

In an astounding and daring move, ‘Maasai *morans*’ broke up an exhibition of photographs of the Rift Valley violence, by Professor Wangari Maathai, in Vienna Austria, in June 1993. A renowned environmentalist and vocal critic of the Government’s handling of the clashes, Maathai had attended the World Conference on Human Rights. It is instructive that Mr William Ole Ntimama had also attended the conference in order to put a case for the recognition of the ‘Maasai rights’ to their traditional land.<sup>57</sup> Whether he had a hand in masterminding the violent disruption of Professor Maathai’s exhibition is a matter of conjecture. Earlier on, the local administration in the Rift Valley had frustrated Maathai’s efforts to hold a seminar on ethnic violence on March 2, 1993.<sup>58</sup>

In May 1993, administration police and KANU youth squads demolished 600 kiosks belonging to street vendors in Nakuru. The town experienced four days of riots and pitched battles between the vigilantes and the vendors. These vendors had licenses from the Municipal Council to sell their merchandise.<sup>59</sup> Most of them were also sheltering their friends and relatives displaced in other parts of the Rift Valley. Majority of the vendors who lost their livelihood were Kikuyu. They were responsible for KANU’s defeat in the provincial capital of the Rift

**KANU’s Secretary-General J. J. Kamotho, admitted that the ‘morans’ were hired by KANU to deal with Opposition supporters.**

<sup>55</sup> “A Convoluted Affair”, *Weekly Review*, April 9, 1993.

<sup>56</sup> “Morans: Speaker Wants Kamotho to Explain”, *Daily Nation*, April 2, 1993.

<sup>57</sup> “In the Interest of the Maasai”, *Weekly Review*, October 29, 1993, pp. 8—9.

<sup>58</sup> Lilian Nduta, “Maathai Seminar Dispersed”, *Daily Nation*, September, 1993.

<sup>59</sup> “Who should Know if not the PC?”, *Daily Nation*, May 11, 1993.

Valley and for electing opposition candidates as members of parliament and civic leaders in the district. Seemingly, the government was using informal means to reassert its authority in Kenya's major cities and to repress opposition support.

### The Case of Enosupukia

Maasai 'morans', estimated at between 500—1000 raided the residents of Enosupukia, in Narok on October 15, 1993.<sup>60</sup> Over 20 Kikuyu peasants were killed and, according to the local Catholic church, approximately 30,000 people displaced.<sup>61</sup>

Trouble started brewing in June 1993. As earlier noted, the Minister for Local Government, William Ole Ntimama, had attended the World Conference on Human Rights held in Vienna, Austria in June 1993. His basic concern was with the rights of indigenous people especially what he called 'Maasai Rights'.<sup>62</sup>

Upon his return, Ntimama declared the 44 square kilometre area of Enosupukia, which was mostly inhabited by Kikuyu farmers, a trust land reserved for the public by the Narok County Council. The Minister for Environment and Natural Resources, John Sambu, supported his action and issued notice to the inhabitants to vacate the area without offering them an alternative settlement. And on September 11, Ntimama accused the residents of Enosupukia of destroying the Maasai environment and vowed to forcibly evict what he referred to as 'foreigners'.<sup>63</sup> The Enosupukia residents had purchased their land from Dorobo and Maasai groups from the late 1960s and early 1970s, and believed they had a right to it.<sup>64</sup>

<sup>60</sup> Some of the warriors were recognized as game wardens in the Maasai Mara Game Reserve. They wore army boots and carried weapons resembling Egyptian-made swords, designed with a protective hand shield. See, KHRC, *The State of Human Rights in Kenya: A Year of Political Harassment*, Nairobi, 1993, p. 30.

<sup>61</sup> "Fighting in Narok Leaves Four Dead", *Daily Nation*, October 14, 1993; "Ten Killed in Narok Violence", *Sunday Nation*, October 17, 1993; and "Outrage Over More Killings", *Daily Nation*, October 18, 1993.

<sup>62</sup> "In the Interest of the Maasai", *Weekly Review*, October 29, 1993, pp. 8—9.

<sup>63</sup> "Ntimama Vows to Evict 'Aliens'", *Daily Nation*, September 13, 1993.

<sup>64</sup> In October 14, the Enosupukia Catholic church and the Justice and Peace Commission of Ngong sought a court injunction in Nakuru to restrain the Government from evicting the residents of Enosupukia. Justice David Rimita, sitting in Nakuru, ordered that the application be heard on November 3, 1993. This was never to be, for the residents were evicted on October 15.



Ntimama Unrepentant

The Enoosupukia victims strongly believed that they were being evicted because they voted overwhelmingly for the opposition in the 1992 General Elections.<sup>65</sup> Although Ntimama himself had made it to parliament some of the councillors allied to him lost to opposition candidates. Worse still, they had voted overwhelmingly for an opposition presidential candidate. While KANU's President Moi got a dismal 6.4 per cent in Ntimama's Narok North constituency, FORD-A's Kenneth Matiba, a Kikuyu, garnered 72.4 per cent.<sup>66</sup>

Ntimama faithfully stuck to the argument that the eviction of non-Maasai had its basis in the fact that they violated Maasai land rights and environment. But later in 1996, a KANU nominated councillor allied to him, Mr William Ole Aiye, unwittingly let the cat out of the bag:

*All you Kikuyus and other tribes (sic). I want to assure you that because you voted me out during the last elections, showed disregard to our Minister (Ntimama), and hold the entire Maasai community with contempt, the time has come for the Maasai to show you that you must support the Minister or leave....*<sup>67</sup>

When he was named in parliament as the instigator of the Narok violence, Ntimama declared that he 'had no regrets about the events in Enoosupukia because the Maasai were fighting for their rights. (The Kikuyu) had suppressed the Maasai, taken their land and degraded their environment. (W)e had to say enough is enough. I had to lead the Maasai in protecting our rights'.<sup>68</sup> A parliamentary motion calling for the dismissal of Mr. Ntimama from the cabinet was defeated by the KANU parliamentary majority on October 1993.<sup>69</sup>

**Ntimama declared that he 'had no regrets about the events in Enoosupukia because the Maasai were fighting for their rights.**

In the long-run the Narok clashes irreversibly changed the areas ethnic distribution which, in turn, has improved KANU chances of winning in future elec-

<sup>65</sup> "Residents Won't Leave Narok", *Daily Nation*, October 1, 1993, p. 4.

<sup>66</sup> NEMU Report 1993, pp. 109 and 212.

<sup>67</sup> KHRC, *Quarterly Repression Report: October—December, 1996*.

<sup>68</sup> "Minister: 'No Regrets Over Events'", *Daily Nation*, October 20, 1993.

<sup>69</sup> "Opposition Ultimatum for Dismissal of Local Government Minister Rejected", KBC Radio, October 20, 1993.

tions. During the 1997 General Elections, for instance, Mr. Ntimama was elected unopposed for his Narok seat and President Moi's vote shot from 6.4 per cent in 1992 to 77.1 per cent in 1997. With no challenge at home, Ntimama was himself less hawkish in the run-up to the 1997 elections.<sup>70</sup> Moreover, the electoral demography of Narok North constituency, which includes the Enoosupukia area, declined, thanks to the clashes. The number of registered voters fell from 50,927 in 1992 to 46,866 in 1997.<sup>71</sup>

### Land and Electioneering

The Government rewarded handsomely those members of the Kalenjin and Maasai communities who participated in the clashes. By closing its eyes to and often sanctioning fraudulent land transfers, illegal occupation, pressured land sales and exchanges, the government enabled the Kalenjin and the Maasai to acquire land formerly owned by the displaced population in the Rift Valley Province, the most fertile farmlands in the country.<sup>72</sup>

The immediate effect of violence was that it depressed the market value of land in the clash-torn areas. In the fertile Uasin Gishu District, for example, the value of land declined by between 75 and 80 percent. The displaced were being offered Ksh. 20,000 (\$ 250) instead of Ksh. 80,000—100,000 (\$ 1,000—1,200) per acre, the land value before the clashes.<sup>73</sup> Kalenjin buyers insisted that "the amount has been agreed upon by buyers regarding the purchase of all farms owned by non-Kalenjin in the Rift Valley".<sup>74</sup> In Olenguruone, Nakuru, a Kikuyu man sold his six acres of land at Ksh. 70,000 (approximately \$ 1,300) while the market price was Ksh. 600,000 (approximately \$ 11,000), thanks to panic land selling in the clash-hit zones.<sup>75</sup>

In some areas, local leaders sanctioned illegal land occupancy as a vote-catch-

<sup>70</sup> *Daily Nation*, January 4, 1998, pp. 18—20.

<sup>71</sup> NEMU Report, 1993 pp. 109 and 212; *Daily Nation*, January 4, 1998: pp. 18—20.

<sup>72</sup> Human Rights Watch, *Failing the Internally Displaced: The UNDP Displaced Persons Program in Kenya*, New York, June 1997, pp. 71—77.

<sup>73</sup> "Victims 'Asked' to sell Their Farms", *Daily Nation*, May 4, 1993; "Biwott Men Target Clash Victims' Land", *The People*, June 27—July 3, 1993.

<sup>74</sup> Human Rights Watch/Africa, *Divide and Rule*, pp. 76—79.

<sup>75</sup> *Ibid*, *Failing the Internally Displaced*, 1997, p. 76.

ing devise. In Narok, Ntimama told the Maasai to disregard Kikuyu title deeds as they were of no consequences and advised them to take up and develop all the land owned by the latter. Area committees were formed, comprising of chiefs, councillors and Maasai elders, to oversee the take-over of Kikuyu land by the Maasai.<sup>76</sup>

Fraudulent land transfers were more rampant in Olenguruone, Nakuru District, than anywhere else. Here, land title deeds belonging to the Kikuyu were transferred to the Kalenjin with the full complicity of the Commissioner of Lands who is expected to give consent for all land transfers.<sup>77</sup> Moreover, victims were coerced to exchange their prime land with the Kalenjin. This prompted one Nakuru lawyer to remark:

*The Land Control Board has become an instrument of control for the government to further its discriminatory policies. The Government cannot claim that it is not aware of this because such a process cannot take place without the knowledge of the D.O (District Officer) in the area.*<sup>78</sup>

This transformation of the Rift Valley into a nearly exclusive Kalenjin-Maasai area has far reaching political implications. Ethno-nationalism among the Maasai and Kalenjin has soared. This has, in turn, benefited the KANU elite by “allowing it to claim that it is satisfying Kalenjin sentiments (and) that the government deserves continued political support for getting ‘their’ land back and increasing their economic wealth”.<sup>79</sup> As one human rights organization aptly remarked: “Since the Rift Valley is allocated the largest number of seats in parliament (49 out of 210), the KANU government is making long-term political gains for a future election by consolidating Kalenjin hegemony.”<sup>80</sup>

### Violence Against the Displaced

Having won the 1992 elections, it was widely assumed that the KANU government would embark on massive resettlement of the clash victims to their former

<sup>76</sup> KHRC, *Quarterly Repression Report*, October–December 1996, p. 36.

<sup>77</sup> Human Rights Watch/Africa, *Failing the Internally Displaced...*, p. 72.

<sup>78</sup> Interview with Mirugi Kariuki, Lawyer, Nakuru, August 7, 1996, by Human Rights Watch/Africa in *Ibid*, pp. 72–73.

<sup>79</sup> Human Rights Watch/Africa, *Divide and Rule...*, p.76.

<sup>80</sup> *Ibid*, p. 80.

lands. Instead, it encouraged vigilante groups, the regular police and provincial administration police to violently disperse the internally displaced from the camps where they had sought refuge. On June 3 1993, for instance, over 2,000 Luhya and Teso internal refugees in Endebess camp in Trans Nzoia District were forcibly dispersed.<sup>81</sup>

More heinous was the Maela saga in 1994. KANU youth vigilantes and Administration police razed the Maela camp to the ground on the night of December 24, 1994. The camp, which was situated near Naivasha town, sheltered over 10,000 people who were displaced from Enosupukia, Narok in October 1993. The Government defined 200 of these as ‘genuine’ victims of displacement and relocated them to two acre plots at Moi Ndabi, a government-owned farm near Maela, rather than in their former farms in Enosupukia. This land is dry and less suitable for agriculture compared to the fertile Enosupukia.<sup>82</sup>

The Maela residents considered ‘non-genuine’ fell victim to double displacement. In an ‘operation’ which was undertaken at 3.00 a.m., they were forcibly loaded onto government lorries, and those who resisted were beaten and thrown into the trucks. They were transported to three destinations in Central Province, the ‘homeland’ of the Kikuyu. One group was dumped by the roadside at Ndaragwa in Nyandarua District, another was dropped at Kirigiti Stadium in Kiambu, and a third was left between the railway line and the main road in Ol Kalau, Nyandarua District.<sup>83</sup> The government never bothered to resettle the displaced to ‘their land’ in Central province but simply dumped them in ‘no-man’s land’. Twice displaced, these victims beefed up the new crop of Kenya’s post-Mau Mau landless class.

**Ntimama told the Maasai to disregard Kikuyu title deeds as they were of no consequences and advised them to take up and develop all the land owned by the latter.**

<sup>81</sup> Human Rights Watch/Africa, *Divide and Rule...*, pp. 67–71.

<sup>82</sup> *Ibid*, *Failing the Internally Displaced...*, pp. 77–82.

<sup>83</sup> *Ibid*, p.77.

<sup>84</sup> “Government and Catholics to Resettle 700 Families”, *The Update*, No 53, June 30, 1997; *Daily Nation*, November 25, 1997.

## Land for Votes

In the run up to the 1997 General Election, KANU embarked on a different strategy. This entailed resettling some of the internally displaced, especially the Kikuyu in Nakuru. In November, about 700 Kikuyu families displaced from Chapakundi, Olenguruone in 1992, were resettled at Kapsita in Elburgon.<sup>84</sup> President Moi personally awarded the title deeds to the victims. This was interpreted as a ploy by KANU to lure the votes of the populous Kikuyu. During the occasion, the then vocal opposition member of parliament for Molo constituency in Nakuru, Mr. Njenga Mungai,<sup>85</sup> defected to KANU.

This new approach to 'resettlement' was not viewed as a genuine solution to the problem of displacement. The government was criticised for setting a flawed precedent with regard to land ownership and occupancy. Among those who took issue with the government was Koigi wa Wamwere, a former MP in Nakuru and a Presidential candidate in the 1997 elections. Mr Wamwere argued that by not resettling the victims back to their own land in Olenguruone, "KANU had formalized 'ethnic cleansing' in Nakuru by letting the culprits occupy the land left by the victims". He posed: "If the government can annul legally issued title deeds and let an army of ethnic killers occupy the land, what will stop the army from chasing away the resettled victims?"<sup>86</sup>

The Bishop of Embu and the Chairman of the Roman Catholic Bishops' Conference, the Kenya Episcopal Conference, John Njue, argued that the relocation of the Molo clash victims from Olenguruone to Chepakundi "would seem to be an explicit blessing of the clashes and indeed, a confession of the feigned incapability of the government to control the clashes".<sup>87</sup> Had the Government dispossessed the Kalenjin of their newly acquired land, it, no doubt, would have risked losing their votes in the December elections.

