



HUMAN
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HIGH STAKES

Political Violence and the 2013 Elections in Kenya





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Map of Kenya



Summary

Kenya will hold general elections on March 4, the first elections since the serious violence that engulfed the country after the 2007 polls and the first under Kenya's new constitution. Inter-ethnic clashes and police violence after the 2007 elections left up to 1,300 people dead and more than 650,000 displaced.

As this report shows, the underlying causes of past election-related violence remain in place, and in some parts of the country the tensions have escalated. A combination of inaction by the authorities in some regions and abusive or discriminatory conduct in others, plus a failure to implement promised reform, has led Kenya into another election where the risk of violence and human rights violations remains perilously high.

The fears are real. Already in 2012 and early 2013, inter-communal clashes in parts of Kenya have claimed more than 477 lives. Another 118,000 people have been displaced.

The dynamics and risks differ in each region of the country. For example, in Coast the government is facing a secessionist group opposed to the elections as well as a violent inter-ethnic conflict. In Nyanza and Central powerful criminal groups and armed gangs are backing politicians. In North Eastern government security forces have stoked tensions by using excessive force against local residents, especially after attacks by armed groups on the police and military.

The common theme, however, is the unwillingness of the government and other state authorities since the post-election violence of 2007-2008 to address the root causes of violence, reform the police, tackle official corruption, disband criminal groups, resettle displaced persons, and hold accountable the many perpetrators of violence. The near total impunity for the murders, rapes, and forced displacement in 2007-2008 has left the people who committed those crimes free to commit them again.

Without domestic prosecutions the International Criminal Court (ICC) has filled some of the gap. Four Kenyans are facing charges of crimes against humanity at the ICC in relation to the 2007-2008 violence, with trials due to start in April 2013. Two of the four suspects,

Uhuru Kenyatta and William Ruto, are running on a joint ticket for president and vice-president, raising the stakes of the March elections.

The Kenyan commission of inquiry that examined the 2007-2008 violence identified the conduct of the police as a fundamental problem, and since then little has changed. Kenya appointed its first inspector general of police under the 2010 constitution in December 2012, but the police remain under-staffed and poorly equipped to deal with inter-ethnic violence and criminal gangs, and they frequently commit human rights violations when they do intervene. The police are widely considered to be corrupt and in collusion with criminal groups.

The dynamics of election-related violence are complicated by Kenya's multi-layered struggle for power, with candidates competing on the national level and for various posts in the 47 new counties created under the 2010 constitution, including in each county a governor, deputy governor, senator, member of parliament, women representative, and assembly representative. These positions offer control over government funds and local resources.

Based on research conducted between August and December 2012 in Kenya's Central, Coast, Eastern, North Eastern, Nyanza, and Rift Valley regions, this report documents and explains the patterns of violence and human rights violations in six of Kenya's eight regions. It highlights the risks to the right to life that the government and other state authorities need to address as elections approach. The report shows how the government has failed to address the root causes of past political violence, such as police abuse, police corruption, politicians stoking inter-ethnic tension, and the near total impunity for perpetrators of serious crimes. It focuses attention on areas of Kenya where the risk of violence around the elections is high, and urges the government and other authorities to take urgent measures to protect Kenyans right to life.

In total, researchers interviewed 228 people around Kenya, including community elders, youths, civil society representatives, government officials, security officials, representatives of humanitarian agencies, victims of violence, and perpetrators of violence—mostly young men in armed gangs and criminal groups. Human Rights Watch submitted detailed questions to the Kenyan government about its efforts to hold free and fair elections without violence (see Appendix A), but the government did not respond. The

report builds on Human Rights Watch's extensive reporting on the 2007-2008 election-related violence and the government's conduct since then.

The report is divided into the five sections, mirroring the regions that have recently witnessed violence. The Coast region has experienced mounting tension since 2009, with the secessionist Mombasa Republican Council (MRC) warning the government against organizing elections there. Facilities and officials of the electoral commission, as well as police stations, have come under attack in Kwale, Kilifi, and Malindi counties, but MRC denied responsibility. The police blamed MRC and arbitrarily rounded up suspected MRC members. At the same time, Tana River county has experienced a spate of serious violence since August 2012, with around 180 people killed in fighting between the agriculturalist Pokomo and the pastoralist Orma communities. An estimated 34,000 people have been displaced. Both communities complained about the police's failure to provide protection or arrest the perpetrators of violence, which they said led both groups to take justice into their own hands.

In the Rift Valley mistrust and anger remain high between members of the two main ethnic groups, the Kalenjin and the Kikuyu, who fought fiercely in 2007-2008. The government of President Mwai Kibaki, a Kikuyu, has not adequately promoted reconciliation between the communities; on the contrary, some of its policies have widened the divide. Human Rights Watch research indicates that government assistance to the roughly 400,000 persons displaced in the Rift Valley five years ago—a rebuilt home, a new home, money, or land—has significantly favored the Kikuyu and left the Kalenjin internally displaced, many of them unregistered, concerned that the government will not assist them.

The failure to arrest, let alone prosecute, those responsible for previous election related violence has left people suspicious and afraid—emotions that are heightened when candidates for office hold secret meetings and make political appeals along ethnic lines. Unlike 2007-2008 when both sides used machetes, spears, and bows and arrows, Kalenjin and Kikuyu elders, as well as local government officials, told Human Rights Watch that both communities have now acquired guns. “The communities are preparing—they are arming themselves,” one activist in a local nongovernmental organization said. “All over they are saying: ‘This time we won’t be unprepared.’”

In Eastern and North Eastern regions, the prospects for violence are on two fronts: inter-clan clashes and widespread abuses by government security forces after attacks inside Kenya by the Somali militant Islamist group al-Shabaab. In the former, the police have consistently failed to intervene; in the latter, they have repeatedly used excessive force. The inter-clan violence began in late 2011, primarily in Isiolo, Moyale, and Mandera, and has left roughly 120 people dead and 77,000 people displaced. At the same time, al-Shabaab has continued to target Kenyan security forces since Kenya's intervention in Somalia in October 2011. Kenyan forces have responded with excessive force, arbitrary detention, and mistreatment in custody of people believed to be supporting al-Shabaab in places such as Garissa, Wajir, Dadaab, Mandera, and El Wak. Al-Shabaab supporters have also launched grenade and gun attacks at churches, mosques, buses, and other public places in Nairobi, Mombasa, and northern Kenya.

In Central Kenya, a traditionally Kikuyu area, the key danger stems from candidates and their parties using criminal groups and armed gangs to silence opponents and rally support. As with previous elections, politicians seem to have hired gangs, including the violent Mungiki, to intimidate voters. Police have taken no effective action against these illegal groups despite the passage of a law in 2010 to respond to the threat of armed gangs.

Nyanza region in western Kenya was one of the areas hardest hit by violence in 2007-2008, with about 115 people killed, more than 90 percent of them by the police, according to the Commission of Inquiry into Post-Election Violence (CIPEV, also known as the Waki Commission after its president, Justice Philip Waki). Nyanza has historically witnessed high levels of political violence, with partisan youth in Kisumu city playing a major role. In recent years Nyanza has been dominated by different criminal gangs, including the Baghdad Boys, Sungu Sungu, American Marine, and China Group.

For the most part the police have failed to prevent these armed groups from committing crimes, and some police are accused of collaborating with them. The gangs are also allied with politicians: American Marine based in Kisumu apparently supports Prime Minister Raila Odinga and China Group appears to support Uhuru Kenyatta and William Ruto. Violence erupted between the two gangs in September 2012 after a visit to Nyanza by Deputy Prime Minister Kenyatta, and the police failed to intervene. In October 2012 the murder by unknown suspects of a candidate from Odinga's Orange Democratic Movement (ODM) sparked riots. This time the police intervened, and their apparent use of excessive

force left eight people dead. Four of the eight died while hiding from police in a container; three witnesses told Human Rights Watch that the police locked the container door and fired tear gas inside, causing a fire.

Despite promises from Kenya's leaders to reform, the country's political system remains haunted by the specter of violence. The rewards of political office, including protection from criminal prosecution, are huge. As such, some candidates in the past have gone to great lengths to achieve power, including unleashing violence on their opponents and their supporters. The violence over the past 14 months shows that Kenya's political actors have failed to address the underlying causes of conflict or adequately strengthen Kenya's institutions to protect human rights. Resolute action by these actors, including outgoing and incoming political office holders, with coordinated pressure from foreign governments and international organizations, is essential for the March 2013 elections to be free of violence and human rights abuses.

Human Rights Watch recommends that the government deploy police in adequate numbers to areas of potential conflict and ensure that they perform their duties impartially and with full respect for the law. Criminal justice authorities should promptly investigate and, where there is evidence, prosecute all individuals, including government officials and candidates for office, who are suspected of inciting, planning, or organizing violence.

Consistent with the responsibility to protect, the government should take all possible measures to prevent mass atrocities and support the development and implementation of effective contingency plans to halt mass atrocities rapidly should preventive efforts fail.

Kenya's development partners, as well as the United Nations and African Union, should apply sustained and coordinated pressure on Kenya's government and politicians to take the important steps outlined in this report, with consequences when they do not, including visa bans and asset freezes of individuals credibly implicated in political violence. Long-term election observer missions are essential for effective elections monitoring, including in the post-election period. Governments and international organizations should publicly condemn human rights abuses by all actors and demand accountability for criminal acts.

Methodology

This report was researched and written by Human Rights Watch staff based on interviews conducted in Kenya's Central, Coast, Eastern, North Eastern, Nyanza, and Rift Valley regions between August and December 2012.

The report documents and explains the patterns of violence and human rights violations in six regions. It highlights risks to the right to life that the government needs to address as elections approach, and shows how the government and other state authorities have failed to address the root causes of past political violence. The report focuses on some of the key areas where the risk of violence around the elections is high.

Researchers interviewed community elders, youths, civil society representatives, government officials, security officials, representatives of humanitarian agencies, victims of violence, and perpetrators of violence—mostly youth who had been recruited by organized groups and militia gangs.

Human Rights Watch interviewed a total of 228 people of whom 21 were from Nyanza, 48 from Central, 51 from Coast, including Tana River, 54 from the Rift Valley, and 54 from North Eastern and Eastern Kenya.

Out of the 51 from Coast region, three were senior security officers, and four were politicians currently holding elected positions. The rest were elders, militia members, youth leaders, women leaders, civil society leaders, and victims of violence.

Out of the 54 people interviewed in the Rift Valley, one was a senior security officer, three were government officials, and three were representatives of humanitarian agencies. The others were victims of the 2007-2008 post-election violence, civil society activists, elders of the Kikuyu, Kalenjin and Kisii communities and youth who had participated in political violence.

Out of the 54 people interviewed in North Eastern and Eastern regions, 10 were from Isiolo, three from Moyale, 22 from Mandera, and 21 from Garissa. One was a government official based in Mandera.

In Nyanza all 21 interviewees were from Kisumu. Fifteen of them were members of gangs in Kisumu town and six were members of the government-established district peace committees. The 48 interviewees in Central region included militia leaders, elders, women, business people, youth leaders, and civil society officials.

In all of these locations, staff of local nongovernmental organizations, journalists, and community elders assisted Human Rights Watch by providing background and establishing contacts with residents and officials. The interviews were conducted mostly in English or Swahili, with occasional support from interpreters when the interviewees had difficulty understanding either of these languages. Human Rights Watch has not named most of the interviewees, and has occasionally omitted the date or place of an interview, due to concerns over security. Whenever possible, the interviews were conducted in a private one-on-one setting. No financial incentive was provided and interviewees were free to stop the interview at any time. Human Rights Watch sought to corroborate information by separately interviewing multiple witnesses to incidents and checking information with secondary sources.

On January 24, 2013, Human Rights Watch sent a list of questions to the government of Kenya about its efforts to hold free and fair elections without political violence (see Appendix A). At this writing, the government had not responded.

Recommendations

To the Government of Kenya

Violence-Free Elections

- Publicly commit to holding credible, free, fair, and violence-free elections where rights are respected, abiding by elections rules and ensuring a level playing field for all candidates and parties; and ensure an orderly transfer of power, regardless of the elections outcome.
- Consistent with the responsibility to protect, take all possible measures to prevent mass atrocities and support the development of effective contingency plans to rapidly halt mass atrocities should preventive efforts fail.
- Ensure that national and regional authorities promptly finalize and implement an elections security strategy at the county level, with contingency plans in the event of violence and human rights violations.

Prevent Hate Speech

- Publicly condemn hate speech and participation in or incitement of political and ethnic violence.
- Make clear to all candidates that threats, intimidation, and harassment of political opponents and their supporters are crimes, and will be prosecuted to the full extent of the law.
- Ensure that the National Cohesion and Integration Commission has sufficiently trained personnel to investigate hate speech countrywide, and does not limit its investigations to speech in the media but also investigates election rallies, political meetings, and other fora where hate speech could be used.

Deploy and Train Police Forces

- Ensure sufficient deployment of properly trained police to areas of possible violence ahead of the election, in particular in Coast region; Rift Valley; Nairobi's informal settlements; Kisumu in Nyanza Region; Isiolo in Eastern region; and Moyale and Mandera in North Eastern region.

- Require that all security forces deployed during elections undergo training on their duty to protect people from violence, as well as on the limits on the use of force, in particular that lethal force may be used only when strictly unavoidable to protect life.

Ensure Accountability

- Address impunity for election-related violence by establishing credible, special mechanisms within the judiciary, police, and prosecutorial services that enhance capacity to investigate, prosecute, and adjudicate cases from the 2007-2008 election-related violence while also providing full cooperation to the investigations and prosecutions of the International Criminal Court (ICC).
- Cooperate fully in the investigations and prosecutions of the ICC, including by responding expeditiously to all requests for assistance and investigating reports of threats against those perceived to be supporting the court.
- Provide adequate funds and full support to the Witness Protection Agency so it can provide professional and independent services to witnesses of serious crimes in need of protection.

Other Essential Reforms

- Address underlying grievances and triggers of violence, including by ensuring that authorities do not discriminate in the provision of assistance to all internally displaced persons from the 2007-2008 post-election violence and the more recent inter-communal violence, and set up a mechanism where those who complain of discrimination in assistance can have their complaints fairly determined.
- Ensure that institutions responsible for enforcing leadership and integrity as outlined in chapter six of the Kenyan constitution, such as the Ethics and Anti-corruption Commission, Commission on Administrative Justice, Independent Electoral and Boundaries Commission, and Kenya's police, are provided with adequate funding, training, and personnel.

To All Election Candidates

- Publicly commit to respecting Kenyan law by not using hate speech, inciting violence, or organizing violence before, during, or after the elections, and to challenging election outcomes only through the proper procedures allowed by law.

