



PRESS STATEMENT

Nairobi, October 30: We note the rare unity of the political class in dismissing the report of the Commission of Inquiry into the Post-Election Violence as inadequate and flawed. We also note the dismissive attitude of the police force towards the findings of the investigation, as well as the faultfinding by the Attorney General.

The commission chaired by Appeal Court Judge Philip Waki travelled around the country to visit the theatres of the violence, hear oral evidence on oath from 156 witnesses and take sworn (written) testimony from 144 people over four months. This is what the commission found:

1. The violence was initially a spontaneous reaction to the elections results and initially targeted government institutions, such as was the case in Nyanza. The initial intention was not to kill but to expel people and destroy property.
2. After that, the violence took on a more organised form. Politicians and businesspeople organised and planned attacks. The evidence of this was in the warnings people received, the numbers of attackers mobilised and moved, the weapons acquired and the secrecy involved in targeting people of given ethnic groups.
3. The failure by the police to act on intelligence, to be impartial and professional in their work, as well as to respond appropriately only made matters worse. Police used excessive force. There was a discernible breakdown in the chain of command.

Findings:-

a. Deaths

1. The violence claimed 1,133 lives. This contradicts the official police figure of 616.
2. Gunshots were the most frequent cause of death, accounting for nearly four in every 10 deaths (35.7 per cent of total deaths). Police were found to be responsible for all deaths by gunshot. The commission also found that police response was uneven, even where faced with similar situations. In Nyanza and Western provinces, for example, police response was more brutal and the use of force, excessive.
3. The highest number of deaths by ethnicity are recorded as Luo (278); Gikuyu (268); Kalenjin (158) and Luhya (163).

b. Rape and sexual violence

4. Individual and gang rapes, sometimes using objects, were committed in front of families. Men as well as women were targeted based on their ethnicity and political affiliation. Genital mutilation, including castration and forced male circumcision, were rampant.
5. The police told the commission that there were no incidents reported of sexual or gender-based violence. General Service Unit, regular and administration police were however found to have taken part in the rapes (including gang rape) and obstructed reporting and investigations.

c. Official response

1. The Government did nothing to ease the tensions before the elections. It posted 1,600 Administration Police officers to Nyanza because, in the testimony of the Head of the Public Service to the Commission, it was hostile territory.
2. The Commissioner of Police ordered the release of Chinkororo and SunguSungu gangs involved in violence before the elections. Police officers were posted to receive and relay election results in orders clearly outside their call of duty.
3. The National Security Intelligence Service acted suspiciously outside its mandate by seeking 50 accreditations for election observers

and conducting opinion polls in order to provide information to the Head of Public Service.

4. The police in North Rift and the provincial administration were unprepared for the violence, raising questions about their coordination with intelligence services. Although the commission noted individual acts of personal courage among police officers in saving lives, the police in North Rift participated in the violence, or were just divided and overwhelmed.

5. The Cabinet security committee never met throughout the election period and after, and there were no joint preparations for what would possibly arise. There were no formal meetings at the national level, raising questions about who was in charge and who was in control of the security apparatus. Variations of this misnomer would be apparent at the provincial level.

6. The police ban on assembly and the ban on live broadcasting worsened the security situation in the country. Further investigations into police use of force and rape as well as records on the use of ammunition and supplies require independent investigators.

d. Impunity

The Attorney General is culpable for promoting impunity. He has been in charge of prosecutions for the entire time that the parliamentary select committee chaired by Kennedy Kiliku and the Judicial Commission of Inquiry chaired by Justice Akilano Akiwumi made recommendations about further investigations and prosecutions for ethnic-based violence. The AG's role in failing to follow up on the Kiliku and Akiwumi reports is stark. For their part, the police claimed they had not even read the reports.

The recommendations

The political class is distorting the Waki Report to appear as if it only recommends their own punishment. Fortunately, it does more than that. Kenya is much bigger than the 10 or so people on the list of perpetrators that the commission has handed to the Panel of Eminent African Personalities. Given a choice between the 10 suspects and the 38 million Kenyans, our choice is obvious. Let us review the recommendations of the Waki team again ...

1. The police have been severely indicted in this report. To quote, the criminal involvement of the police ranged from “murder to gang rape and looting”. A GSU officer hacked off a man’s hand. They stole and extorted bribes to protect people. The commission recommends that the administration police should be abolished and its officers integrated into the Kenya police Service. These changes are long overdue. From the mediation agreement, Kenya should have an independent police commission by January 2009, the AP review should be complete by now, and the legal and policy reforms to establish an independent complaints and civilian oversight authority should be in place already.

