



KENYA

Ballots to Bullets

Organized Political Violence and Kenya's Crisis of Governance

HUMAN
RIGHTS
WATCH

Summary and Recommendations



Kenyans registered to vote in record numbers
for the presidential and parliamentary
elections on December 27, 2007.

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BALLOTS TO BULLETS

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As the announcement of the result was delayed crowds began demonstrating against what they saw as the rigging of the election.

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The scale and speed of the violence that engulfed Kenya following the controversial presidential election of December 27, 2007 shocked Kenyans and the world at large. Two months of bloodshed left over 1,000 dead and up to 500,000 internally displaced persons in a country viewed as a bastion of economic and political stability in a volatile region.

The ethnic divisions laid bare in the aftermath of the elections have roots that run much deeper than the presidential poll. No Kenyan government has yet made a good-faith effort to address long simmering grievances over land that have persisted since independence. High-ranking politicians who have been consistently implicated in organizing political violence since the 1990s have never been brought to book and continue to operate with impunity. Widespread failures of governance are at the core of the explosive anger exposed in the wake of the election fraud.

The Kenya National Dialogue and Reconciliation between the political parties provides Kenya's leaders with a historic opportunity to step back from the brink and to reform and establish institutions that can help build long-term stability. The establishment of a Commission of Inquiry on political violence; an Independent Review Committee on the elections; a Truth, Justice and Reconciliation Commission; and the agreement on the general parameters for a constitutional review process, all agreed in such a short time frame, represent a serious and positive response to the crisis.



Counting of votes started on the evening of December 27 and carried on throughout the following day. In the presidential race Raila Odinga of the Orange Democratic Movement took an early lead in the count, but then the counting and tallying was beset by delays and the governmental Electoral Commission of Kenya was besieged with complaints.

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Right: People wait in front of the gates of the Kenyan Red Cross during a food distribution in the Mathare slum in Nairobi, January 9, 2008.

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However, challenges remain in ensuring that the institutions created actually deliver accountability for recent and previous violence, correct injustices ignored by previous administrations, and tackle the systemic failure of governance that gave rise to the recent crisis. A particular challenge will arise because some of those individuals implicated in recent and previous episodes of politically motivated violence currently hold public office.

This report describes the main patterns of violence that have unfolded since Kenya's December 2007 general election, namely police use of excessive force against protestors as well as ethnic-based killings and reprisals by supporters aligned to both the ruling and opposition parties. It also outlines the ways in which this violence is the outcome of decades of political manipulation of ethnic tensions, and of impunity intertwined with longstanding grievances over land, corruption, inequality, and other issues.

As the mediation process has recognized, a fresh start for Kenya requires thorough reforms of the institutions designed to safeguard and realize the full panoply of human rights, including the judiciary, the police, land tribunals, and the electoral commission. But unless the Truth, Justice and Reconciliation Commission and the Commission of Inquiry lead to real accountability for the perpetrators of current and previous episodes of political violence, incitement will remain a strategy for political leaders in Kenya. Human Rights Watch believes that there is no alternative to criminal prosecutions of those who have contributed to the violence, including for members of the police found to have used excessive force.

Kenya's recent crisis was triggered by election fraud, but many of the tensions that exploded in December 2007 were years or even decades old. In the 2002 general elections, Kenyans voted overwhelmingly for an end to dictatorial government, corruption, inequality, political violence, and systemic abuse of office. The National Rainbow Coalition (NaRC) headed by Mwai Kibaki promised a new constitution, commissions to address large-scale corruption and arbitrary land-grabbing by the elite, as well as measures to tackle landlessness, unemployment and police reform. One by one those promises were abandoned by the Kibaki regime as the NaRC coalition fell apart and impunity and corruption became further entrenched.

For many Kenyans, the rigging of the 2007 presidential election was the final betrayal of that agenda for change.



Voting on December 27 proceeded smoothly with record numbers of registered voters and a record turnout. The parliamentary results were swiftly tallied and announced on December 29, resulting in major losses for the ruling Party of National Unity (PNU) party. The presidential vote, however, soon took a different turn.



Reaction across the country was swift and violent. Protests erupted even before the announcement of the presidential result on December 30, as delays and irregularities in the count sparked rumors of rigging. The government banned public gatherings and the police met street protests with excessive force, killing and wounding hundreds of peaceful

demonstrators with live ammunition. Meanwhile, some people took advantage of the lack of law and order to loot, rape, and riot.