To the Police, National Police Service Commission, and Independent Police Oversight Authority

- Promptly and impartially investigate all candidates, government officials, and security forces who are credibly alleged to have incited or organized violence, and work with the Office of the Director of Public Prosecutions and the Judiciary to hold perpetrators to account.
- Conduct prompt and impartial investigations into credible allegations of excessive use of force by members of state security forces, and work with the Office of the Director of Public Prosecutions and the Judiciary to hold abusive forces to account.
- Investigate allegations of discriminatory policing or discrimination in policing on ethnic, political, or other grounds, and take relevant legal and other measures, including criminal prosecutions, against responsible heads of the police and military.
- Expedite the vetting of police officers as outlined in the National Police Service Commission Act, ensuring the vetting criteria and process is subjected to public scrutiny to ensure transparency in line with Kenya's constitution.

To Foreign Governments and International Donors

- Publicly call on Kenya's key political actors to commit to a free, fair, and credible election process, and to refrain from intimidating, threatening, and harassing political opponents and their supporters, elections officials and observers, or judges.
- Press Kenya to cooperate with the ICC's investigations and prosecutions and commit to full cooperation and support to the ICC in exercising its independent, judicial mandate.
- Apply sustained and coordinated pressure on Kenya's government to ensure prompt investigations and prosecutions of crimes committed during previous, current, and future incidents of political violence and other elections-related human rights abuses.
- Provide support to the National Cohesion and Integration Commission to investigate hate speech countrywide, in the media, and elsewhere.
- Ensure that election observers deploy to as many counties as possible, and remain in the country for a sufficient period after elections to monitor the post-elections

environment. Ensure the monitors are trained to recognize human rights abuses and politically motivated violence during the elections processes.

- Provide support to Kenyan human rights organizations to monitor and document human rights violations before, during, and after elections.
- Support contingency plans for emergency humanitarian assistance to affected populations in the event of violence and human rights violations.
- Consistent with the responsibility to protect, take all possible measures to prevent mass atrocities and support development of effective contingency plans to halt mass atrocities rapidly should preventive efforts fail.

To the African Union

- Publicly call on Kenya's key political actors to commit to a free, fair, and credible election process, and to avoid intimidating, threatening, and harassing political opponents and their supporters.
- Press Kenya to cooperate with the ICC's investigations and prosecutions and commit to full cooperation and support to the ICC in exercising its independent judicial mandate.
- Apply sustained and coordinated pressure on Kenya's government to ensure prompt investigations and prosecutions of crimes committed during previous, current, and future political violence and other elections-related human rights abuses.
- Ensure that election observers deploy to as many counties as possible, and remain in the country for a sufficient period after elections to monitor the post-elections environment. Ensure the monitors are trained to recognize human rights abuses and politically motivated violence during the elections processes.
- Extend the mandate of the Panel of Eminent African Personalities to keep engaging with the Kenya government on institutional reforms, promoting rule of law, and addressing historical injustices that fuel ethnic tension in the country.
- Consistent with the responsibility to protect, take all possible measures to prevent mass atrocities and support development of effective contingency plans to halt mass atrocities rapidly should preventive efforts fail.

To the United Nations Secretary-General

- Join with the Chair of the African Union to issue a statement urging all parties to work for free, fair, and peaceful elections, calling on political actors to refrain from intimidating, threatening, or harassing political opponents or their supporters, underscoring the importance of accountability for human rights violations in the elections process, and affirming support for the AU Panel of Eminent African Personalities.
- Inform members of the UN Security Council on the status of United Nations preparations for Kenya's upcoming elections and its crisis planning.
- Urge the government of Kenya to take all necessary preventive steps to uphold its responsibility to protect, and ensure development of effective contingency plans to halt mass atrocities rapidly should preventive efforts fail.
- Ensure that the UN contingency plans for possible violence around the elections set up clear lines of responsibility, provide for an integrated response, and ensure a human rights perspective, drawing from the findings and recommendations of the Internal Review Panel on the United Nations in Sri Lanka.

To the Office of the High Commissioner for Human Rights

- Closely monitor the situation in Kenya and be prepared to deploy additional human rights monitors should the situation deteriorate.
- Make a public statement urging all parties to work for free, fair, and peaceful elections, calling on political actors to refrain from intimidating, threatening, or harassing political opponents or their supporters, and underscoring the importance of accountability for human rights violations in the elections process.

Background

Kenya has a history of political violence since multi-party politics were introduced in 1991.¹ The last national elections in December 2007 led to the most serious violence, with an estimated 1,300 people dead and 650,000 people displaced. Noting that disputes over elections in Kenya are generally a trigger rather than a cause of violence, the African Union Panel of Eminent African Personalities that negotiated a coalition government in February 2008 identified some of the underlying issues driving the violence, including the government's inequitable distribution of resources.² It concluded, and the top Kenyan politicians who signed the 2008 agreement concurred, that these underlying issues must be addressed ahead of the 2013 election to reduce chances of recurring violence.³

In 2008, President Mwai Kibaki and Prime Minister Raila Odinga committed to, among other things, tackling issues of historical injustice, implementing constitutional and institutional reforms, addressing impunity and corruption, resettling those who were displaced during the 2007-2008 violence, and disbanding criminal groups and militia gangs. The gangs were identified as having played a key role in the 2007 violence.⁴

Despite this commitment by Kibaki and Odinga, five years later and one month before the 2013 elections, most of these issues remain unaddressed. A new constitution promulgated in August 2010 after a referendum provided the basis for legal and institutional reforms but many of these reforms have been stalled or have not begun.

The Truth, Justice and Reconciliation Commission (TJRC) established in 2008 to examine historical injustices since 1963 has not issued its final report, and long-standing issues,

¹ See Report of the Judicial Commission Appointed to Inquire into the Tribal Clashes in Kenya (The Akiwumi Report), 1999 (released in 2002), <http://www.hrw.org/news/2002/10/31/kenya-report-politicians-fueled-ethnic-violence>. See also Republic of Kenya, Kenya National Assembly, "Report of the Parliamentary Select Committee to Investigate Ethnic Clashes in Western and Other Parts of Kenya," September 1992.

² See Kenya National Commission on Human Rights, "On the Brink of a Precipice: A Human Rights Account of Kenya's Post-2007 Election Violence," August 15, 2008, http://www.knchr.org/Portals/0/Reports/KNCHR_REPORT_REPORT_ON_THE_BRINK_OF_THE_PRECIPE.pdf (accessed February 5, 2013).

³ See the Kenya National Dialogue and Reconciliation (KNDR), "Longer-Term Issues and Solutions: Constitutional Review," March 4, 2008, http://www.dialoguekenya.org/Agreements/4%20March%202008-Long-Term%20Issues%20and%20Solutions_Constitutional%20Review.pdf (accessed February 4, 2013).

⁴ See the four KNDR agenda items, particularly agenda 4, "Long Standing Issues and Solutions."

such as inequitable distribution of resources and land, continue to fuel tension and increase the possibility of election-related violence.⁵ While the judicial sector has seen considerable progress—for example the appointment of an independent chief justice, the vetting of judges by the Judges and Magistrates’ Vetting Board, the recruitment of more judicial staff, and the creation of the Office of the Director of Public Prosecutions that is autonomous from the office of the Attorney General—other important institutions have barely changed.

A fundamental problem is the police, who contributed by omission or commission to much of the 2007-2008 violence and have been slow to reform.⁶ A new inspector general of police and two deputies were appointed in December 2012 and January 2013 respectively, but they took over an institution with officers who are under-staffed, ill-equipped, and widely considered corrupt and prone to human rights violations.⁷ The National Task Force on Police Reforms led by Justice Philip Ransley observed in 2009 that “corruption among junior and senior officers has been rife and has had a debilitating impact on policing and public trust.”⁸ Allegations of police collusion with criminals have kept public confidence in law enforcement agencies low.⁹ The expected vetting of police officers by the National Police Service Commission for criminal elements, recommended by the Ransley-led task force, is unlikely to start, let alone be finished, before the March elections.¹⁰

⁵ See the Truth, Justice and Reconciliation Commission of Kenya, <http://www.tjrckeny.org/index.php> (accessed February 4, 2013).

⁶ See Commission of Inquiry into the Post-Election Violence (CIPEV), “Report of the Commission of Inquiry into the Post-Election Violence,” October 16, 2008, <http://reliefweb.int/report/kenya/kenya-commission-inquiry-post-election-violence-cipev-final-report> (accessed February 4, 2013). See also KNDR Monitoring Project, “Kenya’s 2013 General Election: A Review of the Environment and Electoral Preparedness,” Review Report, October 2012, <http://www.dialoguekenya.org/Monitoring/%28October%202012%29%203RD%20Review%20Report.pdf> (accessed February 4, 2013), p. 37.

⁷ For details on the failure to implement police reform see Amnesty International, “Police Reform in Kenya: A Drop in the Ocean,” January 2013, <http://amnesty.org/en/library/asset/AFR32/001/2013/en/ceb38da9-d2c7-43f2-b270-fb8d52f5539e/afr320012013en.html> (accessed February 3, 2013). See also Joel D. Barkan “Electoral Violence in Kenya,” Council on Foreign Relations, Center for Preventive Action, January 2013, http://www.cfr.org/kenya/electoral-violence-kenya/p29761?cid=otr-marketing_use-kenya_cpm (accessed February 4, 2013).

⁸ “Interim Report of the National Task Force on Police Reforms,” August 2009, p. xxvi.

⁹ Ipsos Synovate polls in conjunction with South Consulting have consistently shown public confidence in police at around 38 percent for much of 2011 and 2012. See “Agenda 4 Reforms: Long-standing Issues and Solutions—Progress Review Report,” South Consulting, March 2012, <http://www.dialoguekenya.org/Monitoring/%28March%202012%29%201ST%20Review%20Report.pdf> (accessed February 4, 2013), p. 16.

¹⁰ The National Police Service Commission was supposed to have finished the vetting process by August 2012. See “Kenya’s 2013 General Elections: A Review of the Environment and Electoral Preparedness – Review Report,” South Consulting, October 2012, <http://www.dialoguekenya.org/Monitoring/%28October%202012%29%203RD%20Review%20Report.pdf> (accessed February 4, 2013).

The 2010 constitution addressed public concerns about the concentration of power in the presidency by introducing a devolved system of government. Under the new two-tier system, 47 county governments around Kenya have a semi-autonomous status from the central government in order to address the inequitable distribution of resources that stemmed from centralization in the past.¹¹ At the same time, this county system has introduced new political competitions between communities at the county level, with elections now for, among other posts, governor, senator, member of parliament, and county assembly representative.

The national authorities have failed to end widespread impunity for past crimes, which were blamed for contributing to the 2007-2008 violence. Various government commissions have looked at Kenya's elections going back to 1992 and have identified individuals responsible for violence, but successive governments have consistently failed to ensure that these people are held to account.¹² The coalition government formed in 2008 committed to ensuring accountability for perpetrators of the 2007-2008 violence, but that commitment remains unfulfilled. In February 2009 parliament rejected a constitutional amendment that would have allowed the establishment of a local tribunal with Kenyan and international judges to handle post-election violence cases.¹³ Parliament later failed to consider a second proposed amendment due to lack of a quorum, effectively killing the proposal.¹⁴ The ICC stepped in when it became apparent that Kenya was unwilling to try cases domestically, and the trial of four Kenyans, including senior political leaders, are slated to start in April 2013. Two of the defendants, Uhuru Kenyatta and William Ruto, are running together for president and vice-president.

The government also committed to ensure quick—at least within a year after the violence ended in February 2008—and fair resettlement or return of those who were displaced during the 2007-2008 post-election violence.¹⁵ But Kenya goes into the 2013 elections with

¹¹ The CIPEV observed that three successive presidents since 1963 had unfairly distributed resources and business opportunities to associates or their regions and communities.

¹² See Human Rights Watch, *"Turning Pebbles": Evading Accountability for Post-Election Violence in Kenya*, December 2011, http://www.hrw.org/sites/default/files/reports/kenya1211webwcover_o.pdf.

¹³ Human Rights Watch press release, "Kenya: Swiftly Enact Special Tribunal," March 25, 2009, <http://www.hrw.org/news/2009/03/24/kenya-swiftly-enact-special-tribunal>.

¹⁴ John Ngirachu and Njeri Rugene, "Kenya MPs snub debate on local tribunal," *Sunday Nation*, November 11, 2009, <http://www.nation.co.ke/News/politics/-/1064/685208/-/xt2vvtz/-/index.html>, accessed January 25, 2013.

¹⁵ See the KNDR agenda 2, "Dealing with the humanitarian crisis arising out of post-election violence."

at least 2,000 internally displaced persons (IDPs) still in camps. In addition, more than 300,000 other IDPs did not go to camps and have not received any assistance from the government.¹⁶ In some counties of the Rift Valley, Human Rights Watch found that the government has favored the Kikuyu community of President Kibaki in the allocation of resources. In Nakuru and Uasin Gishu counties the government has disproportionately favored Kikuyu IDPs with land and homes, sometimes more than one per family, while the Kalenjin have received significantly less assistance, without explanation or justification.¹⁷ The Kalenjin and Kikuyu clashed heavily in the Rift Valley in 2007-2008.

Armed gangs and criminal groups continue to operate in Central Kenya, Nyanza, Nairobi, Coast, the Rift Valley, and parts of North Eastern region, despite the government's promise in 2008 to use legal means to disarm and disband them before the 2013 elections.¹⁸ The likelihood exists that politicians may hire these groups to wreak havoc around this year's elections.¹⁹ The government's approach to policing these armed groups creates the impression that it is selectively dealing with some gangs and tolerating others. Even where security forces have responded to armed groups, their actions have been marred by human rights violations.²⁰

In October 2011 the Kenyan military was deployed to southern Somalia to secure the border, stop cross-border incursions, and dislodge the armed Islamic militant group al-Shabaab from areas it controlled. In response, supporters of al-Shabaab started attacking

¹⁶ UN Human Rights Council, Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, Mission to Kenya, February 6, 2012, http://www.ohchr.org/Documents/Issues/IDPersons/A.HRC.19.54.Add%202_en.pdf (accessed January 25, 2013).

¹⁷ See "Kenya: Discrimination Against Rift Valley Displaced: Flawed Practices Stoke Communal Tensions as Elections Near," Human Rights Watch new release, January 17, 2013, <http://www.hrw.org/es/node/112649> and Internal Displacement Monitoring Centre (IDMC), "Kenya: IDPs' Significant Needs Remain as Inter-communal Violence Increases," December 28, 2012, [http://internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/070E66B46B541CoCC1257AE20043FA02/\\$file/kenya-overview-dec2012.pdf](http://internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/070E66B46B541CoCC1257AE20043FA02/$file/kenya-overview-dec2012.pdf) (accessed January 3, 2012).

¹⁸ See the KNDR agenda 1, "Immediate Action to Stop Violence and Restore Fundamental Rights and Liberties," and agenda 4, "Long Standing Issues and Solutions."

