

## The 2007 Kenyan Election and its Impact

1. If political democracy is the panacea for African democracy then multi-party elections should be that balm to heal the gabbing wound that all too often divides politicians during political rallies and campaigns. It is public secret that elections in Africa especially after the democratic wind of change that swept across the continent in the early 90s carrying within particles of what Duncun Kennedy refer to as “perverse political economy” implying the people are spoon fed to believe that politics is a ‘dirty game’ in this sense politicians and their supporters can engage in all kinds of techniques to either dilute the public with the goods they purport to sell or win over the population with fancy speeches and empty promises. However, it will be naïve to perceive politics in Africa from this lens, even though politics is usually a cut throat process in the continent, recent developments have demonstrated that politicians as well as campaign events have to be streamline in a more humane and transparent manner as the continent move forward in its democratic transformation with the partnership of the international community to set standards acceptable for smooth transitions during elections.
2. Speaking of partnership with regards to the role of the two committees (the Independent Review Committee (IREC) and the Commission of Inquiry on the Post Election Violence (CIPEV)) that were task to review and elaborate on the finding of the 2007 general elections in Kenya whose work finally ended in October 2008; to circumvent and ease the task of understanding the lengthy reports<sup>1</sup> that was piece together by a commission composed of eight<sup>2</sup>, the Dialogue Africa Foundation with the partnership of Konrad Adenauer Foundation in Germany have compact the finding of these committees which will serve as a primary guide to understand the issues that surrounded the 2007 general elections.<sup>3</sup> In the first part of this piece which is a continuation of the previous report<sup>4</sup>, we shall examine the organisation of the elections and in part two, we shall elaborate on other actors in the electoral process; part three will explore the impact of the elections in the provinces. The conduct of the elections was neatly organized in tandem of the following ingredients: one man one vote principle;

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<sup>1</sup> See generally the report: <http://www.kenyamoja.com/tjrc-report/> [Access date 30 August 2013].

<sup>2</sup> **Amb. Bethuel A. Kiplagat** - Chairperson, Kenya; **Tecla Namachanja Wanjala** - Vice Chairperson, Kenya; **Ahmed Sheikh Farah** - Commissioner, Kenya; **Berhanu Dinka** - Commissioner, Ethiopia; **Gertrude Chawatama** - Commissioner, Zambia; **Margaret Shava** - Commissioner, Kenya; **Ronald Slye** - Commissioner, USA and **Tom Aziz** - CEO/ Commission Secretary.

<sup>3</sup> *Kriegler and Waki Reports on 2007 Elections*, p. viii.

registration of voters; voter registration; nomination of candidates; recruitment and training of staffs; voter turnout and regulation of political campaigns. These ingredients will be briefly assessed in light of the prevailing circumstances at the time; and will be garnished with recommendations by the committees.

3. The notion of “one man one vote principle” found legal certainty in the 1964 United States Supreme Court case of *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 136, 12 L. Ed. 2d 506 (1964) wherein it was ruled that the Equal Protection Clause of the Fourteen Amendment requires that legislative districts across states be the same in population; the reasoning behind this constitutional law principle is to provide maximum protection to the populace. To this end Chief Justice Warren submits that “legislators represent people, not trees or acres and legislators are elected by voters, not farms or cities...”<sup>5</sup> this principle was popularised in Africa immediately after independence and has been the *modus operandi* of political campaigns in the continent. In Kenyan 2007 general elections there is vast loophole to the application of this principle; the differences in size are great: Embakassi for instance is 351% greater than Lamu East which is just 18% on average; which implies the vote cast by a voter in Lamu East is nineteen times greater than that of one Embakassi voter.<sup>6</sup> This phenomenon has been aggravated with the shortcomings that bisect multiparty construct in the country; for instance any increase in the number of seats must be approved by parliament while the Electoral Commission of Kenya (ECK) that was accused of rigging the 2007 presidential election can proceed with red limitation if the number is not changed, all these amounts to the fact that the delimitation of boundaries in Kenya offends the basic principle of equality of vote.<sup>7</sup>
4. Section 32(2) of the Constitution of Kenya provides that ‘every person who is registered in a constituency as a voter in elections of elected members shall... be entitled to vote in that constituency’. Section 42A goes further to define the responsibilities of the Electoral Commission which includes:

*(a) the registration of voters and the maintenance and revision of the register of voters;*

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<sup>4</sup> see July 2014 report.