Mobilized opposition supporters—especially in the Rift Valley and the slums of Nairobi—attacked those whom they assumed had voted for Kibaki, and his PNU, in large part the



Above: A riot policeman hits a woman in downtown Nairobi as supporters of Kenya's opposition leader Raila Odinga demonstrated in the street on January 16, 2008.

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Above: Kenyan riot police patrol downtown Nairobi on January 16, 2008.

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Kikuyu. This assigned an ethnic dimension to the violence and angry Kikuyu then fought back.

Politics in Kenya has become to a large extent about competition between ethnic groups, and the 2007 election campaign had emphasized the ethnicity of the candidates and the parties. The opposition Orange Democratic Movement (ODM) built a political coalition based on the widespread perception that the Kibaki government had entrenched tribalism and governed in the interests of the Kikuyu community. The PNU, on the other hand, made Luo cultural

traditions a target, claiming that an uncircumcised man could not rule Kenya. It was unsurprising therefore that the violence following the rigging should take an ethnic form. Indeed, pre-election violence in Kuresoi, Molo, and Mount Elgon throughout 2007 foreshadowed what was to come.

Irresponsible politics may have created fertile ground for violence but the Rift Valley's post-election bloodshed did not arise spontaneously. It came about as a result of incitement before the election and coordination and organization, at least at the local level.





Kenyan riot police in the Kibera slums in Nairobi kick open doors as they search for supporters of Kenya's opposition leader Raila Odinga during the second day of protests on January 17, 2008.

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Right: Kenyan riot police beat a resident of the Mathari slums in Nairobi during clashes with protestors on January 16, 2008.

Below: A Kenyan man and woman lay dead on the ground after they were shot during clashes in the Kibera slums on January 18, 2008 in Nairobi.

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Around Eldoret local ODM mobilizers and other prominent individuals called meetings during the election campaign to urge violence in the event of a Kibaki victory, arguing that if Kibaki was announced as the winner it must mean the polls had been rigged and the reaction should be “war” against local Kikuyu residents. In the days that followed, attacks were often meticulously organized by local leaders.

Nor were the reprisal attacks by Kikuyu militia in Naivasha and Nakuru spontaneous. PNU mobilizers and local businessmen called meetings, raised funds, and directed youth in their attacks on non-Kikuyus and their homes.

Identifying those behind the attacks should be a focus of the inquiries into the violence. In addition, further investigations are required in order to determine the extent of links between the national leaderships of the opposition and ruling parties and those who carried out the violence. There is circumstantial evidence that suggests leaders may well have been at least aware of what was happening and did little to stop it. Some may have been more directly involved.

Across the country, police response to demonstrations against the declared election results involved excessive use of force, leading to hundreds of deaths in late December and



early January. As the country slid into inter-ethnic violence, there were examples of the police intervening to protect lives, but in many other situations the police appear to have had little will or capacity to prevent violence. Although the scale of the demands on the police in many parts of the Rift Valley and western Kenya means that failure to make arrests as violence was ongoing is possibly understandable, the limited extent and slow pace of investigations and prosecutions in recent weeks leave much to be desired.