<sup>85</sup> Mungai was the most influential Kikuyu leader in the Rift Valley by the time of his defection. He owed his fame and power to his uncompromising position on state sponsored violence against non-Kalenjins. He was one of the 21 opposition parliamentarians who were arrested in 1993. In May 1993, he was arrested and charged with incitement after the demolition of kiosks belonging to the Kikuyu. His defection was, thus viewed as betrayal, a fact that cost him his seat in the elections.

<sup>86</sup> *Daily Nation*, December 3, 1997. Also interview with Mr. Koigi wa Wamwere, December 3, 1997.

<sup>87</sup> *Daily Nation*, December 3, 1997.

## Chapter 4

### Violence and the 1997 Elections

"KANU's leaders tactfully exploited genuine grievances and long-standing disputes to foment violence."

Violence flared up in many parts of Kenya in the run up to the second multi-party elections scheduled for 1997. The violence occurred against the backdrop of growing pressure for far-reaching constitutional changes which would create a level playing field for all actors and entrench a genuine democratic culture. The spearheads of the constitutional movement, including NGOs, civic organizations, religious groups and political parties coalesced around the National Convention Assembly (NCA) and its executive wing, the National Convention Executive Council (NCEC). Seizing the initiative on constitutional reforms, the NCEC galvanized the entire society into a massive and irresistible force for constitutional change before the General Election in 1997. It posed a serious threat to KANU's stranglehold on power as momentum and support shifted in favour of reforms.

KANU's political strategists hatched a two-pronged approach to stave off the pressure for meaningful reforms: The first strand of the strategy was to intensify informal repression and violence, both in scale and geographical distribution. Organized violence occurred almost within a month of the first NCEC conference held in Limuru on April 3, 1997.<sup>88</sup> KANU's leaders tactfully exploited genuine grievances and long-standing disputes relating to cattle rustling, border disputes, economic inequalities and religious differences to foment violence. The nation-wide violence was intended to provide KANU leaders with an excuse to impose a state of Emergency, suspend democracy, and the rule of law by decree until they recaptured initiative over the political space. As

<sup>88</sup> See, "Kenya at the Cross Roads: Constitutional Reforms and the Holding of Free and Fair Elections: Our Common Challenge", *The Nairobi Law Monthly*, No.70, August/September 1997; KHRC, *Quarterly Repression Report*: April-June, 1997, p. 21.

the KHRC's researchers aver:

*The (KANU) hawks hoped to precipitate conditions of crisis which would justify a declaration of a state of emergency nation-wide under the provision of Chapter 57 of the Laws of Kenya titled 'The Preservation of Public Security Act'.<sup>89</sup>*

But the context of the violence was complex, and reasons diverse. As vigilante groups proliferated, violence rocked Kenya's urban areas as well as the countryside. In September alone, there were over a dozen sites of violence ranging from West Pokot, Marakwet, Samburu, Isiolo, Likoni, Trans-Mara, Igembe, Mombasa, Kwale, Eldama Ravine to Nyambene, Gucha, Kuria, Turkana, Mandera and Laikipia.<sup>90</sup>

The second strand of KANU's dual-pronged strategy consisted of entering into *ad hoc* alliances with sections of the opposition in order to undercut and pre-empt the agenda of constitutional reformers for sweeping changes. To that end, it tactfully brokered the formation of a semi-official Inter-Parties Parliamentary Group (IPPG) consisting of parliamentarians from both sides of the house. The catch was to weaken the NCEC and to hijack the initiative for reforms, by challenging its legitimacy. This was acceptable to KANU's power barons as long as it did not result in a reform package that would shake the party's monopoly over power, especially presidential powers.

### Vigilantes Galore

For a long time, KANU youth wingers, attached to the various party branches were the only informal groups that unleashed violence against the ordinary people. By May 1997, new vigilante groups calling themselves *Jeshi la Mzee*, (the old man's army, purportedly President Moi's army which is not recognized by law as part of the country's security system) were formed across the country.<sup>91</sup> Most of these vigilante squads consisted of members of KANU youth groups as well as mercenaries hired by the party's stalwarts.

The main political agenda of the vigilante groups was harassment and intimi-

<sup>89</sup> KHRC, *Kayas of Deprivation, Kayas of Blood: Violence, Ethnicity and the State in Coastal Kenya*, (Nairobi, 1997), p. 51.

<sup>90</sup> *Expression Today*, No.2, October 1997.

<sup>91</sup> KHRC, *Quarterly Repression Report: April—June, 1997*, pp. 21—23.



'Jeshi la Mzee'

dation of opposition leaders and their supporters, disrupting their meetings and making pluralist democracy unworkable. In 1997, they effectively disrupted constitutional reform rallies organized by the NCEC. On May 3, 1997, for example, *Jeshi la Mzee*, working in cahoots with the dreaded GSU, disrupted a constitutional reforms rally which was organized by the NCEC at Kamukunji grounds. What surprised many observers was the level of coordination between the *Jeshi la Mzee*, which wielded machetes, whips and batons, and the police during the attack.<sup>92</sup>

Attacks on opposition leaders by organized vigilantes increased. The Social Democratic Party (SDP) presidential candidate Mrs Charity Ngilu, and her entourage were attacked and injured by 'thugs' at Mtito Andei, Makueni District, after addressing a political meeting on July 12.<sup>93</sup> Moreover, a councillor at Masinga, Machakos District, told a meeting that KANU had recruited 6,000 youths, named *Jeshi la Mzee* to flush out any opposition elements in the zone, which he claimed was KANU's domain.<sup>94</sup> Reports abound that KANU's Secretary General had organized hit squads along the lines of *Jeshi la Mzee*, in Mathioya, Murang'a, for the purpose of intimidating and harassing pro-opposition sections of the population in the area.<sup>95</sup>

### A Cesspool of Violence

By September 1997, virtually all violent-prone spots in Kenya had exploded into full-scale violence. In the month of September alone, nearly 140 lives were lost in over a dozen sites of violence throughout Kenya.<sup>96</sup> According to a report by the Catholic Diocese of Marsabit, Northern Kenya, more than 200 people were killed in 1997 alone, and 6,000 others displaced. Over 25,000 head of cattle, 21,000 goats, more than 1,000 camels and 127 donkeys were stolen.<sup>97</sup>

Not all of these cases of violence, however, had underlying political motives.

<sup>92</sup> KHRC, *Quarterly Repression Report: April—June, 1997*, pp. 21—22.

<sup>93</sup> KHRC, *Quarterly Repression Report: July—September 1997*, p. 44.

<sup>94</sup> Ibid.

<sup>95</sup> "Kamotho's Terror Gangs" *Finance*, December 8, 1997, p. 3. The writer, Joseph Mutua, was in the KHRC's Violence Monitoring Group.

<sup>96</sup> "Month of Violence", *Expression Today*, No. 2, 1997, p. 2.

<sup>97</sup> Ibid.

Some, especially in Northern Kenya, were encouraged by Government laxity rather than complicity. So lax was the government's security machinery in Northern Kenya that the reality of death did not only loom large but "the government is spoken of in past tense, mocking its claims to be in charge".<sup>98</sup>

The insecurity in Northern Kenya, however, was a political boon to KANU. During the 1992 elections KANU scooped 9 out of 10 parliamentary seats in North-Eastern province. Indeed, President Moi garnered 79.6 percent of the total vote in the province, more than what he got in his Rift Valley turf. Again, in 1997, the party won 10 out of 11 parliamentary seats and President Moi bagged 73.8 percent of the Presidential vote.<sup>99</sup> A combination of insecurity, harassment and intimidation has enabled the KANU government to keep the opposition at bay in the province.

In Tharaka Nithi-Nyambene area in Eastern province, border disputes had claimed over 520 lives by 1997.<sup>100</sup> In September alone, there were three major raids in which five people perished and scores of others injured.<sup>101</sup> Suffice to say, Eastern Province has been an important electoral zone to the government's strategists. In the two multi-party elections, KANU has hedged its bets on the province in order to fulfil the constitutional requirement that each presidential candidate must get 25 per cent of votes in at least five provinces in order to be declared the winner.<sup>102</sup> In 1997, the activities of *Jeshi la Mzee* in Eastern Province increased. The rise of Mrs. Charity Kaluki Ngilu as a formidable Presidential candidate in the province, threatened KANU's chances in the Province. She was herself a victim of harassment and intimidation by vigilante groups.<sup>103</sup>

**What surprised many was the level of co-ordination between the 'Jeshi la Mzee', which wielded machetes, whips and batons, and the police during the attack.**

<sup>98</sup> "Gristly Trail of Deaths in Northern Kenya", *Expression Today*, No. 2, 1997, p. 2.

<sup>99</sup> "Election's '97", *Daily Nation*, January 4, 1998; NEMU, Report, pp. 206.

<sup>100</sup> "(Bishop John) Njue: Politicians Behind Clashes", *Daily Nation*, December 12, 1997.

<sup>101</sup> Ibid.

<sup>102</sup> A new constitutional (amendment) Bill of 1992, introduced a new system of presidential elections. Apart from securing a majority of votes cast in the presidential elections, the winning presidential candidate had also to garner at least 25% of the votes in at least 5 out of the country's 8 provinces.

<sup>103</sup> KHRC, *Quarterly Repression Report, July—September, 1997*, p. 44.

The Rift Valley Province was perhaps the deepest cesspit of all genres of communal and criminal violence. To begin with, the 1991—95 clashes had left behind a profound legacy of fear and intimidation among the voters. A culture of fear pervaded the former clash-torn districts of Uasin Gishu, Bungoma and Mt. Elgon. During the 1992 elections, opposition supporters openly identified with and carried placards in support of their parties. In 1997, this was high risk. This mood of a suppressed people was captured by an expatriate worker with the displaced in the Rift Valley as follows:

*It is better for them to keep quiet. By talking or identifying with the opposition, they will be digging their own grave. They can vote for candidates of their choice quietly without arousing the anger of the Kalenjin. They have learned their own lesson.*<sup>104</sup>

A Human Rights Watch/Africa team that visited Moi Ndabi, Nakuru, towards the end of 1996 where 200 families of ex-displacees from Enosupukia were resettled reported the same culture of fear. The residents were apprehensive about speaking to the team on the grounds that they might get into trouble with KANU and local government authorities or perhaps even lose their land.<sup>105</sup> A journalist who visited the settlement in the late 1997 intimated that this fear intensified as the elections approached.<sup>106</sup>

The situation was more violent in the Kolongolo area along the Trans Nzoia/West Pokot border. Here, over 200 families had been displaced and fear of death loomed even larger. As one commentator graphically puts it:

*It (is) really a death for many families along the Trans Nzoia/West Pokot border as they could hardly stay for a week without a person being killed, animals stolen or a woman raped or a man sodomized.*<sup>107</sup>

Pre-election violence in 1997 reached a feverish-pitch in four areas: Gucha/Trans Mara, West Pokot/Marakwet, Nyanza, and the Coast.

<sup>104</sup> Interview with Mr. Wilfred Schasfoort, Technical Advisor, NCCCK Displaced Peoples Programme, Eldoret, November 26, 1997. NCCCK, *Progress Report on the Displaced People*, February—July 1997.

<sup>105</sup> Human Rights Watch/Africa, *Failing the Internationally Displaced...*, p. 79.

<sup>106</sup> Interview with Watoro Kamau, a Nakuru-based journalist, November 25, 1997.

<sup>107</sup> "Kolongolo Security Beefed Up: Moi Thanked"; *The Update*, No. 50, March 31, 1997, p. 4.

## Chapter 5

### Violence in West Pokot and Marakwet Districts

"The violence flared up against the backdrop of a growing political stand-off between the government and the Marakwet."

Violence flared up between the Pokot and the Marakwet communities in April 1997 leaving over 20 dead. In addition, 500 Pokot families and between 400 and 500 Marakwet families were displaced while 4,000—5,000 goats, 104 sheep and 400 head of cattle were stolen from the Marakwet.<sup>108</sup> By May 1997, at least 27 people had been killed and close to 10,000 families had been displaced.<sup>109</sup> This part of Kenya has a long standing tradition of rustling. Hence, when violence erupted, it was initially seen as an escalation of the phenomenon.<sup>110</sup>

The violence was, however, inter-woven with intricate political issues relating to the transformation to multi-party democracy. The violence, for instance, flared up against the backdrop of a growing political stand-off between the government and the Marakwet. Faced with a consistent chain of devastating raids by the well-armed Pokot, the Marakwet's confidence in the government's willingness to defend them began to wear thin steadily. In the damning words of one researcher with the NCCCK: "If a Marakwet is killed there is no hustle; but if a Pokot is killed there is a lot of concern."<sup>111</sup> No wonder, they attributed the April incidents to government laxity.

<sup>108</sup> "Why the Pokot, Marakwet are Killing Each Other", *The Update*, No. 51, April 30, 1994, pp. 1, 11, 12.

<sup>109</sup> Interview with Mr Schasfoort, Eldoret, November 26, 1997. See also "Hundreds Flee Homes in Marakwet and West Pokot", *The Update*, No. 59, December 31, 1997, p. 12.

<sup>110</sup> *Ibid.* p. 1

<sup>111</sup> Interview with Wanyama Masinde, Editor, *The Update*, Eldoret, January 9, 1998.



Some Marakwet leaders felt that the government, and more so President Moi, did not take their security seriously. As the then Member of Parliament for Kerio East, Frederick Cheserek, starkly put it:

*President Moi is treating the crisis between the Marakwet and the Pokot as if it is not a major issue and yet he knows that the consequences could be serious.*<sup>112</sup>

Mr Cheserek added a rider that KANU and the government risked losing votes among the Marakwet if the livestock stolen by the Pokot was not returned.<sup>113</sup>

On its part, the government was wary of a likelihood of Marakwet voters drifting to the opposition. It is in this context that President Moi blamed the Opposition for the escalation of violence. Visiting the area in the wake of the violence, he accused the then Leader of Opposition, Michael Wamalwa, of instigating the clashes. In March 1997, Wamalwa had made a tour of the area and decried the appalling security situation. He, however, denied any responsibility for the clashes between the two communities and dared the government to arrest and charge him.<sup>114</sup>

In June, the government declared a security operation zone in the two districts.<sup>115</sup> In spite of this, violence and rustling raged on unabated. Between April and November, raids and counter-raids between the two communities displaced about 6,000 families in West Pokot and Marakwet Districts.<sup>116</sup>

The security situation reached a low ebb in the run-up to the General Election in December 1997. The complex political situation which led to this state of affairs is aptly captured by one Marakwet as follows:

*Every time the General Election is called, the community (Marakwet) is a target of attack by trigger-happy Pokot raiders. At present, the security situation in the area is*

<sup>112</sup> Interview with Wanyama Masinde, Editor, *The Update*, Eldoret, January 9, 1998. p. 7.

