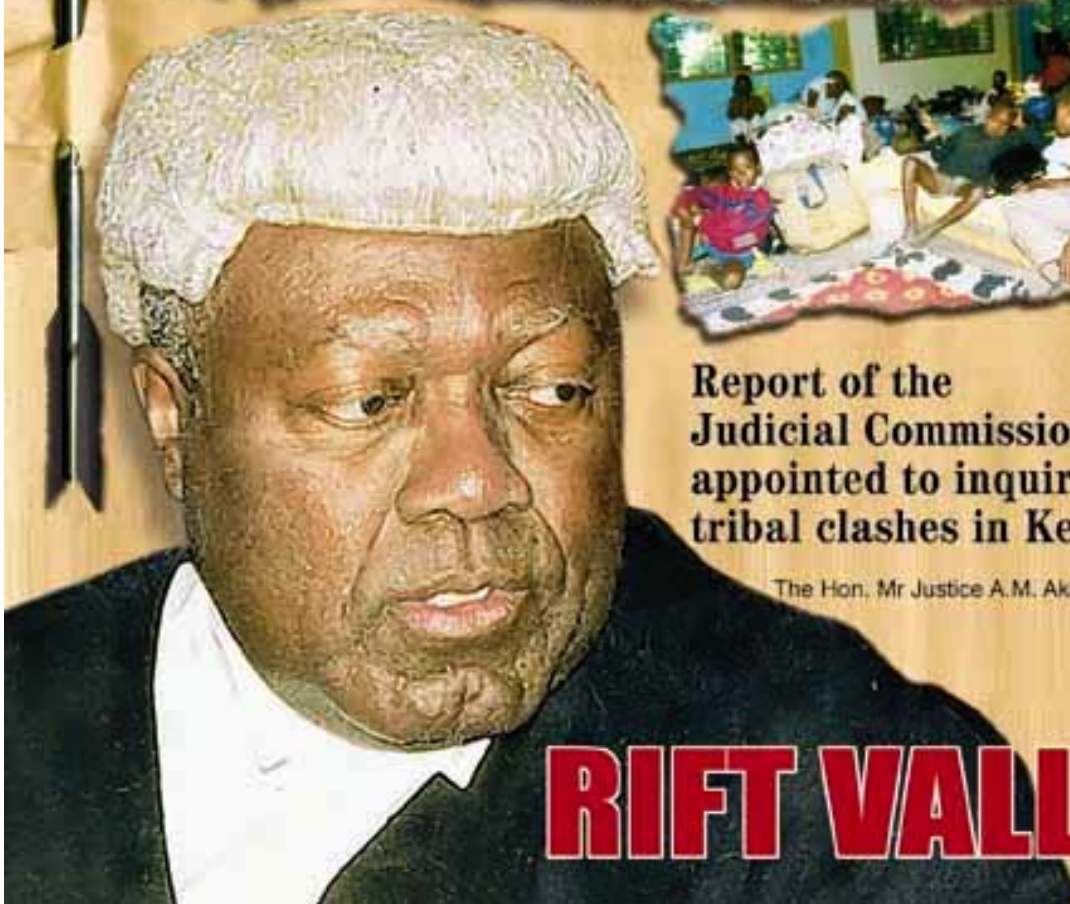




Daily NATION / Special Report



**Report of the
Judicial Commission
appointed to inquire into
tribal clashes in Kenya**

The Hon. Mr Justice A.M. Akiwumi

RIFT VALLEY



CHAPTER ONE

TRIBAL CLASHES IN THE RIFT VALLEY PROVINCE

Tribal clashes in the Rift Valley Province started on 29th October, 1991, at a farm known as Miteitei, situated in the heart of Tinderet Division, in Nandi District, pitting the Nandi, a Kalenjin tribe, against the Kikuyu, the Kamba, the Luhya, the Kisii, and the Luo.

The clashes quickly spread to other farms in the area, among them, Owiro, farm which was wholly occupied by the Luo; and into Kipkelion Division of Kericho District, which had a multi-ethnic composition of people, among them the Kalenjin, the Kisii and the Kikuyu.

Later in early 1992, the clashes spread to Molo, Olenguruone, Londiani, and other parts of Kericho, Trans Nzoia, Uasin Gishu and many other parts of the Rift Valley Province. In 1993, the clashes spread to Enoosupukia, Naivasha and parts of Narok, and the Trans Mara Districts which together then formed the greater Narok before the Trans Mara District was hived out of it, and to Gucha District in Nyanza Province.

In these areas, the Kipsigis and the Maasai, were pitted against the Kikuyu, the Kisii, the Kamba and the Luhya, among other tribes. The clashes revived in Laikipia and Njoro in 1998, pitting the Samburu and the Pokot against the Kikuyu in Laikipia, and the Kalenjin mainly against the Kikuyu in Njoro.

In each clash area, non-Kalenjin or non-Maasai, as the case may be, were suddenly attacked, their houses set on fire, their properties looted and in certain instances, some of them were either killed or severely injured with traditional weapons like bows and arrows, spears, pangas, swords and clubs.

The raiders were well organized and coordinated. Their attacks were generally under the cover of darkness, and where the attacks were in broad daylight, the raiders would smear their faces with clay to conceal their identities. The attackers targeted mainly the Kikuyu, but also the Kisii, the Luhya and the Luo; other non-Kalenjin and non-Masaai communities were not spared.

The attacks were barbaric, callous and calculated to drive out the targeted groups from their farms, to cripple them economically and to psychologically traumatise them. Many of the victims were forced to camp in schools, church compounds and shopping centres. There they lived in makeshift structures of polythene sheets, cardboard and similar materials.



They had little food and belongings with them and lived in poor sanitary conditions with their children who could no longer go to school. There was also a general lack of concern by the Provincial Administration and the Police Force for their security and general welfare.

In general, the clashes started and ended suddenly, and left a trail of destruction, suffering and disruption of life hitherto unknown in this country. The causes of the clashes have been given as conflict over land, cattle rustling, political differences and ecological reasons among others. As stated elsewhere in this Report, these reasons were proffered to conceal the real motive or reason for the clashes.

The issue of border conflicts between the communities has been discussed over and over again, in various fora; various approaches have been tried but to no significant avail. In 1964, a joint border meeting between the local district leaders from both Narok and Kisii led by the Regional Presidents of Nyanza and Rift Valley Provinces, Johnson Keragori and Daniel Arap Moi, was held to promote peace after the two communities had clashed, *inter alia*, because of the unwise utterances by politicians.

At this meeting, the making of inciting speeches was not condemned. The leaders preached only peace. Subsequently, on 5th April, 1967, the question of unsavoury and inciting utterances was raised in Parliament and in the course of the debate, the Assistant Minister, Vice President's Office and Minister of Home Affairs, Mr Matano, remarked, *inter alia*, as follows:

"Mr Speaker, on this question of the clashes between the Maasai and the Kipsigis, there have been some incidents, and we do not want to deny it. There have been a few incidents here and there and, I regret to say that with regard to a lot of those instigations and some of the things that have been happening on the boundaries, the blame really lies on some leaders of this country. I would not like to say which leaders because I feel it is irrelevant, but I feel that if we restrain ourselves and try to help our own people to try to understand one another more and more, I am sure, Mr. Speaker, we shall have less of these incidents."

The importance of the foregoing excerpt is the fact that whilst efforts were made to deal with issues like stock theft and border conflict at local and national levels, we received no evidence of efforts made to deal with unsavoury and inflammatory statements by politicians, who according to the evidence that we received, tend to side with their ethnic communities whenever they face a conflicts situation involving them.

The re-introduction of multi-partyism, tended to magnify and fuel tribal loyalties and to complicate the resolution of inter-tribal border conflicts not only, along the Trans Mara



South Kisii border but also, along the cutline between the Samburu-Pokot and the Kikuyu in Laikipia among other areas.

People in the Rift Valley Province generally tended to follow what their tribal leaders and more particularly, elected leaders, tell them and would not normally follow any counsel, however wise, it may be, from any other quarter if it conflicted with what their leaders had propounded. This was really the crux of the matter regarding the clashes in the Rift Valley Province.

Although we have talked generally in the INTRODUCTION of this Report about the Provincial Administration, we consider it necessary, because of their seemingly partisan role in the clashes in the Rift Valley Province, to say a little bit more about them here.

As we have stated elsewhere, in this Report, the Provincial Administration had over the years, increasingly been politicised to the extent that in the advent of multi-partyism in 1991, they were averse to any remarks made against Kanu the party in power, and whatever action they took had to show their loyalty and support for it. Consequently, when the tribal clashes broke out in the Rift Valley Province, for example, they were not sympathetic to those perceived to be opposition supporters and sympathisers.

For instance, in the Kericho District, two successive District Commissioners, Timothy Sirma and Nicholas Mberia did not care a whit when Luo residents on the Kericho side of the border between it and Kisumu, were evicted. When Nicholas Mberia was asked where he expected the squatters he caused to be evicted from Thessalia livestock holding ground to go to, his response was that they were expected to return to where they originally came from.

He did not at all, endeavour to find out whether they had anywhere to go to before ordering their unlawful eviction. Even when they sought and obtained refuge at a nearby mission and a primary school, he later followed them there and had them forcibly ejected. The only reason which we could discern for his uncaring attitude towards them, was that it was because they were perceived to be Ford Kenya supporters, and also, because they were Luo who were occupying land the Kipsigis who like him, were Kalenjin, considered to be theirs.

We also have the case of Christopher Mwashu, the District Officer 1 of Nandi District, who in October, 1991, was shouted down by a Kanu Location Chairman at a meeting in Miteitei farm, because of his apparent sympathy with the non-Nandi who were considered to be supporters of multi-party politics.

The District Commissioners and the Provincial Commissioners on the other hand, have over the years since 1964, increasingly taken over the role which we think wholly



lies with the police, of directing security operations, arguing that they are directly in charge of the security situations in their areas.

This did in a way, hamper the police operations in quelling the clashes as of ten times, the police had to look up to them for directions as to what action should be taken in that regard. In the process, there was delay in dealing with the raiders who in the meantime, inflicted extensive destruction before police action was taken against them. Moreover, as happened in Thessalia, some District Commissioners, under the guise that they were dealing with threat to security in their areas, engaged in illegal activities which were contrary to law, to achieve purposes which, to say the least, were not within their docket.

In Thessalia, which we will discuss in detail later, Nicholas Mberia, using armed police officers unlawfully and forcibly evicted without the requisite court order, Luo squatters from a piece of land which to his knowledge was not government land but which he argued and asserted was government land, on the pretext that their continued presence there posed a security problem. As we shall also see later, no such problem existed. No evidence was adduced nor was any available to support his assertions. The reason for evicting the squatters which eventually emerged, was a political one namely, to remove the Luo who were perceived to be opposition party supporters, from the area which was regarded as a Kanu zone.

NANDI DISTRICT

Miteitei farm, as the farm came to be known, had a block title in the name of Miteitei Farmers Co. Ltd. Prior to its purchase by the four hundred and fourteen shareholders, Nyakinyua Women's group comprising Kikuyu women only, had wanted to buy it and actually took possession of it. The Nandi, however, resisted the acquisition of the land by the group, and through threats, blatantly, forced the group out of the farm merely because they were non-Kalenjin.

The dispute among the shareholders of Miteitei Farmers Co. Ltd, arose when they could not agree on the acreage of the farm which each of them would get. The Nandi insisted that each of them had to get at least five acres per share, while the other shareholders wanted the farm to be subdivided among all shareholders.

A committee was established by the then area District Officer, Cosmas Mutai, comprising mainly of the Nandi, under the Chairmanship of the area Chief, Philip Kipserein Karonei, to find a solution to the problem, The committee eventually drew up a list of three hundred and nine names, all except nine who were Kalenjin, and presented



them to the area District Commissioner, Mr Paul Yatich, also a Kalenjin, as the genuine shareholders.

That fact, and the fact that the Nandi wanted to be given not less than five acres per share, engendered a dispute between the three hundred and nine who were all Nandi, and those whose names were left out, who all happened to be non-Kalenjin and who numbered two hundred and eighty six. The dispute, despite several attempts, remained unsolved.

The tension between the rival tribal groups increased with each passing day until October, 1991, when tribal clashes broke out, and which was really an excuse to drive the non-Nandi out of Tinderet Division. Ibrahim Injaga Livanze as the Secretary of the Miteitei Farmers Co. Ltd which owned the farm, described the problem in the farm as shown in the verbatim report of the proceedings of the Judicial Commission of 25th February, 1999, thus:

"The problem was tribal land. That the Kalenjin did not want other people to live on their land while they were landless."

Prior to clashes, Security Intelligence reports and other reports on the dispute and the growing tension between the rival tribal groups, had reached the District Commissioner of the area, David Kiilu Mativo, the Chairman of the District Security Committee, who decided to meet the two groups with a view to resolving their dispute.

However, on 28th October, 1991, he instead, sent his then District Officer I, Christopher Mwashu to the farm to meet the opposing groups with instructions, for the second time, to identify who were the genuine shareholders and who were not. He was also to check on the financial management of the company. But we must emphasise that neither the District Commissioner nor the District Officer I had any right in law to interfere with the affairs of the Miteitei Farmers Co. Ltd, a limited liability company, in which they were not shareholders.

When Christopher Mwashu arrived at Miteitei Trading Centre, where he found the rival shareholders separately seated his attempts to get them seated together failed. There was open mutual dislike for each other and at some stage the rival shareholders traded abuses. Because an explosive situation was anticipated several armed policemen under the command of the then Chief Inspector of Police in Charge of Songhor Police Station, Julius Ndegwa, were also present at the meeting to contain any incidents of violence. Although the meeting was one of shareholders of a limited liability company it appeared to have generated a lot of interest among other people who were not shareholders.

Three paramount chiefs had been invited to attend the meeting so also was the Kanu sub-location chairman who though not a shareholder, rudely presented to Christopher



Mwashhi in the course of the meeting a list of three hundred and fourteen mainly Kalenjin whom he claimed were the only genuine shareholders of Miteitei Farmers Co. Ltd.

The involvement and presence of the Kanu sub-location chairman in the meeting of the shareholders showed that there was a political dimension to the dispute. The attempt by Christopher Mwashhi to ignore the intervention of the Kanu sub-location chairman, caused those in the list he presented to become rowdy and abusive. They disrupted the meeting as made it impossible for Mr Christopher to continue. He hurriedly closed the meeting and left with his entourage. The rival group of non-Kalenjin shareholders also dispersed, but the group of mainly Kalenjin shareholders remained behind and held a meeting from about 4 pm. until after 7 pm.

Ibrahim Livanze in his evidence before us, had told us that he had talked to the Nandi, presumably before the meeting was held, and they had told him that they did not want non-Kalenjin in their midst, and that they would drive them out. Special branch Officer Potash Anudo Owuo also testified that the Nandi had said they would solve the land dispute "Kipgaa," meaning that they would find a home made solution to the conflict, which was quite consistent with what the Majimbo crusaders were then preaching.

It should be recalled that a month or so before the meeting of the shareholders, Kanu political rallies were held at Kapsabet in Nandi District, Kapkatet in Kericho District, and Narok town in Narok District, during which as we earlier stated, several prominent Kalenjin politicians drummed up the idea of driving out non-Kalenjin from the Rift Valley Province if they did not support Kanu.

As things turned out, about a month after the last one of those Kanu political rallies and two days after the Miteitei meeting houses of all the non-Kalenjin, except about nine, and including grain stores on Miteitei farm, were set ablaze and burnt down, an act which in effect forced the affected people to flee Miteitei farm.

To this day they had not been allowed back. The only shop premises on the farm which belonged to a Kisii was also burnt down implying that the matter was more than a dispute over shares in a land owning company. We were told that soon thereafter, in or about June, 1992, the farm was surveyed and shared among the so called genuine members and titles were issued to them to the exclusion of those who had been driven away. Those ejected, lost not only, the land but also, the money they had paid to buy shares in the farm.

We were told that the Nandi were unwilling to refund any money to those they evicted, arguing that whatever money they had paid for their shares in Miteitei Farmers Co. Ltd. was rent for the farms they had occupied. Ibrahim Livanze stated as follows in



as shown in the the verbatim report of the proceedings of the Judicial Commission of 25th February, 1999, that:

"Mr. Livanze: The problem now was that they had divided themselves. The 314 and 279 had divided themselves. The 279 were non-Kalenjin and 314 were Kalenjin. Now, the 314 wanted to chase the 279; that: 'You will not get land. What you have paid here, you have earned. You have milked this land for enough time. Now, you must go.'

Justice Bosire: So, the argument was that the money which they had paid was treated as rent for the use of the land?

Livanze: It was taken that way, My Lords. That the money which the 279 had paid was rent for that period and now the rented time was up and they should have gone."

The above statement is almost in all fours with the following one which was made by a Provincial Administration Officer, P. H. Brown in his handing over notes to his colleague, R. Symes-Thompson:

"Recently a European farm at Kaimosi came up for sale and its disposal is still being argued at the time of writing. The Nandi I think would be happy to pay, if necessary by a special rate, for any land but in respect of these two areas i.e. Sarora and Kaimosi they could claim that it is their land, leased to the Europeans, and that therefore there should not be any necessity for them to purchase it."

Owiro farm in Songhor location, Tinderet Division, was bought from one European called Evanson, by a group of Luo, with money contributed by them and bridging finance from the Agricultural Finance Corporation. Clashes on this and several nearby farms in Songhor Location, in which the occupants were predominantly Luo, started on 1st November, 1991, and were allegedly due to the reaction by the Nandi to the rumour that a Kalenjin, Julius Kipsang, had been killed by a Luo policeman.

Julius Kipsang was indeed shot and killed but not by a Luo, but by a Kalenjin police constable Julius Langat. The Nandis attacked and either killed any Luo they came across or looted and burnt their houses. Surprisingly, the looting and arson extended to all the non-Kalenjin implying that the reason for doing so, was not merely the killing of Julius Kipsang.

The attacks were vicious, barbaric and traumatising and that forced the non-Kalenjin out of their farms; they camped at Songhor Police Station, Kopere Trading Centre and Chemelil in Nyanza, among other places. Many have not returned to date to their farms.

One Angira, who tried to return to Owiro farm to harvest some farm produce was attacked and killed by people suspected to be the Nandi. Such attacks brought fear to the refugees and made many to sell their shares in the farm to the Kalenjin. Some simply abandoned their farms and settled elsewhere.



In those farms, unlike Miteitei farm, some of the people whose houses were burnt have settled back on their land.

Those who raided and burnt houses in, Owiro farm were, in general said to have worn white shorts and green T-shirts implying that the attacks were carefully planned and executed. That and the other reasons given elsewhere in this report exclude the possibility that the attacks were provoked by the killing of Julius Kipsang. Kipsang's death was clearly an excuse given to disguise the real reason for the attacks.

Besides, Henry Tuwei, a Kalenjin, and the Chief of Songhor Location, testified that he had prior knowledge of impending attacks on Owiro farm, and instead of informing the Officer Commanding Songhor Police Station, who was only a few kilometres from his office, of this, he chose to travel over 50 km to Kapsabet town to inform the District Commissioner of the impending attack.

The Chief's conduct was clearly suspect and smacks of a person who knew and approved of the acts of murder, arson and looting of the non-Kalenjin houses in Owiro. We recommend that he be further investigated with a view to being prosecuted as we think he was an accessory to the clashes.

Two reasons were given for the inter-ethnic clashes in Tinderet Division. However, as we have tried to demonstrate the reasons were merely excuses for the violence in the various farms. Tinderet falls within the narrow belt on which European settlements lay and as earlier on stated, it is an area that the Nandi have over the years, nursed an ambition to recover.

After hearing various witnesses on the matter and after some research, we have come to the conclusion that the clashes in Tinderet had three basic underlying causes: Firstly, the Nandi have over the years nursed the ambition of recovering what they think they lost when the Europeans forcibly acquired their land in Tenderet among other areas.

The Nandi have all along, contended that Kipkelion, Londiani, Fort Tenan, are other areas, are part of Tinderet and therefore part of Nandi District. Matters were made worse when after independence, people whom the Nandi consider as foreigners, though African Kenyans, acquired part of the land. The case of Miteitei farm was a case in point.

Genuine shareholders were driven out of what in law was their land which was then subsequently shared are the Nandis on the alleged reason that those driven out were squatting on other people's land. Secondly, the Nandi like all other Kalenjin detest foreigners living in their midst, and worse still, owning land among them. The clashes seem to us to have been aimed at removing the foreigners who as stated elsewhere, were derogatorily referred to as "madoadoa".



The third reason for the clashes is politics and ethnic loyalty. In the period immediately before and after political independence in Kenya, the Kalenjin were largely in Kadu. When their political leaders decided to dissolve that party to join Kanu the Kalenjin almost to a man followed their leaders and joined Kanu. They, similarly remained in Kanu en bloc when in 1966, some politicians crossed the floor in Parliament from Kanu to join the newly formed KPU of Oginga Odinga. The crusade for multi-partyism was viewed by the Kalenjin as a disguised attempt to remove their own as President of Kenya in favour of a non-Kalenjin.

The political rallies of September, 1991, which were held at Kapsabet, in Nandi District, Kapkatet in Kericho District and Narok in Narok District, and addressed by largely Kaleqjin political leaders must be looked at against that background. The Kalenjin political leaders who included Henry Kosgey, tile then and current Kanu Chairman in Nandi, Ezekiel Barngetuny, and John Cheruiyot, all from Nandi and who were and still are Kanu stalwarts, advocated and preached "Majimbo" during those rallies.

"Majimbo" according to the evidence presented to us was not federalism in the real sense of the word, but an arrangement in which each community would be required to return to its ancestral district or province and if for any reason they would be reluctant or unwilling to do so, they would by all means be forced so to do.

The majimbo rallies, which were widely publicised in the print media, and whose proceedings were confirmed by witnesses who were present among them, John Keen and Willy Kamuren, were intended to counter the then on going campaign for the re-introduction of plural politics in Kenya.

As we stated earlier, the Kalenjin viewed multipartyism. as a veiled attempt to dislodge from office their own as President of Kenya. The predominance of prominent Kalenjin politicians in those rallies is clear testimony that they felt the.-by would lose a great deal if multi-partyism was re-introduced in Kenya, and hence their unequivocal remarks at those rallies that they would forcibly evict those who supported multi-partyism.