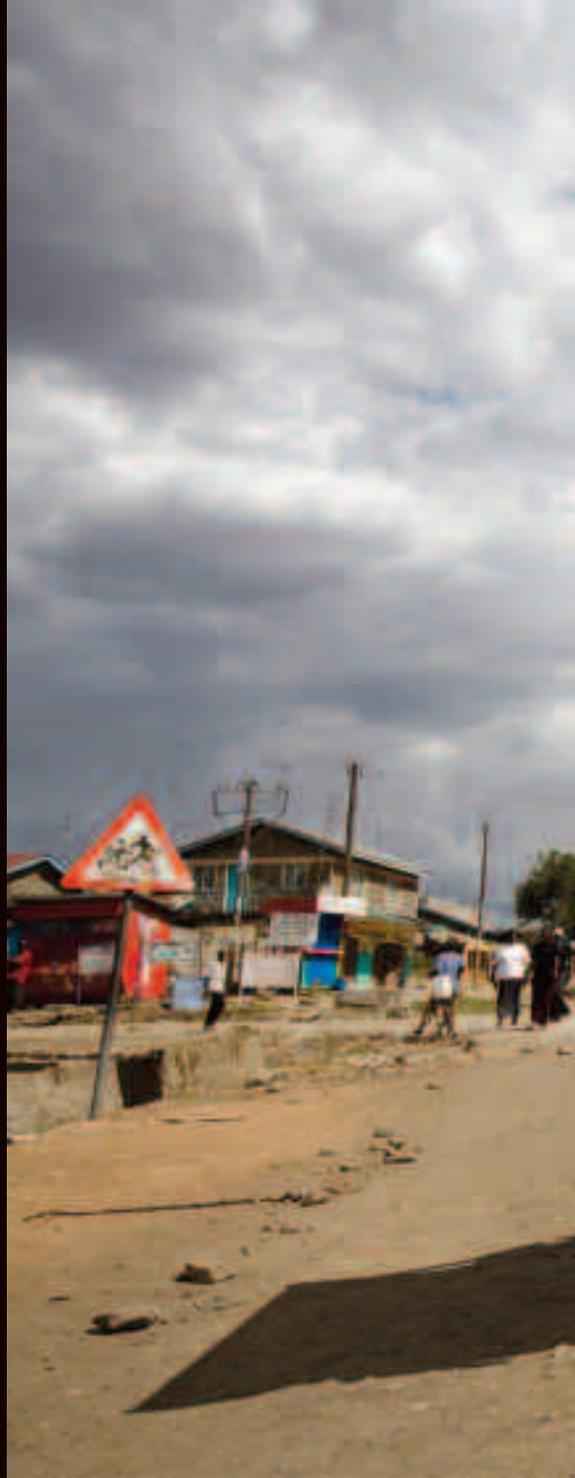
Many Kenyans have little faith in the police to act in a professional, impartial, and timely manner; this reality only encourages vigilantes to take the law into their own hands. The new coalition government should urgently address the issue of police capacity by seeking assistance, including from the UN or foreign governments.

In addition to addressing the urgent protection needs and to ensuring accountability through the institutions established as a result of the National Dialogue and Reconciliation process, the priority for the coalition government must be

Right: Kikuyu taking away possessions of Luo residents after the latter fled from ethnic violence in Naivasha, Rift Valley Province, February 2008.

Below: A Luo man lies on the road in Naivasha, Rift Valley Province, in February 2008. He was left for dead after being attacked by Kikuyu using machetes and clubs.

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what Kofi Annan has called a ‘reform agenda.’ Indeed the parties themselves have acknowledged as much. The roots of the crisis are old and deep. If the power-sharing arrangement for coalition government is to pave the way for a genuinely democratic Kenya, where the rule of law and fundamental civil and political rights are fully respected, a new culture of accountable governance is required.

International actors and civil society played a significant role in the political settlement in Kenya. They now have a role in ensuring that the coalition government seizes this chance to end impunity, deliver reform, and address the underlying causes of violence, many of which are long-standing human rights violations.





Above: The bodies of dead children, victims of the ethnic violence, lie in the morgue in Naivasha, Rift Valley Province, February 2008.

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Above: A man walks through ruins of an area of Chepilat in the Rift Valley Province, February 2008. The burning of homes by Kalenjin men, forced residents of both the Kisii and the Kikuyu ethnic groups to flee.

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RECOMMENDATIONS

To ensure accountability for human rights abuses and the prevention of future abuses, Human Rights Watch makes the following recommendations:

ON ACCOUNTABILITY:

TO THE GOVERNMENT OF KENYA

- Ensure that individual organization, incitement, or participation in political and ethnic violence, excessive use of force by members of state security forces (including the police) are impartially and rigorously investigated, and that perpetrators are brought promptly to justice.
- Ensure that individuals recommended by the Commission of Inquiry and the Truth, Justice and Reconciliation Commission for criminal investigation and prosecution for their role in the violence and excessive use of force by state agencies are investigated and prosecuted by the relevant authorities.
- Act on the reports of previous efforts to establish accountability for past abuses, including the reports of the Akiwumi Commission and the Kiliku Commission, ensuring that individuals identified as culpable are further investigated with a view to criminal prosecutions.
- Ensure offenses under the Electoral Offences Act, including those identified in the course of investigations by the Independent Review Committee, are impartially and rigorously investigated, and that perpetrators are brought promptly to justice.
- Ensure that no one suspected of inciting or organizing political violence is appointed to cabinet positions or any other government post.
- Ensure that the police build on recent efforts to encourage victims of sexual violence to report crimes, take all reports of sexual violence seriously, and investigate all allegations. Ensure that survivors of sexual violence are able to access appropriate medical care and psychosocial support.