<sup>5</sup> The Supreme Court: [http://www.pbs.org/wnet/supremecourt/rights/landmark\\_reynolds.html](http://www.pbs.org/wnet/supremecourt/rights/landmark_reynolds.html) [Access date 22 August 2014].

<sup>6</sup> *Kriegler and Waki Reports on 2007 Elections*, p. 16.

<sup>7</sup> *Kriegler and Waki Reports on 2007 Elections*, p. 17.

- (b) directing and supervising the Presidential, National Assembly and local government elections;*
- (c) promoting free and fair elections;*
- (d) promoting voter education throughout Kenya; and*
- (e) such other functions as may be prescribed by law*

To satisfy s. 42A (a) a voter must be resident at least five months in the twelve preceding months and engaged in business or employment or possessing land or residential buildings; in practice, the requirements for voting in civic election is hardly applied by the ECK.<sup>8</sup> In 1992 during the first multiparty elections that was organised by the ECK, voters were registered in what is known as the “black books” from which mimeographed lists for use at the polling stations were derived, and in 1997 this was computerized using optical mark recognition (OMR) forms; this development rendered the black book worthless as a consequence it was not used during the 2000, 2001 and 2002 elections. However, in 2007 it was decided that black books could be used as back-up in an election that was massively conducted in 20,655 centres and witness a surge in numbers of voters to 1, 767,212 summing up to 14, 296, 180 voters in the 2007 election; this figure is 71% of a total of 19.8 million people over 18 years with national identity cards.<sup>9</sup>

5. Voter registration process has been identified with some lacuna, for instance the continuous registration system that was considered in 2002 to be a giant way forward was found to be expensive; to worsen the situation, the ECK still perennially organised registration that out weigh the cost of the periodic register<sup>10</sup>; to this end the system has been strongly criticised on the following grounds:

- *Continuous registration has not worked – only (2-3) per cent of the registration took place at the ECK offices. The ECK alleges that this is because the number of field offices is too small (and aims to have an office in each constituency). This is not correct: a significant proportion of the Kenyan population lives within a reasonable distance of an ECK district office (located in populated*

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<sup>8</sup> Ibid, p.17.

<sup>9</sup> Ibid, p. 17 – 18.

<sup>10</sup> Ibid, p. 18.

areas) yet only a minimal fraction of that part of the population opts to register at ECK field offices.

- *The system has very low productivity. During the 2007 registration drives before the elections, the average number of voters registered per registration center was about one per day. The productivity of the continuous registration is even lower. In the four months after the 2007 registration, the ECK network of offices recorded 553 transactions, of which only 129 were new registrants (the rest being transfers, detected deceased voters, etc). This means that the ECK offices conducted only one transaction every two weeks per office.*
- *The voter register has a low and biased coverage. Registered voters represent only 71% of the 19.8 million persons over 18 years of age who were issued national identity cards. Women are significantly under-registered: they represent 51.4 per cent of the population and only 47.1 per cent of the voter register. Worse, the population has been declining: in 1997 the population of women in the register was 47.9 per cent. Young people are similarly under-registered: the proportion of persons between 18 and 30 years of age is 46.2 per cent of the population and only 32.1 per cent of the registered voters. Furthermore, the deletion of names of deceased voters from the register is ineffective: the Central Bureau of Statistics estimates that 1,733,000 persons have died since 1997 but the ECK has been able to eliminate the names of only 513,000 deceased persons from the register. Statistically therefore, the names of some 1.2 million dead persons swell the voter register.*
- *There is an almost complete lack of control by the ECK. One of the main reasons for maintaining a voter register is that the verification of entitlement to vote is conducted in advance, as it takes significant time to verify residence, etc. The ECK system operates entirely on trust regarding residence. Form B (application to register as an elector) includes a declaration of residence, but no further proof is required, nor does the ECK conduct any post facto investigation or any other form of verification (except for the*