<sup>113</sup> Ibid.

<sup>114</sup> *The Update*, No.51, April 30, 1997, p. 3.

<sup>115</sup> On June 4, 1997 the then Member of Parliament for Sigor, Mr. Philip Rotino (a Pokot), who was alleged to be involved in the clashes, was arrested and charged with incitement, and barred from visiting the area for three weeks by a Nakuru court. The ban was, however, lifted by the end of June. *The Update*, No. 53, June 30, 1997, p. 3.

<sup>116</sup> Interview with Schasfoort, November 26, 1997; Also *Expression Today*, October 1997. p. 2.

*deplorable and tense. Residents claim that if security is not restored in time before then (General Elections), attacks similar to the ones that occurred in 1992 and April this year could occur. Pokot who believe in sanctity of human life have sent emissaries warning the community of an impending attack during the voting day (December 29, 1997). The attack, as they allege, is meant to be a lesson to Marakwet due to their overwhelming resolve to re-elect their out-spoken MPs (Members of Parliament) on a KANU ticket and as well vote as a block for an opposition president of their choice instead of Moi who over the years did not want to hear anything from the community, however pressing and reasonable it was. At the time of writing this letter, word is going round the villages to the effect that the dreaded GSU personnel stationed in the area would be relegated to duties outside the district in order to pave way for the raiders. Already, fear has gripped villagers who have moved the elderly and children to the hilly caves of Elgeyo escarpment for protection against the anticipated attacks. As a matter of urgency, the hunger-stricken Marakwet are crying for both land and air security during the voting day so that they exercise their democratic right.*<sup>117</sup>

Four days before the December 29 General Election, the Pokot struck. In a night raid of Tot Division of Marakwet, they set ablaze several houses, killed 12 people, and injured three more.<sup>118</sup> The attack, as one source observed, "was aimed at destabilizing the Marakwet community, especially in the valley where the Opposition was gaining ground". The vocal immediate former MP for Marakwet East, Frederick Cheserek, and another parliamentary hopeful, Mr. Chelile, had joined the parliamentary race on Opposition tickets, in this traditionally KANU enclave.<sup>119</sup> The attack, said the same source, was meant to scare off would be voters to deter them from casting their votes at the designated polling stations where they were registered.<sup>120</sup>

**The government was wary of a likelihood of Marakwet voters drifting to the Opposition ... That's why President Moi blamed the Opposition for the escalation of violence.**

<sup>117</sup> Kibor Benny Muniyatany, "Marakwet Threatened Once More", *The People*, 5—11 December 1997.

<sup>118</sup> "Hundreds Flee Homes in Marakwet, West Pokot", *The Update*, No. 59, December 31, 1997, p. 12.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

**Table 8: Multi-Party Parliamentary Elections Results in Marakwet District**

Constituency	Party	1992 score	1997 score
<b>MARAKWET EAST</b>			
	KANU	Unopposed	11,163
	DPK	_____	6,076
	Others	_____	95
	Votes cast	_____	17,334
	Reg. Voters	_____	20,965
	% Turn-out	_____	82%
<b>MARAKWET WEST</b>			
	KANU	_____	21,991
	FORD-P	_____	11,434
	Others	_____	-
	Votes cast	_____	33,425
	Reg. Voters	_____	28,014
	% Turn-out	_____	119.3%

Source: "Election '97", *Daily Nation*, January 5, 1998 p. 17; NEMU, Report, p. 195.

In the end, the violence weakened KANU's stranglehold over Marakwet district long considered a 'KANU zone'. In 1992, Marakwet leaders were part of KANU's 16 MPs who went in unopposed as a result of violence and intimidation against the Opposition. In 1997, the balance tilted remarkably in favour of Opposition parties as some Marakwet voters, disillusioned with government laxity in guaranteeing them security against Pokot raiders, shifted their support to the Opposition. All the major political parties, for instance, had candidates in Marakwet East and Marakwet West constituencies. While President Moi had acquired a resounding 99.8 percent of the vote in Marakwet East in 1992, this declined to 72.8 percent in 1997.<sup>121</sup> According to some Marakwet interviewees, however, KANU still benefited greatly from the security situation which it tactfully exploited to win all parliamentary seats and to weed out its ardent critics like Cheserek.<sup>122</sup> Evidence points to manipulation of elections in the area. Incredibly, the percentage of voter turn-out in Marakwet West, for example, was 119.3 percent, according to one source (see Table 8).

<sup>121</sup> NEMU Report, p. 212; *Daily Nation*, January 5, 1998.

<sup>122</sup> Interview with two Marakwet youths at Eldoret, January 27, 1998.

### Election Violence in West-Pokot

Intimidation and harassment of non-Pokot in West Pokot began in earnest as KANU party nominations got under way in November 1997. At the centre of the renewed violence against non-Pokot was Mr Francis Lotodo, the then Minister for Home Affairs.<sup>123</sup> It was reported that non-Pokots were barred from participating in KANU nominations.<sup>124</sup> Mr. Lotodo's agents were also said to have openly warned non-Pokot in Kapenguria never to set foot in the nomination grounds because the area was not their motherland.<sup>125</sup>

KANU nominations in Kapenguria in particular, and West Pokot in general, were marred by intimidation and violence. Non-Pokot supporters of one KANU aspirant, Mrs Rhoda Rotino, were reportedly flushed out of the line by Mr. Lotodo's agents at Chepareria and Sok polling stations.<sup>126</sup> Non-Pokot had to leave without casting their votes because of the intimidating presence of heavily armed police in virtually all polling stations. According to some church leaders in West-Pokot, Mr. Lotodo had earlier vowed that if he was voted out there would be chaos in Kapenguria.<sup>127</sup> Consequently, even civic candidates, not aligned to him, withdrew from the race as a result of fear and intimidation.

Violence intensified as the General Election approached. On December 15, 1997 scores of Pokot raiders shot at homes of the non-Pokot in Makutano town.<sup>128</sup> Fearing a repeat of 1993, non-Pokot families hurriedly left the area. As church leaders pointed out, Mr. Lotodo was using violence to disenfranchise non-Pokot.<sup>129</sup>

The key beneficiaries of this orgy of violence and harassment of non-Pokot as well as Pokot voters were KANU and its leaders. This time round, all the

<sup>123</sup> In 1993, violence erupted in West Pokot District after Lotodo, ordered non-Pokot to leave the area, basically because they had voted for his Pokot rivals during the December 29 General Election. Over 10,000 non-Pokot traders and farmers were forcibly expelled from the district, their houses razed, animals stolen and property destroyed.

<sup>124</sup> See, *Daily Nation*, November 30, 1997.

<sup>125</sup> "Losers Challenge Mr. Lotodo's Victory", *Daily Nation*, November 30, 1997.

<sup>126</sup> *Daily Nation*, November 30, 1997.

<sup>127</sup> *Daily Nation*, December 17, 1997.

<sup>128</sup> "Houses of Non-Pokot Shot At", *Daily Nation*, December 17, 1997.

<sup>129</sup> *Daily Nation*, December 17, 1997.

KANU candidates in West Pokot districts went in unopposed. Opposition votes in the Presidential election fell from 11.9 per cent in 1992 to a mere 4.6 per cent in the 1997 election, thanks to harassment and disenfranchisement of non-Pokot and, to an extent, Pokot voters.<sup>130</sup>

<sup>130</sup> *Sunday Nation*, January 4, 1997.

## Chapter 6

### 'Ethnic' Clashes in Nyanza and Trans Mara

"The violence drove a wedge between the ethnic groups enabling KANU to maintain its monopoly of power in Southern Nyanza."

In 1997, a three-way ethnic violence broke out at the Nyanza and Trans Mara border. The first spot of violence was the Gucha/Trans Mara border area, and pitted the Kisii against the Maasai. In Nyanza province, there were two pockets of violent clashes. The first occurred along the border of Migori and Gucha districts involving the Luo and the Kisii. The second spot was the border between Kuria and Migori districts. These clashes involved the Kuria and the Luo. Underlying the clashes were long-standing ethnic border disputes and the tradition of cattle rustling which were exacerbated by ethnic polarization in the multi-party era.<sup>131</sup>

At the height of the ethnic violence in mid December 1997, President Moi declared the Gucha/Trans Mara, Gucha/Migori and Kuria/Migori areas 'Security Operation Zones'. Coming at the crucial electioneering season, the slamming of 'Security Zones' and the consequent barring of opposition leaders from these areas was widely interpreted as KANU's ploy of keeping rival parties out of the area. Intended or unintended, the flare up of violence in Nyanza drove a wedge between the ethnic groups involved. By and large, this ethnic violence and the consequent polarization enabled KANU to maintain its monopoly of power in Kuria, Kisii, Gucha and Nyamira Districts.

#### Ethnic Violence in Gucha and Trans Mara Districts

The conflict between the Kisii community in the newly created Gucha District and the Maasai in Trans Mara District has a long pedigree in the traditional practice of cattle rustling. With Kenya's return to competitive politics, conflicts

<sup>131</sup> "Why Clashes Hit Nyanza and Trans Mara", *The Update*, No. 57, October, 1997, pp. 1-2.

relating to raiding have been complicated and intensified by the competing interests of the various actors. Between 1996 and 1997, for instance, no less than 100 cattle raids and counter-raids occurred in the area.<sup>132</sup> In October alone, at least 15 people were killed and several others injured in renewed raids between the Kisii and the Maasai.<sup>133</sup> And by early December, over 50 people had died in the area and hundreds displaced.<sup>134</sup>

Reports indicate that such ethnic tensions were first experienced in 1992, just before the multi-party elections.<sup>135</sup> The new wave of violence resurfaced in March, against the background of growing demands for constitutional reforms. Initially, two people, suspected to be cattle rustlers, were reportedly killed along the borders of the two districts.<sup>136</sup> Another victim, a primary school boy was killed and at least 14 others injured in a fresh raid.<sup>137</sup> A secondary school student identified as Bassa Ole Momura was killed and several other people injured in a fight between members of the two communities. Following further skirmishes on August 17, 1997, growing public pressure forced the government to deploy GSU and police officers along the border of the two districts.<sup>138</sup>

On November 21, 1997, violence in Trans Mara/Gucha area reached a feverish-pitch. 12 people were killed, shops looted and property destroyed at Kilgoris town in Trans Mara. Many Kisii and other non-Maasai communities fled the area in fear of further attacks.<sup>139</sup> A presidential aspirant and leader of the National Development Party (NDP), Mr. Raila Odinga, was chased away from the town, his vehicle pelted with stones and his body-guard badly injured in an attack by 'Maasai morans'. Mr. Odinga had travelled to Kilgoris to console those injured in the November 12 clashes at St. Joseph's Kilgoris Mission hospital.<sup>140</sup>

On December 10, a headless body was found in Renen Moroo Road in Trans

<sup>132</sup> Interview with Masinde Wanyama, NCKK, January 9, 1997.  
<sup>133</sup> "Update in Brief: Gucha/Trans Mara/Kuria/Migori", *The Update*, No. 57, 1997 p. 11.  
<sup>134</sup> *The Update*, No. 57, October, 1997, pp. 1—2.  
<sup>135</sup> *Ibid*, p. 11.  
<sup>136</sup> *Ibid*, p. 1.  
<sup>137</sup> *Ibid*.  
<sup>138</sup> KHRC, *Quarterly Repression Report: July—September, 1997*.  
<sup>139</sup> *Sunday Nation*, November 23, 1997.  
<sup>140</sup> *Ibid*.

Mara, bringing the number of those killed in the opening days of December to four.<sup>141</sup> The orgy of violence came to a head on December 11 when GSU officers stationed along the Trans Mara/Gucha border shot and killed two people, from the Kisii community. The Kisii asserted that those killed were not cattle rustlers but innocent Kisii, and the District Commissioner of Trans Mara, admitted that the victims were shot by security officers at Geteri market along the Trans Mara border.<sup>142</sup>

The flare up of the clashes was traced to the activities of a politically powerful Maasai businessman.<sup>143</sup> Kisii elders consistently told the administration that "as long as this businessman is not apprehended, cattle rustling will continue between the two communities".<sup>144</sup> Nothing was done.

Another view is that the Kisii were pawns in an intra-Maasai struggle for control over the newly created Kilgoris constituency which pitted Julius K. Ole Sunkuli, Assistant Minister in the Office of the President, and his arch-rival, G.S. Konchela. Mr. Sunkuli drew his support from a populous clan, while Mr. Konchella, who hailed from a smaller clan, increasingly relied on non-Maasai votes, particularly the Kisii, to tip the political balance in his favour.<sup>145</sup> Defeated by Sunkuli in the KANU nominations, Konchela decamped to the opposition Democratic Party, bringing in the Opposition-versus-KANU tangle into the tempestuous Kilgoris politics. In this regard, the Kisii vote was a threat to KANU and Mr. Sunkuli.

Not surprisingly, Mr. Sunkuli, among other Maasai leaders, threw salvos at the

<sup>141</sup> *Daily Nation*, December 12, 1997.  
<sup>142</sup> "GSU Men Kill Two at Border", *Daily Nation*, December 12, 1997.  
<sup>143</sup> In 1996, the businessman had allegedly organized a raid and stolen three heads of cattle from Kisii farmers. The court found him guilty of the offence and fined him Ksh. 65,000 (approximately \$1,000). Failing to pay the fine, his 14 head of cattle were confiscated during a market day at Nyangusu. "Why Clashes Have Hit Nyanza, Trans Mara", *The Update*, No. 57, October 31, 1997 p. 7.  
<sup>144</sup> *Ibid*.  
<sup>145</sup> Interview with Mr. Saitoti Ole Torome, December 28, 1997.

**The District Commissioner admitted that the victims were shot by security officers at Geteri market along the Trans Mara border.**

Kisii leaders for provoking the Maasai.<sup>146</sup> The existence of *Morans* and *Chinkororo* warriors among the Maasai and the Kisii, respectively, made the Gucha/Trans Mara violence quite bloody.<sup>147</sup> The clashes were viewed as a KANU scheme of creating internal refugees and, therefore, displacing the Kisii vote and ensuring political longevity and dominance of KANU in the region's politics.<sup>148</sup> There were even reports that Government vehicles were being used to move non-Maasai to their indigenous districts as police looked on helplessly.<sup>149</sup>

### Clashes in Gucha and Migori Districts

Clashes were reported in the Gucha/Migori border from the late October 1997. According to one source, they occurred immediately after Kenyatta Day, October 20, 1997.<sup>150</sup> The clashes occurred in the border areas of Ochodororo, Nyabera and Cham-Gi-Wadu.<sup>151</sup> Five people were killed, scores maimed, over 30 houses razed to the ground, and hundreds of people were displaced.<sup>152</sup> On October 22, a man identified as Mr. Francis Odhiambo Miginjo (a Luo) was shot dead at Remo village along the border of the two districts. 13 houses were reportedly burned down at Ochodororo area and hundreds of people displaced from their farms.<sup>153</sup>

The official government explanation was that the clashes were triggered by cattle rustling between the Luo and the Kisii.<sup>154</sup> They were further attributed to territorial dispute involving the areas of Ochodororo, Nyabera, and Cham-gi-Wadu which the Luo occupied and which the Kisii claimed was part of

<sup>146</sup> *Daily Nation*, December 12, 1997.