It is noteworthy that the Kalenjin tend generally to accept and to follow their leaders in political Issues. In his evidence Chief Jonathan Kibaibaii Rogony of Kamasian Location, in Kipkelion Division, of Kericho District, stated that he believed that because H.E. the President had crossed from Kadu to Kanu with all his followers and since then remained in Kanu, the Kalenjin leaders assumed that only Kanu would be supported in their areas, and other political parties were unwelcome.

The majimbo rallies appeared to be intended to pass a message to the Kalenjin community that the path their leaders had chosen was to stick in Kanu and any other



political thinking had to be resisted even by use of arms. We do not think that clashes started at Miteitei, in Nandi, by coincidence.

We think that like in other parts of the country, they were carefully planned to exploit the existing Nandi ambition to recover ancestral land and to drive away the "madoadoa" in order to achieve the main political purpose of making Nandi a Kanu zone. The attacks were also carefully executed and followed a common pattern.

Kamasai is a village in Soymining sub-location in Chepterwai Location in Kipkaren Division of Nandi District. This area, unlike Miteitei which was a settlement area, was part of the former Nandi native reserve. Its residents were mainly the Nandi, the Luhya, the Masaai and the Teso. The Nandi were the indigenous community in the area while the other communities settled in the area after purchasing land from the Nandi. We were told that many of those who had bought land there did not have title deeds to their respective farms mainly because the Nandi were reluctant to effect the transfer of title to them.

In some few cases, the vendors had migrated to Trans Nzoia and Uasin Gishu Districts and their specific areas of residence there were unknown. They would not therefore be traced to take the necessary steps to effect the transfers.

The clashes in the area like many other areas started and ended suddenly, and pitted the Nandi against the Luhya the Teso and the Maasai. The Nandi, in one night, burnt more than twenty four houses belonging mainly to the Luhya but also a few belonging to the other non-Nandi tribes.

A warning scream in Kinandi had been heard and which was followed by the widespread burning of those houses. The few non-Nandi houses which were left, were later, in January 1992, burnt by the Nandi.

Regarding the causes of the clashes in Kamasai, the Chief of Chepterwai Location, Julius Pekiyei arap Bett, gave what we considered to be a ridiculous reason for the clashes, and which in any event, was unsupported by a witness Samuel Kipkoske Kitur, who was present when the alleged incident took place and who would have been, but was not, aware of that fact.

The Chiefs account was that one Agola Akumu, a Luhya, along with some Nandi and Luhya, were drinking busaa, a local brew, in the home of one Rosyline Cheptoo, a Nandi. Also there with them, was Samuel Kipkoskei, Kitur, a nephew of Rosyline Cheptoo. As they were drinking, a disagreement arose between Agola Akumu and Samuel Kitur which, according to the Chief, was because Agola Akumu wanted to sleep with Rosyline but which he could not do as Samuel Kitur refused to go away. Agola Akumu got annoyed and hit Samuel Kitur with a walking stick injuring him badly. Fearing reprisals,



Agola Akumu ran to his house which he set on fire and to divert attention from his action, shouted out that Samuel Kitur was the arsonist.

The Luhya responding to his calls then set on fire several Nandi houses in retaliation. This in turn, provoked the Nandi to also burn Luhya houses. The Chief, continuing his ridiculous story, further stated that prior to all this, the Luhya had been in the habit of calling the Nandi stupid people, which upset the Nandi who, when the opportunity presented itself, in late November, 1991, decided to drive out all the Luhyas from the sub-location.

These were merely excuses for the clashes as the real reason for the clashes was political and which was at the same time, a form of ethnic cleansing. We have explained these in detail in our discussion of the Miteitei clashes and only, wish to add that the timing of the clashes at Kamasai and elsewhere, lend support to the view that they were planned and executed to achieve political ends.

With regard to the role of, and action by, the Provincial Administration and the Police Force we were told that both the Provincial Administration Officers and the Police Force were warned of impending trouble at Miteitei farm. The Special Branch Officer, Potash Anudo Owuo, told us that he was aware of rising tension between two rivals groups of shareholders of the Miteitei Farmers Company Ltd, a fact which I immediately passed on to both David Mativo the District Commissioner and Chief Inspector Julius Ndegwa.

Yet neither took steps to pre-empt any violence that was clearly evident. Julius Ndegwa did, however, leave some few policemen behind to deal with any possible violence. The policemen remained at the farm overnight, and were relieved by others the next day. Yet when houses started burning they were unavailable either to avert or to stop the burning; nor was the said Julius Ndegwa able to explain where they were and why they were unable to prevent the burning of the houses.

The evidence we received was to the effect that their presence got known when gunfire was heard from one part of the farm but only after several houses had been burnt down. Among the buildings that were burnt down was the only shop at Miteitei Trading Centre, which was owned and run by Wilfred Basweti, a Kisii, who was also a shareholder in Miteitei Farmers Co. Ltd.

It was near that shop that the meeting which aborted was held; and it was there too, that the policemen who were detailed to patrol the area were based.

The behaviour of the police in Owiro farm, was not any better. We were told that in each case, they arrived after houses had burnt down, and whenever they saw houses being torched, they did not at all attempt to arrest the arsonists. We were also told that



whenever they used their guns they merely fired into the air, a fact which neither stopped nor deterred the burnings.

It is our view that the conduct of the police smacked of negligence, cowardice, and callousness. Indeed, whatever they did, was clearly inadequate and bordered on condoning the clashes. It is unthinkable that all non Nandi houses except the negligible few, could be torched and razed down, in more than three locations without any single person being positively identified, arrested and successfully prosecuted for it.

A few people who were arrested were merely scape goats, and in any case, many of them were released without charges being preferred against them; and where any charges were preferred the investigation of the cases was conducted in a half hearted manner.

For instance, Julius Ndegwa told us that many of the suspects who were arrested for arson were released because the complainants could not be traced. That was a ridiculous statement to make. Those displaced came from somewhere. No effort was made to look for them.

This clearly showed that the police were unwilling for whatever reason, to arrest and to charge the arsonists. We were told for instance that a number of people were arrested for various offences but were released on the instructions of the Officer Commanding Police Division Nandi, Mr. Otieno, since deceased.

Moreover, those who were arrested were on charges mainly of being in possession of dangerous weapons, to wit bows and arrows which ordinarily are traditionally possessed by the Nandi.

The manner in which the police went about their work suggests that they had prior warning of impending clashes but did not want to do anything positive to avert or quell them. The Provincial Administration, like the Police Force were quite insensitive to the security situation, and in most cases they did not care a whit.

Even though the area District Commissioner, David Mativo who was also the Chairman of the District Security Committee had been told that the security situation in Miteitei was volatile, he suspiciously, did not consider it important enough to suspend other business so as to deal with the matter himself. He sent his deputy who, to say the least, fuelled an already bad situation and then ran away.

By his action in trying to ascertain who were and who were not shareholders, of Miteitei farmers Co. Ltd., something which had earlier been done by his predecessors, he made the shareholders believe we think, that no solution was in sight to their long outstanding dispute. No wonder, the majority group said later that they would resolve the dispute "Kipgaa", the home way.



Apart from Christopher Mwashu, the other officers of the Provincial Administration below the District Commissioner were all Kalenjin. The Judicial Commission was told that the area Chief, Philip Karonei, was siding with the Nandi shareholders in the Miteitei dispute. He chaired a committee which the previous area District Officer, Cosmas Mutai, had appointed to determine the genuine shareholders of Miteitei Farmers Co. Ltd. and which committee had eliminated the non Nandis from the list of shareholders. He was clearly partisan and seemingly part of a scheme to evict non Nandi out of the District.

Miteitei Farmers Co. Ltd. having been promoted by the non Nandi to the exclusion of the Nandi it was illogical to say that even some of those who started the company did not qualify as genuine shareholders. His role in the clashes should be further investigated with a view to charges of being an accessory being preferred against him.

The Senior Chief of Songhor Location, Henry Cheruiyot Arap Tuwei likewise should be further investigated. On the night clashes broke out at Owiro farm at about 11 pm on 1st November 1991, he had shortly prior thereto been at the scene where the burning of Luo houses later started. He had been in the company of two policemen and they had met Johnson Odero Omala, whom he told that they were there to provide security.

The burning of houses having started soon after he and the policemen had left clearly suggests that his presence there was merely to hoodwink Johnson Omala and his neighbours into believing that all was well. We believe he was one of those behind the clashes in Songhor Location and should be investigated.

The Chief of Kimasai, Julius Pekiyei arap Bett, like his counterpart in Miteitei Location, evidently condoned the burning of the non-Nandi houses in his Location, because if that were not so, he would have, but he did not, taken steps to verify the ridiculous story he presented to us on the cause of the clashes in his Location. Moreover, he did little to either stop the clashes or to assist the victims thereof.

We also received evidence that the District Officer of Tinderet Division R. K. Kirui, forcibly took away the shareholders register of Miteitei Farmers Co. Ltd. from the Company Secretary, Ibrahim Livanze, a fact which was confirmed to be true. But what right did the District Officer have to seize the register of the limited liability company? This unlawful act points to the fact that both the District Officer, and the Chief of Miteitei Location were partisan in their handling of the affairs of Miteitei farm, and tacitly approved the burning of the houses belonging to the non Nandi.

It is no wonder, therefore, that as Ibrahim Livanze said, they, the leaders of the company, could not complain to the Provincial Administration as the latter supported the Nandi against them.



KERICHO DISTRICT

Kericho, an agriculturally rich District with undulating highlands, generous rainfall, and good soil was originally comprised of the present Kericho, Bomet and Buret Districts,

The latter two were carved out recently from the greater Kericho District. The indigenous inhabitants of the greater Kericho District, the Kipsigis, one of the Kalenjin tribes, had by 1991, as their neighbours, the Luo the Kisii, the Nandi and the Maasai.

The District, as it then was, like several other Districts in the Rift Valley Province, was affected by European settlements which covered several areas including Kipkelion and Londiani, Chirchila (Fort Tenan), Thessalia, Sondu and Sotik. For the purposes of this Report we will confine ourselves to a few of those areas which were among those in the country which were affected by the infamous ethnic clashes which rocked our country in 1991 and thereafter, notably Chirchila, Kipkelion and Londian; Thessalia and Sondu. Except Sondu, all the other areas border Tinderet Division of Nandi District, which we discussed earlier.

We also have Burnt Forest in Uasin Gishu District and Molo in Nakuru District bordering Londiani Division and both of which Districts formed part of the European settlements which we will discuss later. We propose to deal now with the Chirchila, Kipkelion and Londiani Divisions together and Thessalia and Sondu, separately because of their divergent backgrounds.

Chirchila, Kipkelion and Londiani Divisions constitute an area wholly comprised of settlement farms which, except for a few, were occupied by a mixture of ethnic communities, notably, the Kalenjin, who were the majority, the Kikuyu, the Kisii, the Luo, the Kamba and the Luhya.

The, Kikuyu moved to the area after 1952, to look for work in former European farms, and by 1957, their numbers had grown so immensely that their presence was causing concern to the colonial government with the result that regulations were promulgated to regulate their entry into and stay in Kericho District. In his annual report for 1957, the area District Commissioner remarked, in pertinent part, as follows:

"As has been stated elsewhere in this report the existing Kikuyu pilot schemes were extended this year to the tune of 500 additional families. For security reasons it is not proposed to allow further employment of members of this tribe, until experience of the present scheme indicates that it is safe to do so."

We however, hasten to add that the European settlers regarded the Kikuyu as providing better quality labour than the other tribes and consequently pressed for the relaxation of entry regulations, which was done and two thousand and four hundred Kikuyu men, women and children were, in 1957 and subsequent years, allowed entry into



Nandi Hills Tinderet, and into Songhor, Chirchila and Lubwa in Kericho District. Of these, except for four hundred who went to Nandi Hills, the rest of the Kikuyu were absorbed in the other areas. The geographical area of Lubwa comprised Kipkelion and Londiani Divisions.

The Kikuyus who then settled in parts of Chirchila, Londiani and Kipkelion were, after independence, among the squatters and former European workers who were settled on Mutaragon farm in Kipkelion, under the aegis of the Commissioner For Squatters. Mutaragon farm is one of several farms which comprise Kipkelion and Londiani Divisions.

Chirchila formerly Fort Tenam is now a Division on its own. Although the Kipsigis claim the three divisions were part of their ancestral land which was taken over for European settlement, the Nandi too, claim that the two among other Divisions were part of Tinderet, which as stated earlier, the Nandi have over the years sought to reclaim.

Be that as it may, whether the areas originally belonged to the Kipsigis or the Nandi is not for consideration here. What is significant, however, is that the two Divisions are now cosmopolitan; the majority of the people resident there have been living there since colonial times; they did not have any overt conflicts among them, and presently own the land they occupy which is duly registered either in their names, or in the name of a cooperative society or land buying company in which they own shares.

Unlike Miteitei farm land disputes among shareholders, where they existed were merely confined to boundary disputes which were in any event, quite isolated.

Chirchila and Kipkelion Divisions but not Londiani Division, border the former Kipsigis native reserve, and like all other administrative divisions elsewhere In the country the two Divisions were dividend into Locations. Those which concern us Include Kunyak (Kapkoros), Koguta, Kiptenam, Minihaha in Chirchila; Kamasian and Kipsige in Kipkelion; and Sorget in Londiani.

Each of those Locations had several farms most of which were occupied by mixed ethnic communities notably the Kalenjin, the Kikuyu and the Kisii, in varying numbers. But in Chirchila most of the residents are the Kalenjin, the Luo, the Kikuyu and the Kisii.

Until 1991, when clashes broke out, the mixed settlements did not pose any noticeable problems, as the residents had after acquiring their farms, quickly settle down got their land registered in their names, built schools and churches for their common use, soon elected their parliamentary and civic, representatives, and got administrative Locations and Sub-Locations with Chiefs and Assistant Chiefs to handle their day to day problems.



Most, if not all the farms, had been acquired by 1971, when the country was a de facto one party state with KANU as the only political party. By 1991, the member of parliament for the area, was William Kikwaii, a Kipsigis, and the local councillors who were at least four, were largely Kipsigiis.

All the Chiefs and Assistant Chiefs were also Kipsigis, a fact which we were told did not auger well with the other ethnic communities who felt that at least, appointments to administrative posts should be evenly shared amongst the ethnic communities. We were told that among the matters which angered the Kipsigis was the fact that some of the Kisii showed a keen interest in elective as well as administrat positions. This issue did not, however, visibly strain the inter-ethnic relationship which according to the evidence we heard, was good.

Witnesses told us that there were cases of inter-tribal marriages, free social interaction and that generally the different communities tolerated each other. Tolerant co-existence prevailed until 1991, when there began in the country, the clamour for multi-p arty democracy.

The campaigns for multi-partyism and majimboism did not actually take place 'in Chirchila, Kipkelion and Londian but they nevertheless affected the areas before the onset of the tribal clashes.

Majimboism was intended to counter the fight for multipartyism. In Chirchila, Kipkelion and Londiani the people there, particularly the Kipsigis, were aware of the both campaigns and the inciting utterances made at the KANU political rallies at Kapsabet and Kapkatet, and as we were told, the Kipsigis warned the other communities to stick to KANU or else they would face dire consequences.

The Kipsigis, who like all the Kalenjin communities, supported KANU, would sometimes when drunk openly say that they wanted "majimbo" so that they can evict the non-Kalenjin from the Rift Valley Province and send them back to their ancestral homes.

For example one witness testified that the Assistant Chiefs used to threaten the non-Kalenjin with dire consequences if they supported or talked about multi-partyism.

Paul Kipkemei Murei, a Kalenjin himself told us that, in or about November, 1991, he heard that the Luo, the Kisii, and the Kikuyu who were the "madoadoa" because they were perceived to be supporters of multi-partyism or its sympathizers, would be driven away.

The tribal clashes in Kipkelion broke out on the night of 5th November, 1991, pitting the Kipsigis against the Kikuyu, the Kisii the Luo, the Kamba and the Luhya, and were confined mainly to Kamasian and Kipsige Locations. Kamasian Location borders Tinderet Division, in Nandi District, where Miteitei farm is situated and the non-Nandi



who were victims of the clashes which began in Miteitei farm on the night of 29th October, 1991 fled and sought refuge in neighbouring areas more particularly, Tinderet Tea Estates, Kamasian Location, Chirchila and Londiani Divisions.

The majority of the refugees who were the Kisii, crossed mainly into Mutaragon farm in Kamasian Location where there were many Kisii residents. The Chief of Kamasian Location, Jonathan Kibaibai Arap Rogony, told us that as soon as the Kisii from Miteitei settled at Mutaragon farm there was general talk that the Nandi had vowed to pursue them there and drive them away.

The refugees from Miteitei farm arrived in Kipkelion and parts of Chirchila Divisions on 3rd and 4th November, 1991, and a day later the houses of the non kipsigis there, began to be burnt.

We were told that about two or three weeks before this, a group of Kipsigis councillors toured Kamasian Location. No evidence was given to connect the visit to the clashes but the implication is obvious because it was almost soon after their tour that non-Kipsigis houses began to be burnt there. Though the individual arsonists could not be identified it was stated that they were Kalenjin youths.

About two hundred of them were seen on 6th November, 1991, in broad daylight, while armed with bows and arrows and other crude weapons, crossing from Leldet farm into Kashin Trading Centre where they looted and burnt all shops belonging to the non-Kalenjin.

There was a similar attack at Nyairobi Shopping Centre. They had smeared their faces with ash, were swift and appeared to have well organized co-ordinated movements; they were ruthless and barbaric and senselessly burnt even grain stores no doubt with a view to traumatising and rendering their victims destitute and thus cause them to move out of the area. One victim Naftali Nyaoma testified, in pertinent part, as contained in the verbatim report of the proceedings of the Judicial Commission of 6th April, 1999, as follows:

"Mr. Chairman: The burning was meant to evict you, Why? So, that

Mr. Nyaoma: So that they may occupy the farms we had, my Lords.

Justice Bosire: Why do you say that?

Mr Nyaoma: Because, when I met some of these people who had taken beer, they used to tell me that some houses which were not burnt, such as mine, were meant to be used by some of them after we had gone.

Mr. Nyaoma: They used to complain: "Some of our youths had burnt the houses of Kisii and Kikuyus, because they were promised to get pieces of land; some were promised jobs, and they never got them", my Lords.



Mrs. Oduor: Did they say who had promised them jobs and land?

Mr. Nyaoma: They did not, my Lords."

The burning of shops at Kashin and Nyairobi Trading Centres took place in broad daylight which clearly shows that the arsonist who acted with impunity and blatantly had some backing from high authority, but how high, we cannot possibly say as no evidence was given in that regard.

There were incidents of retaliatory attacks in which the non-Kalenjin burnt several Kalenjin houses. In isolated cases, they attacked and killed some of the Kalenjin had been for instance, Lord Koech of Londiani. It was suspected that Kalenjin warriors training on his farm to cause the clashes. He was attacked in his motor vehicle, a pick up, as he drove from one of his farms to another.

His widow testified regarding his behaviour before he met his fate and in our view it was rather strange. Despite the fact that a Kikuyu neighbour and friend had warned him not to go to Londiani town on the fateful day, he nonetheless did. At the time of his death, a jerrican with some petrol in it was found in his pick up which was suspected was to be for use in burning non-Kalenjin houses.

The clashes in Chirchila, Kipkelion and Londiani Divisions started almost without notice and ended abruptly. We were told that the causes were basically the reintroduction of multiparty politics in the country and demonic influences. However a careful examination of the evidence that we received, revealed that the well known Kalenjin aversion to strangers living in their midst particularly on their ancestral land which had in colonial times, been set aside for European settlement, was exploited for political objectives.

This took the form of the attacks on, and the destruction of the property and the senseless killing of innocent non-Kalenjin who were perceived as non supporters of KANU so as to drive them away and make the Rift Valley Province overwhelmingly a KANU zone and to make it possible come the December, 1992 general and presidential elections, for the Kalenj in to vote as a bloc for KANU.

The Chief of Kamasian Location, Jonathan Kibaibai Rogony unequivocally stated that political leaders in the area declared Kipkelion a KANU zone, because they feared that non Kipsigis would join the opposition political parties. The local leaders' view appear to have been the same. What Jonathan Rogony said on this issue as contained in the verbatim report of the proceedings of the Judicial Commission of 8th April, 1999, is as follows:



"Mr Rogony: My Lords, I think they were saying that, that was a Kanu zone because since time immemorial KANU had gained support in the area because no other political party had gone to campaign there.

Justice Bosire: There used to be KADU in 1962/1963, is that not so?

Mr Rogony: Yes, my Lords.

Justice Bosire: And by that time KANU was there, as it not?

Mr Rogony: My Lords, at that time I was hearing about KADU not KANU.

Justice Bosire: When did KANU come to the area?

Mr Rogony: My Lords, I think it came to the area when H. E. the President and his followers joined it.

Mr. Mureithi: And H. E. has not left KANU since that time, has he?

Mr Rogony: He has not, my Lords.

Mr Mureithi: Was that the reason why Kalenjin leaders assumed that, that area would remain a KANU zone?

Mr Rogony: It might be so, My Lords.

Mr Mureithi: But that was a time when opposition political parties were being formed. Is that true?

Mr Rogony: Yes, my Lords.

Mr Mureithi: Was the 'zoning' of the area meant to keep away opposition

Mr Rogony: My Lords, I think that was the way the leaders were talking."

Another witness, Silvanas Ngidi Akelo from Kunyak farm in Chirchila Division, and who was a member of the peace and reconciliation committee in his Location, also stated as follows as appears in the verbatim report of the proceedings of the Judicial Commission of 12th April 1999:

"Mr. Akello: My Lords, our neighbours said that the causes were because of political language.

Mrs. Oduor: By saying your neighbours whom are you referring to?

Mr. Akello: My Lords, I am referring to the Kalenjin.

Mrs. Oduor: So, can you tell the Commission what you discussed about politics and how it started that disturbance?