*notoriously ineffectual period for exhibition of the list of registered voters).*

- *The system is outrageously expensive. The cost of the filed offices, mostly devoted to voter registration in non-election years, was Kenyan Shilling (K.Shs) 309 million in 2006 and it is expected to reach K.Shs 377.4 million in 2008. The cost of the 2006 registration drives in 2007 required K.Shs 2.179 million and the allocation for voter registration for 2007/2008 is K.Shs 596.6 million. The present situation is far from adequate.<sup>11</sup>*

The above analysis vindicate the lapses of the continuous registration of voters that was introduced in 2002; it succeeded to register a minuscule number of people at ECK district electoral offices, also women and youths are under-represented.<sup>12</sup> Building on the above premises, it is fair to conclude that the current system is not working and the plausible thing to do will be to change to a more sustainable and effective system that is inclusive of all Kenyans and that emulate what obtains at the international level as highlighted above. To accommodate these lapses the Independent Review Committee has provided the following recommendations:

- *...that as soon as possible the issuance of the national Identity card be integrated with the registration of voters, so that when a person request an ID card, s/he will automatically be entered in the voter register and informed of the location of the polling station where s/he should vote (a cheap voter card containing such information can be provided to a voter). The ECK should immediately begin the necessary studies to implement this solution (resorting, if so desired, to external technical support) and a significant part of the human and budgetary resources today devoted to the registration of voters should be transferred to the new system. The availability of additional resources should allow a much faster implementation...*

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<sup>11</sup> Ibid, p.19.

<sup>12</sup> Ibid, p.19.

- *...that entitlement to vote is based on residency, unless there are strong arguments for maintaining some of the other categories presently included.*
- *...voters are allowed to vote with simple presentation of the national identity or passport if their name is in the voter register.*<sup>13</sup>

6. Nomination is deemed valid if it adheres to the provisions of the constitution, rules of political party concern and it bears the signature of the person delegated by the commission.<sup>14</sup> The ECK statutory notice demands that political parties nominate candidates to contest in the civic and parliamentary elections by 16 November 2007, and that all approved list should be sent in by November 19, 2007 to the ECK headquarters; it is interesting to note that the parties are responsible for organising the primaries using party rank and other people necessary for this process; however there has been recurrent flaws such as chaos, logistical challenges, vote buying and nepotism, again deadlines for submitting the names of candidates in the certified list for the primaries were not respected as a consequence the date was moved to 23 and 24 November 2007 in which 2,547 candidates in the parliamentary elections were sponsored by 117 political parties.<sup>15</sup> To circumvent these lacunae the Independent Review Committee (IREC) proposed that:

- *... consideration be given to establishing a special election court to expeditiously receive and deal with disputes arising from party primaries. Such a court will deal with these matters, but only after the aspirants have exhausted the internal dispute resolution machinery in their respective parties and failed to obtain satisfactory relief. Guided by the constitution or rules of the parties in question, the special election court will then make a decision on the matter, and this decision should be final.*
- *... the Electoral Commission of Kenya establishes a clear, non-adjustable, timeframe within which all parties should hold their primaries and certify their nominees. Such a timeframe should be written into the regulations and communicated to all stakeholders*

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<sup>13</sup> Kriegler and Waki Reports on 2007 Elections, p. 25.

<sup>14</sup> Ibid, p.19.