<sup>147</sup> These traditional semi-permanent 'forces' have been modernized and sometimes wield guns. Politicians have won their allegiance by giving them lagesse in the form of money, food, transport and arms. The *Chinkororo*, for instance, sometimes involve school boys during the holidays and owes allegiance to Kisii elders. Interview with a Kisii Elder, Eldoret, November 29, 1997.

<sup>148</sup> *Daily Nation*, November 23, 1997.

<sup>149</sup> *Ibid.*

<sup>150</sup> "Clashes Take a Toll on Exams, Learning" *Daily Nation*, November 15, 1997.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*

<sup>153</sup> "Why Clashes Have Hit Nyanza, Trans Mara", *The Update*, No. 57, October 31, 1997, p. 3.

<sup>154</sup> *Ibid.*

Gucha. Most occupants of the area who were interviewed by NCCCK officials attributed the clashes to external instigation.<sup>155</sup> As one commentator said:

*The Luo and Kisii lived along the border in harmony since time immemorial. Now, they live in fear and apprehension because they can no longer eat and sleep in the same place*<sup>156</sup>

One of our informants attributed the clashes to KANU's manoeuvres aimed at ensuring that the Kisii did not join the Luo-dominated NDP.<sup>157</sup> Another version is that the clashes were instigated by the Luo who were bitter because their Kisii neighbours did not support the NDP.<sup>158</sup> Be that as it may, the clashes effectively divided the Kisii-Luo political opinion. Even though sections of the Kisii voted overwhelmingly for the Opposition, they never voted for the NDP, thanks largely to the clashes.

### Clashes in Migori and Kuria Districts

Ethnic violence between the Luo in Migori and the Kuria in Kuria Districts, erupted in October 1997. Again, this spate of violence occurred as the country was preparing for the 1997 elections. Reports say that the clashes began when Kuria raiders took three heads of cattle from the Luo side. When the latter pursued the raiders, the Kuria attacked and chased them.<sup>159</sup> In fresh attacks at Remo village along Migori/Kuria border, 14 houses were razed to the ground, and two cows burned alive. An administration police officer and three civilians were also killed in a series of raids by the Kuria at Ogwedhi chief's Camp in Migori.<sup>160</sup>

22 houses belonging to a Luo elder, accused by fellow Luo of spying for the Kuria, were also burned at Remo. At least 30 people camped at Kwa Market in Migori in fear of further attacks by the Kuria. In brief, raids and counter raids

<sup>155</sup> Interview with Mr Wanyama Masinde, editor with the NCCCK's publication, *The Update*, January 9, 1998.

<sup>156</sup> *Daily Nation*, November 23, 1997.

<sup>157</sup> Interview with a Kisii from Gucha, December 27, 1997. Also with Wanyama Masinde, NCCCK, January 9, 1998.

<sup>158</sup> Interview with Kisii elder, January 27, 1998.

<sup>159</sup> *The Update*, No. 57, October 31, 1997, pp. 1-2.

<sup>160</sup> *Ibid.*

along the Kuria-Migori border left more than 20 people dead, 200 houses burned and several herds of cattle stolen in October alone.<sup>161</sup> Over 200 Luo families displaced from Ogwedhi, Sageki and Remo villages sought refuge at the Ogwedhi market.<sup>162</sup> By December, at least 600 families had been displaced and forced to camp in schools and churches.<sup>163</sup>

The clashes were attributed to a border dispute between the two communities involving a 100-acre strip of land at Remo and Sageki. Both Luo and Kuria elders laid claim to the strip of land. Luo elders, however, blamed government laxity for the spread of the conflict. They posed: "Why is it that it is our animals which are always stolen?"<sup>164</sup> They felt that if the point of dispute was land, the provincial administration should have quickly stepped in and resolved it rather than allowing it to go on.

The conflict displaced more Luo than Kuria. Unlike the Luo, the Kuria have vigilante squads styled along the lines of the *Chinkororo* among the Kisii. Moreover, Kuria warriors are often armed with guns. Hence, the Luo elders called on the government to disarm the Kuria.<sup>165</sup>

The clashes were seen as a Kuria response to the euphoria which was associated with the Luo-dominated NDP in Luo Nyanza. Like the Kisii, the Kuria did not support the NDP. As a result, many Luo activists considered them traitors.<sup>166</sup>

KANU and President Moi were favoured politically by the Luo-Kuria stand-off. The clashes effectively put the Luo and Kuria on the opposite side of the political divide, intensified animosity and suspicion between them. In the end, the Kuria voted overwhelmingly for the government.

<sup>161</sup> "Why Clashes Have Hit Nyanza, Trans Mara", *The Update*, No.57, October 31, 1997 p. 1.

<sup>162</sup> *Ibid*, p. 2.

<sup>163</sup> "Security Zoning Criticized", *The Update*, No.59, December 31, 1997, p. 10.

<sup>164</sup> *Ibid*, p. 2.

<sup>165</sup> Interview with Wanyama Masinde, January 9, 1997.

<sup>166</sup> Interview with a Luo Elder from Migori, Nairobi, January 1997.

## Voting Behind the Iron Curtain: Security Operation Zones

On December 18, President Moi declared Gucha/Trans Mara, Gucha/Migori, Kisii/Trans Mara and Migori/Kuria border areas a security zone. He had just completed his campaign programme in the clash-torn zones in Nyanza and Trans Mara. The order imposed a ban on all candidates, except those from the affected areas, from campaigning along the common border areas.<sup>167</sup> Further, the Trans Mara police boss, whom the President accused of laxity in handling the clashes, was to be removed, any security officer from the affected communities transferred, and neutral officers deployed. The Provincial Commissioners of Nyanza and Rift Valley Provinces were directed to implement the directive.<sup>168</sup>

The thorny issue was the legality of the Order. Under the Constitution, the President has powers to seal off any part of the country when public order is threatened. Section 88 of the constitution bestows upon the President powers to invoke part III of the Preservation of Public Security Act<sup>169</sup> by an order published in the Kenya Gazette. Part III of the Preservation of Public Security Act allows the President, among other things, to regulate and restrict the movement of persons, censor the press and prohibit any meetings or processions, in any part of Kenya.<sup>170</sup> The Constitution further states that:

*Such order under this section shall cease to have effect on the expiration of a period of 28 days commencing with the day on which the order is made where before the expiration of that period it has been approved by a resolution of the National Assembly.*<sup>171</sup>

<sup>167</sup> "Moi Closes Off Clash-Hit Areas", *Daily Nation*, December 19, 1997.

<sup>168</sup> *Ibid*.

<sup>169</sup> The Preservation of Public Order Act has since been repealed.

<sup>170</sup> Constitution of Kenya.

<sup>171</sup> *Ibid*.

**KANU and President Moi were favoured politically by the Luo-Kuria stand-off. The clashes effectively put the Luo and Kuria on the opposite side of the political divide, and intensified animosity and suspicion between them.**

Security operation zones were first declared in Molo (Nakuru District), Burnt Forest (Uasin Gishu District) and Londiani (Kericho District) on September 2, 1993. In their aftermath, they neither prevented the escalation and spread of the clashes nor assured the human rights and welfare of the displaced.<sup>172</sup>

Small wonder, then, that the legality of the declaration of 'Security Operation Zones' in December came under severe challenge. According to two constitutional lawyers, Gibson Kamau Kuria and Kathurima M'Inoti, the declaration was illegal. Contrary to section 42 of the Preservation of Public Order Act, the two argued, the declaration did not take the form of a gazetted declaration backed by regulations. They further averred that:

*There is no instrument under the Kenyan law permitting the President to make such regulations. In any case, the timing and the selective nature of the move makes the President's motive suspect.*<sup>173</sup>

The two lawyers posed: "Why didn't he take action when parts of Likoni and Kwale were hit by insecurity recently?"<sup>174</sup>

It was widely felt that the 'Security Operation Zones' were designed to disrupt the campaign programmes of opposition parties. With over 35, mostly Kisii, people killed in the clashes and thousands others displaced between mid-November and mid-December, KANU's fortunes in Kisii politics were at their lowest ebb. Even Kisii KANU aspirants had come to believe that it was suicidal to campaign for President Moi.<sup>175</sup> As one church source reported: "A senior (KANU) politician was heard saying that everyone should carry his or her own cross."<sup>176</sup>

Inversely, the popularity of other parties, particularly the DP, FORD-Kenya and SDP was soaring.<sup>177</sup> Coming 10 days before the elections, the declaration of the security operation zone, it appears, was a strategy of preventing opposi-

<sup>172</sup> Human Rights Watch/Africa, *Divide and Rule...*, p. 38.

<sup>173</sup> "Security Zones Order Illegal", *Daily Nation*, December 1997.

<sup>174</sup> Ibid.

<sup>175</sup> "Kisii Voters Sharply Divided", *Tazama*, Election 97 Watch, Issue 4, December 27, 1997, p. 8.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

tion parties from capitalizing on KANU's misfortunes. Although the declaration had banned KANU candidates from the areas, the party's top guns in Government would be at liberty to visit the areas under the guise of administration, even if the regulations were lawfully made.<sup>178</sup>

By slamming the zoning orders, President Moi rode roughshod over the powers and privileges of the Electoral Commission. In an open breach of goodwill, he issued the order on zoning without informing the Chair of the Electoral Commission or communicating to the Commission thereafter.<sup>179</sup> After all, the President himself was a candidate bound to play within the Electoral Commission's regulations.

The Chair of the Electoral Commission, in a frank brief to the press, said that since presidential candidates had voters all over the country, including in security zones, he had interpreted the order to mean that presidential candidates would be allowed access to the zones.<sup>180</sup> He lamented that:

**It was widely felt that the 'Security Operation Zones' were designed to disrupt the campaign programmes of opposition parties.**

*It will be sad if the candidates will be denied access to such places. Once we get the details, arrangements will have to be made so that when they go there chances of violence are minimized by having security provisions to ensure that the people don't clash.*

Perhaps acting on the view that President Moi's statement did not have a legal basis, Opposition parties proceeded with their campaign programmes in the security zones. This put them on a collision course with the government. The Presidential aspirant on an SDP ticket, Mrs Charity Kaluki Ngilu, was stopped by police with cocked guns aimed at her convoy when she attempted to enter and campaign in the 'Security Operation Zones'. The police used tear gas to disperse her supporters along the Kisii Trans Mara road.<sup>181</sup>

<sup>178</sup> "Kivuitu Not Yet Briefed on Zoning", *Sunday Nation*, December 21, 1997, p. 2.

<sup>179</sup> Ibid.

<sup>180</sup> *Sunday Nation*, December 21, 1997, pp. 1-2.

Another presidential aspirant, Mr. Mwai Kibaki of DP, was also prevented from entering the area. President Moi criticised the opposition candidates, particularly, for defying his declaration.<sup>182</sup> Mrs Ngilu and Mr Kibaki argued that if KANU was serious about ending the clashes, it should have ordered the arrest of those behind the ethnic strife rather than zoning the area.<sup>183</sup>

Violence rocked the Gucha/Trans Mara area as KANU and Opposition supporters engaged in street fights. Four DP supporters were shot dead in the company of a parliamentary candidate for Bobasi constituency, Mr. O.D. Matoke. The four were on a campaign trail to Nyangusi Town when armed youths fired at them. SDP candidates were also attacked in Nyaribari Masaba constituency on December 19, 1997.<sup>184</sup>

Ethnic violence also escalated. Barely 24 hours after the declaration of the zones, four people, including two GSU personnel, were killed in a fight at Nyamesocho, Gucha District. Six other GSU and administration police were badly wounded and 100 heads of cattle stolen.<sup>185</sup>

On the eve of the elections on December 28, three brothers were killed by 'Maasai raiders' and four other people injured.<sup>186</sup> Johana Moi, Peterson Anyona and Johana Mayore were attacked in their compound in Ekona Yangare in Bomachoge Borabu location, Gucha District.<sup>187</sup> A total of seven people were reported killed and scores of others injured since the declaration of operation security zones, bringing the total of those killed in the Trans Mara/Gucha clashes to 42.

<sup>181</sup> "Chaos as Police Confront Ngilu", *Daily Nation*, December 20, 1997.

<sup>182</sup> "Defiant Ngilu Criticised", *Daily Nation*, December 21, 1997.

<sup>183</sup> *Daily Nation*, December 27, 1997.

<sup>184</sup> "Defiant Ngilu Criticized", *Daily Nation*, December 21, 1997.

<sup>185</sup> "GSU Men, Civilians Killed in Clash", *Daily Nation*, December 20, 1997.

<sup>186</sup> "Defiant Ngilu Criticized", *Daily Nation*, December 21, 1997.

<sup>187</sup> "Brothers Killed in Gucha Attack", *Daily Nation*, December 29, 1997.

KANU had the last laugh. In all, KANU won 10 out of a total of 12 parliamentary seats in the clash-torn zones in Nyanza-Trans Mara area. President Moi led in the presidential vote in 8 of the constituencies.<sup>188</sup> In Nyanza his presidential score shot from 14.5 percent in 1992 to 23.5 percent, thanks largely to the vote in the 'Security Operation Zone'. In the constituencies where KANU and President Moi lost, such as Bomachoge in Gucha, the effect of displacement, intimidation and harassment was patently clear. Here, nearly 40 percent of the registered voters did not cast their votes.<sup>189</sup>

<sup>188</sup> "Updated Election Results", *Daily Nation*, January 4, 1997.

<sup>189</sup> *Ibid.*



## Chapter 7

### Violence at the Coast

"KANU had to plan and execute the clashes so that majority of the up-country people supporting the Opposition could be evicted."

#### The Bloody August 13

Violence broke out in Likoni and its environs on the night of August 13, 1997. This was an integral part of the cesspool of violent clashes which rocked many parts of Kenya from the beginning of the year. A gang of armed raiders estimated at between 160 and 500 strong over-ran the Likoni police station, killed six police officers, and made away with 30—50 guns and between 3,000—5,000 rounds of live ammunition. In what was evidently well organized violence, than a spontaneous criminal activity, the raiders razed down the police station, the Likoni tourist police booth and a block which housed the officers of the District Officer and the Chief of the location, and set free prisoners from the police cells. The whole infrastructure of law and order came tumbling down.