¹⁹ See "Kenya's 2013 General Elections," South Consulting, <http://www.dialoguekenya.org/Monitoring/%28October%202012%29%203RD%20Review%20Report.pdf>, p. 36.

²⁰ In Mt. Elgon, for example, the military deployed by the government to quell violence engaged in serious rights violations. See Human Rights Watch, "Hold Your Heart": Waiting for Justice in Kenya's Mt. Elgon Region, October 2011, <http://www.hrw.org/reports/2011/10/27/hold-your-heart>. See also Human Rights Watch, Criminal Reprisals: Kenya Police and Military Abuses Against Ethnic Somalis, May 2012, <http://www.hrw.org/reports/2012/05/04/criminal-reprisals>; and, "Kenya: Set Independent Inquiry on Mombasa Killing," Human Rights Watch news release, August 29, 2012, <http://www.hrw.org/news/2012/08/28/kenya-set-independent-inquiry-mombasa-killing>.

police and military personnel inside Kenya, as well as churches, mosques, buses, and other public places in Nairobi, Mombasa, and northern Kenya from November 2011 through 2012 and into early 2013. Kenyan security forces have retaliated by using excessive force, mistreating refugees, and, in some cases, shooting villagers in the vicinity of attacks whom they accused of harboring the attackers.²¹

In contrast, and without clear reason, security forces have been slow to respond to violent inter-clan clashes in places such as Tana River, Mandera, Moyale, and Isiolo, thereby encouraging communities to engage in retaliatory attacks against each other.²² This was the same uneven manner in which the police responded to the political violence of 2007-2008: in areas such as Kisumu, Nairobi, and Mt. Elgon security forces responded with excessive force, while in others, such as Naivasha, Nakuru, and Eldoret, the police failed to intervene.²³ This has led to the feeling that corruption, political interference, or collusion with criminal gangs within the police plays a role in shaping the police response to violence.

²¹ See Human Rights Watch, *Criminal Reprisals*; “Kenya: End Security Force Reprisals in North,” Human Rights Watch news release, November 22, 2012, <http://www.hrw.org/news/2012/11/22/kenya-end-security-force-reprisals-north>; and “Kenya: End Police Reprisals in Northern Region,” Human Rights Watch news release, October 25, 2012, <http://www.hrw.org/news/2012/10/25/kenya-end-police-reprisals-northern-region>.

²² “Kenya: Investigate All Politicians in Tana River Violence,” Human Rights Watch news release, September 13, 2012, <http://www.hrw.org/news/2012/09/13/kenya-investigate-all-politicians-tana-river-violence>.

²³ See Human Rights Watch, *Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance*, March 2008, <http://www.hrw.org/reports/2008/03/16/ballots-bullets>. The Commission of Inquiry into Post-Election Violence made similar criticisms.

Coast Region

Kenya's Coast Region has experienced growing tension in recent years, with serious communal violence in 2012. The Mombasa Republican Council, a separatist organization based in Mombasa, has warned the government against organizing elections. Facilities and officials of the Independent Electoral and Boundaries Commission (IEBC) have come under attack in Kwale, Kilifi, and Malindi, and the police have accused the MRC of staging the attacks. The security forces have apparently responded indiscriminately and used excessive force.

In Tana River county violent clashes between the agriculturalist Pokomo and the pastoralist Orma communities since August 2012 have claimed more than 180 lives and displaced an estimated 34,000 people. In Tana River the police have failed to prevent or investigate the violence adequately, including the role of local politicians. Members of both Pokomo and Orma communities told Human Rights Watch that, without police action, they had no choice but to use violence to protect themselves. According to three Pokomo fighters, the MRC has also provided the Pokomo with training and fighters because it views them as original inhabitants of the area.

The inconsistent police responses in Coast region—sometimes excessive action after attacks it attributed to MRC and inaction in the face of communal violence—has left the region vulnerable to violence around the March elections.

Background

In recent years members of local communities in Coast region have grown frustrated with government land policies, as government officials in Nairobi and Coast awarded more valuable land, especially beach plots, to persons from outside the region, such as members of the Kikuyu, Luo, Kamba, and Luhya communities, and non-Kenyans.²⁴ Local communities complain that the government has for decades failed to issue them land

²⁴ See "Kenya's Coast Province and the Mombasa Republican Council: Islamists, Separatists or Political Pawns?" Jamestown Foundation, November 2, 2012, [http://www.jamestown.org/single/?no_cache=1&tx_ttnews\[tt_news\]=40056](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=40056) (accessed February 4, 2013); and Clar Ni Chonghaile, "Kenya coast secessionists play on fear of outsiders—the wabara," *Guardian*, September 6, 2012, <http://www.guardian.co.uk/world/2012/sep/06/kenya-ocean-coast-secessionist-party> (accessed February 4, 2013).

ownership documents, which they claim non-locals get within days.²⁵ That resentment erupted into violence during the 1997 elections and in 2003, and threatens to do so again in 2013.²⁶

In addition, coast communities have spoken of a memorandum of understanding signed in 1963 by the newly-independent Kenyan government, the outgoing British colonial authorities, and the Sultan of Zanzibar, which awarded a 10-mile coastal strip to Kenya for 50 years, after which the area would be allowed the option of self-determination.²⁷ Since the 1960s, four separatist groups have pushed this agenda.

The most recent of the separatist groups, the Mombasa Republican Council, which formed soon after the disputed 2007 elections, has called for secession and a boycott of the March elections, arguing that elections should not be held in the region until there is a referendum on self-determination.²⁸ In 2012 the MRC lost a court case in which it tried to stop elections on the coast, but it has continued pushing for secession, including through intimidation of people who are organizing or participating in elections at the coast.²⁹

MRC and the Police Response

Human Rights Watch spent a total of 20 days at the coast talking to former and current MRC members, community leaders, civil society activists, religious leaders, and government officials, among others. All those interviewed by Human Rights Watch said the MRC has an established and functioning structure, including national officials, a council of elders, a steering council, and committees at various levels. The MRC provides its

²⁵ See Joseph Masha and Willis Oketch, "State Pledges to Address MRC Grievances," *The Standard*, November 1, 2012, http://www.standardmedia.co.ke/?articleID=2000069675&story_title=Kenya-State-pledges-to-address-MRC-grievances (accessed February 5, 2013).

²⁶ See Africa Watch (now Human Rights Watch/Africa), *Kenya – Divide and Rule: State Sponsored Ethnic Violence in Kenya* (New York: Human Rights Watch, 1993), <http://hrw.org/reports/1993/kenya1193.pdf>; *Kenya: Playing with Fire: Weapons Proliferation, Political Violence and Human Rights in Kenya* (New York: Human Rights Watch, 2002), <http://www.hrw.org/reports/2002/kenya/>. See also the Akiwumi Report, <http://www.hrw.org/news/2002/10/31/kenya-report-politicians-fueled-ethnic-violence>.

²⁷ Paul Goldsmith, "The Mombasa Republican Council, Conflict Assessment: Threats and Opportunities for Engagement," November 2011, http://www.kecosce.org/downloads/MRC_Conflict_Assessment_Threats_and_Opportunities_for_Engagement.pdf (accessed February 4, 2013).

²⁸ *Ibid.*

²⁹ Joseph Akwiri, "Kenyan separatists fail in court bid to block elections on coast," Reuters, December 20, 2012, <http://news.yahoo.com/kenyan-separatists-fail-court-bid-block-elections-coast-19082975.html> (accessed January 27, 2013).

members with an MRC identity card, two of which were seen by Human Rights Watch, and urges them to burn their Kenyan identity cards. Five current or former MRC officials told Human Rights Watch that the MRC has recruited heavily over the past three years and established sub-committees among all the coastal communities.³⁰

Residents in Coast told Human Rights Watch that the MRC has recruited heavily in Mombasa, Kwale, Malindi, Kilifi, Tana River, Taita Taveta, and parts of Lamu, where it has been campaigning against the March elections. Two former MRC officials now standing for elections explained how the MRC had asked them not to participate in the elections, and how they had been branded traitors by the MRC.³¹ “I have been visited by MRC several times—they were my former colleagues and I know them,” one of the men said. “They keep saying that when the time comes, they will start with me because I have ignored their advice and decided to participate in the elections.”³² Leaflets threatening violence against those participating in the elections were distributed in Mombasa in late 2012 last year, but in January 2013 MRC leaders denied being behind them.³³

Three former MRC members told Human Rights Watch that the group also has a “military wing,” and that its fighters have participated in the 2012 violence in Tana River, as well as intimidated and threatened election supporters in Mombasa, Kwale, and Kilifi. The MRC military wing is preparing for violence should the government insist on holding elections in Coast, they said.³⁴

³⁰ Human Rights Watch interview with two former and three current MRC officials, Mombasa, August 26, 2012. The MRC recognizes four communities as indigenous to the coast: the Mijikenda (with nine villagers or sub-tribes: the Digo, Giriama, Duruma, Chonyi, Kambe, Jibana, Rabai, Ribe, and Kauma); the Pokomo (divided into Northern and Southern Pokomo—Southern Pokomo includes the Munywaya, Mwilwana, Milalulu, Zubaki, Ndura, Kinakomba, Gwano, Ndera, and Mwina, while Northern Pokomo includes the Ngatana, Dzunza, Kalindi, and Buu); the Swahili (with 12 sub-tribes divided into two main groups: 1) Thelatha Taifa, which has the Wachangamwe, Wakilindini and Watangana; and 2) Tisia Taifa, which has the Wajomvu, Wafadha, Wagunya, Wakatwa, Wakilifi, Wamtwapa, Wamvita, Wapate, and Washaka—most Swahilis are found in Mombasa Island and thus fall outside the designated ten-mile coastal strip); and the Bajuni, who are mainly found in Lamu and north of Tana River.

³¹ Human Rights Watch interviews with former MRC official, Mombasa, December 12, 2012, and former MRC leader, Mombasa, August 26, 2012.

³² Human Rights Watch interview with former MRC official, Mombasa, December 12, 2012.

³³ Brian Otieno, “Leaflets against poll stir tension in Mombasa town,” *The Star*, August 3, 2012. <http://www.the-star.co.ke/news/article-7642/leaflets-against-poll-stir-tension-mombasa-town> (accessed February 4, 2013); and Maureen Mudi and Wesonga Ochieng, “Mombasa leaflets ask voters to boycott polls,” *The Star*, January 10, 2013, <http://www.the-star.co.ke/news/article-102233/mombasa-leaflets-ask-voters-boycott-polls> (accessed February 5, 2013).

³⁴ Human Rights Watch interviews with youth leader, Kwale, August 24, 2012 and former MRC official, Mombasa, August 26, 2012.

Police attributed the attacks on IEBC facilities and officials in Kwale, Kilifi, and Malindi to the MRC. The MRC was also responsible for an October 4, 2012 attack on Fisheries Minister Amason Jeffah Kingi in Mtwapa village in Kilifi county, police said.³⁵ The minister survived but five people were killed. After the attack, police arrested the MRC chairman and 37 other people, including his wife, and police killed two of his bodyguards during the arrest. The police claimed that they were forced to open fire when MRC members tried to resist.³⁶

Police have blamed the MRC for three other attacks in the region.³⁷ The MRC repeatedly denied that it was behind the attacks.³⁸

Violence in Tana River County

The fertile Tana River county has long seen tension between the largely agricultural Pokomo community and the pastoralist Orma.³⁹ The Pokomo often complain that Orma let their livestock feed on Pokomo farms, and they have at times responded with machete attacks on Orma livestock. The Orma, who are better armed, sometimes with AK47s, have retaliated with attacks on Pokomo villages. In late 2012, conflict between the two communities erupted into major clashes that claimed roughly 180 lives and displaced about 34,000 people.⁴⁰

³⁵ See Linah Benyawa and Joseph Masha, "MRC Terror on Minister Kingi," *The Standard*, October 5, 2012, https://www.standardmedia.co.ke/?articleID=2000067669&story_title=MRC-terror-on--Minister-Kingi (accessed February 5, 2013).

³⁶ Wesonga Ochieng and Martin Mwaura, "MRC Chairman, 36 members arrested," *The Star*, October 16, 2012, <http://allafrica.com/stories/201210161370.html> (accessed February 5, 2013).

³⁷ The three incidents include the killing of an assistant chief, Salim Changu Shomba, in Kwale on October 10, 2012, for which an MRC member was charged; an attack on an administration police camp in Likoni on October 20, 2012; and an attack on Freretown police station on October 20, 2012.

³⁸ See Linah Benyawa, "Detectives link MRC to recent coast attack," *The Standard*, December 14, 2012, http://www.standardmedia.co.ke/?articleID=2000072815&story_title=detectives-link-mrc-to-recent-coast-attack (accessed February 5, 2013).

³⁹ For details on the Tana River violence, see Kenya National Commission on Human Rights, "29 Days of Terror in the Delta: Account into the Atrocities at Tana Delta," October 2012, <http://www.knchr.org/Portals/o/Reports/Compiled-TANA%20DELTA%20REPORT-Approved.pdf> (accessed February 4, 2013); and Nuur Mohammed Sheekh and Jason Moseley, "Tana River Violence: Is the worst yet to come?" *African Arguments*, November 6, 2012, <http://africanarguments.org/2012/11/06/kenya-tana-delta-violence-%E2%80%93-is-there-worse-to-come-%E2%80%93-by-nuur-mohamud-sheekh-and-jason-mosley/> (accessed February 4, 2013).

⁴⁰ Human Rights Watch interview with Kenya Red Cross official, Minjila, December 10, 2012. See also Kenya National Commission on Human Rights, "29 Days of Terror in the Delta," <http://www.knchr.org/Portals/o/Reports/Compiled-TANA%20DELTA%20REPORT-Approved.pdf> (accessed February 4, 2013).

Some Tana River residents told Human Rights Watch that both the MRC and local politicians were involved in the recent violence. Three Pokomo fighters interviewed separately said that the MRC had provided Pokomo fighters with training.⁴¹ Police in Tana River told Human Rights Watch that some of the Pokomo fighters they arrested had confessed to being MRC members.⁴²

Despite these arrests, local residents from both the Pokomo and Orma communities complained about the police's repeated failure to protect their respective communities from attack or to investigate the perpetrators of violence. Residents from both communities told Human Rights Watch that, in the absence of police interventions, they felt compelled to use violence to protect themselves. They expressed frustration that the police was not taking measures to provide protection prior to the elections, despite clear threats to life and property.

The latest spate of violence began in January 2012 when members of the Pokomo and Orma communities engaged in mutual cattle raids, small-scale attacks, and counterattacks. Both communities lost lives and livestock, and the police either failed to respond or they later released, without investigation, those arrested.