*in the electoral process together with the notice for elections. It should take into account the time required not only to conduct primaries but also to settle disputes arising from primaries. It may be necessary to conclude, as a positive incentive for good behaviour, a requirement that candidates will not be gazetted while an election dispute is pending.*

- *...amendment to electoral law to require political parties to not only conduct elections in accordance with their constitutions or rules but to also conform to established standards of fair practice. The Registrar of Political Parties should, in consultation with political parties, adopt a standard that is then enforced when the constitution and rules are submitted for the party's registration (and with every amendment later) and which the electoral court can rely on to make a finding that a party's nomination rules are not in keeping with fair practice.*<sup>16</sup>

6. The enlistment of and training of temporary electoral officers during electoral processes (voter registration, polling and counting) is to ensure that the skills acquired within the brief period should remain fresh in their memories; observers reports content that this was transparent although some instances of tribalism and nepotism was pointed out in some polling stations as some contending officers were replaced by the Commissioner in the final minutes of the campaign<sup>17</sup>; this scenario was further compounded by the recruitment of returning<sup>18</sup> and presiding officers without determining their basic arithmetic skills as evident in the numerous errors identified.<sup>19</sup> To this end the IREC recommend the training of personnel on management of modern IT-facilitated electoral process and that returning officers undergo special training to keep up with the joneses of modern electoral processes.<sup>20</sup>

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<sup>15</sup> Ibid, p. 20.

<sup>16</sup> Ibid, p. 25 – 26.

<sup>17</sup> Ibid, p. 21.

<sup>18</sup> With regards to recruitment of returning officers the testimony of the Commissioner from Australia is telling. He admitted during his cross examination by the defence counsel Mr. Khan in the on going proceeding of *The Prosecutor v. William Ruto & Joshua Arap Sang* at the International Criminal Court in The Hague that one among many of the returning officer made a phone call to assist in this process and she was given the job. See generally ICC Trial: <https://www.youtube.com/watch?v=FBhHtNRoiRs> [Access date 02 September 2014].

<sup>19</sup> Krieglner and Waki Reports on 2007 Elections, p. 21.

<sup>20</sup> Ibid, 26.

7. With regards to the number of votes cast, one point should be neatly pieced out which is that the continuous registration system as indicated in paragraph 5 above is unfairly biased; in that names of deceased individuals or those who have immigrated or migrated to other countries or within the country, their information is usually being used; for instance it was alleged that the names of some 1.2 million deceased voters were still on register.<sup>21</sup> This phenomenon is true in many countries in Africa that still adhere to the continuous registration system; this explains why elections results are usually massively rigged. It is possible to inflate ballot boxes when such practices occur wherein some stations will be declared that there was 100 % voters' turnout when in fact less than say 80 % of the voters actually cast their votes given the difficulties involve in the process and the fact that some people do not really care. In the 2007 elections it is pointed out that the recruitment was biased and couple with the fact that those involved were inadequately trained to perform their duties and worse still it was ridiculously expensive.<sup>22</sup> Building on this premise, it is plausible to argue that sound education to both youths and adults will help breach the invisible gap that all too often create tension and frustrate electoral processes.
8. It is submitted that campaign period in Kenya is usually a fluid concept implying that it does not abide by the provisions of the law as a consequence there is the tendency to breach the Electoral Code of Conduct; when this happens the outcome is obviously violence against women; undemocratic practices to isolate opponents; spam and short text messages which are defamatory including internet blogs<sup>23</sup>, these incidents and the irrational utilization of state resources for partisan campaigns are the *modus operandi* of the 2007 political campaign in Kenya and this practice goes back immediately after independence. The IREC profess new reforms for instance electoral law should give power to the ECK to carry out its constitutional mandate such as barring errant candidates in the event of defiance of its orders; arrogating matters to itself with the High Court having the power of judicial review, rather than taking it to the High Court for sanctions as contemplated in rule 9; forbidding the use of state funds for elections and the participation of civil servants in politics; and that electoral laws be reform to provide prosecutorial powers to the ECK over all election offences, and not just those as prescribed in section 34A of the National Assembly and Presidential Election Act.<sup>24</sup>

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<sup>21</sup> Kriegler and Waki Reports on 2007 Elections, p. 21.