Mr. Akello: My Lords, they said that there was a political party which was formed by the name of FORD and they said that FORD had come to interfere with peace in Kenya and they did not want other parties to be registered which were being registered at that time."



Joshua Kamau Macharia, a Kikuyu councillor from the Chepkongoni Ward, Londiani, testified on the same issue as shown in the verbatim report of the proceedings of the Judicial Commission of 16th April 1999, as follows:

"Mr. Chairman: How did multi-partyism bring about the clashes?

Mr. Macharia: My Lords, I would not say that multi-partyism brought about the clashes. I think that people did not understand multi-partyism. When multi-partyism came, people thought that these were parties on community basis and they did not understand and that is why there were some differences because when we had a single party system, we did not experience such a thing.

Mr. Chairman: What was the misunderstanding about multi-partyism?

Mr. Macharia: My Lords, there was an argument because most of the supporters of the Opposition parties were Kikuyus and the supporters of KANU were Kipsigis.

Mr. Chairman: And so?

Mr. Macharia: My Lords, people did not understand political parties and they took them to be parties on tribal basis. They took DP and FORD (A) to be parties for Kikuyus and KANU for the Kipsigis. Mr. Chairman: So,---?

Mr. Chairman: So, the Kikuyus were to leave?

Mr. Macharia: My Lords, the Kikuyus were supposed to leave because they had shown openly that they were not supporting KANU. And they were the ones who came with the Opposition.

Mr. Chairman: They were supposed to leave, is that what you are saying?

Mr. Macharia: My Lords, they were being told that they were going to leave.

Justice Bosire: If they did not support KANU, or they will leave no matter what?

Mr. Macharia: My Lords, they were supposed to leave if they were not going to support KANU."

It should also be noted that according to the Constitution a successful Presidential candidate was required to garner at least 25% of all the votes cast in at least five of the eight provinces in the country, and at the same time have the highest number of votes cast countrywide. The zoning of areas as KANU zones was clearly a move in that direction although it was not so openly expressed.

Besides, the Kalenjin leaders made it abundantly clear, at Kapsabet, Kapkatet and Narok KANU political rallies, that they would not tolerate support for political parties other than KANU in the whole of the Rift Valley Province. In this respect it is more than



a coincidence that the clashes in Tinderet, Chirchila and Kipkelion Divisions occurred within a month and half after these three KANU political rallies, were held and which means that the Kalenjin responded expeditiously to the calls which were made in these rallies to the effect that those who did not support KANU, would be unwelcome in the Rift Valley Province and would be driven away.

From the surrounding circumstances, we conclude that the Kalenjin who attacked, killed or injured the non-Kalenjin and burnt their houses were recruited, and trained and financed by some powerful people to violently evict the non-Kalenjin. The Kalenjin raiders who attacked the non-Kalenjin and destroyed their properties in Chirchila, Kipkelion and Londiani Divisions came in large numbers and in some cases, in broad daylight. They mysteriously disappeared eluding the police, after completing their mission. Only a well trained and organized militia could execute the forays the Kalenjin raiders did.

It is also important to state here that the inciting utterances and tribal attitude made and adopted by the Kalenjin politicians in the Kapsabet, Kapkatet and Narok KANU political rallies was clearly an anti-thesis of the declared government policy that Kenya should be a unified, peaceful and non-tribalistic society and one which respects the rule of law.

The then member of parliament for Kipkelion, William Kikwai, a Majimbo proponent and the area Councillors, Chumo and Benjamin Ruto, were among the local political leaders, who were said to have intimidated the non-Kalenjin with violence and eviction if they did not support KANU. We think that their roles in the clashes should be further investigated.

The clashes did to some degree achieve their intended purposes. Many of the non-Kalenjin left Chirchila, Kipkelion and Londiani Divisions after the clashes and were not there as at the time of the December, 1992, general elections to vote, and others either sold to or exchanged their land with the Kalenjin who owned land in areas like Nyahururu. We were told that over fifty Kikuyu in one farm and others in other farms, had either sold their land to the, Kalenjin or exchanged them for land belonging to the Kalenjin.

Unlike the clashes in Miteitei farm and those in Thessalia which we will next consider, no reasons other than the political cause, were proffered as that which may have immediately triggered the clashes in the Chirchila, Kipkelion and Londiani Division.

Thessalia, otherwise known as Buru Hill or the area with red soil, takes its name from Thessalia Mission of the Free Pentecostal Fellowship of Kenya Church which is situated South-West of Muhoroni Town. The part which concerns us is the land designated L.R.



No.3979 which, on or about May, 1924, was alienated to three European settlers by the colonial government for a 99 years lease. In or about 4th January, 1951, the leasehold interest was transferred to Margaritis Plantations Limited, which in turn, transferred one hundred and eighteen acres of it to Arvid Gumerius Bustgaard, on 23rd September, 1959.

By special resolution Margaritis Plantations Ltd, went into self liquidation and appointed two liquidators on 4th September 1967, who transferred to George Evangelos Siragos Margaritis the remaining two thousand three hundred and eleven acres which was designated as L.R. No.3979/2. That land was the subject matter of a management order which was made on or about 24th March 1973, by the Minister for Agriculture and Animal Husbandry, pursuant to the provisions of Section 187 of the Agriculture Act, Cap 318, Laws of Kenya, which empowers the Minister, among other things, to occupy and manage any farm, and thereafter if he considers it beneficial, to transfer the whole or part of the farm for valuable consideration, but after serving on the registered owner thereof a fourteen days statutory notice declaring his intention to do so and inviting objections to the intended sale.

However without any apparent compliance with that provision with regard to notice, the Minister, on the same day the management order was noted in the land register and the instrument of title to the land, transferred to Kipsitet Farmers Society Ltd, 596.7 hectares or 1954 acres; and on 15th August 1975 transferred a further 180.2 hectares to one Joab Henry Onyango Omino, and this left a balance of 392 acres on which lived several Luo squatter families. Those families were to be forcibly evicted from that land on 13th December, 1993, by a combined force of regular and administrative policemen under the supervision of the area District Officer. Samson Omweno.

We received uncontroverted evidence that the several Luo families evicted from L.R. No.3979/2 were part of a labour force the former European settler owner had on the land and who were resident there. He had set aside part of his land for their occupation, and when the aforementioned management order was made they were still living on the land. Some of the squatters were born and brought up there and knew no other place as home.

The farm in question, which we shall now refer to as Buru farm, unlike other former European settler farms, was not purchased by the government for the resettlement of Africans. The Ministry of Agriculture and Animal Husbandry on taking over the management of the farm, decided to make it a livestock holding ground.

The decision was however not implemented because the Luo squatters petitioned the then Vice-President of Kenya, Daniel Arap Moi, to intervene, which he did and directed that the project be abandoned in favour of allowing the squatters to remain on the land. By its letter dated 11th February, 1978, the Ministry relinquished its interest in Buru farm



and by a subsequent letter dated 17th February 1978, asked the Director of Settlement to assist the District Commissioner, of Kericho, in the settlement of the Luo squatters on Buru farm by sub-dividing it and sharing it among them.

That letter was duly copied to the District Commissioner, Kericho, but apart from asking the squatters to raise some money amounting to about sixty thousand shillings which they did and deposited the same in the District Treasury, neither he nor his successors took any further steps towards settling the squatters. Subsequently, upon the petition of the squatters, the Commissioner of Lands wrote a letter dated 25 September, 1987, to the District Commissioner, Kericho, which in pertinent part read as follows:

"The Permanent Secretary Ministry of Livestock Development has confirmed that his ministry no longer requires the above mentioned holding ground and has recommended that the said land should be allocated to the squatters living on the farm ... all 392 acres instead of only 200 acres could be used to settle the squatters."

The letter did not elicit any response from the District Commissioner. In the meantime the Kipsigis County Council also wrote a letter dated 11th July, 1990, to the District Commissioner, Kericho, informing him that the land in question belonged to it, and copied the letter to the Commissioner of Lands who on receipt of it addressed another letter, dated 28 1993, to the District Commissioner asking him to comment other claim over the land by the Kipsigis County Council. This time the District Commissioner responded but in a rather callous, flippant and demeaning manner, in the following manner:

"The fact that the Ministry of Livestock Development at the time had indicated that they did not need the plot any more this nevertheless left the plot as government property which is so up to date. The Government still needs the land for future development."

It should be noted here that in the Civil Service a District Commissioner is far below both a Commissioner of Lands and a Permanent Secretary who at all events, are presumed to know better and in any case are not supposed to be overruled by a subordinate officer like a District Commissioner.

Moreover, who would have known better, assuming the land belonged to the government, what use the land would be put to, a District Commissioner or the Commissioner of Lands whose docket includes looking after government land? Certainly not the DC.

Yet in this instance he held himself out as not only, knowing better but also, as being in a position to overrule the Commissioner of Lands and the Permanent Secretary Ministry of Livestock Development. Be that as it may, the District Commissioner copied



his letter to the Provincial Commissioner Rift Valley Province, the Permanent Secretary, Ministry of Agriculture and Livestock Development, the Kipsigis County Council and the District Land Registrar, Kericho.

Surprisingly neither the Commissioner of Lands nor the Permanent Secretary or any other person intervened to correct or rebuke the District Commissioner. The District Land Registrar, however, must have been dismayed by the turn of events because in his letter to the Commissioner of Lands dated 22nd September, 1993, and copied to the District Commissioner, he sought guidance on what should happen to the squatters, in the following terms:-

"Please advise whether the squatters should be resettled on the piece of land (by sub-division); should they continue to squat on the same, or be evicted since their number is increasing with time."

The wording of both the District Commissioner's letter to the Commissioner of Lands and that of the Kipsigis County Council to him, lead to the inevitable conclusion that there were behind the scenes, manoeuvres by the Provincial Administration at Kericho and the Kipsigis County Council to dispossess the Luo squatters of the land in question not for any other reason but because they were Luo and the land originally belonged to the Kipsigis.

Nicholas Mberia, who was the District Commissioner, Kericho, as at the time the Luo squatters were evicted, was categorical that upon eviction the squatters were expected to return to where they originally came from.

Besides, we were told that as at the time the Luo squatters were asked to raise money to pay for Buru farm a similar proposal was made to a group of Kipsigis in respect of another piece of land. They, like the Luo squatters, were to raise sixty thousand shillings which they did and deposited at the District Treasury.

The Provincial Administration quickly assisted them to, have the land transferred to them and which was eventually sub-divided and shared among them. In view of the foregoing it is quite clear to us that there was extreme reluctance on the part of the Provincial Administration to assist the Luo squatters notwithstanding that the then Vice President, Daniel Arap Moi, had earlier on intervened on their behalf and directed that they be assisted to settle, presumably permanently, on the subject land.

It would appear to us that the Government had in principle agreed to sell Bum farm to the Luo squatters because in 1972, the area District Commissioner, Kericho Milton Ole Ncharo, had, advised them together with Kipsigis squatters who occupied what came to be known as Chebirir farm, to form separate societies to raise funds to purchase the respective parcels of land that they occupied.



The Luo squatters formed the Buru Farmers Society while the Kipsigis formed the Kipsitet Farmers Society and each Society paid what was required to the District Treasury. Unlike the Kipsigis who were quickly assisted to acquire their land, no decisive action was taken by the Provincial Administration to assist the Luo squatters who were later asked to pay a further twenty one thousand one hundred and eighty shillings and ten cents which they paid, on the ground that they had delayed in paying the initial sixty thousand shillings, but that notwithstanding no further action was taken to assist them.

Opposition to their getting Buru farm was first realised in or about 1988, when one Noah, a Kipsigis, told a baraza at the farm which had been called by the then District Commissioner, one Onyango, to notify the squatters of plans to sub-divide and share the farm among them, that the Luo would eventually be evicted from the farm because the land belonged to the Kipsigis.

In another baraza one Councillor Rotich of the area, remarked that the Luo then living in the District were milking Kipsigis land. These two and several others were expressing a view then commonly held by the Kalenjin, that land within their geographical districts should only be owned by them. We have stated elsewhere in this Report that the Kalenjin were averse to other tribes living in their midst and that factor, among others, was exploited to evict the Luo from Thessalia and the areas around it.

The other factor is the political climate of the time. As we stated earlier, 1991 was the year when the clamour for multi-party politics intensified. The reintroduction of multiparty democracy balkanised the people in Kenya along ethnic lines and heightened tribal loyalty and association with the Luo, the Kikuyu and several other non-Kalenjin tribes being perceived by the Kalenjin as either supporters or sympathisers of opposition parties and could not, therefore, be trusted.

In this regard, the evidence of Silvanus Ngidi Akelo a resident of Kunyak (Kapkoros) Location in the neighbouring Division of Chirchila and one who as a member of the Peace and Reconciliation Committee in his Location, had talked to several Kipsigis, is instructive.

He reiterated the stand of the Kipsigis that they did not want any other political party other than Kanu, in their District, and that the Kalenjin were averse to living with other communities in an area they consider their traditional homeland. This explains how a tribal aversion was exploited for political reasons to evict the Luo squatters from Buru farm.

The clashes in Buru farm as indeed, in neighbouring farms occupied by the Luo and the other non-Kalenjin started on the night of 5th November, 1991. They had spread from Miteitei farm into Owiro farm in Nandi neighbouring Nyanza Province, and also



Southwards and Southwest into Kipkelion, Chirchila and Belgut Divisions. Several Luo houses were set ablaze at night time by people who were believed to be Kalenjin because their houses were untouched.

The affected families sought and obtained refuge at the nearby Thessalia Free Pentecostal Fellowship of Kenya Mission. At this time however, only a few houses were affected, among them those belonging to Perez Odoyo and Magdalena Unoka. A few Kipsigis suspects were arrested but were released within three days without any charges being preferred against them.

On 16th November, 1991, several Kipsigis forcibly entered Buru farm and erected structures at the door steps of the Luo huts. The then District Commissioner, Timothy Sirma, who seems to have been at the centre of tribal clashes in various parts of the country was informed and half-heartedly stopped further construction of the huts by the Kipsigis there. In our view, the erection of the structures by the Kipsigis, was intended to lay the ground for subsequently, sending security men to evict the Luo from Buru farm.

Thereafter there was relative calm until 20th December, when Alex Orawo's house was burnt at night, but when the area Chief was notified of it, he is reported to have remarked callously that the Luo had encroached on Kipsigis land and were expected to move out.

He did nothing to assist the victims. We think that this incident and the one of 5th November, 1991, were intended to warn the Luo to move out, but when they persistently remained in their homes, the Kipsigis, on 7th March, 1992, organised themselves, invaded Buru farm and burnt about one hundred and forty four Luo houses and sugarcane and stole several livestock from them. The Luo were thereby rendered homeless and without any security.

Joseph Runya, William Kumo and one Joslin were among the people who one Raphael Adero Okwiri identified as the arsonists and stock thieves. Despite the fact that he made a report at Kericho Police Station naming them specifically as among the arsonists, no action was taken by the police against them.

The Luo once again sought and got refuge at Thessalia Mission where they camped living in makeshift structures and tents and in a deplorable state. No assistance from both the Provincial Administration and the Police Force was extended to them. Various NGOs, among them Oxfam, National Council of Christian Churches of Kenya (NCCCK), Thessalia Mission, and Red Cross, however, provided relief assistance to them.

Their presence there must have embarrassed the Government because on 21st March 1992, a Lady District Officer was sent there in company of the area Chief, Musa Koech,



who advised the refugees to return to their respective homes in Buru farm. This they did and with the assistance of the aforementioned organisations reconstructed their homes.

For at least one year thereafter they lived peacefully. However, in April, 1993, uncertainty and tension among them was heightened when, at a baraza at the farm, the now notorious Timothy Sirma, at the prompting of one Sulumet, gave the Luo squatters a three weeks notice to quit the farm or face dire consequences. Neither he nor the area Chief were willing to discuss the issue.

Timothy Sirma, allegedly told the squatters to move either to Thessalia Mission or to Nyanza. It seems to us that Timothy Sirma was unhappy that the Thessalia Mission had earlier assisted the squatters, otherwise there is no logical explanation as to why he told them to move to Thessalia Mission.

Timothy Sirma was, however, transferred before the period of the quit notice expired, and was replaced by another Kalenjini, Nicholas Mberia, as District Commissioner, Kericho. At first when the Luo squatters petitioned him to rescind the notice he appeared sympathetic and caring because he eventually obliged them. He is also alleged to have assured them that having lived on the land for more than ten years the law protected them against eviction.

However, two or so months later his attitude changed. By his letter of 28th July, 1993, to the Commissioner of Lands he adopted a stand which was diametrically opposed to the interests of the squatters, and in December, 1993, he caused the area District Officer, Samson Omweno and the area Chief, Musa Koech to notify the squatters to leave the area, according to Raphael Adero, Okwiri, within 18 hours and that if they failed to move out, they would "see red berets."

They did not move and the notice was repeated by Nicholas Mberia, on Jamhuri day, namely 12th December, 1993. But the Chief, Musa Koech, Samson Omweno, and Nicholas Mberia all testified that at that time, there was nobody living on Buru farm that the Luo squatters had been driven out in the course of the 1992 clashes and that the alleged eviction of Luo squatters was a misnomer for all that happened in their view, was that the several Luo huts which had since 1992 been standing there empty, were demolished because they had become a hideout for criminals.

The events preceding 13th December, 1993, when a contingent of armed regular and administration policemen went to Buru farm with two bulldozers, and flattened most Luo houses there do not support their lying testimony. It was not disputed that in April, 1993, Timothy Sirma, notified the Luo squatters to move out of Buru farm within three weeks. It was also not disputed that Nicholas Mberia, rescinded that notice, and that on, Jamhuri



day of that year, he warned the squatters to leave "government land" or else face dire consequences.

If indeed, there were no people on the land it would not have been necessary to issue those notices and warnings. Besides the District Security Committee's Minutes dated 24th September, 1993, (Exhibit 162) show that the issue of the Luo squatters on Buru farm was discussed. Besides, the then Officer Commanding Police Division during the material time period, Julius Kiptagat arap Soi, testified that the District Security Committee discussed the eviction of the Luo squatters subsequently after the 1992 clashes and when Nicholas Mberia gave instructions that the Luo squatters should be evicted. We have no doubt that the Provincial Administration led by Nicholas Mberia, were the ones who planned and carried out the eviction using about twenty nine armed policemen, as resistance was anticipated from the Luo squatters.

Nicholas Mberia, in his evidence tried to explain why the issue of the Luo squatters was discussed at the District Security Committee. His explanation, which did not impress us at all, was that the continued presence of the Luo in Buru farm area, was generally causing tension between them and the Kipsigis as the latter did not want them there because they, unlike the Luo who were opposition supporters, were Kanu supporters who felt that the Luo were abusing the hospitality they had extended to them as "foreigners." His evidence on this issue which is contained in the verbatim report of the proceedings of the Judicial Commission of 25th May, 1999, is partly as follows:

"Mr. Mberia: My Lords, I decided to evict them on security grounds. Mr. Chunga: On security grounds?"

Mr. Mberia: Yes, after we had seen signs that those people were going to fight. Ours was to try and pre-empt the occurrence of clashes as there had been in other parts of the district.

Mr. Chunga: Would it not have been a better option to provide security to avert the clashes while you investigated the history and the dispute over Theland?

Mr. Mberia: My Lords, it was not possible to do so at that time. As I have said, we had a problem in our neighbouring districts in Nakuru, and most of our security men had been sent to those parts to assist. So, sending two or three security men to the ground, would also have been endangering their lives, in the event of eruption of fighting. So, we did not see that as an alternative.

Justice Bosire: Yes, but you had sent 30 askaris to evict those people. Mr. Chairman: And two bulldozers, too.

Mr. Mberia: My Lords, for the operation, we had to borrow askaris do the job and go back to their stations."



He had earlier stated in the same proceedings that:

"Mr Mberia: After that it came to a time when there was the agitation again around Muhoroni area. The Kipsigis and the Luo were starting to fight at the shops in Muhoroni.

Justice Bosire: When was this time you had incidents of fighting at Muhoroni market?

Mr Mberia: I think it was around October/November, my Lords. It is too long ago and I cannot remember. Mr Chunga: 1991? Mr Mberia: 1993.

Mr Chunga: Continue. Mr. Mberia: Around the beginning of December the incidents escalated whereby the Kipsigis started burning huts belonging to the Luo and vice versa.

Mr. Chunga: How did the political differences come about? Mr Mberia: It was the general saving at that time that the Ford-K at that time was mainly Luo and Kanu was for the Kipsigis. The utterance's made the Kipsigis feel that the Luo were now not friendly to them and that they were not supporting them and therefore they should not stay in their land. That is the information which we got."

The events Nicholas Mberia was describing did not occur in 1993, but in 1991 and early 1992. There had been relative peace in Thessalia for at least a year and besides, the District Security Committee minutes for the relevant period do not support his testimony. Moreover, Julius Kiptugut Arap Soi, testified that no report was made at any of the police stations or posts then under him about the burning of houses at Buru farm.

As already indicated the invasion of Buru farm by the Kipsigis in early 1992, was intended to create a ruse for police action against the Luo. The foregoing untruthful evidence of Nicholas Mberia was merely the excuse for employing armed policemen to drive out the Luo from land which the government had decided to settle them on. Nicholas Mberia's behaviour, was a mischievous, blatant and uncaring approach to a non-issue and on a matter he had no business to enter into, one between the squatters, the Ministry of Agriculture and the Lands department. His behaviour as indeed that of his predecessor Timothy Sirma, was that of an accomplice in the clashes.

For instance, when Nicholas Mberia wrote the letter dated 16 th August, 1993, which we reproduced earlier, he was categorical that LR. No.3979/2 was government land, a fact he knew was not so. For in his oral testimony before us, he confessed the truth when he admitted that at the time he wrote that letter, he was aware. that the Ministry of Agriculture had relinquished its interest in Buru farm.

If he was aware that the Ministry of Agriculture had relinquished its interest in land which belonged to a private individual, then it could not possibly remain government land.



Curiously, however, Nicholas Mberia, on 6th November, 1995, about two years after the Luo, squatters had been evicted from Buru farm, wrote to the District Lands Officer, inter alia, boasting that "we" had evicted squatters from the subject land, and additionally, seeking to know under which organization the land was registered. This is what he said in the letter:

"R: No.3979/2 KIPSITET KERICHO:

The above quoted piece of land is the famous Thessalia plot where we recently evicted the squatters from it. I would like as a matter of urgency to know under which organization this land was/is registered for my further action. Please treat as most urgent."