The first major attack took place on the morning of August 22, 2012, when up to 100 armed Pokomo men attacked Riketa, an Orma village, killing 48 people, mostly women and children.⁴³ One witnesses told Human Rights Watch how the attackers surrounded the village, set fire to homes, and used machetes to kill inhabitants:

I am 62 years old. My mother was 100 years old. She was killed. My elder brother was killed. My elder uncle was killed. My sister's son and her three daughters were killed. In total, six of my family members died while another is in ICU at Kenyatta National Hospital, Nairobi. I survived but with injuries. I was hit on the knee by a young man I know so well. He first hit my knee and later tried to spear me. I lay down and pretended to be dead. Personally

⁴¹ Human Rights Watch interviews with three Pokomo fighters, Tana Delta, December 8, 2012.

⁴² Human Rights Watch interview with Tana Delta OCPD Richard Masila Mukwate, Minjila, December 11, 2012.

⁴³ "48 Villagers killed in revenge attack," Daily Nation, August 22, 2012; and "Kenya: Investigate All Politicians in Tana River Violence," Human Rights Watch news release, September 13, 2012, <http://www.hrw.org/news/2012/09/13/kenya-investigate-all-politicians-tana-river-violence>.

I lost 44 heads of cattle while a total of 160 heads of cattle were killed during the attack.⁴⁴

September 2012 saw a series of reprisal attacks by the Orma against the Pokomo. On September 7, a group of heavily armed Orma attacked Chamwanamuma village, killing at least 11 Pokomo. Two witnesses told Human Rights Watch that the attackers surrounded Chamwanamuma and prevented residents from escaping, killing people with machetes, spears, and guns until the police from the neighboring village intervened. The militia then exchanged gunfire for several hours with the police. One witness told Human Rights Watch:

The Orma were retaliating for earlier attacks by the Pokomo. They burned our houses and shot at us. I personally think the attackers were around 30 from what I saw as I ran for safety, but some people say they were more. Most were armed with AK47, but I saw one with a G3 rifle. One of the attackers was a police reservist.⁴⁵ I know him very well and he was in police uniform. I could recognize some of the attackers but I know just one by name.⁴⁶

The Tana Delta Officer Commanding Police Division (OCPD) admitted to Human Rights Watch that both Pokomo and Orma police reservists and chiefs had been involved in the violence.⁴⁷ The OCPD said that police had recalled all guns provided to police reservists and ordered the arrest of several chiefs, while others are under investigation.

On September 10, members of the Pokomo launched an early morning raid on Kilelengwani village that left another 39 people dead, including nine police officers who were killed when fighters attacked a nearby police station. Three Orma survivors of the attack, as well as the Tana Delta OCPD, said that the attackers numbered between 400 to 600 men armed with guns, spears, and bows and arrows.⁴⁸ The Pokomo attackers took several guns from the police, including a light machine gun, the police said.⁴⁹

⁴⁴ Human Rights Watch interview with Orma elder, Riketa village, August 29, 2012.

⁴⁵ Police reservists are community members retained by police, and provided with guns and a stipend to help with policing.

⁴⁶ Human Rights Watch interview with Pokomo man, Garsen, December 6, 2012.

⁴⁷ Human Rights Watch interview with Tana Delta OCPD Richard Masila Mukwate, Minjila, December 11, 2012.

⁴⁸ Human Rights Watch interviews with Orma survivors, Witu, December 6, 2012.

⁴⁹ Human Rights Watch interview with Tana Delta OCPD Richard Masila Mukwate, Minjila, December 11, 2012.

After the attack on Kilelengwani, President Kibaki announced a dusk to dawn curfew. Despite this, members of the Orma broke the curfew on September 11 and attacked the Pokomo village of Semikaro, killing four people.⁵⁰ The government reportedly increased security by sending 1,500 police officers, fresh from training school, to bolster the 400 officers who were already in the county.⁵¹ Nevertheless, 39 people were killed when the Pokomo attacked Kipao village on December 21, 2012.⁵² The Pokomo then attacked Nduru village on January 9, 2013, killing another 11 people. The Orma retaliated with an attack on Kibusu village on January 10, in which 10 people were reported killed.⁵³ A Pokomo in Kibusu told Human Rights Watch that several times during the attack villagers had called police who were stationed about one kilometer away, but the police came only after the attackers had left.⁵⁴

Police Inaction

Members of the Pokomo and Orma communities told Human Rights Watch that they resorted to violence because the police had failed to act in the face of ongoing inter-communal crimes. Orma elders and political leaders told Human Rights Watch that between January and July 2012, they reported up to five cases of attacks against them by the Pokomo, but both police and provincial administration officials such as chiefs, the district officer, and the district commissioner had failed to act.⁵⁵

Ten members of the Pokomo community, interviewed separately, told Human Rights Watch that they had similar complaints of police inaction. A Pokomo teacher explained his community's frustrations:

All these cases were reported to police with sufficient eyewitness accounts of who the attackers were. In all the cases, police either just did not bother

⁵⁰ Anthony Kitimo, "Four Killed in New Tana Raids," *Daily Nation*, September 11, 2012, <http://www.nation.co.ke/News/Four-killed-in-new-Tana-raids/-/1056/1504692/-/4wtkwp/-/index.html> (accessed February 5, 2013).

⁵¹ "1,500 GSU graduates to be sent to Tana," *Daily Nation*, September 11, 2012, <http://www.nation.co.ke/News/1500-GSU-graduates-to-be-sent-to-Tana/-/1056/1504624/-/weedunz/-/index.html> (accessed February 5, 2013).

⁵² Daniel Nyassy, "Massacre in Kipao village took us by surprise, say leaders and police," *Daily Nation*, December 23, 2012, <http://www.nation.co.ke/Countries/Massacre-took-us-by-surprise-leaders/-/1107872/1650834/-/15qfhpvz/-/index.html> (accessed February 5, 2013).

⁵³ Daniel Nyassy, "11 killed in Tana revenge attack," *Daily Nation*, January 10, 2013, <http://www.nation.co.ke/News/-/1056/1662196/-/x7t4s8z/-/index.html> (accessed February 5, 2013).

⁵⁴ Human Rights Watch phone interview with Pokomo man, January 13, 2013.

⁵⁵ Human Rights Watch interview with Orma elder and Orma councilor, Dide Waride, August 29, 2012.

to respond, or arrested a suspect and then released the suspect either the same day or the next day.⁵⁶

The Kenya National Commission on Human Rights reached this same conclusion, stating in its report on the Tana River violence that the state had “failed in its primary duty to protect citizens from attacks through acts of omission and commission.”⁵⁷

In response to public criticism over police inaction in Tana River, the then-national Deputy Police Spokesman Charles Owino blamed political leaders for failing to authorize the use of force and used the threat of indictment by the International Criminal Court as an excuse. “We may use firearms only to be called tomorrow and be told that we are either trigger happy or we are either [sic] killing people unfairly,” he said in a September media interview.⁵⁸ Owino cited charges brought by the ICC prosecutor against former Kenyan Police Commissioner Mohammed Hussein Ali for the police’s alleged role in the 2007-2008 violence. A pre-trial chamber of the ICC subsequently refused to confirm the charges against Ali. Owino’s statement suggested that the police could prevent violence in Tana River if it was given guarantees that it could use excessive force with impunity.

Role of Politicians

Members from both the Pokomo and Orma communities, some of them injured in the inter-communal violence, told Human Rights Watch that area politicians contending for seats in the March elections were involved in the violence. Villagers had repeatedly reported this to the police, they said. On September 12 the police arrested a local member of parliament, Dhadho Godhana, on charges of inciting violence. A court acquitted Godhana on January 16, 2013, due to lack of evidence.⁵⁹

Human Rights Watch interviewed three people from the Orma community who claimed that politicians from their own community and from the Pokomo were involved in organizing the

⁵⁶ Human Rights Watch interview with Pokomo school teacher, Witu, August 28, 2012.

⁵⁷ Kenya National Commission on Human Rights, “29 Days of Terror in the Delta,” <http://www.knchr.org/Portals/0/Reports/Compiled-TANA%20DELTA%20REPORT-Approved.pdf> (accessed February 5, 2013).

⁵⁸ See Deputy Police Spokesman Charles Owino video of press conference, *NTV Kenya*, September 12, 2012, <http://youtu.be/Dz8KWFuUels> (accessed January 17, 2013).

⁵⁹ Human Rights Watch interview with Dhadho Godhana, Nairobi, September 14, 2012. See also Alphonse Mung’ahu, “MP Godhana Cleared of Incitement Charges,” *The Star*, January 17, 2012, <http://m.the-star.co.ke/news/article-103165/mp-godhana-cleared-incitement-charges> (accessed February 5, 2013).

violence in Tana River. Human Rights Watch also spoke with six people from the Pokomo community who claimed that politicians from their community and from the Orma were involved. In total, members of the two communities claimed that four area politicians and candidates were involved.⁶⁰ Orma and Pokomo community members described secret night meetings attended by Orma and Pokomo politicians in different villages, as well as fundraising activities which they suspect were used to finance the fighting.

The police and acting secretary of the Internal Security Ministry Shadrak Mwadime told Human Rights Watch that investigations were ongoing and that charges would be filed against politicians found to have violated the law. At this writing, no further arrests had been made.⁶¹

⁶⁰ Human Rights Watch interviews in Tana River, August and December 2012.

⁶¹ Human Rights Watch interview with Shadrack Mwadime, Acting Secretary, Ministry of Internal Security, Nairobi, September 10, 2012.

Rift Valley

The Rift Valley is predominantly occupied by Kikuyu and Kalenjin communities. The two communities clashed after the 2007 elections over the disputed results, which gave victory to the incumbent, Mwai Kibaki.⁶² Almost half of the 1,300 post-elections deaths occurred in the Rift Valley.⁶³ The most notable incidents were the burning alive of Kikuyus who had sought refuge in Kiambaa Church after being attacked in Kimuri village, resulting in 28 deaths, and the burning alive by an organized mob of 19 Luo community members in a house in Naivasha.⁶⁴

Deputy Prime Minister Uhuru Kenyatta, a Kikuyu, and William Ruto, a Kalenjin, are facing charges of crimes against humanity at the International Criminal Court in relation to the violence. In a strange turn of events, given that they were on opposite sides of the political spectrum in 2007, Kenyatta is running for president in the March election with Ruto as his running mate.

Human Rights Watch spent one week in the central Rift Valley in October 2012 and one week in the north Rift Valley in November 2012, interviewing 54 people in total, including tribal elders, women, youth, civil society activists, and government officials. Human Rights Watch also spoke to members of the Turkana, Maasai, Luo, Luhya, and Kisii communities. Nearly all of the interlocutors, including local government officials, expressed serious concerns about possible violence around the March elections.

Kikuyu and Kalenjin elders told Human Rights Watch that the bitterness and deep seated suspicions could quickly erupt into violence. “I see people who killed my relatives, raped my cousin, and destroyed my property,” one Kikuyu elder said. “They have not been arrested and tried. They have not apologized for what they did. How do you expect me to just accept that and move on?”⁶⁵

⁶² See Human Rights Watch, *Ballots to Bullets*.

⁶³ See the Commission of Inquiry into Post-Election Violence final report, int/report/kenya/kenya-commission-inquiry-post-election-violence-cipev-final-report.

⁶⁴ See Human Rights Watch, *Ballots to Bullets*.

⁶⁵ Human Rights Watch interview with Kikuyu elder, Eldoret, November 27, 2012.

On the other side, the Kalenjin feel that they have been abandoned by the government. “The government gave our land to the Kikuyu in the 1960s,” a retired Kalenjin engineer told Human Rights Watch. “It is the injustice we have been hoping will be addressed. Now we feel another injustice is being committed because the government is helping only Kikuyu IDPs, giving them land again. This will bring problems.”⁶⁶

Local government officials and civil society activists expressed fear that the elections would bring violence. “The communities are preparing—they are arming themselves,” one activist in a local nongovernmental organization said. “All over they are saying: ‘This time we won’t be unprepared.’”⁶⁷ Police and local government officials said that, compared to 2007-2008, the Kalenjin and Kikuyu communities today are better armed, and the risks of violence are real.⁶⁸

Background

Members of the Kalenjin and Kikuyu communities have historically fought over land in the Rift Valley. Kalenjin complain that Kikuyu from central Kenya were unfairly settled on Kalenjin land soon after independence in 1963 by the government of President Jomo Kenyatta, Uhuru Kenyatta’s father. In 2007 the Kalenjin had an additional grievance: their feeling of exclusion from government after a newly elected President Kibaki in 2003 sacked many Kalenjin from the civil service, including the military.⁶⁹ The Commission of Inquiry into Post-Election violence noted that feelings of exclusion and inequitable distribution of national resources and opportunities had created a climate of hate and tension between communities and thus heightened potential for violence.⁷⁰ Kalenjin elders and community members told Human Rights Watch that the Kalenjin feel the government has yet to respond to these grievances. “If we don’t get our land back, there will still be violence,” one Kalenjin elder said.⁷¹

⁶⁶ Human Rights Watch interview with member of Kalenjin Council of Elders, Eldoret, November 25, 2012.

⁶⁷ Human Rights Watch interview with civil society activist, Nakuru, October 24, 2012.

⁶⁸ According to the Small Arms Survey, the Rift Valley has seen a “significant increase in gun possession since 2003.” “Availability of small arms and perceptions of insecurity in Kenya: An Assessment,” Small Arms Survey, July 2012, <http://www.smallarmssurvey.org/fileadmin/docs/C-Special-reports/SAS-SR16-Kenya.pdf> (accessed January 24, 2013).

⁶⁹ Human Rights Watch interview with Kalenjin elder, Njoro, October, 22, 2012, and Kalenjin chief, Nakuru, October 25, 2012.

⁷⁰ Commission of Inquiry into Post-Election Violence final report, int/report/kenya/kenya-commission-inquiry-post-election-violence-cipev-final-report, p. 23.

⁷¹ Human Rights Watch interview with Kalenjin elder and chief, Molo, October 22, 2012.

On the other side, members of the Kikuyu community complain of a failure by police to protect them from politically instigated violence over the years. Human Rights Watch heard from Kikuyu elders, women, and youth that the Kikuyu were targeted during politically motivated violence between 1991 and 1994, again in 1997, then during the post-election violence of 2007-2008. On all these occasions, they said, the police failed to provide protection. “This time we shall not be caught unawares and we shall not be the ones running away or getting displaced,” a Kikuyu farmer in Kuresoi said.⁷²

In addition to these grievances, some government practices since the 2007-2008 post-election violence appear to have contributed to rising animosities, and thus the possibility of serious violence, in the Rift Valley. These include a failure of the police to perform law enforcement in a fair and nondiscriminatory manner; discriminatory treatment of the Kalenjin in favor of Kikuyu in assistance given to those displaced in 2007-2008; and impunity for the serious crimes of 2007-2008.