Civilians from Likoni's Ujamaa village and other outlying villages were attacked. The orgy of violence claimed between 60—100 lives, while 200 people were injured and over 100,000 others displaced.<sup>190</sup> At its peak the violence engulfed sections of Mombasa, Kwale and Kilifi districts. The most affected areas, however, were Likoni, Ukunda, Matuga, and Msambweni in Mombasa and Kwale.

According to the testimonies of survivors of the violence, the raiders targeted the up-country people, referred to as *Wabara* (upcountry people) or *Wakirienge*

<sup>190</sup> African Rights, "Violence at the Coast: The Human Consequences of Kenya's Crumbling Political Institutions"; *Witness*, Issue 2, October—November 1997.

(those who speak alien dialects) by the Mijikenda inhabitants of the Coast.<sup>191</sup> These include the Kamba, Luo, Luhya, and Kikuyu, in that numerical order, among others (see Table 10). At the height of the clashes, between 4,000 and 5,000 up-country people camped in the various churches, particularly the Catholic Church in Likoni, the Cathedral, and Baptist High School in Mombasa Island.<sup>192</sup>

Between August and November, when the situation thawed, there were numerous incidences of killings, looting, rape, and displacement throughout Mombasa and Kwale. In September alone, serious raids were reported in Msambweni, Diani, Ukunda and Likoni.<sup>193</sup> All these were directed against up-country groups.

The violence had its roots in the politics of machinations and manoeuvres. Sources point to the fact that plans for the clashes may have been hatched as way back as February—March 1997.<sup>194</sup> The aim, as it shall be demonstrated later, was to destabilize the growing opposition in Likoni, Msambweni, Changamwe and Kisauni constituencies, in Kwale and Mombasa Districts.

As early as May 1997, veiled threats were issued to up-country people by some of their Mijikenda neighbours. A Luo resident in Msambweni, for example, is reported to have been pre-warned by a neighbour: "This time you will go and vote in your own home areas."<sup>195</sup> This threat was an obvious allusion to similar violence which occurred in 1992, just before the General Election. Hundreds of up-country people, especially the Luo and Luhya, were then attacked in what appeared a deliberate move to disenfranchise them. The 8,000 or so displaced persons, who camped at the Likoni Catholic Church, managed to return and vote.<sup>196</sup> This was never to be in 1997.

<sup>191</sup> The Mijikenda, or literary nine houses, include the following sub-groups: The Kambe, Chonyi, Rabai, Ribe, Giriama, Duruma, Jibana, Kauma and Digo. The Digo and the Duruma are the main groups in Kwale. Areas inhabited by the Digo were the most affected by the clashes.

<sup>192</sup> Interview with Agnes Mailu, Catholic Secretariat, Mombasa, 22nd November 1997.

<sup>193</sup> KHRC, *Quarterly Repression Report*, July—September 1997.

<sup>194</sup> KHRC, *Kayas of Deprivation, Kayas of Blood*, p. 19.

<sup>195</sup> *Ibid.*

<sup>196</sup> National Council of NGOs, *Investigation Report on Violence in Mombasa, Kwale and Kilifi Districts*, September, 1997, p. 8.

## The Political Context

The outbreak of violence at the Coast fits well into the larger theatre of national politics in 1997. It occurred as the constitutional reform movement was gaining foothold among the Coastal people. On July 26, for instance, a successful pro-reform rally which hosted by the NCEC was held in Mombasa.

The political agenda behind the clashes was to clip the wings of the opposition in the coast, for long considered a KANU turf. As one Mijikenda elder from Kaloleni, Kilifi District explained, the ruling party's stalwarts were wary of their political future as well as that of President Moi in the face of the soaring popularity of Opposition parties.<sup>197</sup> Consequently, "in a bid to stave off this growing opposition, KANU had to plan and execute the clashes so that majority of the up-country people supporting the Opposition could be evicted".<sup>198</sup> Depopulating opposition strongholds became an important strand of this agenda.

**Maitha disclosed that, "The recent 'tribal' clashes at the Coast are part of a larger KANU scheme to rig the December Elections."**

Among those mentioned by virtually all reports as being the architects of the clashes are KANU top guns and stalwarts at the Coast. A message in one of the numerous leaflets which were spread at the Coast at the time linked the clashes to a group of politicians calling itself the Five-Star: It read thus:

*Five-star is behind the violence, (Nicholas) Biwott, Sajjad, (Immanuel) Maitha, (Omar) Masumbuko, still have power to kill everywhere in Coast. The job is incomplete. It was a contract from somebody Big.*<sup>199</sup>

Omar Masumbuko<sup>200</sup> and Emmanuel Karisa Maitha, widely viewed at the time as KANU's pillars at the Coast, were arrested immediately after the Likoni raid. In an interview with the Kenyan Weekly, *The Star* in December, Maitha disclosed that: "The recent 'tribal' clashes at the Coast are part of a larger

<sup>197</sup> Cited *The Update*, No.56, September 30, 1997, p. 2.

<sup>198</sup> "Why Clashes Erupted in Mombasa", *The Update*, No. 56, September 30, 1997, p. 2.

<sup>199</sup> National Council of NGOs, *Report*, p. 8.

<sup>200</sup> Masumbuko, it is alleged, was once in the dreaded hit squad of the Ugandan dictator, Idi Amin Dada.

KANU scheme to rig the December elections."<sup>201</sup>

On August 20, President Moi's close adviser, and then Minister in the Office of the President, Mr. Nicholas Biwott and a KANU nominated MP, Mr Mohammed Sajjad were named in parliament as the underwriters of the violence at the Coast. They denied the accusation.

Father Mutua of the Catholic Cathedral in Mombasa strongly felt that the motive and style of executing the violence at the Coast must have been borrowed from the Rift Valley and Western Kenya where clashes erupted in 1991—1994, killing 1,500 and displacing 300,000.<sup>202</sup> But true to nearly all cases of informal violence, it has been extremely difficult to get hard-and fast evidence of state sponsorship of the violence.<sup>203</sup>

## State Involvement

One of the most chilling aspects regarding the new phenomenon of state-engineered informal repression, it should be reiterated, is that the government has usually denied any knowledge of or responsibility for it. Instead it passes the buck to its political opponents, or to unknown vigilantes.<sup>204</sup> This is true of the state's role in the Coastal violence.

Denying any government involvement in the clashes, President Moi blamed the violence on the 'evil men' whom he referred to as believers in 'small gods and ghosts'.<sup>205</sup> He later charged that the clashes were being fuelled by tribal sentiments.<sup>206</sup> In a face to face interview with the press on the eve of the 1997 General Election, President Moi did not only reiterate the government's lack

<sup>201</sup> "Clashes: KANU Plot Exposed: Senior Politicians Tells of Pre-Poll Rig Scheme", *The Star*, December 9—11, 1997.

<sup>202</sup> *The Update*, No. 56, September 30, 1997, p. 2.

<sup>203</sup> The KHRC, said in December that it would institute private prosecution against those implicated in the Likoni clashes. It also said it would file a civil case for compensation for people who lost their property in the violence. See, "Likoni: Rights Body to Sue", *Daily Nation*, December 3, 1997. Indeed, its two reports on the Likoni clashes: *Kayas of Deprivation, Kayas of Blood*, (1997) and *Kayas Revisited*, (1998) appear to embrace this agenda in their painstaking research.

<sup>204</sup> Human Rights Watch/Africa, *Divide and Rule*, p. 11.

<sup>205</sup> "Why Violence Erupted in Mombasa", *The Update*, No. 56, September 30, 1997, p. 2.

<sup>206</sup> *Ibid.*

of knowledge of the origin of the clashes but actually presented the government as a victim. He said:

*I must remind you that the first victims of the violence were my policemen. It is therefore, absurd and senseless to claim, like some politicians have done, that the government instigated the confrontation to make political gain. My belief is that politicians on both sides (of the political divide) instigated the violence as a means of making political capital and embarrassing my Government, especially with regard to tourism. As unfortunate as it is, some indigenous Coastal people took advantage of the situation and sought to settle scores with up-country people concerning employment and land issues among other perceived injustices. I must admit that we have not yet found the root cause of the violence. We are still seeking answers to this senseless violence. The problem is not as easy as those who love propaganda have made it appear.<sup>207</sup>*

In an apparent contradiction to this view, the Provincial Commissioner for Coast Province argued that the clashes were instigated by political leaders who were determined to make Kenya ungovernable.<sup>208</sup>

Church leaders, especially the CPK and Catholic clergy, were clear that the government knew exactly who the perpetrators of the violence were but was reluctant, to bring them to book. At a requiem service for those killed in the Likoni violence, for instance, bishops from the two mainstream churches demanded the end to the violence. They added the rider:

*It is not enough to plead with malefactors, you surely know who the culprits are and you have an inherent responsibility to let the law take its course in their regard.<sup>209</sup>*

A report by a team of church leaders placed the blame for the violence squarely on the doorsteps of the government:

*The fact that there is no definite explanation by the administration over the killings simply suggests that the government knows who are behind the clashes and how it will benefit the ruling party. If the violence at the Coast is not politically motivated, how can a security force of over 5,000 personnel fail to trace the raiders? Further more, why should only the*

<sup>207</sup> Interview with Bernard Nderitu, Editor, *Sunday Nation*, December 28, 1997.

<sup>208</sup> NGO Council, *Report*, 1997, p. 4.

<sup>209</sup> *Ibid.*

*opposition strongholds be targets of violence especially when it is an election year.<sup>210</sup>*

### The Paymaster and the 'Dogs of War'

The use of vigilantes and mysterious 'warriors' is a favourite strategy of governments to avoid international censure in regard to their role in instigating and perpetrating terror for political ends. Unsurprisingly, the perpetrators of the Coast violence were said to be Mijikenda 'warriors'.

As in the case of the Kalenjin 'warriors' during the clashes of 1991—95 in the Rift Valley, the 'Mijikenda' fighters were not mere 'warriors'. They were trained in guerrilla warfare in Shimba Hills, Kaya Bombo, Kaya Waa and Similani caves in Kwale. Their trainers were ex-servicemen, Swahili-speaking Hutu refugees from Rwanda and a few Ugandans.<sup>211</sup> The army of warriors is also said to have included in its ranks non-Coastal members who were earlier trained at the Maasai Mara game reserve.<sup>212</sup>

Like the Kalenjin 'warriors' and the Rift Valley KANU stalwarts, the perpetrators of the Coast violence advocated majimboism, especially its aspect of ethnic cleansing. Indeed, recruits to the army of attackers were informed that they were undergoing training as part of the security arrangement for *Mzee* (meaning the President) during the forthcoming general election.<sup>213</sup>

The more rustic and traditional the warriors looked, the easier it was for the government to deny responsibility. Thus the raiders dressed in short pants, red headbands and traditional *kanzus* (cotton dresses), while others were dressed army- or police-style. Besides being armed with guns, they also wielded arrows, bows, spears and machetes to portray the necessary image of 'traditional' warriors. They are also said to have taken a traditional oath to bind them to fight.<sup>214</sup>

**Church leaders, were clear that the government knew exactly who the perpetrators of the violence were but was reluctant, to bring them to book.**

<sup>210</sup> NGO Council, *Report*, 1997, p. 4.

<sup>211</sup> KHRC, *Kayas of Deprivation, Kayas of Blood*, pp. 26—37.

<sup>212</sup> *Ibid.*

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*, and African Rights, *Violence at the Coast*, p. 14.

This was no ordinary band of 'traditional' raiders. It was able to withstand heavy operations carried out by 'crack' security units including the dreaded paramilitary GSU, the Anti-stock Theft Unit, the Flying Police Squad, regular Administration Police and the Navy. In fact, it is reported that at one stage, they engaged government security forces in a number of shoot-outs including a three-hour pitched-battle in the Kaya Bombo area in which three administration police were killed.<sup>215</sup>

### The Conduct of Security Forces

The conduct of the security forces throughout the period of their operation is one of the most convincing signs of state complicity in the violence. While the government was fully aware of the havoc and intensity of the raiders' violence, it simply mounted security operations without declaring the area a security operation zone as it did in Molo-Londiani and Burnt Forest areas of Nakuru in 1993 or later in the Gucha/Trans-Mara area in December 1997.

**Owing to its economic potential as a tourist attraction, Coast province has been a theatre of the worst cases of land 'grabbing' by state bureaucrats, well-placed politicians, and business elite.**

On August 22, President Moi issued a seven day ultimatum for weapons to be surrendered. The deadline was later extended by ten days to September 9. Besides producing few weapons, the ultimatum forced more people to abandon Likoni in anticipation of a heavy crackdown by security forces. Many upcountry people read the deadline to mean an ultimatum for them to leave their homes.<sup>216</sup> Two days after the deadline had expired, attacks escalated around Diani beach and Ukunda areas.

The government never made good its promise of a massive security operation in the area involving some 20,000 troops. There were reports that the army and navy were called in to quell the violence on August 16. But they were recalled as quickly and as unceremoniously as they had been deployed. The popular theory is that the two forces had virtually crossed in on the raiders and were on the verge of bringing the violence to a rapid end. Those behind the

<sup>215</sup> African Rights, *Violence at the Coast*, p.15.

<sup>216</sup> See KHRC, *Kayas of Deprivation, Kayas of Blood*.



Security forces in action at the Coast.

violence, however, the theory goes, were not prepared to end the bloodbath so soon, for political reasons.<sup>217</sup>

Although the clashes had lulled by December 22, President Moi declared that 24 guns out of the 44 guns stolen during the August 13 raid at the Likoni Police Station in Mombasa were still missing and their holders still at large. He promised that the police would continue hunting for the missing guns, and said that he would only consider granting amnesty to over 200 suspects arrested in connection with the Likoni violence if all the guns were surrendered.<sup>218</sup>

Responding to these remarks, Sheikh Amir Banda cuttingly retorted: "What guns and from whom? You only ask back from those that you know. He is threatening the people."<sup>219</sup> From the foregoing it is clear that the security forces were not willing partners with the people in the search for peace.

### Exploitation of Genuine Grievances

The planners of the clashes ingeniously turned what was KANU's bane into a major political tool. They exploited popular grievances among the Mijikenda arising from land grabbing, and economic marginalization as the basis of the violence. Owing to its economic potential as a tourist attraction, Coast province has been a theatre of the worst cases of land 'grabbing' by state bureaucrats, well-placed politicians, and business elite rather than the poor upcountry migrants.