The letter was, we think, written with tongue in cheek, because if surely he did not know who was the registered owner he would not have acted the way he did, namely causing the Luo squatters to be evicted. One would have expected that the starting point before any eviction is carried out was to satisfy oneself as to the ownership of the land involved. Otherwise there would be the obvious danger of evicting people from land which belongs to them.

The eviction of the Luo from Thessalia on 13th December, 1993, was carried out in a cruel and inhuman manner. The people were surprised at daybreak by armed policemen, who woke them up and ordered them to leave immediately. They were not allowed time or opportunity to remove their personal effects. Two bulldozers with government registration marks were used, and all but a few houses were flattened. Families were rendered homeless, and were forced, for the third time, to seek refuge at Thessalia Mission. May be the policemen who effected the eviction were the "red berets" which the squatters had prophetically been told would remove them from the land.

Two factors make the eviction bizarre. The Luo squatters along with the Kipsigis had been told in or about 1970 to raise money to buy the respective parcels of land they were living on. Each group was to raise sixty thousand shilling's notwithstanding that the two pieces of land they were to buy were unequal.

The Kipsigis were to buy about 1954 acres, while the Luo were initially to buy 200 acres which later was upped to 392 acres. The two parcels of land were almost abutting each other and one would not possibly argue that their quality differed.

Secondly, on completing payment the Kipsigis were quickly assisted to have the land transfer to them, and which was subdivided and shared among themselves without any obstacle. However, with regard to the Luo squatters, notwithstanding that they paid much more money than the Kipsigis for land which was about a fifth of what the latter got, no steps were taken to assist them.



The Government to this day is holding their money, its servants kicked them out of Buru farm and many now live in abject poverty, not because they are lazy but because they were uprooted from where they were lawfully eking for themselves a living.

Not content with his eviction of the Luo squatters from Buru farm, Nicholas Mberia, the big bully, followed the Luo squatters to Thessalia Mission and primary school where they had camped, and evicted them for the second time, on the pretext that the school was about to reopen and the school grounds were required for this purpose.

That may well have been the case. However, the evidence we received was that the Luo squatters were attacked not on the school grounds but at the mission compound where they were encamped and where their presence did not obstruct anyone. In the course of this attack one Luo squatter was killed and several others were injured. The missionaries were threatened, harassed and warned because they had tried to assist the squatters; and properties were either damaged or stolen. After this all the missionaries left, and we were told that the mission and the hospital there had to sadly close down.

The case of Buru farm is a clear example in which both the Provincial Administration and the security forces, oblivious of the damage that their action would cause to the image of the Government, acted against innocent citizens of this country for the political reasons, and the economic benefit of a few undisclosed persons.

Sondu is a town strategically situated at the border of the Rift Valley and Nyanza Provinces, and the meeting point of three Districts, namely, Kericho, Kisumu and Nyamira in which lives the Kipsigis, the Luo and the Kisii tribes respectively. The built up area is however astride the common border of Rift Valley and Nyanza Provinces.

The market place of the town although one, has two sections, one on the Kericho side and the other on the Kisumu side. The Kisumu-Kisii highway passes through the town. The town is also connected to Kericho town by a murram, road which passes through Kiptere and Sosiot which are trading centres.

Sondu being strategically situated, its market is generally well attended on market days which fall on, among other days, Fridays. Clashes in the town started on 6th March, 1992, a Friday, and pitted the Kipsigis against the Luo, and also affected the Kisii. We were told that the clashes started at the market place, on the Kericho side, when George Manyala, a Luo hawker in a Ford T-shirt, refused to pay the market cess to a Kipsigis County Council Market Master one Koske, a Kipsigis, because he would not be given as he wanted a Ford-Kenya cess receipt.

As Koske and David Mwendwa Momanyi, one of his two assistants, tried to force George Manyala to pay the cess, it was said that George Manyala drew a knife and



stabbed David Momanyi. The incident caused a stampede and commotion and George Manyala was heard in dholuo shouting for help.

The Luo at the market rushed to his help. The Kipsigis on seeing the Luo rush to Manyala's aid and thinking mistakenly though, that the Luo had gone to attack Koske, the Market Master, also rushed there to assist him. Fighting ensued leading to several casualties. This story was given by Koske and was to some degree corroborated by his second assistant, Peter Ondieki. Peter Ondieki, was however, categorical that the incident was not the cause of the skirmishes in Sondu.

That was one side of the story. There was however, the other side of it which was given by Arthur Ondu Oging a Luo, who told us that on the material day on his way to Sondu he met about twenty Kipsigis, who were strangely dressed in red T-shirts and with red and brown head bands around their heads and armed with bows and arrows, lying down along the side of the road, about a kilometre or two from Sondu but on the Kericho side. On reaching Sondu he found fighting in progress between the Luo who were armed with slings and people similarly dressed and armed as those he had seen lying down by the roadside, on his way to the town.

The out-numbered policemen from Sondu Police Station, which is on the Kericho side of the town could not quell the skirmishes and asked for reinforcement. Later a contingent of GSU, regular and Administrative policemen from both Nyanza and Rift Valley Provinces arrived and stopped the fighting. We were told that slings are easy to make and those being used by the Luo must have been made soon after fighting started. Not so, however, for the bows and arrows.

They are not such items that can be quickly made. For the Kipsigis to have had and used them on that day means that they must have come with them. Arthur Ondu Oging, in his testimony, as contained in the verbatim report of the proceedings of the Judicial Commission of 1st March, 1999, stated inter alia, as follows:

"I think even if Manyala did not put on a T-shirt something would have happened on that day because these people (Kalenjin) were organized before that fight started."

He added that the Kipsigis raiders must have come from outside the general neighbourhood of Sondu as those he saw were strangers to him, and that had they been from the neighbourhood of the town he would have identified them, at least by appearance.

It should also be noted that on the day fighting broke out at Sondu it was only a day after clashes had erupted in Thessalia and its neighbouring areas. The clashes at Sondu appear to us to have been purely a political reaction by the Kipsigis at the reintroduction of plural politics, and were an extension of the clashes in neighbouring Thessalia.



We also think they were intended to confuse the real reason for the clashes in Thessalia and other neighbouring areas. David Momanyi or Peter Ondieki told us that from his observation, the Kipsigis had a hidden agenda as on the material day they came uniformly dressed in T-shirts with head bands and armed with bows and arrows, emerged suddenly, apparently from a hideout, unto the market on hearing the screams pre arranged and well timed of a woman in the market.

In Molo South and Njoro, as we shall see later, strange people were seen in those areas before clashes erupted implying that there was a group which was organized as a militia which was being used to start the violence.

It is also noteworthy that the raiders at Sondu appeared regimented which meant that the clashes in Sondu were not only, premeditated but were also, well organised and executed. We were told that for this purpose, the raiders were dropped near Sondu by matatus but their owners denied this, implying that if at all, the raiders had been transported to near the market, this was done in the ordinary course of their business as transporters.

Several people died as a result of the clashes in Sondu. Three bodies were recovered the next day floating on Sondu-Miriu river which passes through the town, and were identified as two Kipsigis and a Kisii. Other bodies were recovered on the third day, which brought the total of those dead to at least ten.

Although the clashes in Sondu town did not last more than one day, they spread to the outskirts of the town and its hinterland. For instance, several houses were burnt at Komolong in Kericho District and several others on 7th March, 1992, at Holo in Kisumu District, where there was a clash between armed Kipsigis youth numbering about five hundred and, armed Luo youths numbering at least two hundred.

Six Luo, including one Ongus Abila, and an ex-policemen called Mbori Tambo were among the casualties, the latter having been killed in his homestead by Kalenjin youths. Later, four human skeletons believed to have been those of Kipsigis were found on the battle ground.

Like happened at Sondu market, the police who were in the neighbourhood did not immediately intervene to stop the fighting because they were greatly outnumbered by the combatants. It was after reinforcement came that the clashes were stopped in the area, and since then they have not been repeated.

In our introductory remarks regarding the clashes in the Rift Valley Province, we stated that during the clashes the provincial security forces invariably arrived late at the scenes of the clashes, were generally ineffective and largely looked to and depended on the Provincial Administration to give them directions on security operations, and that that



tended to slow down their action against the raiders. We were told that in Kericho, between November, 1991, and April, 1992, the police were reasonably effective.

However, thereafter, although they would be seen in the clash areas they did little, if at all, to quell the clashes. In some cases they stood by watching events unfold, on the ground that their superiors had instructed them not to shoot at the raiders. For instance on 7th March, 1992, at Holo area at the border of Kisumu and Kericho Districts, security personnel watched as the Kipsigis and Luo youths fought. They saw two badly injured persons both of them Luo, one of whom was Mbori Tambo, but did nothing to assist them.

They refused to accede to a request made to them to take the two to hospital with the result that the two died, one before reaching hospital, and the other soon after his arrival there. Eliud Opiyo Nyangwe, the then Assistant Chief of South Nyakach sub-location, who witnessed the incident, testified that instead of the security men helping to stop the fight, they drove away leaving the youths fighting. More than five people were killed before another team of policemen, which eventually stopped the fighting, arrived.

In other instances, the police would arrest people but later release them without preferring any charges against them, or where any charges were preferred, the suspects were released on flimsy excuses. For example, the officer commanding, Sondu Police Station, Johnson Nyagah, told us that during the clashes at Sondu market and neighbouring areas, several people were arrested and charged for various offences.

Those charges were however withdrawn because "no complainants came forward". The suspects, whose particulars were entered in the station's occurrence book, were arrested looting various shops and had a motor vehicle Reg. No. KZB 882, in which they planned to carry away the loot. The vehicle was, however, later unconditionally released to its owner.

It is quite strange that the police instead of looking for the complainants whose shops were looted, sat back and waited for them to come to the police station to complain. In Miteitei, a similar excuse was given by the Officer Commanding the Songhor Police Station. The police handled the clashes in a half-hearted manner and it seems to us that they had instructions from some quarter against taking any serious action against the raiders.

We heard evidence from the officer Commanding the Londiani Police Station, Peter Ouma Ochola that in or about November, 1991 he, together with forty or so other police officers ambushed over one thousand raiders who crossed from Tinderet Division in Nandi District into Londiani and Burnt Forest areas. At the request of the District



Commissioner of Uasin Gishu District, Paul Lagat, the suspects were handed over to Oscar Wakhisi, the Officer Commanding the Tarakwa Police Station in that District.

Those raiders were not charged nor is there any record on what happened to them. Peter Ochola was recalled as a witness to clarify the issue. At first, he was categorical that he had made a note in his station's occurrence book and added that on an earlier occasion when he could not be reached to testify, he had checked the occurrence book and saw the note he had made about the handing over of those suspects to the Officer Commanding the Tarakwa Police Station.

We gave him time to go back to Londiani Police Station to check all the occurrence books for the relevant period which he did, but he could not find the entry. He was, however, not able to get one occurrence book, for the period August to December, 1991, and it is our view that the entry must have been made in that book. Our conclusion is supported by what his Officer Commanding Police Division, Eliud Langat, said, namely that on his return from Britain, where he had been attending a course, he was briefed about suspects who had been arrested within his police division but were handed over to a police station in another Division to wit Tarakwa Police Station. He could not have been briefed about them if it was just a minor matter or if the incident had not taken place.

It is also unthinkable that Peter Ochola, could have on his own volition transferred suspects to a police station in another District and police division without being directed to do so by a superior officer. This is an example of a case in which a provincial administrator gave directions to the police on the handling of criminal suspects and we think the police improperly listened to him. Criminal investigations are matters which the police should have a free hand in handling as only they have the power and personnel to do so.

Although the District Commissioner, Paul Langat, denied it in a written statement which was submitted to us, the evidence we have set out above, does show otherwise. We observed the demeanour of Peter Ochola and we think that as a witness he was interfered with after some indication was given for his recall. We also think that somebody must have obstructed our investigation on the issue as the occurrence book for the relevant period could not be traced.

The behaviour of certain Provincial Administration officers and the Police Force, too, suggests that the clashes had their support. We were told that during the clashes at Koguta and Kunyak, in 1991, the area District Commissioner, Timothy Sirma, ordered policemen from Koru Police Station in Nyanza, to return to their station because



according to him they had no business crossing the border into Kericho. This was at the height of the clashes in the area.

His behaviour was clearly reminiscent of a person who condoned the clashes. His successor, Nicholas Mberia, ruthlessly and inhumanly evicted the Luo squatters on Buru Hill on ethnic and political grounds. These two officers should be investigated regarding their role in the clashes.

There was also the conduct of Eliud Langat, a Deputy Commissioner of Police, who in November, 1991, was the Officer Commanding Police Division, Kericho. Jonathan Kibaibai Rogony, Chief of Mutaragon Location in Kipkelion, told us that while in the company of the members of the District Security Committee which included Eliud Langat and the District Commissioner, Joseph Mutemi, and together with some policemen, they visited Kipkelion at the height of the clashes where they saw at Kibinet, a group of about fifty people gathered on Chakoror hill.

Eliud Langat, a Kalenjin, then rather strangely quickly left the group and without asking any one for help, quickly ran uphill alone to where the people were. When he was asked about it his unconvincing response as contained in the verbatim report of the proceedings of the Judicial Commission of 31st May, 1999 were as follows:

"Langat: My Lords, I had a job to do and I thought that by going after those youths, if I caught up with them then I would have solved a problem in one way or the other."

At least two things may be said about the behaviour of Eliud Lagat. He was the seniormost police officer in Kericho District police Division and was expected to direct police operations there. Behaving as though he was under the command of another officer, he left his junior officers and police constables behind and, in what we think was pretended heroism, ran up to confront a large gang of people. We think that there was something he did not want others that he was with, to know, possibly that he knew the people on the hill and their motive for being there. His testimony was that he met seven youths who he arrested, but the fact that the youths did not run away on seeing him laboriously running up hill, speaks volumes about his relationship with them. The second point we would like to make about him is that, if his statement that he arrested only seven youths is to be accepted, it is strange why he, a senior police officer, would arrest people he had no evidence against. That the seven were later released, is clear testimony that his pretended arrest of them was merely to fake seriousness on his part in dealing with the clashes.

It is noteworthy that those arrested, like him, were Kalenjin and according to Jonathan Rogony they were twenty in number and were armed with assorted weapons and carried



match boxes, a fact that Eliud Langat denied in the following manner as shown In the verbatim report of the proceedings of the Judicial Commission of 31st May, 1999:

"My Lords, what I may have seen may not necessarily be what the chief had also seen. He testified on what lie had seen, and I am also testifying on what I had seen...The youths I chased were not in uniform. I persuaded the youths to accompany me down the hill. They accepted."

The two witnesses having been together it is not possible that they would have seen the arrested youths in different dispositions and number. The disparity in the number of the youths as given by both witnesses is quite big which makes us conclude that Eliud Langat withheld the truth from us on that score. He too, should be investigated regarding his role in the clashes in Kericho.

The foregoing are only examples of the attitude and behaviour of both the Police Force and Provincial Administration. In view of that, the evidence of some of them who testified that they were hampered in their operations due to lack of information and limited personnel, is not believable.

It seems to us that they knew and condoned what was going on, and whatever they did in purported stoppage of the clashes was intended to hoodwink the victims of the clashes and the world in general. That will, we think, explain the suddenness of the clashes, their systematic spread, and abrupt end in each of the areas so far considered.

UASIN GISHU DISTRICT

Uasin Gishu has a large population of former squatters and workers on European farms. who were settled there under the aegis of the Commissioner for Squatters. They ,ere more particularly settled on what is now referred to as Kondoo farms, numbered I to IX, which were formerly managed by the Central Agricultural Board.

There were also other settlement farms under the aegis of the Settlement Fund Trustees. The various communities settled there between 1963 and 1970. The clashes in the District, which is bordered by Nandi, Kericho, Koibatek, Trans Nzoia and Kakamega Districts, were mainly confined to Ainabkoi Division which is the home of a large population of Kikuyu, among other tribes.

Ainabkoi Division is bisected in a North-South direction by the Eldoret-Nairobi road which passes through Burnt Forest town, sometimes referred to as Olare, and Timboroa Shopping Centre. Ainabkoi Division borders both Tinderet Division, where Miteitei farm is, and Londiani Division in Kericho District. For some reason the October/November, 1991 clashes which affected Tinderet and Kipkelion Divisions in Kericho District did not affect Ainabkoi.



Chief Inspector of Police, Peter Ochola, who was then the Officer Commanding the Londiani Police Station, it will be recalled, told us that while, in the company of forty other policemen, intercepted a gang of over one thousand armed Kalenjin raiders, in or about November 1991, as they were about to cross into Londiani and Ainabkoi Divisions from Tinderet. That is perhaps why no clashes were experienced in Ainabkoi in 1991.

Prior to December, 1992, when clashes first erupted in Ainabkoi, the different communities in the area lived in peace with each other, and although there existed isolated cases of land disputes among some shareholders in some farms, they did not take a tribal angle or the dimension which the dispute at Miteitei farm took.

It also appears that the clashes which occurred in neighbouring Tinderet Division and parts of neighbouring Kericho District did not affect the inter-ethnic relationship among the various communities in Ainabkoi. Otherwise the history of the area prior to 1992, unlike the other areas we have already covered was uneventful and we do not propose to say more on it.

199. The clashes in Burnt Forest area, started on 13th December, 1992, two or so weeks before the general elections of that year, and a year after the introduction of multi-partyism in Kenya. Prior to the clashes there had been reports of tension between the Nandi and the Kikuyu which it was claimed was caused by, firstly, increased cases of stock theft of Kikuyu livestock in Rugiri farm by the Kalenjin. Secondly, there were allegedly increased cases of Kalenjin livestock crossing onto Kikuyu farms and destroying their crops, which the Kikuyu regarded as deliberate and intended to annoy them. All this led to mutual accusations that one or the other tribe was planning to attack the other.

But the clashes when they came, did not start in either Rugiri or Bayete but at Usalama Shopping Centre where most of the businesses and the business and residential premises, there were owned by the Kikuyu. The raiders who were believed to be the Kalenjin, armed with bows and arrows with their faces painted to conceal their identities, were well organized and came in large numbers. The attack at Usalama was almost simultaneous with another attack by the Kalenjin at Geiti farm, which was also predominantly occupied by the Kikuyu.

Two people were killed at Usalama and two at Geiti, and several others were injured in both places. Several Kikuyu houses and shops were looted and then burnt. There was a similar attack at Burnt Forest Town itself, where Tarakwa Police Station was situated, and during which, several business premises and motor vehicles owned by the Kikuyu were burnt.



The few policemen at Tarakwa Police Station did not at all attempt to stop the arson allegedly because of their depleted numbers, but we think that that was merely an excuse given for not bothering to take any action at all to stop the violence. The Kikuyu then organized themselves and made retaliatory attacks on the Kalenjin in the town.

They burnt several Kalenjin shops and motor vehicles and a Kalenjin, Samson Busieni, who was a businessman in the town, was beheaded. The other Kalenjin business people fled and sought refuge in Olare Guest House owned by Samuel Ngelel, a Kalenjin. The clashes then spread to several farms with mixed communities.

All the non-Kalenjin fled their farms and settled mainly in Burnt Forest, Usalama, and other Trading Centres where they camped in schools and churches. A few Kalenjin whose houses were burnt in the retaliatory attacks, fled and sought refuge in neighbouring farms predominantly occupied by fellow Kalenjin.

The clashes, in Uasin Gishu District in December, 1992, coincided with the campaigns for the multi-party general and presidential elections to be held that month. The clashes were eventually stopped before the polling day which was on 29th, December.

But on 30th March, 1993, the clashes erupted again more or less in similar fashion as before. These too were stopped, and there was relative peace until 23rd August, 1993, when over forty armed Kalenjin youths attacked and killed five Kikuyu, allegedly because they had stolen their livestock.

We were told that some of the Kikuyu used firearms and hand grenades to repulse their attackers and this and a similar alleged incident in Molo South, we think, must have forced the Government to declare Burnt Forest, Londiani and Molo, security operation zones on 2nd September 1993.

Regarding the action by the Provincial Administration and the Police Force, to stop the clashes, the Officer Commanding Tarakwa Police Station, Oscar Wakhisi, told us that he had mobilized his men just before clashes broke out when he had been told of tension building up between the Kalenjin in Bayete farm and the Kikuyu in Rugiri farm, and that while he was attending to this he saw houses burning at Geiti Usalama/Nyakinyua farms and at Usalama Trading Centre where he arrived too late to stop people being killed and injured, and properties being looted and others destroyed. There was thus, not much he could do to stop the clashes.

He stated further that he telephoned his Officer Commanding Police Division, Jama Warsame, and requested for reinforcement but there was delay in getting it, and when it eventually came the harm had already been done more or less beyond repair. Fourteen Kikuyu, eight Kalenjin, one Luo and four unidentified people were reported killed, and several others were injured in the skirmishes.



The security forces arrested sixty five people, all except one who were Kalenjin. Among those arrested were two police officers because it was alleged that they were involved in the incidents of looting and arson. The majority of those arrested were found armed with traditional weapons like bows and arrows.

Oscar Wakhisi said that apart from the report of tension between the Kikuyu and the Kalenjin on Rugiri and Bayete farms he did not have any other prior report or knowledge of the impending clashes. The effectiveness of the Special Branch there at the time was doubtful in view of what other witnesses told us that prior to the clashes in December, 1992, the Kalenjin had been talking about evicting the Kikuyu from the area because of their reluctance to support Kanu.

That Oscar Wakhisi denied having had any prior knowledge of the clashes suggests that there was limited, if any, flow of information among the different security arms, and between the people and those units or that though the Special Branch had prior information, they, as was the case in the Coast Province, and in support of the clashes, kept the information to themselves.

There is also the fact that as soon as Oscar Wakhisi got information about tension between the Kalenjin and the Kikuyu he immediately notified the District Officer of the area, Paul Cheruiyot. Oscar Wakhisi's behaviour in this regard, showed that the police considered themselves as an appendage of and subject to, the Provincial Administration.