After the 2007-2008 violence, with the support of international donors, the government created district peace committees in the Rift Valley and across the country to promote reconciliation and to deal with minor conflicts. The committees are frequently staffed with people from diverse backgrounds, including civil society and community elders, and at times they have played a helpful role in mediating and settling conflict.⁷³

Impunity for Past Crimes

The failure by relevant authorities to arrest and prosecute those responsible for the 2007-2008 election-related violence has heightened tensions by leaving the people responsible for past violence-free to repeat their actions.⁷⁴ This applies to Kenya more broadly, but resonates in the Rift Valley because most of the crimes committed in 2007-2008 took place there. In all of Kenya only seven serious crimes related to the 2007-2008 violence—including killing, assaults, arson, and rapes—resulted in convictions. Five out of the seven cases were against individuals from the Rift Valley who supported the Orange Democratic Movement.⁷⁵ In one of these cases, the two accused had their convictions overturned on

⁷² Human Rights Watch interview with Kikuyu farmer, Kuresoi, October 23, 2012.

⁷³ Human Rights Watch interview with Peace Committee member, Eldoret, November 26, 2012.

⁷⁴ Human Rights Watch, “*Turning Pebbles*”.

⁷⁵ Human Rights Watch, “*Turning Pebbles*”; and “Kenya: Post—Election Violence Suspect Sentenced to Life in Prison,” *Citizen TV*, June 12, 2012, <http://www.youtube.com/watch?v=bJobZeiBsfQ> (accessed February 4, 2013).

appeal.⁷⁶ In total, only 14 people have been convicted for these serious election-related crimes.

Critical weaknesses in Kenya's criminal justice system have contributed to the low number of convictions, including the unwillingness of police officers to investigate and prosecute their colleagues, let alone their superiors.⁷⁷ The absence of a functioning witness protection system, in part due to government underfunding, has jeopardized investigations.⁷⁸ On the political level, parliament has twice blocked attempts by the executive to set up a local tribunal with Kenyan and international judges that would have prosecuted perpetrators of the 2007-2008 violence.⁷⁹

In the absence of domestic prosecutions, the ICC stepped in. The ICC prosecutor initially brought charges against six individuals, and the pretrial chamber confirmed charges in four of the six cases. The Kenyan government has promised to cooperate with the ICC, and is obligated to do so as a state party to the Rome Statute, which established the ICC. However, some government officials have strongly expressed discomfort with the cases being tried at the ICC and the government has aggressively campaigned for either their deferral or referral to a jurisdiction other than the ICC.⁸⁰ The ICC Office of the Prosecutor has complained about Kenya's failure to release certain materials or facilitate its access to potential witnesses.⁸¹

⁷⁶ Patrick Kibet, "Murder suspects acquitted for lack of evidence," *The Standard*, December 23, 2012, http://www.standardmedia.co.ke/?articleID=2000073532&story_title=Murder-suspects-acquitted-over-lack-of-evidence (accessed February 4, 2013).

⁷⁷ See Kenya Human Rights Commission and International Commission of Jurists, "Elusive Justice: a Status Report on Victims of 2007-2008 Post-Election Violence in Kenya," 2012, http://www.khrc.or.ke/resources/publications/cat_view/37-downloads/38-civil-a-political-rights.html (accessed February 4, 2013).

⁷⁸ International Commission of Jurists, "Critique of the Witness Protection Act and Amendment Bill," 2010, http://www.iccnw.org/documents/Critique_of_the_WitnessProtection_Act_and_Amendment_Bill.pdf (accessed February 4, 2013). See also Brian Otieno, "Witness Protection Agency Weak, Says Omar," *The Star*, July 19, 2011, <http://allafrica.com/stories/201107191320.html> (accessed February 4, 2013).

⁷⁹ "Kenya: Swiftly Enact Special Tribunal," Human Rights Watch news release, March 25, 2009, <http://www.hrw.org/news/2009/03/24/kenya-swiftly-enact-special-tribunal>; and John Ngirachu and Njeri Rugene, "Kenya MPs snub debate on local tribunal," *Sunday Nation*, November 11, 2009, <http://www.nation.co.ke/News/politics/-/1064/685208/-/xtzvytz/-/index.html>, accessed January 25, 2013.

⁸⁰ Walter Menya, "Kenya seeks AU's help to defer ICC cases, again," *Daily Nation*, March 26, 2012.

⁸¹ International Criminal Court, *Situation in the Republic of Kenya, In the Case of The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, January 9, 2013, <http://www.icc-cpi.int/iccdocs/doc/doc1538795.pdf> (accessed January 25, 2013).

The failure of the Kenyan justice system to investigate and prosecute ordinary citizens and public officials who perpetrated the violence in 2007-2008, not to mention the high level suspects facing trial before the ICC, has greatly contributed to the current tension and prospects for violence. The victims of violence feel betrayed by the justice system and the perpetrators of violence believe they are above the law. The ICC has contributed to accountability, but in failing to act on the mid- and low-level cases, Kenyan authorities missed the opportunity to bring those responsible to account before the 2013 elections.

Discrimination in Assistance for IDPs

Adding to the high tension between communities is the government's discriminatory treatment of displaced persons in the Rift Valley. An estimated 400,000 people of various communities in the area were displaced by inter-ethnic clashes after the elections in 2007. Human Rights Watch has documented several cases where the government gave preferential treatment to internally displaced persons from the Kikuyu community, even though Kalenjin were also displaced in large numbers. Authorities have not given any justification for this.⁸²

The discrimination in central and northern Rift Valley takes two broad forms. First, more than 20 witnesses, including three government officials, described how the government has given priority to displaced Kikuyu when rebuilding homes and providing new homes, land, or money. Some Kikuyu families have received more than one new home. Second, a majority of displaced Kalenjin in the Rift Valley and elsewhere, roughly 300,000 people across Kenya, have not been officially registered by the Ministry for Special Programmes, which is responsible for internally displaced persons.⁸³ Also, they have not received government support.

Government officials contend that it is difficult to identify displaced Kalenjin because most of them chose to stay with relatives rather than go to camps. They told Human Rights Watch that these so-called "integrated IDPs" are difficult to locate and therefore register

⁸² "Kenya: Discrimination Against Rift Valley Displaced," Human Rights Watch news release, January 17, 2013, <http://www.hrw.org/news/2013/01/17/kenya-discrimination-against-rift-valley-displaced>.

⁸³ See Kenya Human Rights Commission report, "Gains and Gaps: A Status Report on IDPs in Kenya – 2008-2010," February, 2011, http://www.khrc.or.ke/resources/publications/doc_download/17-gains-and-gaps-a-status-report-on-idps-in-kenya-2008-2010.html (accessed February 4, 2013); and Report of the United Nations Special Rapporteur on the human rights of internally displaced persons, February 6, 2012, http://www.ohchr.org/Documents/Issues/IDPersons/A.HRC.19.54.Add%202_en.pdf (accessed February 4, 2013).

and assist. However, the government appears not to have taken any meaningful step to locate and assist them. For instance, there is no government data that records IDPs by ethnicity. Citing the “de facto exclusion” of roughly 314,000 “integrated IDPs” from any “assistance, protection or durable solutions,” the UN Special Rapporteur on the human rights of internally displaced persons called on Kenya in February 2012 to develop “accurate, efficient and disaggregated data-collection and database/registration systems which are comprehensive and inclusive of all categories of IDPs.”⁸⁴

A new law for IDPs, the Internally Displaced Persons Act, and a new national policy for IDPs, both passed in October 2012, can help with IDP protection and assistance but they need to be rigorously implemented by the government.

Even government officials confirmed that the national government was favoring displaced Kikuyus. A senior official in the Ministry of Internal Security told Human Rights Watch that the Ministry for Special Programmes had ignored repeated warnings about the dangers of its discriminatory policies in Rift Valley, adding: “There seems to be resistance to any suggestion that this kind of bias should be changed.”⁸⁵

An official at the Ministry for Special Programmes was more direct. “The entire government machinery is Kikuyu and this machinery is favoring the Kikuyu on the ground,” he said.⁸⁶

Human Rights Watch found numerous examples of discriminatory resettlement assistance across Nakuru and Uasin Gishu counties in the Rift Valley that disproportionately benefitted members of the Kikuyu community. In Ndefo area in the Njoro constituency of Nakuru county, for instance, according to a joint civil society and Kenyan government report, the government built 908 housing units for Kikuyu IDPs on one side of a road and 34 on the other side for Kalenjin, even though all communities in the area were affected by violence and had similar numbers of displaced people.⁸⁷

⁸⁴ Report of the United Nations Special Rapporteur on the human rights of internally displaced persons, February 6, 2012.

⁸⁵ Human Rights Watch interview with official from Ministry of Internal Security, place and date withheld.

⁸⁶ Human Rights Watch interview with official from Ministry for Special Programmes, place and date withheld.

⁸⁷ Kenya National Commission on Human Rights, “Summary report of the status of internally displaced persons in South Rift region,” 2011.

In the Kuresoi area of Nakuru county—one of the areas most affected by the 2007-2008 violence—the government resettled Kikuyu IDPs displaced from Kuresoi and other areas in and around Sanyo, giving them new houses and tilling land for them with tractors. In the same area, an equally large group of Kalenjin displaced from 2007-2008 has received no government support.⁸⁸

The government has also resettled some Kikuyu IDPs in the middle of Kalenjin-inhabited areas, such as Sanyo and Banita in Rongai, without adequately consulting the host communities, local community leaders said.⁸⁹ In both locations, Human Rights Watch saw newly built homes and freshly dug roads for resettled Kikuyu. Local officials and Kalenjin community leaders said the resettlement had caused great resentment among local Kalenjin, who said they fear the government is trying to alter demographics prior to the March elections.⁹⁰

Two government officials in Nakuru county, as well as Kikuyu community members, told Human Rights Watch that the government also has a practice of giving internally displaced Kikuyu more than one house per family, even though the majority of displaced Kalenjin in the county have received none.⁹¹ A report prepared by the government-funded Kenya National Commission for Human Rights made similar observations in 2011.⁹²

The government said it is treating all IDPs equally. “The government has not skewed its resettlement program in favor of any particular community,” the government said in response to a January 2013 Human Rights Watch statement about discriminatory IDP policies.⁹³ “The resettlement has embraced all affected communities.”⁹⁴

⁸⁸ Human Rights Watch interviews with farmer, Kuresoi, October 23, 2012; a government-appointed chief, Mauche, October 22, 2012; and a local official of the Kenya National Commission on Human Rights, Nakuru, October 25, 2012.

⁸⁹ Human Rights Watch interviews with a Peace Corp official, Nakuru, October 24, 2012; and a resettled Kikuyu IDP, Rongai, October 25, 2012.

⁹⁰ Human Rights Watch interview with Kalenjin elder, Mauche, October 22, 2012.

⁹¹ Human Rights Watch interviews with official from the Ministry of Internal Security, place and date withheld; an official from Ministry for Special Programmes, place and date withheld; and a Kikuyu farmer, Kuresoi, October 25, 2012.

⁹² Kenya National Commission for Human Rights, *Summary Report of the Status of Internally Displaced Person in South Rift Region*, 2011.

⁹³ “Kenya: Discrimination Against Rift Valley Displaced,” Human Rights Watch news release, January 17, 2013, <http://www.hrw.org/news/2013/01/17/kenya-discrimination-against-rift-valley-displaced>.

⁹⁴ Ministry for Special Programmes, “Government Not Discriminating against Displaced People,” *Daily Nation*, January 24, 2013.

Early Warning Signs

Possibilities of violence in 2013 remain high in the Rift Valley and, according to members and elders of both the Kikuyu and Kalenjin communities, minor disagreements at either the local or national level could trigger serious violence. Local government officials told Human Rights Watch that the political unity between Uhuru Kenyatta and William Ruto exists only at the national level because significant mistrust lingers between the Kikuyu and the Kalenjin at the local level.⁹⁵

In the central Rift Valley that has been plagued by political violence since 1992, local officials and residents told Human Rights Watch how the usual indicators of violence have started appearing. Inter-tribal theft cases, especially livestock theft, have increased.⁹⁶ Local government officials said both communities have made bellicose claims, with each community promising, as one local security official put it, “not to be caught unprepared this time” and “not to be the ones running away.”⁹⁷

Members of both the Kalenjin and Kikuyu communities, and local officials, said that politicians from both communities are holding secret night meetings with supporters and—though Human Rights Watch has no evidence that the meetings are being used to plan violence—the fact that the meetings are apparently exclusive to each ethnic group has heightened suspicion. A government security official told Human Rights Watch that the police had summoned some political leaders and cautioned them about night meetings. “The meetings are very secretive and only members of one community are allowed,” he said.⁹⁸

In 2007-2008 the two communities fought each other with crude weapons, such as spears, machetes, wooden batons, stones, bows and arrows.⁹⁹ But local residents, community elders, and local government officials told Human Rights Watch that both sides are now preparing to use guns. A government official coordinating security matters in the central

⁹⁵ Human Rights Watch interviews with government official, Eldoret, November 29, 2012, and an employee of an international humanitarian organization, Eldoret November 25, 2012.

⁹⁶ Human Rights Watch interviews with Luhya farmer, Kuresoi, October 23, 2012, a Kikuyu farmer, Kuresoi, October 23, 2012, and a senior government official, Nakuru, October 25, 2012.

⁹⁷ Human Rights Watch interview with official from the Ministry of Internal Security, date and place withheld.

⁹⁸ Human Rights Watch interview with official from the Ministry of Internal Security, date and place withheld.

⁹⁹ See Commission of Inquiry into Post-Election Violence final report, int/report/kenya/kenya-commission-inquiry-post-election-violence-cipev-final-report.

Rift Valley told Human Rights Watch that the communities have acquired firearms, mostly from Somali merchants. It is incumbent on the police to take these security concerns into consideration and to take all steps to conduct policing in the Rift Valley without regard for ethnicity or political affiliation.

North Eastern and Eastern Kenya

North and northeast Kenya have long suffered instability and violence, marked by tension and occasional clashes between the government and ethnic Somalis, including a separatist movement and civil war in neighboring Somalia. North Eastern region, formerly known as North Eastern Province (NEP), has also seen violent altercations between clans. A major government operation aimed at disarming warring clans in late 2008 involved the widespread and indiscriminate detention and beating of up to 1,200 men and the rape of a dozen women.¹⁰⁰

The adoption of the new constitution and the devolution of elected positions have inadvertently encouraged competition among clans as they compete for power. Inter-clan violence in 2012 left at least 120 people dead and 120,000 displaced. According to local residents and civil society activists, the police repeatedly failed to intervene, especially to arrest the clan elders and local politicians who are widely regarded as instigators of the violence.