<sup>22</sup> Kriegler and Waki Reports on 2007 Elections, p. 22.

<sup>23</sup> Kriegler and Waki Reports on 2007 Elections, p. 22.

<sup>24</sup> Ibid, p. 28.



Having explored the organisation of the election, we shall now turn our focus to the actors involved in the electoral process.

9. Political parties are fundamental in any electoral ball game; it is submitted that they are the acceptable conduit for political representation. In Kenya the Constitution, the national assembly and the presidential election Act Cap 7 commands that party sponsorship is a prerequisite in presidential, parliamentary and civic elections because independent candidates are not acknowledged.<sup>25</sup> Section 40 of the Constitution stipulates that:

*“A member of the National Assembly who, having stood at his election as an elected member with the support of or as a supporter of a political party, or having accepted appointment as a nominated member as a supporter of a political party, either –*

*(a) resigns from that party at a time when that party is a parliamentary party; or*

*(b) having, after the dissolution of that party, been a member of another parliamentary party, resigns from that other party at a time when that other party is a parliamentary party, shall vacate his seat forthwith unless in the meantime that party of which he was last a member has ceased to exist as a parliamentary party or he has resigned his seat...”*

This provision emphasizes the role of political parties in the electoral process. A careful study has however revealed that political parties are undemocratic in their functions and their leaders are autocrats who cannot be held to account.<sup>26</sup>

11. As democratic principles finds roots into the Kenyan society, the media which played a leading role during the 2007 general election comes under scrutiny. Even though electoral campaign was broadcast in local languages and ordinary Kenyans had the opportunity to part take in the election through the frequency modulated (FM) radio stations; the ECK granted 2,964 local and international journalists election fiat to cover

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<sup>25</sup> Kriegler and Waki Reports on 2007 Elections, p. 12.

<sup>26</sup> Kriegler and Waki Reports on 2007 Elections, p. 12 – 13.

this event with training provided by the Media Council of Kenya (MCK), it is however argued that, the Kenya Broadcasting Corporation (KBC) was accused for favouritism and monopolising the live coverage of this event and worse still it officially proclaimed the election results and then went further to banning of live coverage after the announcement of the presidential results; this attest that it is still a tightly control arm of the government under the former post independent rigid political setting.<sup>27</sup> To remedy this situation, the Independent Review Committee (IREC) submits that:

- *Even though the leading newspapers, television and radio stations were not very openly biased for or against any of the candidates, there were discernible preferences shown by the tilt they gave in favour of or against the candidates and their campaign issues;*
- *As election results started trickling in, the stations competed with each other to be the first to announce the results from various constituencies. Some stations relied on unspecified sources to broadcast and announce results ahead of the ECK.*
- *Most media houses avoided hate speech but several FM stations incited ethnic animosity, particularly during call-in programs.*<sup>28</sup>

Building from this perspective, one can subsumed and understand why this election span out of control and eventually led to the indictment of Kenyan strong men who are currently facing trials at the ICC for alleged crimes committed during this period.

12. Another important players in this electoral process were the civil society and the faith based organisations. These bodies served as regulatory organs in that they were present to ensure that there is fairness in the electoral process.<sup>29</sup> This signals that there was a degree of openness in the manner in which the election was organised.
13. Monitoring electoral process is fundamental through an effective domestic programme that ensure checks and balances, surpluses and deficits of electoral malpractices, voters attitudes, rational use of state funds and media coverage; to circumvent this situation the ECK approved a total of 24,063 electoral observers, 15,000 of whom are local monitors under the Kenya Elections Domestic Observation Forum (KEDOF), while the rest

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<sup>27</sup> Kriegler and Waki Reports on 2007 Elections, p. 14 and 68; Post Election Violence, p. 295 – 296.