This was so notwithstanding what the former Commissioner of Police, Duncan Wachira, had to say about the relationship between the Provincial Administration and the Police Force which appears in the verbatim report of the proceedings of the Judicial Commission of 4th June, 1999, namely that:

"The Provincial Administration have no legal authority to give orders on use of firearms. Their role remains to co-ordinate and to oversee the security operations in their respective areas. The police remain in charge of operations, giving orders and acting when the situation demands. The conflict on the ground is unfortunate."

But this aside, the security forces did not act decisively to prevent or stop the clashes. We were told, and this was a common feature in almost all the clash areas, that security men instead of firing at the raiders with a view to disabling them so that they can be arrested merely fired in the air. Senior Chief Philip Kiptuk Kiskei told us that in his Ollainguise Location which borders Miteitei, he witnessed an incident at Kitingia Shopping Centre where Kalenjin youth armed with bows and arrows, engaged Kikuyu youth who were armed with stones.

There were three armed Administrative Policemen nearby who instead of firing at the combatants, only fired their guns in the air. The combatants were not moved one bit by



the firing and continued fighting during which more than ten people were killed, six Kikuyu and five Kalenjin.

Prior to the reintroduction of plural politics in Kenya at the end of the 1991, the area KANU member of Parliament, was John Tarar. In 1992, however, there was a strong opposition element in Burnt Forest area. Ezekiel Kibii Cheruiyot, the Chief of Olare Location testified that, Tarar would have had a hard time recapturing his seat in the 1992 general elections had his only opponent, who was contesting on an opposition ticket, not withdrawn his candidature at the last minute. This perhaps will explain the timing of the clashes in 1992 and why violence targeted the Kikuyu and other non Kalenjin communities who were perceived as opposition supporters. It is notable that during the elections Councillor Kirua of Ford Kenya, was elected the area Councillor.

The same witness testified that fifteen per cent of the people in his Location did not cast their votes because they had been displaced by the inter-ethnic violence. Only KANU stood to gain if opposition supporters and sympathizers were displaced from voting during the general election of that year.

NAKURU DISTRICT

Nakuru District, an expansive, multi-ethnic District with its administrative headquarters at Nakuru and which is also the headquarters of the Rift Valley Province, was the most hard hit by the inter-tribal clashes of 1991 to 1998. The District is bounded by Narok District to the South, Nyandarua District to the East, Baringo and Koibatek Districts to the North, and Kericho and Bomet Districts to the West. Nakuru District was part of what used to be the White Highlands, but unlike other Districts we have already considered Nakuru District did not in colonial times, have native reserves.

Its present residents therefore, moved there under different settlement programmes, some of which were started before independence. By the end of 1961, there were about forty thousand Africans in Nakuru and about one hundred and sixty thousand in the farms in the District which, according to the Annual Report for Nakuru, 1961 more than fifty percent were the Kikuyu. At independence, therefore, there was a very high percentage of the Kikuyu population in Nakuru District, and their presence there, both before and after independence was a constant source of problems not only with the settler population but also, with other tribes who like them were resident in the district for various reasons.

Elsewhere in this Report we said that the Rift Valley Province was the ancestral home of pastoral tribes, who were moved out to create room for European settlements. The Kipsigis and the Nandi who were among those tribes, have over the years laid claim to



the whole of the Rift Valley Province. They as also the other Kalenjin tribes have always detested control of their ancestral land by outsiders, whether economically or politically. For instance in The 1961 Annual Report for Nakuru contains the following relevant statement:

"Inter-tribal tensions increased markedly as the year wore on. The Kalenjin make no secret of the fact that they are stock-piling native arms against the inevitable day probably after independence, when they will have to fight the Kikuyu and perhaps the Luo for control of their own areas, including the upper and middle Rift.

The tribal antipathies are now so great on some farms that the Kalenjin members of the Agricultural Workers' Union would refuse to take part in a union strike alongside Kikuyu members and would automatically take the opposite line in any controversy."

The above excerpt looked at with hindsight was prophetic as during the clashes in Nakuru District and elsewhere the Kikuyu and the Luo were the major targets of attack by the Kalenjin.

The Kalenjin and the Kikuyu, it now seems to us, had more or less become traditional enemies. Like the Kalenjin, the Maasai in the Mau Narok area were as far back as the late 1950s against the Kikuyu coming to live in their area. However, unlike the Kalenjin, the Maasai were not so hostile to the Kikuyu.

Prior to independence there were no marked tribal differences other than those we have stated above. However, Nakuru District was the most politically conscious District in the whole of the Rift Valley Province, to the extent that by 1962, there were about eleven political and quasi-political registered societies; most which were tribally based.

The political situation on the introduction of multipartyism in Kenya, in 1991, was similar, and it seems to us that Kenyans have changed little, if at all, in their political and general approach to issues. We thus consider the following observation which appears in the 1960 Annual Report, for Nakuru, as an apt comment:

"An African's first loyalty is to his family and tribe rather than a political party or other non-tribal organization. As general elections approached political loyalty became more and more synonymous with tribal loyalty. The main line-ups were Kikuyu/Luo for KANU and the Kalenjin/Abaluhya for KADU."

In post independence Kenya and more particularly in Nakuru District, opposition politics had been unwelcome. For instance, in 1965, the Nakuru District Ex-freedom fighters had to organize a meeting in addition to raising funds to purchase land, to refute insinuations that they were secretly supporting the opposition. Such insinuations by KANU stalwarts against opponents within KANU have not been uncommon in the print and electronic media. Infact during the KANU majimbo rallies at Kapsatet, Kaptatet and



Narok, which we referred to earlier, the virulent attacks by the speakers were directed against those in KANU who had become proponents of plural politics. The late Chepkok, for instance, is reported in the Sunday Nation of 22nd September, 1991, to have said the following about multiparty proponents:

"Hit them hard wherever they are."

And William Ole Ntimama was reported in the Sunday Nation of 29th September, 1991, as having told the Narok rally that:

"We have now buried the FORD, multiparty politics and the NDP. All the Ministers and KANU leaders you see here have resolved to fight together and follow President Moi together..."

Majimbo was here at the time of independence and was done away with; if majimbo ended, multiparty politics should also end - or else."

Other speakers used words to the same effect including also that violence could be used to resist multiparty politics. The use of such violent and unsavoury language when it comes from leaders and more particularly, political leaders, who generally are regarded as opinion shapers, tend to easily stir up the populace more so where as happened in 1991, issues are presented in a slanted manner with a view to misleading and inciting an unsuspecting and simple people.

The majority of the parliamentarians in Nakuru, during the one party era having been Kikuyu, we think that the clamour for multi-party politics raised a feeling of unease and suspicion among the Kalenjin politicians, who as some witnesses said, felt that the position of their own tribesman as President was threatened by the Kikuyu who were in the forefront of the clamour for multi-party democracy. This perhaps would plain why Nakuru District which then had a high non-Kalenjin population was hit hardest by the intertribal clashes of 1991 to 1998.

We earlier discussed how the various ethnic groups got land in the White Highlands or scheduled areas. The resettlement programme brought together people from different ethnic backgrounds, who, in due time, came to know and relate well with each other and to share common views in social, economic, educational and political matters for a long time before the clashes.

However, with the advantage of hindsight it would seem that the different tribes did not accept each other but only tolerated each other as apparently there were deep seated ethnic ambitions and prejudices which were activated by political events preceding the 1992, general election.

The new settlements in Nakuru District did not take any particular pattern. In some cases however, the farms were bought by tribally based land buying companies and



societies with the result that in those farms one would find occupants wholly from one ethnic community.

However, as at the time of the clashes in 1992, the scenario was gradually changing. We were told that some of the shareholders had sold their shares in some farms to other people either from their own or other tribe and thus promoted tribal integration.

We were not told of any land disputes in the settlement farms, which were of the same or greater intensity as that which had existed at Miteitei farm in Nandi District. And so at the onset of the tribal clashes in 1992, most farm owners in Nakuru District were happily settled on their farms and the clashes came as a shock to them.

The clashes in Nakuru District were in two phases; the first one which covered the period 1992 to 1993, affected mainly the Molo and Olenguruone Divisions as they then were; while the second phase covered the period 1997 to 1998 and affected mainly Njoro, Mauche and Lare Divisions and to some extent Nakuru town. Under this subheading we will only deal with the first phase, and deal with the second phase later under a different subheading.

The first phase of the clashes in Nakuru started on the night of 14th March, 1992, in Molo South. What triggered the violence there was as told by the Kalenjin witnesses firstly, that Kalenjin children selling milk at Kamwaura Shopping Centre had been chased away by some Kikuyu and that their parents in retaliation, had attacked the Kikuyu businessmen at the trading centre.

Secondly, that because of the spill over of existing tension arising from the clashes in Miteitei, Kipkelion and Londiani, the Kalenjin, thinking that the Kikuyu who were holding a meeting in the neighbouring Kenya Ngairubi farm, were plotting to attack them, took a preventive step and attacked the Kikuyu.

These, two reasons could not possibly be the causes for the clashes in Molo South and we dismissed them. The clashes in Molo South started suddenly. According to eyewitnesses, well organized and co-ordinated, and heavily armed Kalenjin raiders with painted faces, were the ones that attacked the Kikuyu in Molo South. We shall deal with the other reasons for this later.

Benjamin Ndega Nganga, the then Chief of Nyota Location, in Molo South, where the clashes first broke out, told us that prior to the clashes, handwritten leaflets in red ink had been seen in parts of his Location warning mainly the Kikuyu and the Kisii, to leave the area or else they would be killed.

The leaflets were in the Kiswahili language and the authors described themselves as Kalenjin Warriors. The leaflets were handed over to the police at Molo Police Station on



or about February 1992, but apart from the barazas which Benjamin Nganga and the area District Officer, Henry Obino, held to warn those distributing the leaflets of dire consequences if they did not stop doing so, nothing else was done to avert the threatened violence against the non-Kalenjin.

As it happened about the same time that these leaflets appeared, many of the Kalenjin started moving their livestock and personal effects away into Ndoinet forest, which abutted Nyota Location.

The clashes in the area started on the night of 14th March, 1992. Benjamin Nganga told us that on 14th March, 1992, he saw many strangers at the Kamwaura Shopping , which worried him. Coincidentally he met his Assistant Chief, one Wilson Maritim, and on inquiring from him why there were many strange faces at the Trading Centre the latter answered that because it was a market day they had probably come there to buy livestock.

Benjamin Nganga was not too happy with this answer because although it was a market day, it was not one of those market days when livestock was brought to the market for sale. Benjamin Nganga coincidentally also met later that day five Anti Stock Theft Unit police officers at the Trading Centre and was told by one of them, a Kisii, that he had seen a suspiciously large number of people in the nearby Ndoinet forest, a fact which heightened his fears of impending trouble.

In Sondu too, strange people were seen in the area before clashes broke out there. However, on the same day at about 10 pm. Kenya Nguirubi farm was attacked by an armed gang who were suspected to be Kalenjin, who violently attacked several of the Kikuyu there; a few were killed, a few escaped with cut and arrow wounds, many of their houses were burnt and a number of their livestock were stolen. Among those who died on that night was the brother of David Tom Maari, an advocate of the High Court of Kenya.

He told us that he and some policemen in uniform, met the raiders face to face, near his father's farm in the Kamwaura area, armed with bows and arrows clad in red "shukas" and who threatened to kill him along with those he was with at first oblivious of the fact that some of them were policemen. Their hostile attitude only softened when they realized the presence of the policemen with David Maari.

The raiders' explanation for the violence was that because the Kikuyu had shown they would not vote for "Mzee" in the general election which was due later that year they had decided to kill them along with any other person who like them would be unwilling to vote for him; that they were paid five hundred shillings for every male adult non-Kalenjin killed and two hundred shillings for every non-Kalenjin male child killed, and that they, had received their training in some forest in Bomet District.



On the 15th March, 1992, the raids spread to neighbouring farms where similar destruction was caused. The raiders made surprise attacks both at night and during daytime and set ablaze several grass thatched non-Kalenjin houses, stole livestock, looted houses and killed or seriously injured any non-Kalenjin they came across. Among the locations into which the clashes spread were Kapsumbeiwo, Chemaner, Kipsonoi, Nyota and Temoyetta, all in Molo South.

There were a few retaliatory attacks against the Kalenjin in which some of their houses were also burnt and, in isolated cases, deaths occurred. Among those who were victims of the retaliatory attacks was a prominent farmer and retired military officer, Capt. Belsoi.

However, because the Kalenjin raiders appeared more prepared, organized and the security agents seemingly supported them in view of the several instances in which they should have but did not arrest them, the Kalenjin raiders inflicted heavy casualties on the non-Kalenjin and caused them extensive loss of property.

The attacks on the non-Kalenjin caused fear, loss of life and property and a feeling of helplessness and hopelessness on the survivors. Several of them fled their homes with whatever little they were able to salvage and trekked towards Molo Town. This encouraged the Kalenjin raiders to make more daring and blatant attacks sometimes within the vicinity of the security forces. For instance, on 16th March, 1992, while the District Commissioner, John Abduba, was holding a baraza at Boroni Primary School which incidentally was attended by only non-Kalenjin, the Kalenjin started torching houses nearby.

They were coming in large numbers from Ndoinet forest and the presence of security men did not deter them. The police managed to arrest a handful of them, but that did not deter the others who continued looting and burning houses belonging to the non-Kalenjin.

Although we were told that those arrested were later charged, no further evidence was made available to us in that regard. What is, however, notable is that the Kalenjin raiders, including those arrested then were in some sort of uniform and painted white faces implying that they were a well organized and trained militia which was fully prepared to attack the non-Kalenjin.

After 17th March 1992, the raids in the Molo South region were sporadic. Most people had left their homes and looters and stock thieves had a field day. Many livestock were stolen and corrugated iron sheets were removed from the roofs of non Kalenjin houses and carried away. A few Kalenjin houses were also



affected more particularly on settlement farms, which were occupied largely by non-Kalenjin.

We were told that all the Kalenjin in such farms also fled and trekked towards and into Ndoinet forest to join their brethren in Bomet and Kericho Districts , which were on the opposite side of the forest.

After 17th March, 1992, there was a short lull, but the clashes resumed in the area and also in the Mau Summit Location on 24th April, 1992; and on 25th April, 1992, in the Olenguruone Division. Molo South is about 60 km from Olenguruone and about 30km from Mau Summit Location. That the clashes started in the three areas simultaneously clearly shows that they were organized and controlled from a central position.

Besides the reasons which were given for the renewed violence in Molo South, differed from those given for the clashes in Mau Summit and Olenguruone. We were told that on or about 20th April, 1992, four Kikuyu Administrative police officers, from Chemaner, in Molo South, while in the company of another Kikuyu went to Kalenjin homes in search of items which had been stolen in the course of the earlier clashes. The Kalenjin who felt they were being harassed by the Kikuyu raised a war cry and then several Kalenjin armed with bows and arrows attacked the Kikuyu.

In Mau Summit area of Molo Division, the clashes first started on Big 15 farm, which was occupied wholly by the Kikuyu and, where several Kikuyu houses were burnt. The fires spread to adjoining farms notably Sinendet A & B which were predominantly occupied by the Kalenjin; Baraka farm, which together with African farm, Jogoo and Kamara farms, among others , were occupied by a mixture of tribes but predominantly by the Kikuyu and the Kalenjin.

The burning of houses on these and other farms, affected all communities but mainly the non-Kalenjin who were forced to flee their farms to seek refuge at Mau Summit, Total Shopping Centre and Molo Town. The majority of them have not to date returned to their farms, which presently are used by the Kalenjin as grazing pastures and for their own cultivation. We were told that some of the non Kalenjin have either sold or leased their farms to the Kalenjin as they fear returning there because of insecurity.

The result is that farms which were previously occupied by a mixture of the Kalenjin and the Kikuyu like Sinendet C, are presently only occupied by the Kalenjin. Multi-partyism was given as the main reason for the clashes in Mau Summit area, but all the witnesses who testified from the area did not elaborate.

The clashes in Olenguruone Division of Nakuru District were most tragic, well planned and executed as all the Kikuyu and other non-Kalenjin tribes then resident in the



area were driven out of their farms where they had lived peacefully with their Kalenjin neighbours for many years. Olenguruone was previously a forest reserve which was inhabited by the Dorobo (Ogiek). In 1939, however, the Europeans settled over four thousand Kikuyu squatters there. The area was originally part of Maasailand, but because of frequent clashes between the Maasai and the Dorobo, the Maasai were pushed further south to obviate further clashes. During the State of Emergency declared in 1952, most of the Kikuyu who had been settled there were rounded up and repatriated to various places in Central Province. In 1955, Olenguruone was declared a settlement area for the landless squatters who comprised the

Kikuyu, the Kipsigis and the Kisii. They were given plots of land ranging from five to twenty five acres. A few Dorobo also got land and settled alongside those other tribes. However, there was no settlement scheme for the Dorobo. After independence other tribes, for example the Kamba, the Nandi and other Kalenjin tribes, although they were few, were also given land in the area.

The clashes in Olenguruone Division started on 25th April, 1992, and pitted the Kalenjin against mainly the Kikuyu, even though the other tribes were not spared. The area Chief Jonathan Musee Mutai and an Acting Assistant Chief, Joseph Kirui, told us that the death of one Kiplangat Arap Kipkilach, a Kalenjin who was allegedly beheaded by the Kikuyu, sparked off the violence. Kiplangat Arap Kipkilach was allegedly beheaded on 24th April, 1992 by allegedly known people all Kikuyu.

John Kimutai Arap Langat who claimed to be the son of the deceased told us that he lived in the same homestead with the deceased, and that on 24th April, 1992, their home was raided by people who he did not identify. He escaped into Segemia in Maasailand where he remained until the next day when he was informed of his father's death.

He returned home immediately, and by the roadside near his home he saw a headless body which he said he identified by the clothes and legs as that of his father. He did not say whether there were any special features on the legs which made him particularly identify the body as that of his father.

The police allegedly took the body away but no one knows where they took it to or where it was eventually buried. Neither Jonathan Mutai nor the relatives of the said Kiplangat Arap Kipkilach formally reported the beheading to the police. Indeed, no one had gone to the police to claim his body.

John Kimutai Arap Langat was looked for when we raised the issue whether indeed, Kiplangat Arap Kipkilach ever existed, and if so where his body was buried. Neither John Kimutai Arap Langat nor any other person was able to tell us what happened to the headless body alleged to be that of



Kiplangat Arap Kipkilach.

We have a gut feeling and the circumstances seem to support the view that Kiplangat Arap Kipkilach did not exist, or if he existed and later died, the death had nothing to do with the clashes. The then area District Officer, Paul Cheruiyot, a Kalenjin, denied under cross-examination that the death caused the clashes, but he was sure that it was the culmination of events leading to the clashes in Olenguruone Division.

We are of the view that there was a wider scheme to which Paul Cheruiyot and Jonathan Mutai were party, to drive out the non-Kalenjin, and in particular the Kikuyu from the area. Paul Cheruiyot denied having got any prior information about the clashes, but admitted having been told by Njihia Mwaniki that the Kikuyu in Nyambogo and Chepakundi were spending nights in the bush because they feared being attacked and burnt in their houses by the Kalenjin, which report he said he dismissed-as being baseless. When the clashes eventually broke out he condoningly instructed the security men to shoot in the air whenever they saw the raiders and not at them.

Be that as it may, the death of Kiplangat Kipkilach was one of the reasons given by the Kalenjin, which sparked off the clashes in Olenguruone Division. It was also alleged that the Kikuyu had for several months preceding the clashes been holding night meetings disguised as religious meetings to plan and prepare to attack the Kalenjin.

The meetings were held from home to home and in each of those meetings they would beat drums, sing and dance to conceal the simultaneous digging of pits inside those houses, into which they buried their personal effects in readiness for the attack which it was claimed they eventually started.

Esther Martha Lavuta, a Kaniba, told us that after the Kikuyu had buried their belongings they set their houses on fire to spark off the violence. This was clearly a ridiculous suggestion and has only been stated to be rejected. The other reason given for the clashes is a claim by the Kalenjin that on 24th April, 1992, cows belonging to one Arap Kogogen, a Kalenjin, were slashed by people who were believed to be Kikuyu. The incident, coupled with the other incidents we have stated, above, were according to the Kalenjin, the immediate causes of the clashes in the area. However, the area District Officer who was allegedly informed by the Chief about the maiming of the animals denied any knowledge of that incident. In that regard his testimony is at variance with that of the area Chief. We observe here that the slashing of animals was also given as a reason for the clashes in Ol Moran.

The Kikuyu on their part stated that the clashes had been planned and executed by the Kalenjin with a view to driving out of Olenguruone all the non-Kalenjin and more particularly the Kikuyu so that they would thereafter occupy their land.



Whatever the reason and motive for the clashes, the people who were driven away were the non-Kalenjin. The Kalenjin who were heavily armed, with painted faces, and wearing some sort of uniform raided non-Kalenjin houses, either killed or wounded any non-Kalenjin they came across, looted and torched their houses, and stole their livestock.

They later demolished the non-Kalenjin houses and took away the building materials. This also showed that they were the aggressors and that they did not want the non-Kalenjin in the area. We were told that a group of over three thousand non Kalenjin being led from Chepakundi to Olenguruone town by Pastor Daniel Serebebi Saramiah Kipsigei, a Kalenjin, met a gang of about one hundred and sixty Kalenjin raiders in some sort of uniform, who threatened to kill them, and could have done so had the Pastor not pleaded with the Kalenjin raiders to leave the defenceless non-Kalenjin alone. As all this was happening the security forces were nowhere to be found.

Their complacency was conspicuous, and when looked at objectively it bordered on connivance. All non-Kalenjin were driven out of Olenguruone, and to date only a few, non Kikuyu, have returned to their farms. We were also told that when Njuguna Maina, a Kikuyu, attempted to go back to his farm, he was hacked to death.

The fact that many people have not returned to their farms for fear of insecurity seems to suggest that, the Police Force and the Provincial Administration connived at the ethnic violence in the area. The roles in the clashes particularly of Paul Cheruiyot and Jonathan Mutai should be further investigated.