In Ukunda, Kwale District, for instance, 21 acres of land meant for Jihad mosque was given to the neighbouring Leisure Lodge. The Muslims in the area successfully sought a court injunction to stop the management from taking over the land. Despite being restrained by the court, the lodge took over the plot. By the time the clashes erupted construction on the plot was at an advanced stage.<sup>220</sup> Again, 300 Digo families lost ownership of their land between Ukunda and Diani to up-country tycoons with strong political connections. The land was later subdivided and sold to investors and individual tycoons.<sup>221</sup>

<sup>217</sup> KHRC, *Kayas of Deprivation, Kayas of Blood*, p. 39.

<sup>218</sup> "Moi: 24 Guns Still Missing", *Daily Nation*, December 23, 1997.

<sup>219</sup> Interview with Sheikh Amir Banda, Ukunda, December 22, 1997.

<sup>220</sup> *The Update*, No. 56, September 30, 1997. p. 2.

<sup>221</sup> *Ibid.*

Another case involved 340 Digo families who were displaced from Chidze village in Ukunda in 1989. The families were not given alternative settlement. Four houses were burned down when their owners refused to vacate. Among those involved in the heinous deal were KANU leaders, including some Digo Members of Parliament.<sup>222</sup>

In December 1997, Omar Masumbuko was taken to court for fraudulently acquiring land belonging to the African Inland Church and mortgaging it to the National Bank of Kenya at Ksh. 11 million (approx. \$ 177,419). In acquiring the land, Masumbuko is said to have connived with the Commissioner of Lands. Evidence brought before the court indicated that the six acre piece of land was allocated to the church by President Moi in 1996. But Mr. Masumbuko alleged that the land had also been allocated to him by President Moi in 1991.<sup>223</sup> Nominated MP, Rashid Sajjad, is embroiled in a case where he is accused of grabbing the Kenyatta public beach in Mombasa.<sup>224</sup>

The relationship between the ordinary up-country people and their Mijikenda neighbours, however, was not so bad as to warrant a full-scale ethnic clash. Most of them were tenants who rented houses, shops and even leased small plots of land from the Digo. The well-to-do among the up-country people had purchased plots. As Sheikh Amir Banda states:

*Relations between the Mijikenda and upcountry people have been good. They even have married among us, they do business with us, rent our houses and shops and lease or buy land from us. When the violence erupted, locals had no knowledge. They wondered what caused the war.*<sup>225</sup>

Former councillors Ramadhani Mwangumo (Likoni) and Ahmed Juma Mwasharifu (Shika Adabu) said that the Likoni violence was alien to the region and could only be seen as politically motivated by a group of certain politicians.<sup>226</sup>

<sup>222</sup> Interview with Amir Mohammed, Ukunda, Kwale, Dec. 22, 1997.

<sup>223</sup> "Church in Land Row: Masumbuko 'Acquired Church Land by Fraud'", *Daily Nation*, December 11, 1997.

<sup>224</sup> "Arabs versus Africans Racial War Brewing at Coast", *Kenya Confidential*, April 10—15, 1998.

<sup>225</sup> Interview with Sheikh Banda, Ukunda, December 22, 1997.

<sup>226</sup> National Council of NGOs, *Report*, p. 9.

## The Growing Opposition

The government employed a two-pronged strategy of containing the opposition at the Coast. First, it refused to legalize coast-based parties. Second, it used informal means to harass and intimidate upcountry parties in order to weaken and undercut their influence at the Coast. The three coast-based parties which were formed after 1992, the Islamic Party of Kenya (IPK), the National Democratic Union (NADU), and the United Muslims of Africa (UMA) were denied registration.

To circumvent the legal restriction the IPK adopted a strategy of entering into pacts with up-country parties. In 1992, for instance, it entered into a pact with FORD-Kenya which had a massive support from the Luo and Luhya population in Mombasa. The pact involved, among other things, allowing the IPK to nominate most of the candidates at the civic and parliamentary levels while, in return the IPK would back the presidential bid of FORD-K leader, the late Jaramogi Oginga Odinga. The pact, delivered the Kisauni and Likoni seats to FORD-K and a sizeable number of civic seats.<sup>227</sup>

In 1997, the IPK entered into a new alliance with the National Development Party led by Raila Odinga.<sup>228</sup> Some of the IPK radical intellectual activists such as Munir Mazrui of NCEC/NCA and SUPKEM, Omar Bwana (a former Director of Museums), Khelef Khalifa, a founder member of the IPK, among others, forged links with Safina which was registered in November 1997.<sup>229</sup>

Way back in 1992, a significant section of the Mijikenda population in Likoni and Kwale coalesced around the National Democratic Union (NADU). Adhering to a federalist policy, it sought for the liberation of the coastal people from 'internal colonization' by up-country groups.<sup>230</sup> NADU was denied registration.

The United Muslims of Africa (UMA), was formed in 1993 by Omar Masumbuko, once the Coast-based leader of the Youth for KANU '92, the defunct multi-million lobby for KANU during the 1992 elections, "to promote the interests of Muslims of African origin".<sup>231</sup> UMA embarked on withering

<sup>227</sup> "How Coast Will Vote", *The People*, December 5—11, 1997.

<sup>228</sup> Ibid.

<sup>229</sup> Ibid.

<sup>230</sup> KHRC, *Kayas of Deprivation, Kayas of Blood*, p. 18.

<sup>231</sup> Ibid, p. 27.

racial diatribe against the Kenyan Arabs revealing its identity as a KANU marionette, meant to undermine the IPK.<sup>232</sup> It was part of KANU's scheme of recapturing political space in Mombasa which it had lost the IPK.<sup>233</sup>

By 1997, KANU's Mijikenda supporters were growing restless. It was Mr. Emmanuel Karisa Maitha, then a KANU activist, who vividly articulated the Mijikenda elites' position:

*We, (the Mijikenda) delivered eight parliamentary seats to KANU in the 1992 elections, but our intellectuals are being sidelined in regard to public appointments. Coastal intellectuals of Arab origin were the only ones who benefited from substantive appointments in the KANU government. We do not have as many ambassadors as our Arab friends but the Arab community has five ambassadors. Rashid Sajjad who has been nominated to parliament was recently appointed to head the Kenya Ports Authority where he has made a lot of money.*<sup>234</sup>

These are some the challenges that the clashes were meant to tackle.

## Killing the Vote

The violence at the Coast was concentrated on Likoni, Ukunda, Matuga and Msambweni in Mombasa and Kwale Districts. This is no coincidence because the clashes largely targeted up-country people who were also concentrated in the areas.

The total caseload of registered voters in Mombasa District in the 1997 elections was 268,353 while in Kwale the number was 131,482 voters. It is difficult to get the exact figures of up-country voters. But going by their proportion in the areas' population, they may have constituted almost 50 per cent in Mo-

<sup>232</sup> KHRC, *Kayas of Deprivation, Kayas of Blood*, p. 18.

<sup>233</sup> The KANU regime pushed its anti-IPK war to an absurd degree when it took away the citizenship rights of the fiery Islamic preacher and founder-member of the IPK, Sheikh Khalid Balala. It insisted that Balala was not Kenyan but a Yemeni while the government of Yemen denied this. By the time the government gave in to public pressure and allowed Balala back into the country in the late 1997, he was already disenfranchised, having not registered as a voter, and his influence in the IPK had waned drastically.

<sup>234</sup> See "Clashes: KANU Plot Exposed: Senior politician Tells of Pre-Poll Rig Scheme," *The Star*, December 9—11, 1997. After losing in the KANU nominations, Maitha defected to the opposition Democratic Party in November 1997 and subsequently contested and won the 1997 parliamentary elections on the party's ticket. Like a born again Christian, he has since denounced KANU's activities in Mombasa.

mbasa and about 15 per cent in Kwale (see table 10). What is significant about these figures is that the up-country population was concentrated in specific areas, namely, Likoni, Kisauni, Mvita, and Changamwe constituencies in Mombasa and Msambweni in Kwale.

**Table 10: The Population of the Main Up-country Groups in Mombasa and Kwale Districts (1989)**

Group	Mombasa ..... % of Total	Kwale ... % of Total
Luo	64,088 ..... 13.88	4,445 ..... 1.16
Luhya	42,790 ..... 9.27	3,060 ..... 0.80
Kamba	54,842 ..... 12.53	34,143 ..... 8.91
Kikuyu	29,099 ..... 6.30	4,013 ..... 1.05
Mijikenda (Coastal)	128,860 ..... 27.91	316,240 ..... 82.56
Taita (Coastal)	31,041 ..... 6.72	3,288 ..... 0.86
<b>TOTAL</b>	<b>461,753 ..... 100.00</b>	<b>383,053 ..... 100.00</b>

Source: Republic of Kenya, *Population Census 1989, Vol 1*, March 1994.

The heavy presence of up-country voters explains the high rate of voter registration in Changamwe (78,554), Kisauni (76,591), Likoni (42,367), Mvita (70,841) and Msambweni (60,203) compared to other constituencies in Kwale and Kilifi Districts which, on the average, registered about 30,000 voters.<sup>235</sup>

It is estimated that displacement of up-country people ranged between 75 per cent and 100 percent in those areas directly hit by the violence.<sup>236</sup> Displacement, however, did not automatically lead to disenfranchisement.

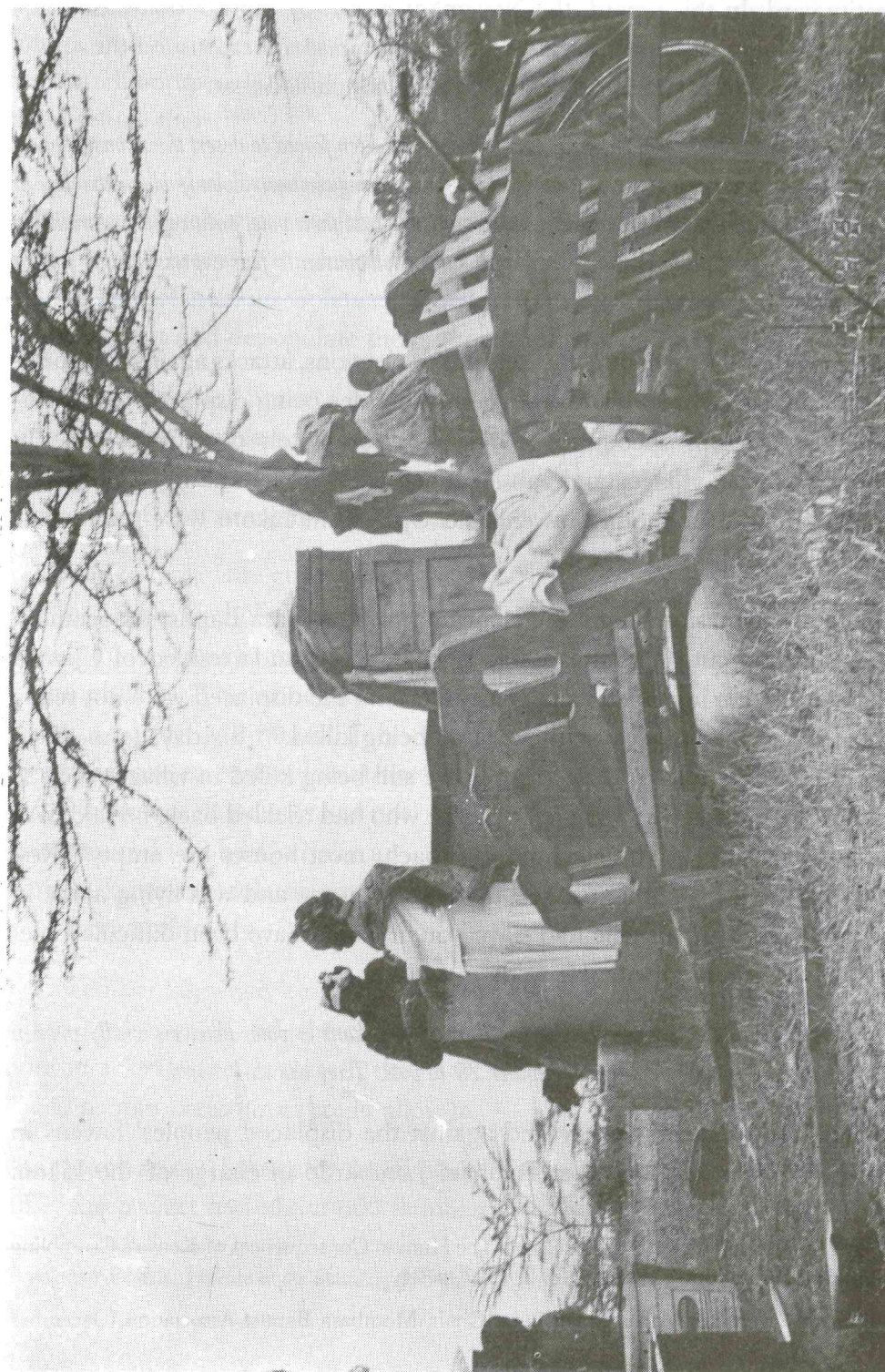
As earlier noted, in 1992 thousands of up-country people displaced from Likoni were able to return to their homes and vote.

The 1997 clashes led to virtual disenfranchisement of the victims. Interviews with officials in the Catholic Secretariat, which hosted about 6,500 displaced people from Likoni, indicated that almost a third of the displaced had lost their identification documents such as identity cards, title deeds, and drivers' licences during the attack.<sup>237</sup> In order to vote one must have either a passport, or an

<sup>235</sup> "The Presidential Race Table", *Daily Nation*, January 4, 1998, p. 18.

<sup>236</sup> KHRC, *Kayas of Deprivation*, p. 49.

<sup>237</sup> Interview with Agnes Mailu, in charge of the Displaced, Catholic Secretariat Mombasa, December 23, 1997.



Displaced and disenfranchised: Violence victims in a camp.

identity card. In this regard, the November report of the London-based human rights organization, African Rights, whose researchers visited the clash-torn areas in Mombasa in September rightly concluded that:

*For the many registered voters in Likoni who have been forced to desert their constituency, there is little chance of participating in the forthcoming election. Even if voters are able to return eventually to their constituency, in order to cast their vote, political terror makes a farce of 'democratic elections' as people have good reason to fear expressing any sort of political preference.*<sup>238</sup>

In the two months preceding the December elections, attacks against up-country voters were stepped up. Consequently, besides being displaced and disinherited, the Likoni upcountry people were completely disenfranchised. By November, some villages and sub-locations with predominantly up-country population such as Shoda-Maweni and Ujamaa in Likoni were reduced to ghost villages.<sup>239</sup>

Reverend Athanasius Muga, the chairman of Mombasa Baptist Association, which hosted about 100 victims at Baptist High School and a resident of Ujamaa village in Likoni, informed us in December that the displaced were not ready to go back to Likoni because they feared being killed.<sup>240</sup> Six days to the elections, Rev Muga told us that: "People are still being killed in villages such as Ujamaa." Of those who were left or those who had trickled back, he said "We are living in fear. As the elections approach, most houses are empty." Rev. Muga had sent his family to their up-country home and was living alone in Likoni. But even if his wife had stayed on, it would have been difficult to get her to go to Likoni to vote. He said:

*It is difficult to convince the displaced to go to Likoni to vote. Few, especially women voters, will go to Likoni on December 29 to vote. They are still scared.*<sup>241</sup>

A campaign of terror was waged against the displaced peoples' havens in churches. According to Father Raphael Lombardo in charge of the Likoni

<sup>238</sup> African Rights, "Violence at the Coast: The Human Consequences of Kenya's Crumbling Political Institutions", *Witness*, No. 2, 1997, p. 24.