<sup>28</sup> Kriegler and Waki Reports on 2007 Elections, p. 14.

included the European Union (EU), the Commonwealth International Conference of the Great Lakes Region, the East African Community and the Independent Republican Institute (IRI).<sup>30</sup> However, despite the measures taken by the ECK to ensure that election materials and badges are available to the observers<sup>31</sup> and other logistical apparels necessary for this electoral process, the outcome of the elections span out of control and the reminisce is the resultant death of many innocent civilians and the eventual indictment of those considered to bear the greatest responsibility for the unspeakable things that occurred after the 2007 general election. To water down the lacuna and prevent future conflict, the IREC has proposed some guidelines as follows:

- ... *that a media and elections policy should be developed, to include guidelines for verifying data before going on air, vetting of live broadcasts and screening of paid-for advisements, responsibility to announce accurate results and training of journalists on the Electoral Code of Conduct, and elections reporting and the manner of reporting on opinion polls;*
- ... *that disclosure of the real owners of media be made on a regular basis;*
- ... *that Kenya Broadcasting Corporation (KBC) Act be amended to provide the ECK with the commensurate power to compel KBC to act in accordance with the law;*
- ...
- ...*that key provisions in the KBC Act pertaining to free access slots for party political broadcasts be clarified and precisely defined as to the rights of the parties and candidates in law; and*
- ...*that a substantive Act prohibiting hate speech be drafted and enacted.*<sup>32</sup>

14. We shall now turn our focus on the impact of this election violence in the provinces. It is important to indicate here that the 2007 post election violence did not escalate in all the eight provinces in Kenya; in fact the following provinces were affected and will be our focal point. They include: the Rift Valley, Western Province, Nyanza Province, Nairobi

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<sup>29</sup> Kriegler and Waki Reports on 2007 Elections, p. 14.

<sup>30</sup> Kriegler and Waki Reports on 2007 Elections, p. 15.

<sup>31</sup> Ibid, p. 15.

<sup>32</sup> Ibid, p. 16.

Province, Central Province and Coast Province. It is submitted that the cause of the violence is diverse and can be traced back in the colonial era and the successive repressive regimes that ensued in the guise of democratic governments. What is obvious is that Kenya as well as other countries in Africa are imbued with a vast diversity of ethnic, tribal, language and cultural differences usually in one unified political identity; in some countries like Cameroon for instance there are about 250 tribes or cultures which by extension mean the same amount of languages; in South Africa there are eleven official languages and the ethnic groups are: the Black Africans, Coloured, Asian, European, Afrikaans and Others. In Kenya as in other countries in the Great Lakes Region the story is essentially similar; in Rwanda for instance there are the Tutsis, Hutus and Twa; in Burundi there are Hutus, Tutsis, Twa, European and South Asians; in Uganda the languages are Luganda, Southern Luo, Runyankore, Runyoro, Ateso, Lumusaba, Lusoga, Samia and Swahili, the ethnic groups are Baganda, Banyankole, Basoga, Bakiga, Iteso, Langi, Acholi, Bagisu, Lugbara and Others. Kenya is unified under a political power like other countries in the continent but the people are identified by their tribes and/or ethnicity which as it is submitted is one of the reasons for the violence as we shall examine in the ensuing paragraphs.

15. The Rift Valley according to official sources experienced in the Uasin district alone 205 dead, followed by Langas and Kiambaa that received 127 bodies from the Moi Teaching and Referral Hospital; according to the post mortems finding in descending order of gravity most of the deaths were as a result of sharp objects that is about (33%), followed by burns (22%), then blunt objects (14%), gun shots about (14%), arrow wounds (6%), broken bones (3%) and others.<sup>33</sup> Beside deaths, property was destroyed during the attacks and as the police records indicated 52,611 houses were burnt including motor vehicles 58 of which belong to civilians and 2 to the government, in total 21,749 people were displaced<sup>34</sup> and communities hardest hit are: the Kalenjin, Kikuyu, Luo, Kisii and Luhya while the areas that witnessed the violence are as follows:

*Uasin Gishu, Kesses Location, Meteite, Eldoret, Tinderet, Nandi District, Kiambaa, Rurigi, Rukuini, Kiamumbi, Moiben Division, Matunda in Soi Division, Turbo; Trans Nzoia West - Gituamba, Timbora Location in Saboti Division and Waumini near Kitale*

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<sup>33</sup> Kriegler and Waki Reports on 2007 Elections, p. 60.