- Ensure that Kenyan police and judicial institutions are willing and equipped to meet the task of providing for justice. Where necessary, request international assistance to provide training or other assistance in police reform and enhance investigative and prosecutorial capacity.

TO FOREIGN GOVERNMENTS

- Provide appropriate support, as requested, for the National Dialogue and Reconciliation process and institutions established under its auspices, including the Commission of Inquiry and the Truth, Justice and Reconciliation Commission.
- Make future bilateral and multilateral non-humanitarian assistance conditional on human rights benchmarks including accountability of individuals responsible for current and previous episodes of political violence and excessive use of force by police.
- Maintain and extend foreign visa screening and asset freezes of those individuals suspected of implication in corruption, arbitrary seizure of land, and political violence, during the period of investigation and following convictions.
- Consider electoral reforms such as the gazetting of the political parties act and the independent appointment of electoral commissioners.

ON REFORMS TO SAFEGUARD AGAINST HUMAN RIGHTS VIOLATIONS:

TO THE GOVERNMENT OF KENYA

- Implement electoral reforms such as the gazetting of the Political Parties Act and the independent appointment of electoral commissioners.
- Ensure full and fair settlements of land disputes in line with recommendations from the Njonjo Commission and Ndung'u Commission reports and international standards on the rights to property and land, including the rights to historic land of indigenous communities. This will require a new law that sets up powerful and adequately funded mechanisms to resolve historic disputes, including allocation of compensation when appropriate.

TO FOREIGN GOVERNMENTS

- Provide appropriate, coordinated support for initiatives aimed at addressing the full and fair settlement of land disputes and compensation for historical and current human rights violations.

ON DISPLACED PERSONS:

TO THE GOVERNMENT OF KENYA

- Ensure that internally displaced persons are protected from further violence regardless of their ethnicity and location, and ensure that the fundamental and social and economic rights of all those displaced by recent and previous events are met, including through equitable access to food, health, and education services.
- Engage with civil society and internally displaced persons themselves to agree on a national plan for voluntary return, re-location or re-settlement of the displaced; that plan should take into account the long history of displacement in Kenya and the ongoing unresolved questions over land rights and should include a process of compensation for those who have lost their homes and property.

TO DONOR GOVERNMENTS, UN AGENCIES, AND NATIONAL AND INTERNATIONAL NGOS

- Assist the Government of Kenya in ensuring that adequate protection and assistance is provided to all displaced persons, without discrimination as to ethnicity or location.
- Provide additional assistance to the Government of Kenya and Kenyan NGOs, as required, to meet its obligations to displaced people, including in the settlement or resolution of long-standing disputes over land.