<sup>239</sup> Interview with Rev. Athanasius Muga, Chair, Mombasa Baptist Association, December 23, 1997.

<sup>240</sup> Ibid.

<sup>241</sup> Ibid.

Catholic Church, terror gangs continued to intimidate those inside the compound. In a daring move on August 22, raiders attacked the displaced within the church compound, killing two people and injuring a policeman who had taken refuge there.<sup>242</sup>

Compared to what happened in 1992, Father Lombardo said the 1997 incursions were "much more violent than before. It is so cruel, so terrible. It is senseless and brutal – the hatchets and the killings are sickening..."<sup>243</sup> This was the kind of heinous violence needed to translate displacement into disenfranchisement and depopulate these opposition strongholds.

According to Pastor Ernest Ombava, in charge of the Baptist High School's camp, 'strange' people were jumping over the wall of the compound and intimidating the internal refugees. After the Pastor reported the incidences to the police one of the 'strangers' suspected to be a 'warrior' was shot.<sup>244</sup>

In a strange move, the government gave the Likoni Catholic Church an ultimatum to force the refugees out of the church. This shocked the Archbishop of Mombasa, John Njenga, who rejected the ultimatum saying the refugee's security had not been assured.<sup>245</sup> The Catholic authorities, however, took the government threats seriously.

**In the two months preceding the elections, attacks were stepped up, consequently, besides being displaced and disinherited, the up-country people were also completely disenfranchised.**

By December 22, when we visited both the Likoni Church and the Cathedral within Mombasa Island, the compounds were completely deserted. Fearing more attacks on the displaced, the church undertook to settle as many displaced people as resources could allow it.

The church rented houses for the displaced for two months. By November 22, 1997, the project had about 600 families which were housed, fed and given

<sup>242</sup> African Rights, *Violence at the Coast...*, p. 6–7.

<sup>243</sup> Ibid, p. 7.

<sup>244</sup> Ibid.

<sup>245</sup> KHRC, *Quarterly Repression Report: July–September 1997*, p. 17.



medical care by the church.<sup>246</sup> Individuals and families, housed by friends and relatives, also obtained food rations and came to the Church's clinic for medical services as ways of supplementing the support from their hosts.<sup>247</sup>

In spite of all these efforts the environment was still unfavourable for the displaced to vote. While some of the displaced were determined to vote, others had despaired. One opposition activist in Likoni captured this disillusionment with these words:

*I voted for the opposition last time (1992), and we managed to get our MP, Salim Mwavumo, elected in Likoni. Since this crisis we've seen him talking on television... He is scared. This is an opposition stronghold, and we think the government must know that we intend it to remain an opposition stronghold. I think the government has a plan and thinks it can create chaos on a temporary basis... It is chaos for a short duration... that's the thinking behind it. I don't think it will be possible for me to vote this time because things are getting worse. I don't think there should be an election when things like this are going on.*

Another displaced victim lamented that:

*The election is going to be the worst election. They have interfered, they have killed, they have burned peoples' homes and property. Mombasa area is a KANU zone now. Most people from up-country are for the Opposition, they want to interfere with the opposition vote. I will never vote for the government.*<sup>248</sup>

More threats to the upcountry voters came from the activists of the newly registered Shirikisho Party of Kenya (SPK).<sup>249</sup> According to Rev. Muga, activists of Shirikisho were warning the up-country people that: "If you don't vote for the party, you will not stay here after the elections."<sup>250</sup> There were reports of leaflets warning up-country people that after mid-night of December 28, the eve of the election day, they should move away. Consequently, very few up-country people turned up for elections.<sup>251</sup>

<sup>246</sup> Interview with Agnes Mailu, in charge of the resettlement project, December 23, 1997.

<sup>247</sup> Ibid.

<sup>248</sup> Ibid, p. 26.

<sup>249</sup> The political agenda of SPK is discussed in the next section.

<sup>250</sup> Interview with Rev. Athanasius Muga, Mombasa, Dec. 23, 1997.

<sup>251</sup> Ibid.

Partly because of massive displacement, violence and intimidation of voters, especially the upcountry ones, KANU's parliamentary strength in Mombasa increased from one seat in 1992 to two seats after the elections.<sup>252</sup> It also retained all the seats in Kwale District. President Moi led in all constituencies at the Coast including traditionally opposition strongholds. His presidential vote rose from an average of 33.89 percent in 1992 to about 42 percent in 1997 in the four constituencies of Mombasa-Changamwe, Kisauni, Likoni and Mvita.<sup>253</sup> The rise was even more dramatic in Likoni, the scene of the worst cases of ethnic clashes. While in 1992 President Moi had scored 31.165 percent, in 1997 he garnered 41.5 percent of the vote.<sup>254</sup>

Voter turn-out in the two districts, was one of the lowest in the whole country. In the four constituencies of Mombasa, voter turn-out averaged 38 per cent. It was worse in Likoni and Mvita where only 37.4 per cent and 25.22 per cent of the total registered voters, respectively, turned out to vote.<sup>255</sup>

The Likoni seat went to the newly registered Shirikisho Party of Kenya (SPK). FORD-K, which earlier held the seat, came a dismal fourth, thanks to the displacement of its supporters. The SPK, however, did not have a presidential candidate. President Moi took 44.2 per cent of the vote, a major improvement from 31.2 in 1992.<sup>256</sup>

<sup>252</sup> All the statistical information presented here is derived from the results of the parliamentary and Presidential elections tables, *Daily Nation*, January 5, 1998 and NEMU Report, pp. 191—222.

<sup>253</sup> *Daily Nation*, January 5, 1998.

<sup>254</sup> Ibid.

<sup>255</sup> Ibid.

<sup>256</sup> Ibid.

## Chapter 8

### Reaping the Whirlwind: The Mijikenda Victims of Violence

"KANU was using the occasion of a security operation to intimidate and silence its opponents among the local residents."

While the up-country people were murdered, mutilated, tortured and raped by the marauding raiders, it was the Mijikenda, specifically the Digo, who faced the full brunt of the reprisal by the security forces.

According to Digo leaders, the locals suffered more than the up-country people from the violence.

*Most of them were beaten up by the GSU. They could not go to the hospital. Some taken to a place called Magandia, a calcium manufacturing plant in Ukunda, and dumped there in full lorries. I think the numbers of people who died during the security operation were more than those who died as a result of attacks by raiders. In all, I think over 300 people, including the 65 official figure died in the whole process.*<sup>257</sup>

Charges of arbitrary arrests, harassment of innocent civilians and extortion of huge sums of money from the Digos, in order to buy their peace and freedom from the police, were rampant.<sup>258</sup>

Even diehard KANU stalwarts were taken aback by the intensity of violence against the Digo. An example is Emmanuel Maitha, who was briefly arrested as one of the organizers of the violence. He charged:

*The Mijikenda are angry with the ruling party; its security agents have vandalized*

<sup>257</sup> Interview with Sheikh Amir Banda, December 22, 1997.

<sup>258</sup> African Rights, *Violence at the Coast*, pp. 18—19.

*homes, raped women and consigned communities to destitution under the pretext of flushing out 'clash perpetrators'.*<sup>259</sup>

On September 3, the Coast Deputy Provincial Commissioner, Mr. Hassan Haji, admitted that a GSU officer had been arrested on suspicion that he tortured residents, after some locals protested against rape, beatings and harassment.<sup>260</sup>

The next on the line were Muslim clerics, intellectuals, and ex-soldiers. Many were arrested and detained in police custody for long periods. Among those arrested were the head of the Masjid Markaz mosque in Ukunda, Sheikh Hamisi Amir Banda, Prof. Alamin Mazrui of KHRC, Ali Chizondo, Imam of Msambweni Mosque, Jumbe Rashid Tosha and Khelef Khalifa, a founder member of the IPK. As the story of Sheikh Amir Banda reveals, these were subjected to abuses and torture:

*On August 16, at 6.00 a.m., someone came and told me that I was being called by the District Commissioner of Kwale. I eventually landed in Shimo la Tewa prison where I was tortured. I was supposed to tell them who caused the violence. I had nothing to say because in the first place I did not know anything.*<sup>261</sup>

Sheikh Banda stayed in jail for two months. He was accused of raiding the Likoni Police Station and killing policemen on August 13. His interrogators sought to know why he was killing people, burning houses, supporting federalism and, more tellingly, why he was opposing Msambweni KANU MP Kassim Mwamzandi.<sup>262</sup>

Virtually all those arrested were radical Muslim preachers and intellectuals with either IPK and/or NCEC links or supported reforms. Seemingly, KANU was using the occasion of a security operation to intimidate and silence its opponents among the local residents.

There were numerous reports of excessive use of force and wanton cruelty and killing of civilians by the GSU. A five-year-old girl at Neema in Mwakamba village sustained injuries in the ears after she was slapped by G.S.U men.<sup>263</sup>

<sup>259</sup> *The Star*, December 9—11, 1997.

<sup>260</sup> African Rights, *Violence at the Coast*, 1997, p. 18.

<sup>261</sup> Interview with Sheikh Banda, Ukunda, December 22, 1997.

<sup>262</sup> "Coast Killings: Torture, Arrests but no Clue Yet", *Expression Today*, October 3, 1997.

<sup>263</sup> *Ibid.* p. 2.

The Masjid Noor Mosque had 20 bullet holes which the Imam, Sheikh Jamal, said was the work of GSU officers. Four faithful, Said Juma Kazuri, Ali Juma, Hijja John and Salim Kwaya were killed in cold blood by the GSU at the Mosque.<sup>264</sup> Indeed, the Imams challenged the government to state whether it had singled out Muslim clerics and faithful for torture and harassment. Moreover, they warned of possible resistance from the Muslims if this did not stop.<sup>265</sup>

Mijikenda ex-servicemen were arrested, tortured and released without charge. On September 20, the then District Officer for Kaloleni, Mr Edward Manani, was quoted in the press asking all ex-soldiers from his division to report to his office for unspecified reasons. Parents of ex-soldiers were summoned by chiefs to disclose the whereabouts of their sons.<sup>266</sup> The ex-servicemen warned that if harassment continued "they will be forced to defend themselves".<sup>267</sup>

As a result, as many as 800 displaced persons, mainly Digo, fled their homes in fear of harassment from the G.S.U. and took refuge in Mosques. Researchers recorded 100 people were camped at Sarkina mosque in Mombasa; 137 families (411 people) in Markaz mosque, Ukunda; 200 people at Ridhiwani mosque, Ukunda, and; 30 people at Nuru mosque, Ukunda. Hundreds of others fled to Lunga Lunga, Tanzania.<sup>268</sup> Others shifted residence and moved to less dangerous areas such as Diani Beach.

By September, the police had picked up so many young Mijikenda men that President Moi had to order them to release the innocent ones.<sup>269</sup> Over 218 suspects, all Digo, were held at Shimo la Tewa prison by December. One of them, Mr. Michael Nyamawi, died in December while in custody.<sup>270</sup> While on a campaign tour in Kwale District, President Moi asked the police to drop the charges against an elderly woman arrested on suspicion of collaborating with the Likoni raiders.<sup>271</sup> He was responding to a public plea by the Msambweni

<sup>264</sup> *Expression Today*, October 3, 1997. p. 2.

<sup>265</sup> *Ibid.*

<sup>266</sup> *Ibid.*

<sup>267</sup> *Ibid.*

<sup>268</sup> National Council of NGOs, *Report*, 1997, p. 11

<sup>269</sup> African Rights, *Violence at the Coast...*, p. 19

<sup>270</sup> *Daily Nation*, December 24, 1997.

<sup>271</sup> "Moi: 24 Guns still Missing", *Daily Nation*, December 23, 1997.

KANU aspirant, Ms. Marere wa Mwachai that he sets free those arrested in connection with the Likoni violence unconditionally. President Moi said he would only consider granting amnesty to suspects if all the guns were surrendered.

### **Ethnic Revival in Mijikenda Politics: The Rise of the 'Shirikisho' Party**

Initially, it seemed like the Likoni-Kwale violence had boomeranged on KANU. The party's stalwarts, including all the sitting Members of Parliament in Kwale – Boy Juma Boy (Matuga), Kassim Mwamzandi (Msambweni) and Ngozi Rai (Kinango) – were defeated at KANU party nominations. Some of the up-coming KANU leaders such as Ms Marere wa Mwachai, in Msambweni, were initially opposition activists.<sup>272</sup>

After nominations, key Mijikenda KANU activists such as Emmanuel Maitha decamped to the opposition. Moreover, they began to advocate federalism as a means of ensuring ethnic equity and development of the Mijikenda.

Against a backdrop of the mounting tide of Mijikenda ethno-nationalism, the government registered the first coast-based party, the Shirikisho Party of Kenya (SPK), in November 1997. While the new party espoused federalism, its leaders, mostly Mijikenda intellectuals, rejected ethnic cleansing of the majimboist mould.<sup>273</sup> The new party was strongest around the areas of Ukunda, Likoni, Msambweni and Matuga which were affected by the clashes.

The party argued that the Digo community had suffered under KANU government and called upon the entire Mijikenda community to reject KANU in solidarity with Digo still suffering under the pretext that they invaded the Likoni

<sup>272</sup> Ms. wa Mwachai had stood on a Democratic Party ticket during the 1992 elections. Garnering 41.42% of the vote, she came a respectable second to Kanu's Kassim Mwamzandi.

<sup>273</sup> "Shirikisho not for Tribalism", *Daily Nation*, December 22, 1997.

**The most plausible explanation for the belated registration of Shirikisho party is that this was a strategy by the KANU government to divide the Arab-Swahili and Mijikenda voters at the Coast for easy control.**

police station and stole guns in August.<sup>274</sup> The party portrayed itself as the liberator of the Mijikenda against KANU.

During the December elections, the Shirikisho party became a formidable political force in the Kwale-Likoni area. It fielded nine parliamentary candidates in the area, but no presidential contender. By mid December, Shirikisho had begun to pose a threat to KANU itself.

It is in this context that the Registrar-General threatened to deregister the party in mid December. He warned the party that it risked deregistration for allegedly inciting people to violence. On December 11, he gave the party six days within which to respond:

*I would like to strongly caution your party against inciting people at the Coast and other criminal activities that are likely to endanger peace and good order.*<sup>275</sup>

Although the party was later cleared of the charges, the Registrar-General said that the party would be kept under surveillance.