North Eastern region is also deeply impacted by the situation in Somalia and the violent activities of al-Shabaab in Kenya. Following the October 2011 intervention in Somalia by Kenyan forces, al-Shabaab has targeted Kenyan security forces and launched grenade and gun attacks at public places in Nairobi, Mombasa, and northern Kenya, including churches, mosques, and buses. Kenyan military and police have repeatedly responded with excessive force, arbitrary detentions and mistreatment in custody of ethnic Somali Kenyans and Somali refugees. Human Rights Watch documented such abuses by government forces in Wajir, Mandera, Garissa, and Dadaab refugee camps in 2011 and 2012.¹⁰¹

The danger of violence around the 2013 elections is increased by a number of Kenyan youth—perhaps a few hundred—who were recruited and trained by the Kenyan military to

¹⁰⁰ Human Rights Watch, “*Bring the Gun or You’ll Die*”: Torture, Rape and other Serious Human Rights Violations by Kenyan Security Forces in the Mandera Triangle, June 29, 2009, <http://www.hrw.org/reports/2009/06/28/bring-gun-or-you-ll-die>.

¹⁰¹ Human Rights Watch, *Criminal Reprisals*.

serve in Somalia, but who either never went to Somali, or returned to Kenya and joined the militia of their respective clan.¹⁰²

Human Rights Watch visited Mandera and Garissa in North Eastern as well as Isiolo and Moyale in the Eastern region, interviewing 54 people, including civil society and youth activists, government officials, clan elders, women's groups, and victims of and participants in the violence in 2012. Almost all interlocutors said they feared violence around the March 2013 elections and were worried that the Kenyan police and government were not taking the necessary steps that would ensure violence-free elections.

Inter-clan Violence

Serious inter-clan violence erupted in 2012, particularly in Isiolo and Moyale in Eastern Region and in Mandera in North Eastern Region. Local residents, civil society activists, and elders and members of various tribes told Human Rights Watch that the police repeatedly failed to take adequate measures against the violence, including the arrests of key perpetrators.

A wide spectrum of people interviewed by Human Rights Watch, from youth activists to clan elders, claimed that local politicians from different clans have financed fighters for their own political aims.¹⁰³ A 50-year-old civil servant in Isiolo who is also an elder in the Borana community explained:

In most cases, it is because they want to be seen to be defenders of their communities and thus get votes. They give money, which is used to feed and pay fighters... It is done by politicians from all communities. They use councilors who organize the violence.¹⁰⁴

Prime Minister Odinga attributed the clashes between communities to the competition for elected positions at the county level. "One community can provide the governor, the other provides the senator, another could produce the MP, the other produces the women's

¹⁰² For background on the recruitment process, including of Somali refugees in the Dadaab camps, see "Kenya: Stop Recruitment of Somalis in Refugee Camp," Human Rights Watch news release, October 22, 2009, <http://www.hrw.org/en/news/2009/10/22/kenya-stop-recruitment-somalis-refugee-camps>.

¹⁰³ See also Judie Kaberia, "Police Blame Politicians for NEP Violence," *Capital News*, August 22, 2012.

¹⁰⁴ Human Rights Watch interview with Borana civil servant, Isiolo, November 21, 2012.

representative,” he said when visiting Moyale in February 2012 at the peak of the violence. “You don't have to kill each other for these positions.”¹⁰⁵

Isiolo

Violence erupted in Isiolo, in upper Eastern region, in November 2011 and persisted until January 2012, by which time at least 20 people had been killed and close to 10,000 displaced. The fighting pitted the Turkana community against the Somali clans in the region—mostly made up of the Arjuran, Issack, and Harti clans—who had support from the Borana community.¹⁰⁶ The fighting apparently started as a dispute over grazing land and cattle rustling, but with time it became clear that the fighting was about county politics and the coming general elections.¹⁰⁷

Community elders, government officials, and local activists said they are expecting the worst as elections approach because the various clans all have organized militias.¹⁰⁸

Two fighters from the Borana clan in Isiolo told Human Rights Watch that their community raises funds for its fighters.¹⁰⁹ A Borana elder explained:

As a member of the Borana Council of Elders in Isiolo, part of my responsibility is to ensure we have a strong team that can defend us. This we can only achieve by maintaining a group of fighters who are armed and well drilled. We sell animals to buy weapons. One camel can fetch us two G3 rifles.¹¹⁰

¹⁰⁵ “Raila calls peace talks over Moyale fighting,” Daily Nation, February 23, 2012. <http://www.nation.co.ke/News/Raila-calls-peace-talks-over-Moyale-fighting/-/1056/1333254/-/ujapyq/-/index.html> (accessed January 27, 2013).

¹⁰⁶ Ali Abdi, “Politics of Land to Blame for Isiolo Violence,” The Standard, November 5, 2011, <http://www.standardmedia.co.ke/?articleID=2000046179&pageNo=1> (accessed February 4, 2013).

¹⁰⁷ See Leonard Mutinda, “Kibunjia Links Clashes to Election Campaigns,” Daily Nation, January 8, 2012, <http://www.nation.co.ke/News/politics/Kibunjia-links-clashes-to-election-campaigns/-/1064/1302196/-/cn9a3l/-/index.html> (accessed February 4, 2013). The other communities in NEP include the Meru, Samburu, and Garre clans, who all have a presence also in Ethiopia and Somalia.

¹⁰⁸ Human Rights Watch interviews, Mandera, October 7, 2012, and with Borana clan elder, Isiolo, November 26, 2012.

¹⁰⁹ Human Rights Watch interview with two Borana fighters, Merti Village, Isiolo, November 26, 2012.

¹¹⁰ Human Rights Watch interview with Borana elder, Isiolo, November 26, 2012.

“The service we offer is crucial to the community, we fight for them,” one Borana fighter told Human Rights Watch. “Our activities are blessed by the elders and when we want meals from a homestead, we go directly to the elder in the homestead.”¹¹¹

The Turkana community, which fought the Borana in 2012, also has a militia. A Turkana man who has contributed money to support the fighters explained how the fighting had become political:

The Turkana have been a minority, but now our population has grown. In the 2007 election, a Turkana candidate came second and the Borana realized we could take the seat in 2013. They started attacking us in order to displace us.... In the past we did not have guns, but now we have guns as well as a group of young fighters on standby.¹¹²

The police in Isiolo failed to respond to the violence adequately, local residents and human rights activists said. First, they ignored reports of impending violence. Then, when violence did erupt, the police failed to investigate the role of tribal elders and politicians, who many people thought were inciting the violence.¹¹³ One resident of Isiolo, for example, told Human Rights Watch that he personally warned the police of impending violence, and knows of many others who did the same. “The police did nothing,” he said. “When violence broke out, we called police but they asked us to fuel their car so that they could come.”¹¹⁴ In January 2012, police reportedly charged 26 people with incitement to violence in Isiolo and Moyale, among them chiefs and councilors.¹¹⁵ All 26 of these people appear to have been released for lack of evidence.¹¹⁶

¹¹¹ Human Rights Watch interview with Borana fighter, Merti village, Isiolo, November 26, 2012.

¹¹² Human Rights Watch interview with Turkana man, Isiolo, November 22, 2012.

¹¹³ Human Rights Watch interviews with Borana elder, Isiolo, November 26, 2012, and Gabbra elder, Isiolo, November 25, 2012.

¹¹⁴ Human Rights Watch interview with Borana elder, Isiolo, November 23, 2012.

¹¹⁵ “Police arrest 26 suspects over Isiolo and Moyale attacks,” Daily Nation, January 19, 2012, <http://www.nation.co.ke/News/Police-arrest-26-suspects-over-Moyale-Isiolo-attacks-/-/1056/1310510/-/ikeidxz/-/index.html> (accessed February 4, 2013).

¹¹⁶ Human Rights Watch telephone interviews with journalist and human rights activist in Isiolo, February 6, 2013.

Moyale

Violence in Moyale between November 2011 and February 2012 pitted the Gabra and Borana communities against one another. Members of the Garre clan, one of the Somali clans in the region, joined on the Gabra side. The clashes killed at least 60 people and displaced about 20,000.¹¹⁷

As with other violence in the region, the conflict started with a dispute over grazing land, but appears to have been influenced by Marsabit county politics.¹¹⁸

A Borana elder, who is also a member of the district peace committee and has participated in numerous peace meetings in the area, told Human Rights Watch that Kenyan security forces were aware of the various clan militias but were not doing enough to stop them. “The existence of these clan armies is known even to Kenyan security, but they just don’t bother,” he said.¹¹⁹

A Gabra elder who has attended Gabra clan meetings to discuss how to respond to attacks from other clans also accused Kenya’s security agencies of inaction. “The government just has not taken protection of people’s lives and property here seriously,” he said.¹²⁰

A trader in Moyale town, whose Gabra clan has been involved in fighting, said that the police were very slow to respond when the violence began in November 2011. “The fighting went on for days without police doing anything,” he said. “We started seeing police react and arrest perpetrators after several days of fighting.”¹²¹

¹¹⁷ UNOCHA Eastern Africa. “Horn of Africa Crisis Situation Report” No.29, December 30, 2011, http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_HoA_SitRep_No._29%5B1%5D.pdf (accessed February 4, 2013).

¹¹⁸ See “Politics to Blame for Violence in Isiolo, Moyale,” *The Star*, January 31, 2012, <http://www.the-star.co.ke/news/article-32147/politics-blame-clashes-isiolo-moyale> (accessed February 4, 2013). Moyale is in Marsabit county, which is also home to other small communities, such as the Burji, Rendille, Sakuye, Mirile, and the Shangila.

¹¹⁹ Human Rights Watch interview with peace committee member, Moyale, November 25, 2012.

¹²⁰ Human Rights Watch interview with Gabra elder, Moyale, November 25, 2012.

¹²¹ Human Rights Watch interview with trader, Moyale, November 25, 2012.

The police eventually arrested and charged 26 people, among them local chiefs and councilors, with incitement to violence, murder and arson, but all of them appear to have been released due to lack of evidence.¹²²

Mandera

Mandera has three communities—the Garre, Degodia, and Murale—all of whom also live in Ethiopia and Somalia. Violence between members of the Garre and majority Degodia communities flared in Somalia in late 2011 and crossed the border into Kenya in February 2012.¹²³ The conflict escalated in July 2012 when Garre attacked Degodia for allegedly blocking a common passage between the two communities. By the end of August 2012, 40 people from both communities were dead and up to 60,000 were displaced.

A Garre clan elder with knowledge of the violence told Human Rights Watch that the fighting was linked to control of Mandera North constituency.¹²⁴ Degodia and Murale clan elders also said that political competition had fueled the violence. “We started hearing that there will be violence in January 2012,” one Degodia clan elder explained. “The issue was the newly created Mandera North constituency. The Degodia and Garre started holding meetings on how to capture the seat.”¹²⁵ A Murale clan elder agreed. “The Garre want to take political seats in Mandera, including the newly created Mandera North constituency, and they are displacing other clans so that they don’t vote,” he said.¹²⁶

In Madera, Human Rights Watch heard from community elders, civil society activists, and government officials how communities, expecting the worst as elections approach, have put militias on standby in case fighting breaks out.¹²⁷ A Garre clan elder and a Degodia clan elder both said that their clans have fighters ready to respond to attacks from hostile clans because the police do not respond to their calls for protection.¹²⁸

¹²² “Police arrest 26 suspects over Moyale, Isiolo attacks,” *Daily Nation*, January 19, 2012; and Human Rights Watch telephone interviews with journalist and human rights activist in Isiolo, February 6, 2013.

¹²³ “Law Should Deal Firmly with Violence Inciters,” *The Standard*, August 26, 2012, http://www.standardmedia.co.ke/?articleID=2000064791&story_title=Law-should-deal-firmly-with-violence-inciters (accessed February 5, 2013).

¹²⁴ Human Rights Watch interview with Garre clan elder, Mandera, October 7, 2012.

¹²⁵ Human Rights Watch interview with Degodia clan elder, Mandera, October 6, 2012.

¹²⁶ Human Rights Watch interview with Murale clan elder, Mandera, October 6, 2012.

¹²⁷ Human Rights Watch interviews in Mandera, October 2012.

¹²⁸ Human Rights Watch interviews with Garre clan elder, Mandera, October 6, 2012, and Degodia can elder, Mandera, October 6, 2012.

The councils of elders of the various communities are central to the fundraising and organizing for the fighting, local residents and elders from various communities said. One Garre clan elder explained:

Everyone in the community contributes depending on their ability. Even women who just sell groceries contribute. Those who coordinate the contributions and ensure everyone, including the politicians, has given their share are elders like me. Those who refuse to contribute are branded traitors by the clan.¹²⁹

Even members of parliament must contribute, elders from various communities said. The Garre elder continued: “The MPs cannot refuse to contribute since they want votes and thus do not want to be branded traitors by their clans.”

Abuses Connected to Operation Linda Nchi

In October 2011 the Kenyan military entered Somalia (Operation Linda Nchi, or “Protect the Country”) in pursuit of al-Shabaab. Since then al-Shabaab and its supporters have targeted Kenyan security forces and civilians inside Kenya. In response to these attacks, Kenyan police and military units have often violated human rights by arbitrarily arresting and using excessive force against ethnic Somalis and other people who were in the area of the attack. These abuses by security forces have mostly impacted communities in areas bordering Somalia, such as Garissa, Wajir, Dadaab, Mandera, and El Wak. As elections approach, al-Shabaab attacks on police and other targets are likely to continue. In December 2012 a bomb exploded at a voter registration center in the Dadaab refugee camp, injuring one person.¹³⁰

A May 2012 report by Human Rights Watch documented the use of excessive force, indiscriminate detention, mistreatment in custody, and harassment by security forces across northern Kenya.¹³¹ Since the publication of that report numerous other incidents

¹²⁹ Human Rights Watch interview with Garre clan elder, Mandera, October 6, 2012.

¹³⁰ See “Kenya Poll Registration Centre Attacked,” Agence-France Press, December 14, 2012, <http://www.iol.co.za/news/africa/kenya-poll-registration-centre-attacked-1.1441237> (accessed January 25, 2013).

¹³¹ See Human Rights Watch, *Criminal Reprisals*.

have taken place, including excessive use of force by police in late May,¹³² a heavy-handed military response to an attack in Garissa town in October and November that injured at least 52 people,¹³³ and another use of excessive force in response to an IED attack on a police vehicle in Mandera that left at least nine people injured in September 2012.¹³⁴

In October and November 2012 Human Rights Watch interviewed 29 people in Garissa and Mandera, including victims of abuses by security forces, political leaders, and human rights defenders. In Mandera three witnesses and four victims told Human Rights Watch that police had beaten and mistreated people in the nearby village of Bulla Power following a morning IED attack on a police vehicle on September 15, 2012. A woman who was beaten by police that day explained what happened:

I was sitting by the fire holding my six-month-old child when five officers stormed into my house. They kicked the child's milk from the fire. When I stood up, one of the police officers kicked me and the child fell on the floor. They started kicking and beating me with a big stick they had. I fell down and lost consciousness. It has been two weeks since and I still feel sharp pain in the hips.¹³⁵

An area civic leader, councilor Noor Dais Sheikh, who witnessed some of the attacks and later helped victims file complaints with the police, described the level of police brutality. "They were not asking questions," he said of the police. "They would break into the house and start beating everyone there."¹³⁶ Sheikh said the police also beat women in their homes. "They would find women cooking lunch, kick the food off the fire, and start beating the woman," he explained. "They did this to several women." One female victim was eight months pregnant but told Human Rights Watch that the police whipped her, and left her on the ground writhing in pain.¹³⁷

¹³² "Kenya: Refugees Describe Abuse by Police," Human Rights Watch news release, May 23, 2012, <http://www.hrw.org/news/2012/05/23/kenya-refugees-describe-abuse-police>.