Clashes in Naivasha Division pitted the Maasai against the Kikuyu, but witnesses could not give an exact date for this. What was clear is that the clashes may have been sparked off by rampant stock thefts in the area with the Kikuyu and not the Maasai, as victims. As a result of such thefts one Maasai who was suspected to be a stock thief was killed.

Three people, all Kikuyu, who were suspected as the killers were arrested, arraigned in court for murder, but were eventually acquitted. We were told that the acquittal did not please the Maasai who in retaliation, attacked and killed three Kikuyu in broad daylight, at Kigecha — Village, in Maai Mahiu Location; but the killers were not identified and no arrests were therefore made.

Three or so days later, without any provocation whatsoever, the Maasai invaded Kigecha village again while armed with sharp weapons, burnt several houses and grain stores belonging to the Kikuyus and killed at least ten people and injured several others, all Kikuyu, before they escaped. In this second raid other neighbouring villages were also affected.



The area Chief Lasiit Ole Kipelekenya, and Joseph Chege the Assistant Chief of Maai Mahiu Sub-Location which was mainly affected by clashes, told us that the clashes came as a surprise to them, but were decisively dealt with by the Police force. The Provincial Administration officers on their part organised barazas to reconcile the warring parties and since then there has not been any recurrence of the clashes.

It is noteworthy that although the area was inhabited by other communities like the Kisii and the Luo, they were not affected by the incidents of arson, murder and thefts. Only the Kikuyu were affected and we think that there must have been a political motive for this. The District Criminal Investigations Officer at the time, Dida Golicha, told us that the clashes in the Naivasha Division were a spill over from Enosupukia, but we did not receive any other evidence to corroborate it.

What we think was the underlying cause was the general Kalenjin and Maasai hatred for the Kikuyu on political grounds, and the clashes were meant to distabilise them as they were quite many clustered in an area which was believed to be a Kanu zone. The Kikuyu at the time made no secret about their opposition to Kanu, which was predominantly supported by the Kalenjin and the Maasai in the Rift Valley Province. The clashes may well have occurred just before the 1992 general elections, otherwise, no other plausible explanation was given for the clashes nor can we discern any.

With regard to the causes of the clashes in Nakuru District we earlier set out in general terms what we were told were the causes and motives for the clashes. The evidence before us looked at as a whole discounts those as the possible reasons for the clashes. All the areas apart from Naivasha, within the District that we have considered, fell within Molo Constituency which at the time had as its member of parliament, Njenga Mungai, a Kikuyu.

But with the introduction of multi-party in 1992, political parties were based on ethnic loyalties. Enough has been said- about this and the strained intertribal relations that it caused. We will now only refer to the following evidence of some of the people from Nakuru District namely, Peter Asiago, a Kalenjin primary school teacher, Augustine Kipkemoi Ngerich, another Kalenjin from Baraka farm in Mau Summit, and David Masubuch Malel, Chief of Chemanel Location, and contained respectively in the verbatim reports of the proceedings of the Judicial Commission of 16th November, 1998, 20th November, 1998, and 2nd December, 1998:

"Mr. Asiago: My Lords the kind of discussion was that, 'You Kisii are "kamama" so you have to support Us'...

Chairman: The Kalenjin teachers told the Kisii teachers that they expected your support?



Mr Asiago: Yes, My Lords. The Kalenjin said 'If you do not support us, you will have to move.'".

"Sometimes, we used to hear that Moi would not win and I think such utterances from politicians could create hatred amongst the communities

Kiplenge: And that more specifically they were not happy about these people who came from other tribes and who might have sympathized with the new leaders of opposition who wanted to take the Presidency?

Mr. Ngerich: Yes, my Lords.".

"Mr. Chainnan: Kalenjin- did not want Kikuyus to join FORD.

Justice Bosire: What did they fear that such membership would do?

Mr. Malel: My Lords I think they thought that FORD as a party was going to take over the government

Mr. Malel: — Yes, they thought that Kikuyus were going to take over the leadership

Mr. Malel: I have said that the Kalenjin did not want the Kikuyus to join or support Ford They, were happy with the party

Mr. Chairman: They were happy that there was multi-partyism to enable them support Ford a rival political party?

Mr. Malel: Yes, My Lords.".

The aftermath the clashes took clearly showed that those who either supported or were sympathetic to the emergent multi-party politics were the ones targeted. Except where we had retaliatory attacks no Kalenjin or Kalenjin houses were affected by the clashes.

The Kikuyu and the Luo who were in the forefront in the support of plural politics suffered the most. The other tribes who expressed some limited support of the same, like the Luhya and the Kisii were also affected. The planners and perpetrators of the clashes in Nakuru, more particularly during the 1991 to 1993 clashes cannot have come from the area.

John Rono Bor, Chief of Mau Summit Location, as appears in the verbatim report of the proceedings of the Judicial Commission of 4th December, 1998, was emphatic on this. He said:

"... I have in mind that the reports that we were hearing about clashes in other places; the Kikuyu community clashing with Kalenjin, reports about casualties arriving in Molo hospital, people with arrows in their heads, corpses with missing parts of the body like private parts, headless corpses and so on, must have developed hatred among the two communities..... So, I believe some people somewhere must have made an arrangement to come and avenge on us. But I wish to exonerate my people; they did not know, even



Kikuyus when the torching took place, ... And even most of them had gone to their farms. On the following day on 25th, there was a mass exodus. That means that these people did not know the cause of the clashes."

He was also emphatic that the motive for the clashes, was political. He made us to understand that the Kikuyu were excited about multi-partyism and the Kalenjin thought that they were humiliated by the utterances of the Kikuyu. The clashes in Nakuru District have also to be looked at against the political- climate of the time. Before the clashes erupted in the district there had been clashes in Tinderet in Nandi District, and in Kipkelion, Chirchila, Londiani, and Sondu in Kericho District.

All these clashes were preceded by political rallies at Kapsabet, Kapkatet and Narok in which prominent Kalenjin leaders preached one message, namely, that all the non-Kalenjin in who did not support Kanu must leave the Rift Valley Province "or else", they would be driven out by force.

The politicians included senior cabinet ministers in the government of Kenya including the then Vice-President of the Republic of Kenya George Saitoti. We have no record to show that any action was taken against them for their unsavoury and inflammatory statements which, in our view were prima facie, criminal as they were meant to incite the public to violence.

Nor do we have any evidence that any of the politicians protested what was attributed to them in the print media. As we stated elsewhere in this Report many communities in Kenya, and more particularly the Kalenjin, follow what their leaders advise.

Consequently, considering the timing of the clashes, those leaders became the prime suspects as the perpetrators and planners of the clashes. Otherwise, they owe this country an explanation as to why, as is expected of the Government, its leaders and servants, they did not respect the law.

Besides it is too much of a coincidence that the clashes appeared systematic, the raiders were dressed and armed themselves in a similar manner in all the affected areas, and that the same community, the Kalenjin, were the aggressor in all cases, targeting the other ethnic communities which did not agree with them politically. Moreover, the clashes immediately preceded the general elections of 1992, and we believe that they were intended to drive away communities who were likely to vote against the party in power Kanu, which the majority of the Kalenjin supported.

This political objective was used to stir up and to spur on the traditional Kalenjin antipathy against the Kikuyu and their age long desire to regain the lands which they say they lost during European settlement in Kenya.



The 1992 and 1993 clashes in Nakuru affected mainly Molo and Olenuruone Divisions, which have since been sub-divided into several other Divisions. For instance Molo, as it then was, now has Kamara, Kuresoi, Keringet and Molo as divisions. By 1992 there were three District Officers in Molo Sub-Division two of whom were based at Molo and one at Olenuruone.

When the clashes first broke out the two District Officers who were based in Molo, Henry Obino and one Wanjohi, acted swiftly, and we think, decisively, as they with the then Officer Commanding the Molo Police Station, Joseph Saoke, mobilised the security men under their command, moved to the scene of the clashes and arrested over one hundred and forty suspects for various offences including murderer and arson.

Their action stopped the clashes in the Kamwaura area within two to three days and as we have come to expect, the three officers were transferred immediately thereafter. Henry Obino was transferred even before he completed his report on the clashes.

We have a feeling that whoever effected the transfers must have wanted those officers out of the way so that realisation of the purpose of the clashes should no longer be obstructed or hindered.

Besides, we heard evidence of events prior to the clashes. There were leaflets circulating in Molo South warning the non-Kalenjin to move out of the Rift Valley or else they would face dire consequences. There was talk among school children of plans to evict the non-Kalenjin, which initially were not taken seriously.

Cosmas Onderi Petro, a resident of Cheptagurn farm in Molo South, told us that the impending clashes were common talk in his area and also that one Ntimamu, a Kalenjin, who worked for Jonathan Ngeno, then a Cabinet Minister, had told him that there would be war to drive out the Kikuyu from the area. Thereafter, there was a general exodus of the Kalenjin into Ndoinet forest with their livestock and personal effects. The District Officer of Olenuruone Division, Paul Cheruiyot, was told, at least two weeks before clashes broke out there, that the Kalenjin had vowed that they would burn all the Kikuyu houses with a view to driving them out of the Division, but he did nothing about it.

Besides on or about 21st April, 1992, some Kikuyu families had reported to him that they had heard rumours of impending attacks on the Kikuyu in the area, but he dismissed their information as baseless notwithstanding the information he already had concerning the fact that the Kalenjin had threatened to do so. Neither the Chiefs, nor their Assistants passed these pieces of information to those in authority, and where that was done, no action was taken to pre-empt the clashes.



So in Nakuru District, the events preceding the clashes reveal a general reluctance on the Provincial Administration officers, who knew well that clashes would occur, to take any pre-emptive action. For instance, Assistant Chief Wilson Maritim, disappeared as soon as the clashes broke out within his Sub-Location in Molo South and was nowhere to be seen until after the clashes had been stopped.

He did not even attend two barazas, one which was chaired by the District Commissioner and the other by the Provincial Commissioner, both which were held in his Sub-Location. As it later turned out, he had prior knowledge of the impending clashes and had contact with the raiders, but he withheld that information from those who needed to know it and who would have taken preventive action. He was later retired from the public service because of his involvement in the clashes but we think that mere retirement was not sufficient punishment.

A common feature in all the clash areas which we have already described was the late arrival of the Police Force and the Provincial Administration officers at the scenes of the clashes and their deliberate reluctance to shoot to disable and to arrest those caught red-handed in taking part in the clashes.

That behaviour coupled with what we have stated clearly suggests that those who were supposed to prevent or stop the clashes had prior knowledge they would occur, but did not want to stop them or were under orders not to do so. The raiders must also have either had prior reassurance in this regard or having observed that the police by firing into the air, did not intend to kill or arrest any of them carried on their attacks undeterred.

It was no wonder therefore, that in Molo South while the District Commissioner was holding a baraza at Boroni Primary School, the arsonists were busy torching houses within the vicinity of the venue of that baraza.

Another common feature in the clash-torn areas, Nakuru District included, was the fact that the clash victims were driven out of their homes and farms into camps in towns and trading centres where they lived in makeshift structures and in unsanitary conditions, with their children unable to go to school and with little or no food and medicines.

Yet, apart from the assistance which NGOs and churches provided, the Police Force and the Provincial Administration officers did not take any or sufficient steps to ensure that the victims were provided with basic needs. Instead, what we were told they did was to order the victims to return to their farms notwithstanding that the security situation was volatile.

The victims' houses having been burnt it was mischievous and insincere for the Police Officers and the Provincial Administration officers to require them to return to their farms. For instance in Olenguruone, the then Provincial Commissioner, Mohamed Yusuf



Haji, and the late Mr Ishmael Chelanga who was then District Commissioner of Nakuru District, told thousands of victims at Olenguruone on 28th April, 1992, to return to their farms on the ground that security had been improved. This was after the two administrators had flown over the area and seen that most of the houses had been burnt down or were still smouldering.

It was illogical to expect the people to return to their farms when they did not have shelters to live in and when the security situation was still volatile. That was conduct which showed extreme callousness on the part of the security forces and the Provincial Administration for the plight of the victims, and possible connivance of the clashes by them.

Similarly in many if not all clash torn areas, the Police Officers and Provincial Administrators heavily relied on and over emphasised the importance of "barazas". While we concede that barazas are an important tool for the dissemination of information particularly regarding government policies in times of peace, and also that barazas may be used to promote reconciliation where the matter in dispute is simple and clear, we do not think that having regard to the serious and ethnic nature of the clashes, the barazas could, or indeed, achieved much during the clashes.

In some cases we think they were an excuse for not taking decisive action to stop the clashes. The Government to the common man is represented by the Provincial Administration, and the Police Force, and if those cannot offer them the protection they need then the basis upon which their faith in the Government is anchored is completely eroded.

That is what many of the clash victims who have yet to return to their farms told us, and the blame lies squarely with the Provincial Administration and the Police Force who seem to have abdicated their responsibility of giving equal protection to all people.

On 2nd September 1993, Molo, along with Burnt Forest and Londiani were declared security operation zones under Section 85 of the Constitution and Part III of the Public Security Act. This was at the time when there was a revival of clashes in those areas.

In Molo, renewed violence started with a spate of stock theft of non-Kalenjin, livestock and also when a Mkorino from Kariba farm was killed when he tried to resist the theft of his livestock. It was followed by leaflets advising the non-Kalenjin to leave the Rift Valley Province.

Then there followed an attack on 25th July, 1993, of one Mongare at Bachuke farm, and on the same night a woman known as Teresa Moraa from Kongoi farm was attacked and robbed in her house. Geoffrey Nganga and George Gachengo of Tebere and Wira



respectively in Molo South were also attacked on 26th July, 1993, and their livestock were stolen.

On 1st August, 1993, as the police were investigating these attacks, the families of Sanden, Kiplangat Tuwei, and Daniel Chepkwony, all Kalenjin, were attacked, and one of them, Kipyegon Sanden, was killed. Though the attackers were not identified they were believed to be Kikuyu. The police then raided Morinduko farm, which was occupied mainly by the Kikuyu, and recovered two home made guns, a thunder flash, a quiver containing seven arrows, a hand axe, a Somali sword and three live bullets.

About the same period William Ole Ntimama the well known Maasai politician, is reported in The Standard of 5th April, 1993, Exhibit 173, to have decried the manufacture of firearms in Molo and Enoosupia. We think that this exposure must have been one of the reasons why the Government took prompt action in quelling the clashes in the area then.

We were also told that the attack on the three Kalenj in families and the recovery of the weapons sparked off an attack on the Kikuyu and the Kisii at Arimi farm which is occupied by mixed communities, and that Hillam Kamau, a Kikuyu aged seventy five years, was shot with five arrows, which were later found stuck in his body. He later died from the arrow wounds. His workman, Anthony Asiago, a Kisii aged twenty eight years, was also killed.

The attackers went to the home of a Mrs Mukuni, a Kikuyu, raped her and escaped with some of her properties. They also attacked the home of one Kabue set his house ablaze, and injured his son Joel. The raiders then moved on to an adjoining farm, Temoyetta 4 where they attacked and killed one Philip Kamau Njuguna and injured a visitor who was in his house. The raiders were believed to be the Kalenjin. We were also told of the killing of a Kalenjin boy at Kamwaura by people suspected to be Kikuyu.

In the course of the swift and decisive operation by the police, Ruth Chepkorir w/o Langat, and a Kalenjin, was shot and killed at Temoyetta 4. This death and the other incidents aroused a lot of interest and consternation. Some policemen who were suspected to have shot her were immediately arrested and were soon thereafter arraigned in court for murder. We were told that they were eventually acquitted of the charge for lack of evidence, but the damage had already been done.

We have narrated the foregoing incidents which occurred in July and August, 1993, to show that the police action then and the government reaction to the clashes was different. They were swift and decisive. The Government soon thereafter declared the area a security operation one, even though in comparison, the events of 1991 and 1992



regarding the clashes, were of greater magnitude and caused greater suffering, loss of life, damage and destruction of property.

The Government action in July to September 1993, including the declaration of Molo as a Security Zone demonstrated a greater willingness than before to end the clashes. The action and the security operation in Molo Division seemingly brought the clashes to an end as since then no clashes of the same magnitude have been experienced there. There were, however, isolated incidents of stock thefts and incidents of house breaking and burglary, but which are not of major concern to the residents.

Of major concern, however, is the fact that neither the ordinary police operation nor the security operation in Molo has facilitated the return of all clash victims to their farms. Many, particularly in Mau Summit and Keringet area are yet to return to their farms.

The case of Olenguruone remains a scar in the Government image. We were told that some displaced people from Olenguruone had been given alternative land in Elburgon area, but the beneficiaries clearly seemed uncertain and doubted the sincerity of the government for the gesture which they believe is merely an exercise intended to placate them and later drive them out.

The clashes in Nakuru District, apart from taking lives, causing destruction and loss of property, and displacing a large number of people, engendered hatred among communities particularly the Kalenjin and the Kikuyu to the extent that at the height of the clashes no Kalenjin could travel through towns like Elburgon or Molo; and no Kikuyu could move freely in any area predominantly occupied by the Kalenjin. They would be instantly killed.

A farm manager of Benjamin Kipkulei, a former Permanent Secretary in the Ministry of Education was stoned as he drove his Toyota pick-up through Molo town and was eventually burnt inside it merely because he was a Kalenjin, We were told that those responsible were the Kikuyu, the Kisii, the Luhya, the Luo and the Kambas who were then resident in the town. Mutual suspicion more particularly between the Kalenjin and the Kikuyu which for sometime had thawed to some degree was heightened. Government officers in those areas also tended to be partisan in favour of their ethnic communities.

The late Ishmael Chelanga, the District Commissioner of Nakuru District at the time, and in abuse of his office, withdrew security men from Molo South on the pretext that they had been away for too long from their families; but 'if that was the real reason, then the logical thing that he should have done was to have sent replacements, which he did not do. His action was questioned by Archbishop Ndingi Mwana Nzeki, who was then the Catholic Bishop in charge of the area, but to no avail.



Dida Golicha, the then Divisional Criminal Investigations Officer at Nakuru, testified that a Kalenjin policeman at Tebere farm in Molo South, refused to take action against known Kalenjin who had reportedly killed Daudi Osoro, a Kisii. The security men were also used to further sectoral interests. The Archbishop testified, as in the verbatim report of the proceedings of the Judicial Commission of 23rd July, 1998 as follows:

"Archbishop Ndingi: Some of my team went to Molo Police Station. While at Molo Police Station, the PC and DC came there in a helicopter as though they were inspecting what was happening. After that, we drove to Olenguruone Parish and stopped at the DO's Office. There, we found some — whether they were soldiers or police I do not know — but they were dressed in camouflaged uniforms. When we tried to take a picture of the contents inside the car, they refused. We did see military helicopters flying over Olenguruone and asked ourselves, "what are they looking for?" Since people who had been driven from there were there, these helicopters never landed to talk to us or anybody, what was their mission."

It was not the Government's official or declared position that it was supporting the clashes, or the eviction of certain communities. However, it was clearly evident that certain Government officers, particularly those in the Provincial Administration either acquiesced to or supported the clashes.

The clashes, therefore, divided the government servants in Nakuru District as it did the people along tribal lines. Perhaps that will explain why police action was prompt and decisive when a Kalenjin woman was killed because the Provincial Police Officer, Francis Sang, a Kalenjin, personally went to the scene to oversee the investigation into her death. The death of Capt. Belsoi also elicited a similar response.

We were also told that because of mutual Suspicion, farms with mixed communities have experienced an unprecedented sale of land by the minority groups who move to areas where their people are predominant. All the Kikuyu forced out of Olenguruone cannot return there without risking their lives.

We were also told that most of them have sold their land cheaply to some Kalenjin in so that they can settle elsewhere. We were told of similar sales in Molo South and Mau Summit areas. That has in a way led to what Prof Ezra Kiprono Martim recommended should have been done during the settlement exercise, namely, that ethnic communities should have been settled together with a greater bias in favour of the indigenous people.

However, the result is being achieved through a process which may be termed as ethnic cleansing, which seemingly had Government tacit approval as some Kikuyu and Kisii victims of the clashes from parts of Chepakundi in Olenguruone Division; have now landed at Elburgon area.



Socially, many people have been forced into urban centres where they live in abject poverty; there is an increase in lay-outs in urban and shopping centres, and possibly an increased crime rate.

Economically, many farms in Molo and Olenguruone Divisions, as they then were, are lying idle and we think that overall food production must have been adversely affected. These and the other factors, we have talked About are a potential source of future conflict.

OL MORAN AND NJORO

Clashes in Ol Moran and Njoro Divisions like those in Enoosupukia area of Narok District which we will deal with later, occurred after the general election unlike those in other areas which preceded it. The two areas were part of the former European settlements, and are presently administrative divisions, the former in Laikipia District and the latter in Nakuru District.

After independence the Settlement fund Trustees took over farms in those areas and later sold them to various land buying companies, among them Mutukanio Co. Ltd and Laikipia West Co. Ltd, which companies together with several other sister companies were associated with Dixon Kihika kimani, a one time member of parliament for Laikipia West within which Ol Moran falls, and the current member of parliament for the Molo constituency within which Njoro falls.

The shareholders in those several land buying companies, including the Kikuyu who were the majority. Those shareholders form the majority of the residents of Ol Moran and Njoro and also other Divisions in other areas where the companies bought land, which include Nakuru North Constituency, which Kihika Kimani one time represented in parliament.

In Ol Moran, apart from the Kikuyu, the Kisii, the Somali, the Luhya and a few other people from smaller tribes, who all are agriculturists, we also have the Pokot, the Samburu and the Turkana, all who are pastoral tribes, resident in the area. These pastoral tribes are the indigenous peoples of the area who were driven out by the colonialists to create room for European settlements.

The sale of former European farms to other tribes has over the years been a source of disquietude among the pastoralists who feel that they were improperly deprived of their ancestral land and that the presence of these other tribes constitutes an interference with their grazing rights in the area.

We were told that whenever they felt like these pastoral tribes would graze their livestock on the farms of the agriculturists and sometimes even on the crops growing



there. This blatant illegal grazing had over the years been a source of conflict between them and the agriculturalist tribes there.