<sup>34</sup> Kriegler and Waki Reports on 2007 Elections, p. 60.

*town; Trans Nzoia East, Geta Farm Salama, Kalaa area, and Naivasha districts; Nakuru, Molo and Naivasha Districts; South Rift and Kisii Region - Kipkelion Kericho, Bomet, Sotik/Borabu Border.*<sup>35</sup>

According to the inquest conducted by the Commission of Inquiry into the Post Election Violence (CIPEV) in this region the conflict escalated because of dispute over land, cattle rustling, political differences as well as ecological factors with possible other reasons that includes:

- *The desire by resident Kalenjins in the province to recover what they think they lost when the Europeans forcibly acquired their ancestral land;*
- *The desire to remove "foreigners", derogatorily referred to as "madoadoa" or "spots" from their midst. The reference was mainly towards the Kikuyu, Kisii, Luo and other communities who had found permanent residence in the Rift Valley;*
- *Political and ethnic loyalty to the dominant political parties and political leaders;*
- *Negligence of the provincial administration and security officers to punish perpetrators of earlier political violence (1992 & 1997);*
- *Perceived arrogance, stereotypes and hostilities of certain ethnic groups;*
- *Incitements, especially from political leaders and other propaganda sources...*<sup>36</sup>

16. Western Province is largely dominated by the Luhya and the violence here was land disputes and most importantly bitter division in political differences that led to riots and eventual gunshots that saw a high toll of deaths; up to 98 people were killed amounting to 73 per cent of people who died as a consequence of firearms, also there was destruction of road infrastructures leading to other parts of the country, burning and looting of property belonging to the Kikuyu community and those sympathetic to the Party of National Unity (PNU), in this series of events the towns most affected were

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<sup>35</sup> Ibid, p. 58.

Kakamega, Mumias, Bungoma, Mbale, Lugari, Busia and Vihiga including Budalangi in Busia district.<sup>37</sup>

17. In Nyanza Province the destruction experience here is largely arson of government infrastructures and vehicles including the attack on the political home of Raila Odinga leader of the Orange Democratic Movement (ODM) because of the perceived delay to release the presidential results, however, the police had to intervene in a timely manner to save lives and property.<sup>38</sup> It is interesting to point out at this juncture that the impact of this violence was enormous and the commission recorded the following:

- *... the commission heard that by 11 of February 2008, 102 people were reported dead - most of the people who lost their lives did so through gun shots and 685 people injured in the province while 40,000 non-Luos had existed in the province. Nine government offices, 73 business premises and 415 residential houses were looted or burnt across the province. Fifty government vehicles were destroyed, 16 public service vehicles damaged mainly on the roads or where they had been parked and another 16 damaged. Indeed about 90% of the deaths in New Nyanza General Hospital were from gun shots and bullet wounds. Three security personnel were killed in the course of suppressing the violence.*
- *2,886 people sought refuge as internally displaced persons (IDPs) within the town. The Commission heard that the province received 126,821 returnees from outside Nyanza because they had been ejected from other provinces or they feared continuing to stay in those places most of who were taken in by friends and relatives.*
- *Loss of property and businesses; one large enterprise, the Ukwala supermarket was burnt down from the explosion of an inflammable material thrown inside it during police clashes with the rioters.*<sup>39</sup>

18. Nairobi Province like other provinces witness crisis over land between the Luo and Luhya tenants, destruction of property, reported instances of forced circumcision,

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<sup>36</sup> Ibid, p. 59.

<sup>37</sup> Ibid, p. 60 - 61.

<sup>38</sup> Ibid, p. 61 - 62.