¹³³ "Kenya: End Security Force Reprisals in North," Human Rights Watch news release, November 22, 2012, <http://www.hrw.org/news/2012/11/22/kenya-end-security-force-reprisals-north>.

¹³⁴ "Kenya: End Police reprisals in Northern region," Human Rights Watch news release, October 25, 2012, <http://www.hrw.org/news/2012/10/25/kenya-end-police-reprisals-northern-region>.

¹³⁵ Human Rights Watch interview, name withheld, Mandera town, October 7, 2012.

¹³⁶ Human Rights Watch interview with councilor Noor Dais Sheikh, Mandera, October 7, 2012.

¹³⁷ Human Rights Watch interview, name withheld, Mandera, October 7, 2012.

In Garissa, where Human Rights Watch documented incidents of indiscriminate police reprisals in 2012, 12 witnesses told Human Rights Watch how police and the military beat, mistreated, and even shot at people after gun or grenade attacks on security officers.¹³⁸ The Kenyan military responded excessively on November 19, 2012, for example, after an attack in which three soldiers were shot dead in Garissa, apparently by al-Shabaab. Twelve witnesses told Human Rights Watch that the Kenyan army surrounded Garissa, preventing anyone from coming or going, and attacked residents. The military shot randomly at people, witnesses said.¹³⁹

An employee of Garissa Provincial Hospital said that at least 52 people with severe injuries had been admitted there on November 19 and 20.¹⁴⁰ At least eight of those admitted had gunshot wounds. The soldiers also set fire to businesses, among them Muqti market, the Alwaqaf building, and Maua Posho Mill, witnesses said.

¹³⁸ “Kenya: End Security Force Reprisals in North,” Human Rights Watch news release, November 22, 2012, <http://www.hrw.org/news/2012/11/22/kenya-end-security-force-reprisals-north>.

¹³⁹ Human Rights Watch interviews in Garissa, November, 2012.

¹⁴⁰ Human Rights Watch interview with Garissa Provincial Hospital employee, November 20, 2012.

Central Region

Central region, with more than four million inhabitants, is a traditional Kikuyu area. The area witnessed little violence in 2007-2008 but tensions rose as Kikuyu displaced from other areas arrived with tales of killings and other crimes. Warnings and threats to the non-Kikuyu population encouraged many from the Luo, Luhya, and Nandi communities to leave, and the police failed to provide protection.¹⁴¹

The largely homogenous population means there is less chance for inter-ethnic violence in Central region but the competitions for political office are still intense. The biggest problem, and the main danger of violence, is the use of criminal gangs by politicians to mobilize support, and the police's failure to enforce the law.

Human Rights Watch spent two weeks in Central region in November and December 2012 talking to 48 people, including community elders, political activists, women, youth, and members of armed gangs. Almost all interlocutors complained that, as with previous elections, politicians and candidates for office have hired gangs to intimidate voters and political opponents.¹⁴² They said police have taken no action against these illegal groups despite the passage of a law against organized groups in 2010.¹⁴³

Most interlocutors also said that, on the level of national politics, it is extremely difficult in Central region to support a candidate for president other than Uhuru Kenyatta, who is Kikuyu.

A political activist and Kenyatta supporter explained the general message to the Kikuyu from the Kenyatta camp. "Most people here have been told that if Raila [Odinga] wins then he will ensure that Uhuru Kenyatta is jailed by the ICC after which he will begin to target

¹⁴¹ Human Rights Watch, *Ballots to Bullets*.

¹⁴² See Kenya National Commission for Human Rights, "On the Brink of The Precipice," http://www.knchr.org/Portals/o/Reports/KNCHR_REPORT_REPORT_ON_THE_BRINK_OF_THE_PRECIPE.pdf.

¹⁴³ Prevention of Organized Crimes Act, Law number 6 of 2010, http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=oCDYQFjAA&url=http%3A%2F%2Fwww.kenyalaw.org%2Fkplr%2Ffileadmin%2Fpdfdownloads%2FActs%2FPrevention_of_Organised_Crimes_Act__2010.doc&ei=tbEPUftuFK6SoQWp64HYCA&usg=AFQjCNH86dMAMySoYRKyTNxW5V_CG82v5Q&bvm=bv.41867550,d.dzk (accessed February 4, 2013). Known as POCA, the law imposes stiff penalties on members of organized criminal groups, including seizure of property and assets of both the group and individual members. It also imposes penalties for intimidation of and threats against witnesses.

the Kikuyu as a community,” he said. “So there is strong fear of a Raila presidency and this election is seen as the only way to save both Uhuru and the Kikuyu.”¹⁴⁴

Other political activists in Central region complained about being branded Odinga supporters and thus traitors to the Kikuyu because they voiced opinions different from those held by Uhuru Kenyatta and his supporters.

Mungiki, Militias, Gangs and Voter Intimidation

Residents of Central region told Human Rights Watch how politicians running for office are using local gangs and militias, including the violent Mungiki to intimidate voters.¹⁴⁵ A farmer in Kagumo explained how it works in his community:

These gangs get paid by politicians. They move from door to door asking people to support one candidate. We do not argue with them. We just agree with what they say because arguing with them can cost you a life or that of your family members.¹⁴⁶

A businesswoman in Mathira also said gangs had tried to influence her vote. “What we see the gangs doing is they come to ask us to vote for a particular politician and if you don’t agree with them they threaten your life,” she said.¹⁴⁷

A man who has lived and done business in Kiambu county also explained how the gangs use threats and intimidation:

Members of the gangs go around to people’s houses asking us to vote for that one politician and if we refuse they threaten to do something bad. If

¹⁴⁴ Human Rights Watch interview, name withheld, Karatina, Nyeri, December 1, 2012.

¹⁴⁵ The Mungiki has evolved since the early 1980s, when it was started as a religious and cultural movement in Laikipia, Rift Valley, by sons and daughters of former Mau Mau fighters. The Mungiki’s initial mission was to revive the land agenda that drove the Mau Mau war of independence and to restore adherence to Kikuyu culture. The gang has since shifted from that agenda and now has political connections, plus repeated allegations of links to violent criminal groups who control public transport in Nairobi, central Kenya and parts of the Rift Valley. See Prof. Peter Mwangi Kagwanja, “Facing Mt Kenya or Facing Mecca? The Mungiki, Ethnic Violence and the Politics of Moi Succession in Kenya, 1987 – 2002,” *African Affairs*, Vol. 102, Issue 406, 2003, <http://afraf.oxfordjournals.org/content/102/406/25.short> (accessed February 4, 2013).

¹⁴⁶ Human Rights Watch interview with farmer, Kiangai, December 4, 2012.

¹⁴⁷ Human Rights Watch interview with Kikuyu businesswoman, Mathira, November 28, 2012.

you go against their wishes they plan to attack you. They can kill if you don't follow what they say. Central Kenya has in the past witnessed some of the cruelest murders of people who disagree with these gangs.¹⁴⁸

Elders, youth, and political activists in Central region told Human Rights Watch that the fear of a Raila Odinga presidency is so great that some political leaders are suggesting they will not hand over power to him, if he wins. One elder said:

The gangs might cause violence especially if the one who they support loses.... I think everyone here supports Uhuru Kenyatta. But they have been told that it is Odinga who is trying to stop Kenyatta from running for president. To people here, Raila [Odinga] is a big enemy of the Kikuyu and he hates the Kikuyu. He can do bad things to the Kikuyu if he takes power. No one here believes Raila can win. They are being told by leaders that if Raila wins then power handover will not take place and people are ready to support that move.¹⁴⁹

Government Response

From the 1990s to 2005, criminal gangs in Central region enjoyed close ties with senior officials in government, whose patronage made it difficult for police to investigate and prosecute gang members.¹⁵⁰ But the relationship between officials and gangs, especially the Mungiki gang, deteriorated in 2005 and the state began to crackdown on gang activities. In 2007 then-Minister for Internal Security John Michuki issued a shoot to kill order for Mungiki members, saying the police will “wipe them out.”¹⁵¹ The order led to serious human rights violations, including, as the Kenya National Commission on Human Rights reported, the extrajudicial killing of over 500 gang members by police between 2005 and 2007.¹⁵² Since then the government has taken no clear measures to ensure the

¹⁴⁸ Human Rights Watch interview with shoe shiner, Gatundu, Kiambu, December 4, 2012.

¹⁴⁹ Human Rights Watch interview with Kikuyu elder, Mathira, November 28, 2012.

¹⁵⁰ For an overview of the relationship between politicians and gangs see David Anderson, “Vigilantes, Violence and the Politics of Public Order in Kenya,” *African Affairs*, Vol. 101, No. 405, 2002, <http://afraf.oxfordjournals.org/content/101/405/531.abstract> (accessed February 4, 2013).

¹⁵¹ “We Will Wipe Them Out, Warns Michuki,” *Daily Nation*, June 6, 2007, <http://allafrica.com/stories/200706060231.html> (accessed February 4, 2013).

¹⁵² See Kenya National Commission on Human Rights, “The Cry of Blood: Report on Extrajudicial Killings and Disappearances,” September 2008, http://wikileaks.org/wiki/Kenya:_The_Cry_of_Blood_-_Report_on_Extra-

identification and prosecution of those behind the killings. After the 2007-2008 election-related violence, however, the Commission of Inquiry into Post-Election Violence said that links between Mungiki and some politicians began to return, limiting again the ability of the police to investigate this group.¹⁵³

Some of those who tried to investigate the Mungiki have been killed. In 2008 a key police source on Mungiki violence for the Kenya National Commission on Human Rights investigation on extrajudicial killings and disappearances, Bernard Kiriinya, was assassinated.¹⁵⁴ The next year two other human rights defenders who were investigating the same issue were murdered.¹⁵⁵

The International Criminal Court prosecutor has been investigating the links between government officials and Mungiki in the post-election violence of 2007-2008. However, the prosecutor has complained about the intimidation of witnesses.¹⁵⁶

In parts of Central region such as Karatina, Human Rights Watch heard how residents have lost faith in police and the provincial administration for failing to take action against gangs. A businessman from Karatina said: “Most people just don’t bother to report threats from these gangs to police, because they will not do anything. Others have accepted protection from the gangs, so they report cases to the gangs, who will mete out instant justice, rather than report to police.”¹⁵⁷

Judicial_Killings_and_Disappearances,_Sep_2008 (accessed January 25, 2013). The report is not available on the Kenya National Commission on Human Rights website.

¹⁵³ See Commission of Inquiry into Post-Election Violence final report, int/report/kenya/kenya-commission-inquiry-post-election-violence-cipev-final-report.

¹⁵³ See Leo Odera Omolo, “Sungu Sungu gangsters killing innocent people in Kisii must be stopped by the government,” *Africa Press International*, <http://africanpress.me/2008/06/21/sungu-sungu-gangsters-killing-innocent-people-in-kisii-must-be-stopped-by-the-government/> (accessed February 4, 2013).

¹⁵⁴ Xan Rice, “UN Condemns Executions Carried out by Kenya Police,” *The Guardian*, February 25, 2009, <http://www.guardian.co.uk/world/2009/feb/25/un-kenya-executions> (accessed February 4, 2013).

¹⁵⁵ Frontline Defenders, “Kenya: Murder of human rights defenders, Mr Oscar Kamau Kingara and Mr John Paul Oulu “GPO,” March 6, 2009, <http://www.frontlinedefenders.org/node/1836> (accessed February 4, 2013).

¹⁵⁶ “Statement of ICC Chief Prosecutor Fatou Bensouda,” *The Standard*, October 22, 2012, http://www.standardmedia.co.ke/?articleID=2000069022&story_title=the-verbatim-statement-of-icc-s-bensouda (accessed February 4, 2013).

¹⁵⁷ Human Rights watch interview with businessman, Karatina, November 29, 2012.

Nyanza Region

Nyanza was one of the areas most hit by violence after the 2007 election results were announced. It recorded at least 115 civilian deaths, over 90 percent of which were caused by police.¹⁵⁸

In November 2012, Human Rights Watch spent seven days in Nyanza, talking to 21 people, including political activists, peace campaigners, youth leaders, business people, and members of local, organized gangs that have participated in violence. They said violence could erupt again as the stakes around elections are high. They pointed to the existence of strong and well-organized armed gangs that are being employed and used by political parties and candidates. The police, meanwhile, have proven unwilling and unable to confront these powerful groups, and many people in Nyanza believe that the police are protecting criminal groups. The one time in 2012 when the police did actively intervene, after the murder of a political candidate sparked riots in October, eight protesters died following police use of excessive force, witnesses to the violence claim. Four of the protesters died when police fired tear gas into a container where they were hiding, setting it on fire.

Located in the western part of Kenya, Nyanza region has, as of April 2012, 21 parliamentary constituencies, out of which 11 are predominantly Luo. The other 10 are occupied by other tribes, such as the Kisii and the Kuria.¹⁵⁹ The Kisii constituencies have been plagued by insecurity due to a 10-year-old gang called Sungu Sungu, which started off as a community vigilante group and has been associated with criminal activity and killings in the Kisii region.¹⁶⁰

Violence in the Luo Nyanza has been largely confined to Kisumu town. Residents explained how Kisumu has two main gangs—American Marine and China Group—each of them

¹⁵⁸ See Commission of Inquiry into Post-Election Violence final report, int/report/kenya/kenya-commission-inquiry-post-election-violence-cipev-final-report.

¹⁵⁹ Ibid.