Be that as it may, a few of them bought some shares from some shareholders of Mutukanio Co. Ltd and Laikipia West Co. Ltd and settled there are the non pastoral tribes. Otherwise the majority of the pastoral tribes live in their former reserves in Manyattas. They migrate from time to time in search of pastures for their livestock which are their lifeline.

Their attachment to livestock is cultural and sentimental with the result that any interference with them evokes anger and consternation on their part.

The pastoral tribes sometimes referred to as Kamatusa (Kalenjin, Maasai, Turkana and Samburu) are also traditional stock thieves. The Judicial Commission was told that because of the high incidence of cattle rustling in the area, mainly against the agricultural tribes, by January, 1998, when clashes broke out in of Moran, none of them kept any cattle.

However, a few of them kept goats which they locked up indoors at night, a fact which caused the pastoralists to resort to the use of firearms to rob the owners of their goats. Indeed, clashes in the area were said to have been sparked off by such an incident which we propose to deal with later. Previous complaints by the non-pastoral tribes in that regard had not elicited any assistance from the Provincial Administration and Police Force.

We were told that out of desperation and frustration the non-pastoral tribes, in 1996, held a protest march in the area while carrying the body of a victim killed by the pastoralists in the course of cattle rustling, to express their anger and frustration at the government's seemingly lack of concern for their security and welfare.

The action spurred the Government to send a contingent of armed security men into the area to evict the pastoralists who then and from time to time used to invade the non-pastoralists land in search of grass, but for some reason the eviction did not materialize, with the result that the problem persisted until the clashes under consideration broke out.

Ol Moran, before January, 1998, was a location within Ngarua Division, and was made into a Division on or about 22nd January, 1998, when the then Provincial Commissioner, Nicholas Mberia, visited the area at the height of the clashes. The making of Moran into an administrative Division was one of the measures he instituted to contain the clashes and armed conflict in the area generally.

Previously, it was being administered from Ngarua (Kinamba) where the District Officer was based. We heard evidence that the area had a police post and in Anti Stock Theft Unit (ASTU) Camp at Ol Moran as the only Security centres, with only a handful of



police who lacked essential facilities like transport and communications equipment. When Ol Moran was made a Division, the police post at Ol Moran Trading Centre was also elevated into a police station.

That a Location was elevated into an administrative Division clearly indicated how expansive the area was, which the Ngarua District Officer administered. This when considered with the available scarce security centres and their lack of transport and communications equipment, lends some justification to the complaints by the non-pastoral tribes about lack of security.

We were also told that the area has a difficult terrain, poor infrastructure, and whenever it rained people could only move from one place to another on foot. These were given as constraining factors to effective administration and security surveillance, but as we shall observe later in detail the greater problem was laxity and complacency by provincial administrators and the security personnel.

Politically, Ol Moran falls within Laikipia West Constituency, which until 1992, had G.G. Karriuki, a Kikuyu, as its Kanu member of Parliament, but he lost the seat in the 1992 general elections to Dixon Kihika Kimani, also a Kikuyu, who vied for the seat on a DP ticket.

The latter did not, however, defend that parliamentary seat in the 1997 general elections, but opted to contest the parliamentary seat for Molo constituency which he easily won on a DP ticket. Chege Mbitiru, also a Kikuyu the Laikipia West Parliamentary seat in 1997, on a DP ticket against a Samburu Kanu candidate, Laikipia West, like Laikipia East, has a strong DP following and this has been one of the causes of disharmony between the pastoral tribes, who are predominantly Kanu supporters, and the non-pastoral tribes, who are predominantly or perceived to be opposition supporters.

Clashes in Ol Moran location started on the night of 11th January, 1998, when a gang suspected to be of the Pokot, armed with among other weapons, firearms, raided the home of Esther Njeri, a Kikuyu widow, and stole fourteen of her goats. She raised an alarm which drew the attention of her predominantly Kikuyu neighbours who pursued the thieves and managed to recover ten of the goats.

On the same night, the home of one Lechau Apalungeiya, a Pokot, who lived in the same area, was raided by a gang of people believed to be Kikuyu, who cut and killed about forty of his goats, maimed or killed some of his cattle and allegedly burnt four of his houses there. It is not clear whether those who raided his home were the same people who recovered Esther Njeri's goats, or whether it was another gang.

It is also not clear whether any of his houses were burnt because, although Lechau Apalungeiya and other witnesses testified to that effect, the then Ag District



Commissioner of Laikipia, Lorna Odero, who visited the home two or so days later, denied she saw any burnt houses there.

However, we were told that the killing and maiming of Lechau Apalungeiya's livestock greatly incensed the Pokot who, in a meeting which the area District Officer, Jonathan Soi held on 13th January, 1998, insisted that the Kikuyu compensate Lechau Apalungeiva with an equal number of livestock as those killed or maimed before they could discuss peace and reconciliation.

A committee of twenty elders was chosen from both sides to discuss peace, but the Pokot adamantly refused to co-operate before their demands were met.

On the night of 14th January, 1998, the Pokot together with the Samburu raided several Kikuyu homes in the Magadi area, killed two people and looted and burnt several houses. The incident caused fear and panic among the Kikuyu and other non-pastoral tribes who then fled their homes and sought refuge in 01 Moran Catholic Church and other churches in 01 Moran, Sipili and Kinamba. The arson and murder continued on 15th and 16th January, 1998.

Neither Jonathan Soi nor the Officer Commanding, Ngarua Police Station, the late Chief Inspector Jeremiah Ndahi, made any arrangements for the security of the refugees or for the provision of food and other essential requirements for them. At some stage the Catholic Church moved some of them to places which were considered safer because of a threatened attack on them by the pastoral tribes.

We were told that the Kikuyu in Sipili, and other neighbouring areas, who felt that the Government was in a way condoning the attacks, mobilized and armed several Kikuyu youths, numbering about three hundred, with pangas and sticks among other weapons, who were transported in commandeered matatus to Magadi in 01 Moran to avenge the killing of the Kikuyu there and the destruction of their property.

We were also told that several Kikuyu women were mobilized and sent to a training Centre known as Survey where they made meals for the Kikuyu youths. Because the rain had made the road into Magadi area impassible the Kikuyu youths would get off the matatus at Survey and proceeded on foot to Ngosusu area in Magadi. What happened when they reached Ngosusu is a matter of inference.

Over forty one bodies, two of which were identified as being that of a Pokot and of a Turkana, were later recovered and were positively identified as those of the Kikuyu youth largely from Sipili. It would seem that the Kikuyu youths were confronted by well armed Pokot and Samburu warriors who butchered them and rendered their revenge mission a disastrous one.



The clashes in 01 Moran effectively ended on 18th January, 1998, as thereafter, no incidents of tribal clashes were reported.

The Judicial Commission was told that the theft of Esther Njeri's goats and the subsequent killing of Lechau Apalungeiya's livestock was reported at 01 Moran Police Post, and later to Jeremiah Ndahi and Jonathan Soi.

They in turn, notified their respective superiors, the Officer Commanding the Police Division, Mutinda Ngunguni and Loma Odera, as indeed, they were supposed to do. Jonathan Soi, gave a detailed account of what he and the Officer Commanding Ngarua Police Station, since deceased, did to contain the violence, but in our view what they did fell far short of expectation.

He said that he was first informed of the events of 11th and 12th January 1998, on the morning of 13th January, 1998, after which he immediately proceeded to the scene which was at a place called Mirigwit.

He visited the home of Lechau Apalungeiya, saw his killed and maimed livestock, talked to him and several Pokot people he found there, promised to take appropriate action against the culprits and to consider the possibility of paying compensation to Lechau Apalungeiya, without saying who would pay the compensation.

He promised to return the next day, which he did with a District Officer 11 Special Duties, Kobia, who had been sent by Lorna Odera, to find out what exactly had happened. The two preached peace and reconciliation which as we stated earlier, was rejected by the Pokot unless appropriate compensation was paid.

The both Jonathan Soi and Kobia did not sense any impending trouble from the negative stance by the Pokot and so did not take the necessary steps to avert it. They simply drove away to Kinamba, leaving the Pokot disgusted and in a fit of rage. It was not surprising therefore, that on the following night the Pokot and their Samburu allies, attacked the Kikuyu in Magadi sub-Location, killed two of them and burnt more than twenty five Kikuyu houses.

When later the next morning Jonathan Soi was informed about this, he did not make any plans to avert or contain further violence. We were told that the Pokot and Samburu lived in Manyattas or clustered homesteads, which, for any person determined to contain their activities, would have been easy to monitor.

Yet neither Jonathan Soi nor Jeremiah Ndahi, considered it appropriate to specifically deploy the few security men they had to monitor the movement of the Pokot and the Samburu.

Besides on 16th January, 1998, the Jonathan Soi was informed by the Assistant Chief of Sipili sub-location, John Kipkoech Kimaiyo, that the Kikuyu there had mobilized



several youths to go to 01 Moran to avenge the killing of their people there. Instead of taking immediate steps to stop the planned attack, Jonathan Soi did nothing even in the face of abundant evidence that such attack had been planned.

We were told that on the morning of 17th January, 1998, he saw and talked to several Kikuyu women at survey who were cooking a large amount of food, which in view of the prevailing situation there should have warned him that something bad was in the offing.

In the Police Report of an Inquiry Into The Circumstances Which Led To Clashes in 01 Moran, Exhibit 12, which was prepared by a team headed by Issac Maitiri Muthuri, Deputy Commissioner of Police, it is stated that Jonathan Soi Jeremiah Ndahi had met groups of Kikuyu youths, armed with stones, rungu, pangas, bows and arrows and spears marching towards Ngosusu, but they did not stop them.

Jonathan Soi in his evidence denied having seen the armed groups of Kikuyu youths, but we did not expect him to admit it in view of what eventually happened to them. Besides, the behaviour of Jonathan Soi, and the Jeremiah Ndahi, on the evening of 17th January 1998, as testified to by Father Borsa Sandro of the Catholic Church, when he visited them at Kinamba, leaves no doubt in anybody's mind about the blatant indifference and complacency of the two officers to the clashes in 01 Moran.

Father Borsa Sandro testified that on the instructions of Bishop Kirima, he visited the two officers at Kinamba to inquire about the plans they had to contain the violence in 01 Moran. Despite the fact that reports from the area indicated that there was widespread arson and other incidents of violence, both of them independently told him not to worry, because, according to them, the situation was under control.

That behaviour was not isolated as evidence of similar behaviour by other Provincial Administration officers and the security forces in other clash hit areas was adduced in this Inquiry.

The behaviour the next day of both officers was hostile to the Catholic priest as among other things, they refused to discuss with him ways to contain the violence in the area, a fact which the Jonathan Soi admitted before us but argued that he did so because he first wanted to see a copy of some memorandum from the Catholic Church which the priest said he had come with before he could agree to talk to him.

This behaviour and his subsequent behaviour, was one of indifference and callousness and connivance. In our view Jonathan Soi and Jeremiah Ndahi deserved at least, a severer disciplinary action possibly dismissal, than a mere stern warning which the Muthuri Committee had recommended in Exhibit 12, if not criminal prosecution.

The Officer Commanding Police Division, Mutinda Ngunguni, did not fare any better. He was the senior-most police officer in the District and yet he did not take any notable



action to stop the clashes or apprehend the raiders. He neither effected any arrest nor assisted in the arrest of any raiders or arsonists.

One would have expected that as the most senior police officer in the District, he would take charge of and lead the security operations but he didn't. His behaviour, like that of Jonathan Soi and Jeremiah Ndahi bordered on that of an aider and abetter of the clashes.

The recommendation in the report of the Muthuri Committee, Exhibit 12, that he should be served with a stern warning, is ridiculous. In our view severe action against him, possibly a dismissal is called for, if not criminal prosecution.

Lorna Odero, told us that on at least three occasions between 14th and 18th January, 1998, she petitioned the Provincial Commissioner of the Rift Valley Province who was at the time, none other than the notorious Nicholas Mberia, for security reinforcements, but none was sent until 19th January, 1998, after the Pokot and the Samburu, had on their own accord stopped their onslaught on the non-pastoralists.

Of course, Nicholas Mberia, did not bother to visit the area until 22 d January, 1998, when he held a baraza at 01 Moran, and belatedly instituted measures to end the violence, which measures, in our view, he should have taken immediately he was notified about the existence of clashes in the area.

The measures included the establishment of several police posts, the elevation of 01 Moran Police Post into a police station, the elevation of 01 Moran Location into a Division and the posting of another District Officer to the area, and most important of all, but far too late, the deployment of a contingent of GSU men there.

The measures were laudable in as far as any future incidents were concerned, but with regard to the clashes at the time, they were only a public relations exercise having come too late after over forty one lives had been lost, several houses had been burnt, loss of valuable property had occurred and many people had been displaced and their normal lives disrupted.

Nicholas Mberia, as the District Commissioner in Kericho in 1993, will be remembered for intransigent, partisan and illegal role he played in his handling of the Luo squatters at Buru farm in Thessalia. As we shall later show, he adopted a more or less similar role and attitude in dealing with the Njoro clashes.

The behaviour of the Provincial Administration and the Police Force no doubt was reminiscent of people who, directly or otherwise, condoned the clashes. It was therefore, not surprising that Lorna Odero, was on 16th January, 1998, shouted down by the irate displaced persons who were camped at the 01 Moran Catholic Church, when she tried to tell them that steps were being taken by the Government to reinforce security; and



likewise the Kikuyu in Sipili, on the same day, resorted to self-help measures of recruiting their youths to deal with their security problem.

We wish to observe here that the behaviour of the Kikuyu was evidence of frustration and desperation. As we stated earlier, in 1996, several people in Ngarua, out of frustration and desperation because of the rampant thefts of their livestock by heavily armed pastoralists, while carrying the dead body of a Kikuyu who had been killed during such theft, marched along public roads in the area to protest the Government's apparent indifference to their plight.

In Njoro too, as we shall show later, the area member of parliament, Kihika Kimani, publicly threatened to employ self-help methods to deal with insecurity in Njoro area arguing that the Government had failed to protect him and his constituents.

The clashes in Ol Moran appear to have been pre-planned and did not take the Provincial Administration officers, particularly the area Chief Benjamin Kabomet, and Jonathan Soi, by surprise.

For instance, prior to the clashes of January, 1998, some unsigned letters were addressed to a few Kikuyu farmers who owned land in the area or occupied some leadership positions there, threatening them with death unless they migrated from the area.

These letters were taken to the Jonathan Soi, who dismissed them as having been written by the Kikuyu as a ploy to achieve selfish ends. A month or so later, clashes broke out which led to loss of lives and destruction of property and the displacement of many people, mostly the Kikuyu, some of whom have not to date, returned to their farms.

It is the same Jonathan Soi, who as stated earlier, was on 16th January, 1998, informed by, John Kimaiyo, of a planned attack against the Pokot and the Samburu by Kikuyu youths, but took no action on the report. In each case, Jonathan Soi was complacent suggesting that he either did not care or knew in advance and approved what was in the offing and what it was intended to achieve and therefore did not want to interfere.

His behaviour, when he was the District Officer in Enoosupia, which as we stated earlier, we will deal with later, was similar and we cannot help wondering whether it was not with his connivance, that the clashes in the two areas occurred.

Njoro is one of the current fifteen Divisions in Nakuru District, and lies to the South and South West of Nakuru. Like Ol Moran, its residents are from different ethnic backgrounds with the Kikuyu as the majority. The majority of the residents were shareholders in Njoro Mutukanio Co Ltd, a land buying company which, in the 1960s and 1970s bought farms in the area through the efforts of Kihika Kimani, for their settlement.



Kihika Kimani was one of its promoters as also its sister companies whose only aim was to buy land in the Rift Valley Province for the settlement of landless Kenyans. The shareholders were from different communities.

The area we are concerned with is not confined to the administrative division known as Njoro, but includes Mauche and Mau Narok Divisions which in times past, were part of Njoro Division before it was subdivided to produce the two additional administrative Divisions. Njoro Mutukanio Co. Ltd, bought well over 51,000 acres of land in Njoro area.

Each shareholder could buy as many shares in the company as he could afford at the rate of one thousand and fifty seven shillings per share, which would entitle him to 21/2 acres per share. Kihika Kimani alone got at least 353 acres. The farms abutted Tinet and Mau forests parts of which, in the early 1980s, were hived out to create settlements for the several Dorobo families who before then, were living in two forests as well as Ndoinet forest in Molo South. We were also told that in 1978 and 1979, some Kikuyu and Kalenjin bought a farm in the area which they eventually sub-divided into several holdings which they shared among themselves and settled on.

Njoro is rich agriculturally, and the various ethnic communities who settled there were united by their common desire to earn a living through farming, and for a long time lived in peace and harmony, intermarried and engaged in several joint social and economic activities.

However, as stated elsewhere in this Report, the Kikuyu were better off economically having learnt earlier to obtain financial assistance from banks and other money lending institutions to improve their economic welfare. Because of their superior economic position they were able, in addition to farming, to establish businesses in the new settlements which included, retail shops, bars and restaurants, milling facilities and motor transport businesses.

The Kikuyu were also more politically conscious than other communities in the area with the result that over the years since independence they have dominated politics, not only in Njoro but also in other parts of Nakuru District. For instance, in the current parliament, of the six parliamentary constituencies in Nakuru District, three or four are represented by Kikuyus, and the remaining two by the Kalenjin.

Political representation in the Rift Valley Province has over the years been a source of conflict or disagreement between the Kikuyu and the Kalenjin. The Kalenjin feel that the Rift Valley Province being traditionally Kalenjin land, 'foreigners', which include the Kikuyu, should not represent them, and where they do, they should be supporters of the party which the Kalenjin support.



During the era of one party politics, Molo constituency was represented in Parliament by John Njenga Mungai, a Kikuyu, who, in the 1992 general elections, successfully defended his seat on a Ford Asili ticket after decamping from KANU. He however, lost miserably, to Kihika Kimani of DP, also a Kikuyu when in the 1997 general elections he tried to recapture it on a KANU ticket.

In Kenya, political loyalty seems synonymous with tribal loyalty. So because KANU was not the political party the Kikuyu generally preferred, and which also happened to be the party predominantly supported by the Kalenjin, Njenga Mungai stood no chance, of winning the elections in his constituency.

The tribal clashes in Njoro and Ol Moran, unlike those in most areas elsewhere erupted immediately after the 1997 general elections. But they were allegedly triggered off by a political brawl in a bar at Ndeffo on 9th December, 1997, shortly before the general elections, which resulted in the death of a Kalenjin, David Kibyegon Bii.

The Kalenjin in the area who were made to believe that David Bii had been killed by the Kikuyus armed themselves with traditional Weapons and invaded Ndeffo Trading Centre where they killed one Robert Waweru Kinuthia, a Kikuyu and injured four others, burnt seven shops, seven small eating places, three butcheries and two motor vehicles, all belonging to the Kikuyu.

The police and the Provincial Administration officers acted swiftly and restored calm in the area. Thereafter, although there was general tension arising from mutual suspicion by the two affected tribes, there were no significant incidents of violence or arson for at least a month.

The response of the Provincial Administration and the Police Force to the incident was prompt and appropriate. The violence did not go beyond 9th December, 1997, and two days later, namely on 11th December, 1997, the then Provincial Commissioner, Mohamed Yusuf Haji, properly held a joint Provincial Security Committee and District Security Committee meeting to discuss the incident and its implications. In the minutes of that meeting, Exhibit 13(B), the following apt statement is recorded:

"The members recalled that the inter-tribal clashes of 1992 erupted in the same way. 1997 being the year for the General Elections it was felt that the problem has to be dealt with decisively and immediately, otherwise some people might not accept the fact that the whole problem started in a bar following heated arguments."

The above statement and the plan of action the meeting adopted which appear hereunder, clearly show that the joint committees were conscious that the 1992, tribal clashes were politically motivated and any slight excuse could be used to start fresh clashes. The plan of action the adopted was as follows:



- (a) "Security officers should move in quickly whenever an incident has taken place.
- (b) A standby security team should be formed in all districts.
- (c) ASTU officers who have overstayed in various areas to be transported.
- (d) Politicians and other people known to be trouble shooters to be monitored very closely and appropriate action taken where applicable according to the law.
- (e) Intensive patrols to be carried in areas vulnerable to bring problems, more so this time when some politicians are likely to capitalize on some issues.
- (f) The DCs should call all aspiring politicians together for harmonization of peaceful campaigns."

Although the plan of action was comprehensive and appropriate, little was done to implement it, if at all. Anyway, the 1997 elections in Njoro were generally uneventful.

In the 1997 general elections in Njoro, there were two Parliamentary candidates in Molo constituency, John Njenga Mungai, of KANU and Kihika Kimani of DP. There were other candidates who fell by the wayside during party primaries.

In his evidence to the Judicial Commission which was supported by the evidence of other witnesses, Kinuthia Mbugua, the then area District Commissioner said that during the election campaigns there was common talk among the Kikuyu that if DP won in the elections the Kalenjin would not only be driven out of the Rift Province but those of them in important positions would also be removed.

Similarly, he said, the Kalenjin said that if KANU won they would drive the Kikuyu out of the Rift Valley Province. Kinuthia Mbugua and those other witnesses also talked about leaflets which were distributed in Molo constituency allegedly authored by Prof Wangare Mathai, entitled "House of Mumbi", calling upon all the Kikuyu to inter alia, vote for Mwai Kibaki the DP presidential candidate, and that if DP won the elections it would sack all the Kalenjin in key posts.

Other witnesses told us that DP supporters were so confident that Mwai Kibaki would win the presidential elections that some of them became arrogant and sometimes abusive. When the elections were finally held arap Moi won in the, presidential election, but Njenga Mungai of KANU, was defeated by Kihika Kimani of DP in the parliamentary elections. Those results created not only in Njoro but in other parts of the country.

Kinuthia Mbugua, testified that leaflets were thereafter distributed in Moto constituency calling for the eviction of the Kikuyu from the Rift Valley Province. There was also a report in the Sunday Nation of 18th January 1998, and in the Daily Nation of



the next day, and contained in Exhibits 36A to 36C, about an alleged declaration at Narok by some KANU stalwarts that if Mwai Kibaki filed an election petition challenging the election of Daniel arap Moi as its elected President, there would be trouble in Kenya.