<sup>39</sup> Ibid, p. 62.

looting and arson for instance the Toi Market in Makina which formerly accommodated about 3,000 traders before the elections was burnt down and the rail line that passes through it was destroyed, also, between 30th December 2007 and 30th January 2008 it is submitted that in the Nairobi City Mortuary a total of 111 corps were registered by police as "Post Election Violence Bodies"<sup>40</sup> ; the situation in this province span out of control with the killing of late Embakasi MP - Hon. Melitus Mugabe on 29th January 2008 in Nairobi`s Woodley Estate as a result many communities were affected.<sup>41</sup>

19. In Central Province the violence was largely ethnic based and mainly kikuyus targeting those perceived to be unsympathetic to the PNU presidential Candidate Mwai Kibaki, this is evident in the eviction of non - kikuyus in other parts of the country<sup>42</sup>; this scenario was further compounded with the arrival of internally displaced kikuyus coming from other parts of the country as they clash with members of other communities, also this state of events was obvious in the business sectors as non - Kikuyus were targeted and their jobs taken away in companies such as the Universal Corporation Limited (UCL) and Steel Rolling Mills, both in Kikuyu; KARI and KEFR; the Tea Estates and Bata Shoe Company in Limuru; BIDCO and other industries in Thika; flower farms in O1 Kalou.<sup>43</sup> It should be noted that the violence in this province was propelled essentially by direct incitement by politicians and other leaders; the resurgence of Mungiki to defend Kikuyus communities from non - Kikuyus; the circulation of hate speeches through mobile text messages and the outcome was that a total of 8,889 people were displaced internally:

- ... *In some areas the incoming Kikuyu internally displaced persons would be absorbed into the society by the local residents and other humanitarian agencies;*
- Non-Kikuyu IDPs left and concentrated in the following police stations: Nyeri police station hosted 900 IDPs; Tigoni police station, 5,390; Maragua police station 68; Kinangop police station, 66; Karatina police station, 193; and Kikuyu police station, 500.*<sup>44</sup>

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<sup>40</sup> Ibid, p. 63.

<sup>41</sup> Dandora and Mathare North; Lucky Summer Quarry; Gituamba; Gitare Marigo and Dandora Dumpsite; Babadogo; Glue Collar; Kariadudu; Mugure and Kasabuni; Kibera - Kianda, Raila village, Gatwikira and Kisumu Ndogo. See generally *Kriegler and Waki Reports on 2007 Elections*, p. 63; *Post Election Violence Report 2007*, p. 196.

<sup>42</sup> *Post Election Violence Report 2007*, p. 195.

<sup>43</sup> *Kriegler and Waki Reports on 2007 Elections*, p. 64.

<sup>44</sup> Ibid, p. 64 - 65.

20. As compared with the other provinces, the Coast Province was generally peaceful during election period but the fear of expulsion among the Kikuyus, Luos, Kamba and other communities within Kipini settlement scheme in Malindi district was looming as presidential polls results was disappointing to angry youths who took on the streets in Taveta, Mwatate and Voi towns; this led to massive destruction of property, looting and burning of houses and road blockades in Chagamwe, Mikindani, Kisauni, Bamburi, Mtongwe, Bomu and Migadini areas.<sup>45</sup>
21. To dovetail our discussion on the impact of the 2007 election that bisect Kenya in the wake of its process of democratization, it should be bond in mind that this incident do not only remind Kenyans about the deep and vast divide that exist among the tribes, ethnic groups and communities but inform them that they need to build a harmonious Kenya; this requires reflecting and revisiting their historical past, addressing socio-economic issues, reform their political and economic structures to horizontal heights so that it is inclusive of all Kenyans and transition from there to avoid future incidents like the recent Westgate massacre and the 2007 post election violence itself that has taking some of Kenyan strong men to face trials at the International Criminal Tribunal (ICC) at The Hague which will be our next point of focus in this series.

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<sup>45</sup> Ibid, p. 65.