¹⁶⁰ See Leo Odera Omolo, "Sungu Sungu gangsters killing innocent people in Kisii must be stopped by the government," Africa Press International, June 21, 2008.

affiliated to one of the main national political actors. Peace activists and members of these gangs told Human Rights Watch how the gangs get paid by political actors.¹⁶¹

Kisumu Gangs

2012 saw numerous incidents of violence in Kisumu town, with the most notable being the clashes in September and October 2012 between American Marine and China Group.¹⁶²

Kisumu residents said that the American Marine is made up of youth in Kisumu, largely the van drivers, motorcycle and bicycle taxi operators, handcart pushers, and small business owners in town. Its main base is Kondele, from where the violence erupted after the 2007 elections.¹⁶³

Residents spoke of how American Marine has controlled Kisumu for the past five years, deciding who can enter the transport business and which politician can address a crowd.¹⁶⁴ According to an activist of the Orange Democratic Movement and an American Marine member, the gang openly supports the prime minister, and informally provides security for ODM officials visiting Kisumu.¹⁶⁵

Interviewees told Human Rights Watch that a number of American Marine members also hold positions in the prime minister's ODM party, while others are usually incorporated into the ODM security detail when a senior ODM official visits the town.¹⁶⁶

China Group is a new gang in Kisumu, comprised mostly of young property owners. Residents and human rights activists in Kisumu said the gang is more welcoming to politicians critical of the prime minister. Several residents claimed that China Group

¹⁶¹ Human Rights Watch interviews, Nyanza, November 11 and 12, 2012.

¹⁶² See "Residents Raise Alarm as Kisumu Falls to Gangs," *Daily Nation*, October 8, 2012, <http://www.nation.co.ke/News/Residents-raise-alarm-as-Kisumu-falls-to-gangs/-/1056/1528560/-/f7m64cz/-/index.html> (accessed February 5, 2013) and Manga Mosota, "Protests Over Insecurity in Kisumu," *The Standard*, October 29, 2012, <http://www.standardmedia.co.ke/?articleID=2000069501> (accessed February 5, 2013).

¹⁶³ See Human Rights Watch, *Ballots to Bullets*, p. 43.

¹⁶⁴ HRW interviews with Kisumu church minister, November 13, 2012 and peace committee member, Kisumu, November 11, 2012.

¹⁶⁵ Human Rights Watch interviews with ODM youth supporter, Kisumu, November 12, 2012, and American Marine member, Kisumu, November 12, 2012.

¹⁶⁶ Human Rights Watch interviews with Nyalenda businessman, researcher, and peace committee member, Kisumu, November 11, 2012.

invited and prepared the ground for William Ruto and Uhuru Kenyatta to visit Kisumu in February and September 2012, respectively.

September 2012 Clashes

On September 14, 2012, two days after Deputy Prime Minister Uhuru Kenyatta visited Nyanza, clashes broke out between American Marine and China Group. An American Marine member told Human Rights Watch that the dispute was over money. The China Group had paid American Marine not to oppose the visit, he said.¹⁶⁷

The clashes reportedly began with an argument on September 15 between an American Marine member, who is also an ODM youth leader, and three China Group members.¹⁶⁸ Three Kisumu residents who were not witnesses but said they heard about the incident from others told Human Rights Watch that the American Marine member was apparently leaving an ODM office when three China Group members attacked him with crude weapons.¹⁶⁹

According to an American Marine member, the following day a group of gang members went to visit their injured friend in Nightingale Hospital, where they planned retaliation:

A lot of ODM aspirants for various positions, serving councilors and officials came to the hospital that morning. They started saying TNA people had beaten their member. They said the TNA members in question were the China Group members. Among the ODM officials who were there was the late Shem Onyango Kwegu, an ODM parliamentary aspirant for the Kisumu Town West Constituency. I could see some coordination starting here, with phone calls being made amid a lot of consultations. After a few minutes, a group of youth came to the hospital with crude weapons.¹⁷⁰

¹⁶⁷ Human Rights Watch interview with American Marine member, Kisumu, November 12, 2012.

¹⁶⁸ See Peter Atsiaya, "Youth Groups Clash at Bus Park, Set Car Ablaze," *The Standard*, September 17, 2012, http://www.standardmedia.co.ke/?articleID=2000066327&story_title=Youth-groups-clash-at-bus-park,-set-car-ablaze (accessed February 5, 2013).

¹⁶⁹ Human Rights Watch interviews with American Marine member and civil society activist, Kisumu, November 12, 2012.

¹⁷⁰ Human Rights Watch interview with American Marine member, Kisumu, November 12, 2012.

That same day, some members of the American Marine demolished three butcheries owned by the head of China Group, a witness to the attacks said.¹⁷¹

During the violence the police failed to act. One of the American Marine members told Human Rights Watch that his fellow gang members even told the police that they would continue destroying property that belonged to the China Group. “A lot of business premises for China Group members in Kondele along Oginga Odinga road and at the main bus park were destroyed as police watched,” he said.¹⁷²

Four American Marine gang members said that they reported the incidents to the police but the police took no action.¹⁷³

Killing of an ODM Candidate

At around 9 a.m. on October 29, 2012, Shem Onyango Kwegu, an ODM parliamentary candidate for Kisumu Town West, was shot dead by unknown gunmen in the middle of Kisumu town.¹⁷⁴ Kwegu had been deeply involved in the peace meetings convened by the Kisumu district commissioner following the September conflict between China Group and American Marines.¹⁷⁵ Three days before Kwegu’s killing there had been two successive daytime killings of prominent personalities, one of them a doctor working with the Centre for Disease Control (CDC) in Kisumu. No arrests were made.¹⁷⁶

In response to Kwegu’s murder a group of young men went to protest at the police station. “We decided to go to the office of the police chief to ask why security had deteriorated,” a young man who participated said. “By the time we arrived at the police station, several other youth had joined in and we were now 35. But by the time we left the station, we were

¹⁷¹ Human Rights Watch interview with van driver, Kisumu, November 12, 2012.

¹⁷² Human Rights Watch interview with American Marine member, Kisumu, November 12, 2012.

¹⁷³ Human Rights Watch interviews, Kisumu, November 11 and 12, 2012.

¹⁷⁴ See Manga Mosota, “Protests Over Insecurity in Kisumu,” *The Standard*, October 29, 2012, <http://www.standardmedia.co.ke/?articleID=2000069501> (accessed February 5, 2013).

¹⁷⁵ Human Rights Watch interview with member of Kwegu’s campaign team, Kisumu, November 11, 2012.

¹⁷⁶ See Samuel Otieno, “Four die in Kisumu riots over Kisumu man’s killing,” *The Star*, October 30, 2012, <http://www.the-star.co.ke/news/article-93474/four-die-kisumu-riots-over-odm-mans-killing> (accessed February 5, 2013).

in the hundreds.”¹⁷⁷ According to the young man, the crowd started throwing stones at police. “That is how the riot started and it went on until 5 p.m.,” he said.

In response to the protest that turned violent, the police used excessive force, including live gunfire. In total four men were shot and killed, and four others—three young men and a young woman—died when the container in which they were hiding caught fire.

Three witnesses told Human Rights Watch that the police started the fire when they locked the door and fired tear gas canisters into the container where the four people were hiding. One of the witnesses, a member of the local district peace committee explained:

It is the police who caused the fire that killed those people who died while hiding in the container. I saw everything as it happened. I was driving my *matatu* [commercial minibus] when I saw police chasing youth from Kondele. They were running towards New Nyanza General Hospital. Some youth entered the container. Police came and locked it from outside and threw tear gas inside. The owner of the container is a lady who is a carpenter. She had kept cushions in there that caught fire. People were crying. We came out of the *matatu* and tried to rescue them. It was a lady and three young men. The lady was a sister to the owner of the container. The other young man was a carpenter employed by the owner of the container. The other two young men were just people who sought refuge in the container from police.¹⁷⁸

To date, the police are not known to have launched an investigation into the eight deaths.

In addition to those killed, at least eight other people were shot and wounded that day. The local peace committee member told Human Rights Watch that he visited the eight victims in New Nyanza General Hospital on October 29, 2012. “They were eight. They all had gunshot wounds,” he said. “Among them was a pupil from Kosawo Primary School. He had been shot in the buttocks. The hospital gave us all their names.”¹⁷⁹

¹⁷⁷ Human Rights Watch interviews with youth representative from Kondele and a member of Shem Kwega’s campaign team, Kisumu, November 11, 2012.

¹⁷⁸ Human Rights Watch interview with district peace committee member, Kisumu, November 12, 2012.

¹⁷⁹ Ibid.

Response of the Authorities

Human Rights Watch research indicates that during the gang violence in Kisumu after Kenyatta's visit, police did not intervene to protect people or property, let alone make arrests. After the violent protests about Kwegu's murder, the police overreacted and eight protesters lost their lives. Unsurprisingly, confidence in the police among Nyanza residents is low. The local peace committee member summed this up:

People were getting frustrated with these killings. We had also reported numerous cases of violence from the gangs and no action was being taken. Even where a suspect had been identified, police would arrest the suspect and then release them the next day. There was also a growing feeling that police were siding with some gang members. They could never arrest them even when they assaulted someone. This is why people rioted when Kwegu was killed.¹⁸⁰

The National Cohesion and Reconciliation Commission (NCIC) visited Kisumu a few days after the September violence and met about 100 key stakeholders to promote peace ahead of the March elections. NCIC decided after the meeting to organize a peace rally the next day at Kondele Grounds. Senior government officials, including the regional security commanders, attended.

While such efforts are necessary and welcome, the proper role of the police is to provide effective and efficient security and to investigate and prosecute crimes. In that regard, they are neglecting their duties in Kisumu. Excessive force in response to the rioting in 2007-2008, including the shooting of protestors in the back, was a major feature of the post-election violence.¹⁸¹ Residents of Kisumu said they have become accustomed to a slow, haphazard, and in some cases non-existent police response to crime. At other times, the police have used indiscriminate and excessive force. As such, the implementation of effective, efficient, and impartial policing is an urgent priority ahead of elections.

¹⁸⁰ Human Rights Watch interview with district peace committee member, Kisumu, November 12, 2012.

¹⁸¹ See Human Rights Watch, *Ballots to Bullets*, and the Commission of Inquiry into Post-Election Violence final report, int/report/kenya/kenya-commission-inquiry-post-election-violence-cipev-final-report.

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Appendix A: Questions to the Government of Kenya

Sent January 24, 2012

1. Assistance to IDPs

- What concrete measures has the government taken to ensure that assistance to displaced persons in the Rift Valley and other parts of the country is fair, nondiscriminatory and transparent?
- What is the breakdown by tribe of the displaced persons who have been assisted by the government so far, where they were displaced from and where are they currently?
- What plans does the government have to ensure that displaced persons who went to live with relatives rather than go to camps are identified, registered and assisted in the same way as those who went to camps? Does the government have data on how many of these so-called integrated IDPs there are and where they are?
- Exactly how many of the integrated IDPs have benefitted from start-up capital of Ksh 10,000 or 25,000? For those who have not been paid, how many are still in the verification process?
- In 2009 the government evicted 7,107 households from gazetted government forests, such as Mau, Embobut and Kieni. To date, only 1,789 Mau Forest evictees have been resettled. Why has resettlement of these people taken so long? When will the rest of the evictees be resettled?

2. Mid and Low Level Perpetrators of the 2007-2008 Violence

- What steps has the government taken to ensure that the police, prosecution and justice systems are able to arrest and prosecute mid and low level perpetrators of the 2007-2008 violence?
- What measures has the government put in place to ensure that future perpetrators of violence will be identified, arrested and prosecuted without delay?

3. Inter-clan Fighting and Police Response

- What measures is the government taking to ensure that police become more responsive, effective and efficient in dealing with inter-clan violence?

- What measures is the government taking to ensure that the police, prosecution and justice systems can investigate and prosecute those behind the inter-clan violence that in 2012 alone killed at least 400 people and displaced more than 118,000?
- In 2012, the military appointed a board of inquiry to investigate abuses by military personnel in North Eastern Kenya. What has been the progress of this inquiry and have any officers been investigated and disciplined?
- What measures has the government taken to ensure fair and effective investigations of police and military officers accused of committing human rights abuses in North Eastern Kenya?

4. Criminal Gangs in Central Kenya and Kisumu

- The coalition government undertook in 2008 to use legal means to disband and disarm the gangs that were partly blamed for the 2007 – 2008 violence. What is the reason these gangs have remained active and violent despite the enactment of a specific law to deal with them?
- What measures has the government taken to ensure that politicians and other leaders credibly suspected of financing and supporting these gangs are investigated and prosecuted?

5. MRC at the Coast and Tana River Violence

- Does the government have credible evidence that the Mombasa Republican Council (MRC) is behind a spate of attacks in 2012 that police have attributed to them? If so, why has it been difficult for the authorities to prosecute MRC members suspected of violence? What will the government do to ensure that the perpetrators of the attacks are punished?
- The minister for internal security stated in August 2012 that police were investigating the role of politicians in the 2012 Tana River violence. What were the findings of these investigations and what action has been taken based on those findings?
- What measures has the government taken to correct police failures in Tana River, including continued attacks after a large contingent of police was posted to the region? How will police better protect lives and property in the area?

6. The ICC and Accountability

- The government has pledged to respect its commitment to the ICC as a member country and to cooperate with the ICC with regard to the two Kenyan cases. But some officials have expressed opposition to the ICC and the government has tried to stop or suspend the ICC process without a genuine commitment to pursue these cases domestically. The ICC prosecutor has also indicated that there have been “inordinate delays” by the Kenyan government in facilitating her assistance requests. Is Kenya still committed to the ICC process, and will it continue to be so regardless of who wins the March elections? Will the government commit to respond expeditiously to all pending assistance requests?
- The chief justice has recently indicated plans for the establishment of an international crimes division within the high court to prosecute, among other cases, those related to the 2008-2008 election violence. Will the government commit to establishing such special mechanisms, including a special investigatory unit, to investigate, prosecute, and adjudicate election related violence?
- What steps will the government take to investigate reported threats against civil society activists and others perceived to be supporting the ICC process? Will the government commit to providing full funding for the Witness Protection Agency, as an essential pre-requisite for the fair prosecution domestically of serious international crimes?

7. Accountability for Allegations of Death Due to Police Actions

- On October 29, 2012, unknown gunmen shot and killed a parliamentary aspirant in Kisumu, Mr. Shem Onyango Kwega, sparking riots in the town that left eight people dead. According to witnesses, four of them died after being shot by police and another four after the building/container they were hiding in caught fire. Eyewitnesses say the protesters died in the building after police locked it from the outside and threw teargas canisters inside, causing it to catch fire. Has the government ensured that effective investigations have been conducted into these police actions and have disciplinary actions been taken against the officers responsible for these killings?

HIGH STAKES

Political Violence and the 2013 Elections in Kenya

Kenya will hold general elections on March 4, 2013—the first such election since the severe violence after the 2007 polls and the first under Kenya’s new constitution. Based on extensive research across Kenya, this report shows how the government has failed to address the underlying causes of past election-related violence, and in some areas the tensions have escalated. A combination of inaction by the authorities in some regions and abusive or discriminatory conduct in others, plus a failure to implement promised reforms, has led Kenya into another election where the risk of violence and human rights violations remains high.



Kenyan police officers walk past the remains of burnt houses after an attack in Kibusu village in Tana River County of the Kenyan Coast on January 10, 2013. Inter-ethnic clashes in 2012 and early 2013 claimed about 180 lives.

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