It is unbelievable that the leadership of the police force has not been overhauled in view of these findings. Pending actions include:

- Review of the Police Act and police standing orders;
- Establishing a representative police service commission;
- Launching a modern code of conduct;
- Setting up a statutory Directorate of Criminal Investigations
- Creating civilian oversight on the police.

2. Sexual and gender based violence were pervasive, yet there were no institutions to deal with it at police stations and public hospitals. The commission recommends that a Rapporteur on Sexual Violence (with appropriate powers and staff, reporting to staff) should be appointed to monitor the work of the Gender Commission and gender units in various ministries, and to provide an annual report to Parliament.

3. The partisan involvement of the Head of the Public Service and the provincial administration in the elections and the violence that followed it call for radical institutional reform that goes beyond changing faces.

4. The Attorney General told the commission that he was waiting for evidence to prosecute perpetrators of the violence. He is too closely linked to the culture of impunity and should be relieved of his duties. The commission recommends the creation of a special tribunal to go round the culture of impunity and the AG. The tribunal will try people first and offer

them an opportunity to defend themselves. The constitutional amendment Bill has been withdrawn to insert provisions that accommodate the IREC recommendations. This is also the time to include the recommendations on the Special Tribunal.

5. The President and the Prime Minister must provide leadership with respect to speed and efficiency in implementation of commission reports, just as they did with regard to the rapid implementation of the National Accord Bill. Parliament must not shirk its responsibility to pass the following laws as recommended:

- a. Special Tribunal
- b. International Crimes Bill, 2008
- c. Witness Protection Act to be operationalised (can government maintain safety of witnesses)
- d. Freedom of Information Bill

6. The Government has the following policy tasks ahead:

- a. National Security Policy
- b. Conflict and disaster early warning and response systems
- c. Joint operations preparedness arrangements
- d. Broader participation in the National Security Advisory Council

Our conclusions

1. We are witnessing a situation where the politicians in government are satisfied that they are now sharing power and that it is business as usual. It is disturbing that they prefer to push all issues that contributed to the crisis under the carpet in order to turn such issues into an instrument to access power in 2012.

2. We as Kenyan civil society are certain that the crisis we witnessed is not over. These same politicians will certainly break this country if they go unpunished.

3. We demand the full implementation of the Waki recommendations and immediate disbandment of the ECK. A small team of no more than three people can be appointed by Kenyans to run ECK pending establishment of rules to compose another body.

5. We as civil society are calling on International Community to immediately begin the process of taking perpetrators to the International Criminal Court.

6. We request the International Community not to be complacent or to call this a Kenyan problem requiring a Kenyan solution. These are politicians punishing the rest of the society and refusing to implement these recommendations is not a Kenyan solution.

7. Civil society will soon be contacting the ICC to discuss how to have the perpetrators of violence brought to book.

Signed-

- Africa Centre for Open Governance (AfricoG)
- Awaaz
- Bunge la Mwananchi
- Centre for the Development of Marginalised Communities (CEDMAC)
- Centre for Law and Research International (CLARION)
- Centre for Multiparty Democracy (CMD)
- Centre for Rights, Education and Awareness for Women (CREAW)
- Coalition on Violence Against Women (COVAW)
- The Cradle-the Childrens Foundation
- Constitution and Reform Education Consortium (CRECO)
- East African Law Society (EALS)
- Fahamu
- Foster National Cohesion (FONACON)
- Gay And Lesbian Coalition of Kenya (GALCK)
- Haki Focus
- Hema la Katiba
- Independent Medico-Legal Unit (I ML U)
- Innovative Lawyering
- Institute for Education in Democracy (IED)
- International Commission of Jurists (ICJ-Kenya)

- International Centre for Policy and Conflict
- Kenya Human Rights Commission (KHRC)
- Kenya Leadership Institute (KLI)
- Kenya National Commission on Human Rights (KNCHR)
- Kituo cha Sheria
- Mazingira Institute
- Muslim Human Rights Forum
- The National Civil Society Congress
- National Convention Executive Council (NCEC)
- RECESSPA
- Release Political Prisoners Trust
- Sankara Centre
- Society for International Development (SID)
- The 4 Cs
- Women in Law and Development in Africa (WiLDAF)
- Urgent Action Fund (UAF)- Africa

And concerned citizens:

- Shailja Patel
- Mary Onyango
- Philo Ikonya