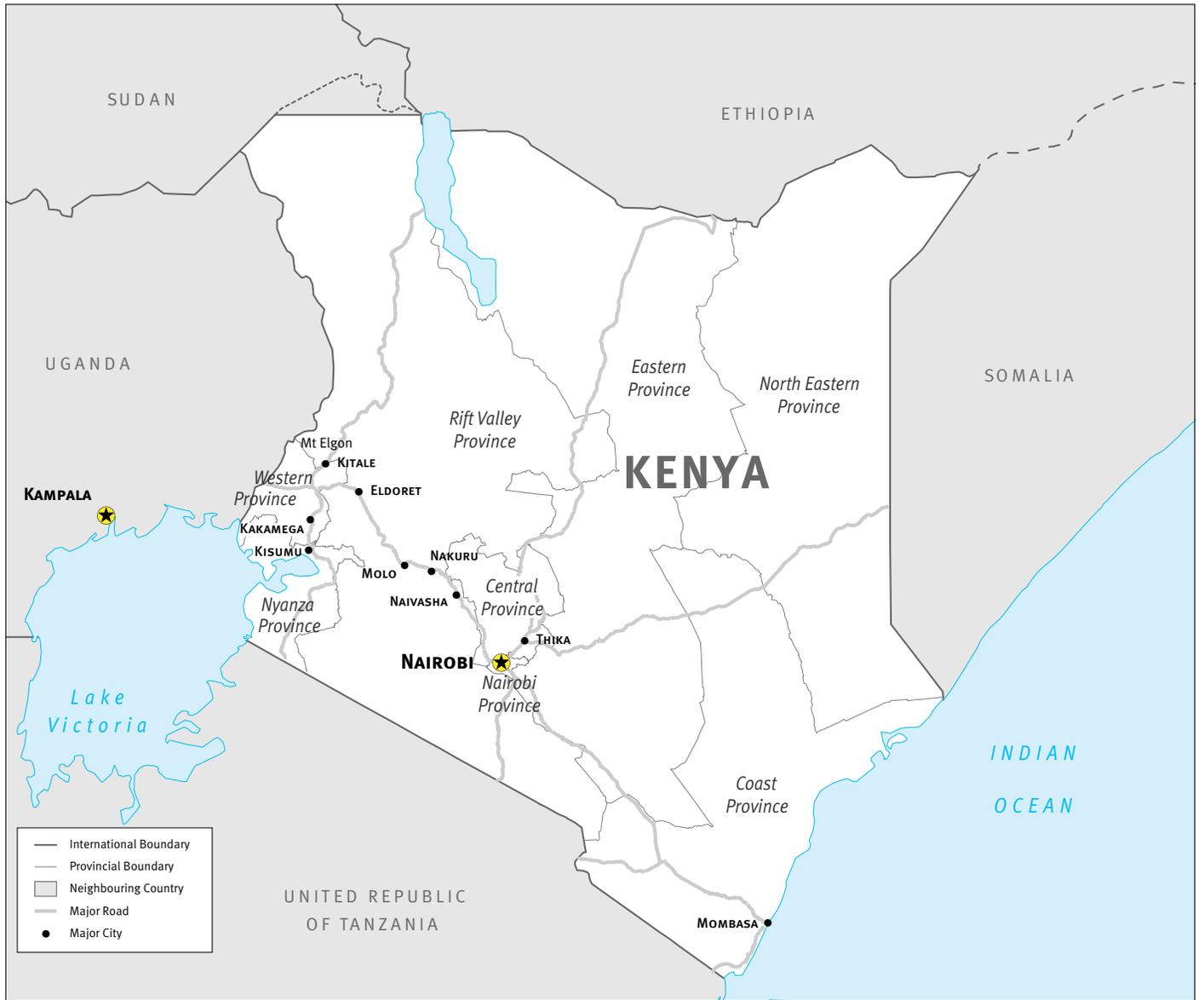
Above: A camp for internally displaced persons in Eldoret, Rift Valley Province, February 2008, in which over 10,000 had sought refuge.

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METHODOLOGY

This report is based on two research missions to Kenya during January and February 2008. Researchers conducted over 200 interviews with victims, witnesses, perpetrators, police, magistrates, diplomats, Kenyan and international NGO staff, journalists, lawyers, businessmen, local councillors, and members of parliament across the country, from all major ethnic groups, by phone and in person, the vast majority in person. Interviews were conducted in English and Swahili without translators. Human Rights Watch also examined court records in Naivasha. Researchers visited the following areas: Nairobi, Kisumu, Kitale, Eldoret, Naivasha, Nakuru, and Molo.

For security reasons, many people spoke to Human Rights Watch on the condition of confidentiality, requesting that the report not mention their names or other identifying information. Details about individuals and locations of interviews when information could place a person at risk have been withheld.



This map has been modified by Human Rights Watch, and is based on a ReliefWeb map. The boundaries and names displayed on this map do not imply official recognition or endorsement by the United Nations or Human Rights Watch.

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Organized Political Violence and Kenya's Crisis of Governance

The results of Kenya's 2007 Presidential election sparked an outbreak of violence that shocked ordinary Kenyans and the world at large. Over 1,000 people were killed and 500,000 displaced. Outsiders had long viewed Kenya as a stable nation in an unstable region. In fact, the underlying causes of the violence are old and deep. Successive Kenyan governments have failed to address systemic failures of governance by allowing corruption, arbitrary land-seizure, and impunity for political violence to persist.

This report, based on research carried out during the clashes in Nairobi, Nyanza, Western, and Rift Valley provinces, documents organized political and ethnic violence in January and February 2008. It also highlights the abusive role of the police, who repeatedly used excessive force against demonstrators. The clashes that brought Kenya to the brink in early 2008 were not the first in the nation's history. Similar numbers of people were killed and made homeless in state-sponsored violence from 1991-1993. No one was prosecuted for these crimes, despite several high profile reports naming and shaming senior politicians for their role in organizing and financing violence.

If the new coalition government is to herald a fresh start for Kenya then it must ensure that those individuals most responsible for recent and previous episodes of violence face justice. It must reverse longstanding failures of previous administrations and address widespread corruption, land grievances, and the institutional reforms needed to protect human rights and ensure stability.

On the evening of December 30, Kibaki was hurriedly sworn in as president. As the news spread, burning and looting took place throughout the night across the country.

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