Indeed, when the election petition was filed, there was trouble in Ol Moran and Njoro, both which were and still are DP strongholds, or so we think. There were a few Kikuyu KANU supporters who in their evidence before the Judicial Commission said that they were threatened by their fellow Kikuyu who regarded them as traitors to their tribal political cause, The foregoing was the political scenario before and after the 1997 general elections.

The 1998 clashes in Njoro started on the night of 25th January, 1998, at Stoo Mbili when a gang of people who were believed to be Kalenjin, while armed with bows and arrows attacked some Kikuyus in their homes, set their houses on fire and killed those of them who were not able to flee on time.

The attacks quickly spread to Ndeffo and other neighbouring farms. On the next day, the Kikuyu, particularly in Lare Division grouped and organized retaliatory attacks against the Kalenjin and they too killed and injured several of them and burnt many of their houses.

The communities in the affected areas fled their farms, the Kikuyus headed towards Njoro and Nakuru towns, while the Kalenjin fled towards Tinet and Mau forests. These movements are telling more particularly when looked at against the events immediately preceding the eruption of the violence on 25th January, 1998.

Neither the Provincial Administration officers nor the Police Force, save the Special Branch, said they had any prior knowledge of the impending clashes. In their respective testimonies before the Judicial Commission they said that the clashes took them by surprise.

Petkay Shen Miriti, a Deputy Commissioner of Police, who was then Special Branch Provincial Security Intelligence Officer, told us, and which was supported by Kinuthia Mbugua, and David Kipkorir Siele, the special Branch District Security Intelligence Officer, that from early January, 1998, a large number of people all Kalenjin, had come from Bomet, Kericho and Trans Mara Districts, and camped in Tinet forest which abuts Njoro, allegedly in search of land. About the same time, the farm of Kihika Kimani, and two neighbouring farms, were invaded by people who were said to be the Kalenjin and who were armed with clubs, pangas and spears.

Kihika Kimani, who was away from the farm at the time did not become aware of the invasion until about 22nd January, 1998, and when he addressed the press, and as reported in that Exhibit 35 as follows:



"The invaders have definitely been sent by their leaders with the intention of creating conflict to pave way for renewed ethnic clashes which some KANU politicians have been plotting."

According to Patkay Miriti, the invasion of Kihika Kimani's farm had been reported to him by David Siele, a Kalenjin, on 17th January, 1998. However, there is no mention of it in the minutes of the District Security Committee meeting held on 23rd January, 1998 Exhibit 22, which David Siele attended, and notwithstanding the fact that the invasion was reported in the Daily Nation of that day Exhibit 35. Instead what appears in the minutes, Exhibit 22, under the heading: MINU.6/98 SECURITY SITUATION, is as follows:

"The situation in the District is still satisfactory save for certain after election effects where certain political parties especially the DP which is behaving arrogantly.

This behaviour has created bad relationship and the DSC is monitoring and checking on incidents likely to spark insecurity, An example of that situation is Nakuru town where opposition is using the bus park levy as a reason of (sic) creating misunderstanding at the Municipality. Since the members know the motives are different, we have taken the following measures:

An operation has mounted and 127 touts/hawkers have been arrested and taken to court.

The Town Engineer and the enforcement officer have been directed by the DSC to continue eradicating hawking within the town centre and bus station.

The same officers have been instructed to do away with all unauthorized structures."

David Siele, withheld the vital security intelligence information regarding the invasion of Kihika Kimani's farm, from his District Security Committee, which, in line with the directive given to the District Security Committees by the Provincial Security Committee as contained in the minutes of its meeting held on 26 August, 1997, Exhibit 32(B) should have enabled his District Security Committee to put in place contingency plans "to counter any threats to security through covert instigation."

In fact, even in an un-addressed and unsigned facsimile message he allegedly sent to the Directorate of Security Intelligence on 24th January, 1,998, Exhibit 37, he gave the false impression that the invasion had not occurred earlier than 19th January 1998. According to Kipkorir Siele the date of the invasion was given to him by Kihika Kimani when they met on 24th January, 1998.

Kihika Kimani could not possibly have given him that date because in his statement, Exhibit 13(H), to the Abongo Committee which the Commissioner of Police of the time appointed to investigate the violence at Njoro, made on 8th February 1998, Kihika



Kimani had stated that the invasion occurred on 13th January, 1998, which is in consonance with the testimony of Petkay Miriti, who said that Kipkorir Siele had on 17th January, 1998, passed on to him, the information about the invasion of Kihika Kimani's farm. Kipkorir Siele was lying.

We must also recall here Kipkorir Siele's deliberate act of deception was also repeated in his first statement of 12th February, 1998, to the police, and contained in Exhibit 13 (E), where he made no mention whatsoever, of Kihika Kimani's letter or his meeting with him.

It was only three days, later, and after he had been pressed by police investigators, that he disclosed this in his further statement of 15th February, 1998, which is also contained in Exhibit 13(E).

We also received evidence that on 23rd January, 1998, David Siele received, through his Deputy, Philemon Opiyo Owino, a letter from Kihika Kimani, Exhibit 13(A), which is as follows:

Hon Dixon Kihika Kimani
Box 13455 Nakuru
Date 23rd/1/1998

The Special Branch Officer
Nakuru District
Through their Njoro office

I wish to start by greeting you very much and asking you kindly to meet me privately here at Njoro or my home at Lanet.

I wish to let you know that the situation here is very tense and it is very explosive. We Kikuyus here are on the side of DEFENSIVE side and Kalenjin and Maasai are on the side of offensive side now.

Now I would like to meet you and show you the two SIDED PICTURE. I don't tell lies no and I trust your office very much from 1960 to date.

Now by today I am at Njoro but by tomorrow I will be at Maumanet Laikipia. I will believe (sic-brief) you exactly what we are planning to do (next time) because we were taught a lesson by the 1991- 1993 Ethnic clashes.

Please please let us meet.

I beg to remain Sir with deep respect,

Yours

Sign.

D. K. Kimani."



Kipkorir Siele testified and Kihika Kimani confirmed it, that the two met at noon on 24th January, 1998, a Saturday, and the latter explained the frustration and desperation of the Kikuyu in Njoro, and that he had met forty or so Kikuyu elders from various farms in Njoro who had agreed that in the event that the Government did not immediately offer them security to avert an impending attack on them by the Kalenjin, they would recruit and arm Kikuyu youth for purposes of self defence.

The facsimile Kipkorir Siele, said he sent Exhibit 37, was supposed to be a review of their talk, but a closer examination of it clearly shows that Mr Siele presented the facts in an untruthful, slanted and distorted manner: Instead of stating Kihika Kimani's concern that law and order should be maintained to obviate inter-ethnic skirmishes, he painted the picture, which was clearly wrong, that Kihika Kimani had organized the Kikuyu to invade the Kalenjin and thus making him appear to be the aggressor and not the intended victim.

Regarding the large number of people who came to Njoro about the time Kihika Kimani's farm was raided they were roundly referred to as land speculators. But Kinuthia Mbugua told the Judicial Commission that at the material time the Government was not allocating any land in the area, and that the alleged land speculators had been brought there by two persons namely John Koske alias Cheragei and another Siele not David Siele.

Both the Provincial Administration and the Police Force were aware of their presence in Njoro area, but no attempt was made to drive them away. They were camped in the nearby Tinet forest and we reckon that they were also the ones Kihika Kimani was talking about in Exhibit 35.

Their presence in Njoro was realized at the beginning of January, 1998, and it was soon thereafter that Kihika Kimani's farm and two others, were raided. We think that their presence in Tinet forest was not for the stated reason that they were land speculators.

In Molo South too, a large number of people were seen within Kamwaura area a day or so before clashes erupted there in March 1992. The joint Provincial Security Committee and District Security Committee meeting we referred to earlier did correctly observe that there were signs which signalled impending clashes in the area and consequently adopted the plan of action already set out above.

The so called land speculators were from one ethnic community, the Kalenjin. Witnesses were specific that they were the Kalenjin from Bommet, Kericho, Narok and Trans Mara Districts. If indeed, they were land speculators one would have expected that people from other communities would also have been there. In his evidence to the Judicial Commission, the Provincial Police Officer of the Rift Valley Province, Philip



Cheruiyot, stated that in the 1992 and 1993 clashes, there was a group called Kalenjin Warriors which was involved in the clashes in Molo South.

He was then the Officer Commanding, Nakuru Police Division under which both Molo and Njoro Divisions then fell and was therefore in a position to know who were involved in the clashes there at the time. During the 1998 clashes in Njoro, he was the Provincial Police Officer of the Rift Valley Province, and must have been made aware of the presence of the so called land speculators who, according to Petkay Miriti, the Kikuyu believed were the Kalenjin warriors. Petkay Miriti conceded that their presence should have created a security alert. He described the situation during the period immediately preceding the clashes as explosive and could be security rated as "Ready Alert".

Evidence was also adduced to the effect that there was tension between the Kikuyu and the Kalenjin which was caused firstly, by the incident of 9th December, 1997, at Ndeffo, and, secondly, by the presence in the Tinet forest of many strangers who were believed to be Kalenjin warriors.

As a result of the tension, the Kikuyu refused to do business with the Kalenjin which so incensed the Kalenjin who depended largely on the Kikuyu shops, Posho mills and public transport for their day to day operations, attacked the Kikuyu. We are not here concerned with whether or not the decision by the Kikuyu not to do business with the Kalenjin was proper, nor are we concerned with whether or not the reaction by the Kalenjin was justified.

Both Petkay Miriti and Kipkorir Siele testified that, from security intelligence reports that they received from their staff attached to the Njoro area, the security situation in the area was explosive. In their evidence to the Judicial Commission each of them testified that he passed the information to his respective Security Committee.

However, in Exhibit 22, the minutes of the Kipkorir Siele District Committee which met on 23rd January, 1998, the SECURITY SITUATION is given as "still satisfactory", we doubt whether indeed this was done. Besides, both Nicholas Mberia and Philip Cheruiyot denied Petkay Miriti notified them of the explosive security situation in Njoro. They both also denied having been notified of the existence and contents of Kihika Kimani's letter of 23rd January, 1998, Exhibit 13(A) to David Siele.

Recounting what happened at his meeting with Kipkorir Siele on 24th January, 1998, Kihika Kimani told us that he told Kipkorir Siele about the Kalenjin raiders that they were threatening security in the area, and that although the invaders of his farm had been driven away, the threat of clashes was still looming and unless something was done to avert the expected violence, he was prepared to mobilize Kikuyu youths for self defence purposes, and that he had asked forty Kikuyu elders to mobilise Kikuyu youths to defend



them if the Kalenjin attacked the Kikuyu. In effect he rehashed what was contained in his letter to Kipkorir Siele.

Kipkorir Siele, testified to the same effect and added that after their meeting he notified Petkay Miriti, the members of the District Security Committee and Special Branch Headquarters about what Kihika Kimani had told him without disclosing the source, before he left for Keringet, in Molo South, to attend a family meeting. Considering the fact that the members of both the Provincial Security Committee and the District Security Committee denied receiving such information, and in view of Kipkorir Siele's subsequent conduct, we do not believe that he actually shared the information with those who were supposed to be made aware of it, more particularly Kinuthia Mbugua and the Officer Commanding Police Division, Peter Kilonzo Kavila.

Kipkorir Siele testified that a Chief in Njoro called Rono, a Kalenjin, had told him about the people who were camped in Tinet forest, but unlike other witnesses who said that they were land speculators, Rono had described them as people who had come there to avenge certain unnamed Kalenjin who, according to a rumour, had been killed at Naishi in Lare Division.

So, long before Kipkorir Siele met Kihika Kimani, he was also aware of the presence of strange people who were camped in Tinet forest and the reason for their being there. When on 23rd January, 1998, he attended the District Security Committee meeting of that day, he did not tell the meeting about the impending Kalenjin revenge mission, the tension between the Kikuyu and the Kalenjin or about Kihika Kimani's letter to him.

In his evidence he tried to shift the blame for failure to inform the District Security Committee about the existence of tension between the tribes, unto Peter Kavila by saying that though he had raised the issue at the meeting, Peter Kavila had said that it was not the sort of matter that should be included in the minutes of the meeting.

Kinuthia Mbugua who chaired that meeting like Peter Kavila denied that Kipkorir Siele mentioned the matter or anything related to the clashes at that meeting. Indeed, if that had been so the minutes concerning the security situation, should not have stated that the security situation was satisfactory.

We turn to the facsimiles Exhibit 37, which Kipkorir Siele sent to the Special Branch Headquarters of the Directorate of Security Intelligence. The following are the relevant parts of that facsimile:

"...DP member of parliament for Molo stated that the situation within Ndeffo farm, Mau Narok and Njoro areas is tense with a possibility of tribal clashes erupting any time.

He claimed that there is a large influx of Kalenjin warriors into the forest areas within Ndeffo, Sigotik, Mau Narok who are preparing to attack the Kikuyu. ...He also revealed



that following a meeting which he held in his house at Njoro with about twenty Kikuyu elders on Friday 23rd January, 1998, they resolved as follows:- that

- (a) Every location to form Youth Home Guards consisting of 500 youths to protect the villagers from possible attacks.
- (b) That the youths' will be armed with bows, arrows, sticks, knives, spears and rungas.
- (c) Possibility to revive GEMA/KAMATUSA talks adding that the problem at hand is a Kalenjin/Kikuyu problem which should be solved by the two communities.

The government should not come in.

COMMENT:

The DSC members who have been handling the illegal occupation of the farms issue have been alerted over the sentiments expressed by KIHKA KIMANI and a public baraza has been organised for Monday 26th January, 1998 to educate the area residents on the need to live in peace and maintenance of law and order."

Apart from distorting the content of the discussion he held with Kihika Kimani. Kipkorir Siele trivialized or rather toned down the seriousness of the concern Kihika Kimani had expressed. He did not state anything about the need to send security personnel to the area to avert the looming violence.

In his comment, which in effect is his assessment of the situation he highlighted the fact that a baraza had been organized to be held on a designated date, and therefore, there was no urgent need to take any more security precautions.

As already referred to, David Siele left to go and attend to personal errands despite the fact that he had been told by Kihika Kimani that the situation was tense and, Chief Rono had told him that the people who were camped at Tinet forest had come to attack the Kikuyu, Other police witnesses who included the former Director of CID, Noah Arap Too and the former Commissioner of Police, Duncan Wachira, regarded Kipkorir Siele's behaviour, to put it mildly as strange.

We too regard his behaviour as not only strange but also that of connivance at the clashes, When the clashes eventually broke out on the night of 25th January, 1998, he was not present to assist the other members of the District Security Committee to stop them.

When he was asked about it, his response was as strange as his behaviour. He told us that after he had notified the Directorate of Security Intelligence and the members of the District Security Committee about what Kihika Kimani had told him, he did not have any more responsibility in the matter.



However, his superior officer in the Special Branch, Benson Okemwa, testified to the contrary and on that he was supported by Stanley Mutungi, a retired Deputy Commissioner of Police, who told us what we already knew, that Special Branch Officers were until January, 1999, policemen who were subject to the provisions of the Police Act, Cap 84 of the Laws of Kenya, and were therefore obliged to take part in such operations.

We were also told that on the morning of 26th January, 1998, Kipkorir Siele suddenly resurfaced and joined the other members of the District Security Committee at Njoro where they had gone to stop the violence. He found about seven armed suspects had been arrested for torching Kikuyu houses and intervened on behalf of one of them and sought his release on the ground that he knew him and that the suspect had only been found advisina the Kalenjin youth to stop torching the Kikuyu houses.

Kipkorir Siele was not present at the time the suspects were arrested, unless of course he was watching from a hideout in the bush. He would not therefore know the circumstances under which the suspects were arrested. That behaviour shows that he knew much more regarding the causes of the clashes than he was read to admit to us.

Petkay Miriti too, behaved in a strange manner. He testified that as the Provincial Security Intelligence Officer, he had been informed by among other people, Kipkorir Siele. about the supposed land speculators and the explosive security situation in Njoro. Although he said that he shared all this information with fellow members, of the Provincial Security Council, they all denied the same.

The only inferences that call be drawn from the circumstances are that either he did not notify them as he said he did or that if he did, all the members knew not only that clashes were in the offing but also, who were behind them but denied any prior knowledge to protect those people.

All in all, we had the Feeling that the members of the Provincial Security Committee and the District Security Committee knew Much more than they were prepared to tell us.

On 9th December, 1997, violence erupted at Ndeffo which the joint Provincial Security Committee and the District Security Committee and the District Security Committee meeting held on 11th December, 1997, considered . It will be recalled from the minutes of the joint meeting, Exhibit 13(B), already referred to, that the Joint meeting considered the inter tribal violence that erupted at Ndeffo, as a pointer to possible clashes.

The Ndeffo incident was quickly followed by the arrival and camping in the Tinnet forest of the Kalenjin who told Chief Rono, that their mission was to fight the Kikuyu and not to buy land, and which information he passed on to Kipkorir Siele. It will also be recalled that the Kikuyu had refused to do business with the Kalenjin.



Although in our view, the refusal to do business was given merely as a silly excuse for the clashes, the fact that there was talk about it was clear evidence of brewing trouble which should have but did not put Security Committees to be on security alert. Nicholas Mberia, the Provincial Commissioner told us that he had prior information of certain utterances by Kihika Kimani, among them that the clashes in Laikipia would spread to Njoro, and also that some Kalenjin were threatening to evict the Kikuyu from Njoro and other areas; but he did nothing to avert any possible violence in the area.

According to Kinuthia Mbugua, he had also told Nicholas Mberia, that Kihika Kimani had said he would recruit some Kikuyu youths to fight in Laikipia in defence of the Kikuyu.

As one witness put it, the writirig was on the wall for all the members of the Provincial Security Committee and the District Security Committee to see, but their seemingly wholesale indifference and complacency tell us that they knew clashes were coming and who was behind them but they deliberately failed to take the necessary steps to stop them. Each of them should be investigated further regarding their role in those clashes.

Ol Moran and Njoro were and are, DP strongholds. Kihika Kimani wields a lot of influence in the two areas, largely because of his past role in assisting the majority of the residents to get land there. He proudly told us that he was a popular leader and that wherever he chose to stand for parliamentary elections, would win. In fact he plans to stand for elections in the next general elections in a different constituency.

The 1998 clashes appear to have targeted Kihika Kimani and his supporters because they occurred in areas in which he had successfully stood for elections on a DP ticket. As we have attempted to show, the clashes were masterminded by people outside the areas where the clashes occurred whose organized armed groups would, with the help of local accomplices, start the violence, and then escape from the area leaving the locals fighting each other on the mistaken belief that the fighting was as a result of either existing problems or because of some excuse which the perpetrators of the violence created.

Phillip Cheruiyot, at one time the Provincial Police Officer of the Rift Valley Province expressed the same sentiments as appear in the following excerpt from the verbatim report of the proceedings of the Judicial Commission of 13th August, 1998:

"Mr. Gacivih: Now, in the 1992 clashes, who were the raiders?"

Mr. Cheruiyot: The raiders were Kalenjin warriors.

Mr. Gacivih: When you say warriors, are these people who are ably employed or did you identify where they were coming from?"



Mr. Cheruiyot: In 1992; they were from the Dorobo side, from the forest. Mr. Gacivih: By forest you mean Ndoinet?

Mr. Cheruiyot: Yes, Ndoinet Forest, My Lords."

When he was asked to compare those and the 1998 clashes, his response was as follows:

"Mr. Cheruiyot: Unlike before, when there was information of recruiting and preparation by the attackers, this time we did not get any information to that effect. In fact, even the attackers did not wear the normal warriors clothes. Their clothes were normal, actually, there was nothing about them to indicate that they were raiders."

In each of the clash areas we have already discussed, an excuse or excuses were given for the clashes. It has been a common feature that clashes were preceded by the wounding or killing of animals, particularly where, in mixed communities, there are no existing inter-ethnic problems.

In Olenguruone for instance, apart from the death of the mysterious Kiplangat Arap Kipkilach, we were given the wounding of livestock as one of the causes of the clashes there, in 1992. In Molo South too a similar story was told.

Gideon Muoki Mutua who was the Provincial Criminal Investigations Officer of the Rift Valley Province in 1997 and 1998, also told us of an incident in Keringet area where on the night of 24th August, 1997, nine heads of cattle belonging to some Kalenjin were maimed, an incident which he said caused tension between the Kalenjin and the Kikuyu. Two Kikuyu and a Kisii were arrested as suspects and charged.

The then Rift Valley Provincial Commissioner, Mohamed Yusuf Haji, organized an impromptu harambee which raised one hundred and twenty thousand shillings which was handed over to the complainants as compensation. The compensation diffused the tension and frustrated what we think were planned clashes. In view of our above analysis, of the masterminding of the clashes, it could be that the Kikuyu had no hand in the killing and maiming of the goats and cattle of Lechau Apalungeiya which allegedly started the clashes in Ol Moran.

In most, if not all the clash torn areas, in the Rift Valley Province, it is clear that the clashes were preceded either by the presence of strange faces or an incident involving the maiming, killing or theft of livestock. The incidents clearly seem to have been planned to create or provide an excuse for the violence which thereafter ensued but which were clearly intended to achieve a political purpose.

In Ol Moran and Njoro, whoever planned and executed the clashes must have intended to punish and tame Kihika Kimani and his political supporters who we were told



exuded confidence and arrogance during the 1997 election campaigns, and to teach them a lesson so that they would not behave like that again.

The mastermind of the clashes appears to have enjoyed the support of the Provincial Administration and the Police Force, more particularly the Special Branch Officers whose role, particularly in the clashes at the Coast Province and Njoro seems to us to be, at the very least one of connivance and condonation of the same. We have the example of Omari Raisi, in Mombasa, and Kipkorir Siele, in Nakuru, both officers who appear to have known all along what was happening and most likely, were party to it but withheld intelligence information from the other security arms.

We were also told of two Chiefs who were directly involved in the Njoro clashes, notably, the Chief of Balut, a Kalenjin, and the Chief of Likia, a Kikuyu, both of whom were later interdicted and charged, but no one was able to tell us the outcome of their cases. We see no reason why Omari Raisi and David Kipkorir Siele and others, should not face the same fate.

Tomorrow: Coast Province