During the December elections, the Likoni Shirikisho parliamentary candidate, S.R. Shakombo, won the seat, previously held by another opposition party, FORD-K. Shakombo was a king pin in the clashes.<sup>276</sup> In Msambweni, the party came third while in Matuga its candidate Mr. Mwangomba Mwapeu, came a respectable second.

Coming hard on the heels of the government's refusal to give legal recognition to other Coast-based parties such as the IPK and the National Democratic Union (NADU), the registration of Shirikisho in November 1997 appeared to have a sinister ring. Like the NADU, Shirikisho is a federalist party. Way back in 1992, NADU, which espoused a majimbo system and sought the 'liberation' of the Digo population from 'internal colonialism', was denied registration because it, then, appeared to the Registrar that "the interests of peace, welfare and good order in Kenya would be likely to suffer prejudice by reasons of your registration as a society".<sup>277</sup>

<sup>274</sup> *Daily Nation*, December 22, 1997.

<sup>275</sup> "Five Parties Summoned over Violence", *Daily Nation*, December 23, 1997; "Party Cleared of Incitement Claims", *Daily Nation*, December 27, 1997.

<sup>276</sup> KHRC, *Kayas Revisited*.

<sup>277</sup> *Ibid*, *Kayas of Deprivation, Kayas of Blood*, p. 18.

The most plausible explanation for the belated registration of Shirikisho party is, therefore, that this was a strategy by the KANU leaders to divide the Arab-Swahili and Mijikenda voters at the Coast for easy control. KANU lost political control over the crucial port town of Mombasa to the opposition during the 1992 election. In the inter-election period, the party's activists in Mombasa were engaged in running street battles with the followers of the mainly Arab-Swahili Islamic Party of Kenya (IPK).

The Likoni-Kwale clashes were part of KANU's larger scheme to violently displace the up-country allies of the unregistered IPK, especially the Luo, ahead of the 1997 elections. It was their numerical power, more than that of any other up-country group, that enabled the IPK-sponsored FORD-Kenya candidate, Mr Salim Mwavumo, to win the Likoni parliamentary seat in the 1992 elections. In light of this, the Luo as a group would become the prime targets of the raiders in 1997.

Having succeeded in displacing the up-country voters, the electoral base of the IPK-sponsored candidates in the coast, the next step was to ensure that the Islamic factor did not become a rallying point for the unity of Arab-Swahili and the Mijikenda voters. To that end, coastal KANU activists encouraged the mobilization of the Mijikenda, particularly the Digo, along ethno-racial lines in order to divide the two Coastal groups. The registration of the SPK was a milestone towards this objective.

The final step was to keep the SPK on an even keel to prevent it from undermining KANU's foothold among the Mijikenda. The government used its prerogative to register or deregister parties to achieve this end. This possibility of deregistration threateningly hung over the head of the SPK.

Through a subtle combination of intimidation and violence, KANU won its battle of life in the Coast against its upcountry and IPK foes. The IPK, lost the Likoni seat to Mr Shakombo, a seasoned KANU leader now in a Shirikisho Party garb. It also lost the Kisauni seat, previously held by Rashid Mzee, to yet

**Informal repression and violence, displacement, and ethnic recidivism, encouraged by the state at the Coast, produced flawed elections, which, in turn, have undermined the democratic process.**

another KANU old-timer, Karisa Maitha, who had defected to the Democratic Party. Both the Changamwe and Mvita parliamentary seats went to KANU which, in addition, scooped all seats in Kwale. Violence, displacement, and ethnic recidivism, encouraged by the state at the Coast, produced flawed elections, which, in turn, have undermined the democratic process.

Internal repression and violence, displacement and ethnic recidivism, encouraged by the state at the Coast, produced flawed elections which in turn have undermined the democratic process.

## Conclusion

- Since 1991, when Kenya reverted to a multi-party system of political management, a new phenomenon of state-sponsored, but increasingly informal, terrorism has become a permanent feature.
- The KANU elite of the one-party vintage has employed this underhand and clearly criminal mechanism of sponsoring communal violence to derail multi-partyism and give a new lease of life to the restrictive structures of the one party era.
- State-sponsored terrorism occurred in the run up to and immediately after the General Elections of 1992 and 1997. While pre-election violence has been instigated to pre-determine the outcome of multi-party elections, post-election violence has been employed to punish those sections of society which voted for the opposition parties and to reassert the authority of the ruling party among them.
- In regard to pre-determining the outcome of multi-party elections, pre-election violence has served the following specific purposes:
  - ◇ Depopulation of opposition strongholds. Mass killing, mutilation, torture, rape and displacement of sections of the population perceived as opposition supporters has radically altered electoral demographic patterns in the affected areas in favour of KANU leaders. In all, between 1991 and January 1998, almost half a million Kenyans have been displaced and disenfranchised and thousands of others killed and maimed in the orgy of state-sponsored violence in the Rift Valley, Western, Nyanza and, more recently, Coast Provinces.
  - ◇ To sow seeds of inter-ethnic discord and make political capital out of it. The two-way border raids and clashes between the Luo and Kisii groups, on the one hand and Luo and Kuria communities, on the other, were instigated to split the political opinion of the two groups in Nyanza and to ensure that KANU got a foothold in the province.
  - ◇ To intimidate and harass ethnic groups which in the past have been allied to KANU but have increasingly shifted to the political opposi-

tion and accepted the principles of competitive politics. The escalation of incidents of cattle rustling, looting, burning and killing of the Marakwet community from April 1997 was largely meant to intimidate and harass them for embracing the opposition.

- The post-election clashes which occurred in 1993—1994 and which have recurred in 1998 were aimed at punishing sections of society which, in KANU's judgment, ought to have voted for its candidates, but instead threw their weight behind the opposition. Post-election violence in Narok and West Pokot conflicts in 1993 and Nakuru and Laikipia in 1998 occurred in order to punish the Kikuyu community for 'humiliating' KANU candidates and leaders.
- In its aftermath, state-sponsored violence has polarized the society along the lines of 'pro-government' and 'anti-government' ethnic groups. This polarization has enabled the ruling elite to maintain the loyalty of the perceived 'pro-government' groups and to use them as fodder to its political canons whenever it feels that its position is threatened. The government, through some of its officers and KANU leaders, has paved way for some Kalenjin and Maasai to take over land left behind by the displaced through fraudulent land transfers, illegal occupation, pressured land sales and exchange and to take advantage of violence to buy land at throw-away prices from the displaced. In this regard, land is both an election tool as well as a mechanism of consolidating KANU's power among the Kalenjin and Maasai.
- By employing surrogate agents rather than relying on state security personnel to carry out its heinous activities, the KANU government has ensured that there is no hard-and-fast evidence linking it to the violence. Hence, it is able to deny responsibility to it, attributing it instead, to unknown vigilantes or passing the buck to the political opposition.
- The 'deadly marionettes' the Kenyan government has relied upon to execute the clashes include KANU Youth Wingers, Maasai 'Morans', Kalenjin 'Warriors', Digo 'Warriors', *Jeshi la Mzee* and cattle raiders. Activation and modernization of traditional structures of violence as well as the use of traditional weapons and symbols has also been a favourite strategy. However, the so-called 'warriors' are in fact well trained, and organized bands, thanks to the use of ex-service men, illegal aliens and refugees and security

personnel who train them in secret places and forests.

- The catch here is that the more successful the state is in depicting the clashes as 'ethnic' and 'traditional' the more its role becomes concealed and obscure. Hence, it has popularized the epithets of 'ethnic', 'land', or 'border' clashes. The government, therefore, is not only able to shield itself from the glare of international spotlights but is also able to avoid censure for gross human rights violations. Making itself appear as a neutral force, the government turns around and takes over the role of arbitrator and peacemaker among the 'warring' groups. Indeed, local and international groups have beseeched the state to "intervene and mediate between the warring forces" as if it is not the remorseless author of the heinous clashes.
- The most visible effects of the state-instigated 'ethnic clashes' are the flawed elections of 1992 and 1997. Clashes in the Rift Valley Province in 1991—92 ensured that scores of KANU candidates went in unopposed, opposition candidates were harassed and intimidated, hundreds of thousands of people perceived as opposition supporters were displaced and disenfranchised and a level playing field in the elections did not exist.
- In 1997, the pre-election violence forestalled the campaign for comprehensive constitutional reforms which would have created a level playing ground in the ensuing General Election.
- 'Ethnic' violence at the Coast depopulated the opposition stronghold of Mombasa, particularly Likoni where just over 30% turned out to vote in the elections. Subsequent 'punitive expeditions' by members of the GSU harassed and intimidated Mijikenda, especially, Digo voters.
- The violence at the Coast has sown the seeds of ethnic revivalism, which was meant to ensure that the Islamic factor did not drive the predominantly Muslim Mijikenda into the hands of the Arab-Swahili dominated Islamic Party of Kenya, a thorn in KANU's side.
- The violence at the Coast has seen KANU reclaim its political dominance by winning half the seats in Mombasa and all seats in Kwale District. Moreover, the fear of a repeat action by the dreaded GSU is likely to tilt Mijikenda politics in KANU's favour for years to come.
- On the whole, the 1997 elections were massively flawed by nation-wide

activation of violence in Gucha-Trans Mara, Migori-Gucha, Migori-Kuria, Nyambene-Tharaka Nithi, West-Pokot-Marakwet and Likoni-Kwale areas. The declaration of security operation zones in Nyanza and Trans-Mara, specifically, undermined the entire electoral process. Coupled with other electoral malpractices, such as rigging, bribery and technical hitches like the lack of ballot papers in a large number of areas, state-sponsored terrorism made a complete farce of democratic elections.

## Recommendations

### **KHRC makes the following recommendations to the Government**

1. The Government must genuinely re-dedicate itself to its obligation under the Kenya Constitution and international covenants to protect the fundamental rights and freedoms of the Kenyan citizens. The politically-instigated clashes have grossly violated human rights across the board – the right to life, property, freedom of movement and political and civil liberties.
2. The government must immediately end all incidences of communal violence relating to the so-called ‘ethnic’ clashes, cattle rustling, border disputes, and so on. It has the power and resources to do so. What appears to be lacking is the will to end the violence.
3. In light of the government’s involvement in the clashes, parliament should set up an independent commission of inquiry with the following, among other responsibilities:
  - To review the Parliamentary Committee on Ethnic Clashes in the Rift Valley and Western Kenya in 1991—92 (popularly called the Kiliku Report).
  - To investigate all allegations of the involvement of government officials in the clashes and to prefer charges where there is evidence of wrongdoing.
  - To investigate into past clashes and to bring charges where there is evidence against individuals alleged to be responsible.
  - To investigate the persistent reports of land sales being effected under duress, illegal occupation and fraudulent transfers. Where the displaced victims sold land at below prevailing market rates, such land transfers be reviewed, and where possible reversed. To assist displaced persons through appropriate payment of compensation to those who lost their land.

4. The Government, in collaboration with international agencies, humanitarian relief organizations and local Non-Governmental Organizations should set up a Clash Victims Fund. This should:
  - provide compensation and relief assistance to victims;
  - resettle all victims and get them back on proper economic footing; and
  - rebuild schools and other social services in the clash-torn areas.
5. The Government must provide adequate security to all, for as long as it takes, to enable displaced families to return permanently to their land.
6. The Government must retrain its security forces with the view of re-dedicating them to the ideals of nationhood and service to the people. This will ensure that they will not be party to the abuse of human rights, excessive use of force against civilians or agree to be used by future governments and ethnic mongers to subvert justice and to perpetuate inter- or intra-ethnic violence.
7. More importantly, the government must create a level playing field for future elections by:
  - repealing all laws that are inimical to the democratic process;
  - empowering the Electoral Commission to organize and oversee free and fair elections; and
  - encourage civic education in schools and other fora to create an enlightened citizenry which understands the intricate culture of competitive politics engendered by a multi-party system.

**KHRC makes the following recommendations to Opposition Political Parties**

1. Opposition parties must resist the polarization of national politics on ethno-regional lines. They must restrain from the wholesale condemnation of individual groups such as the Kalenjin for the government's actions.
2. Opposition parties should push the agenda of 'ethnic' clashes to the centre-stage of national democratic discourse. They should introduce motions in all parliamentary sessions and crusade for the establishment of an inde-

pendent and effective commission of inquiry on the clashes with the mandate to prosecute perpetrators.

3. The creation of a level playing field in future elections including constitutional reforms, citizens' education and stoppage of all forms of communal violence during and after the elections should be the priority of all opposition parties.
4. A cross-party coalition should be established to oversee the national reconciliation, healing and resettlement efforts in the clash areas.

**KHRC makes the following recommendations to the Electoral Commission of Kenya**

1. Where necessary, the Electoral Commission should postpone elections in areas affected by clashes, until peace is restored.
2. Mechanisms of ensuring that the displaced are not disenfranchised but are able to participate in the elections should be put in place. This may include, among others, the setting up of mobile polling stations, particularly in displaced people's camps or designated 'safe' centres.
3. Disqualify or nullify the election of instigators of ethnic clashes irrespective of their station in life or status in government.
4. Seek legal clarification on the law relating to the declaration of Security Operation Zones by the President, himself a presidential candidate. Such a law devastatingly undermined the campaign programmes of opposition parties in Nyanza and Trans Mara clash areas.
5. A special Elections Force attached to the Electoral Commission, along the lines of the GSU, should be established. This can be deployed in clash areas to see to it that elections are peaceful.

**KHRC makes the following recommendations to International Human Rights Organizations Donor Nations, and Election Monitoring Groups**

1. International donors should review their perception of elections as the crucial barometer of 'democracy' in Africa. Instead, they should focus on



the general culture of politics which undermines democratic elections, including the culture of violence associated with the new phenomenon of state-instigated clashes.

2. Election monitors should resist the tendency to treat elections as an 'event' but instead focus on the wider process which generates democratic and undemocratic elections. In the past, the Kenya government, in particular, aware of this narrow perception of 'fair' elections has tactfully organized flawed elections full of obstacles for the opposition in the run up to the elections but extremely 'clean' on the voting day when international monitors jet in.
3. Local and international human rights organizations should highlight the issue of state-instigated violence as the foremost threat to human rights and the democratic heritage of humanity. They should push for the creation of special United Nations mechanisms to address the problem of state-sponsored violence as a human rights violation just as 'disappearances' of political opponents in the Latin American tyrannies has been declared a human rights violation.
4. The United Nations High Commissioner for Refugees should be mandated to deal with the growing problem of 'internal refugees' which is today outside her mandate.
5. On the whole, since the issue of state-sponsored violence against its own people is the leading threat to human rights and, indeed, the very survival of nations in Africa, the Organisation of African Unity, should establish mechanisms to deal with states and governments which organize 'internal' violence against their own people.