

**INTERNALLY DISPLACED PERSONS AND THE DILEMMA  
OF THE RIGHT OF RETURN: A CASE STUDY OF VUMILIA  
ELDORET, JIKAZE AND FUMILIA NAROK IDPs IN MAAI  
MAHIU IN KENYA'S RIFT VALLEY PROVINCE, 2007 – 2010<sup>1</sup>**

**BY**

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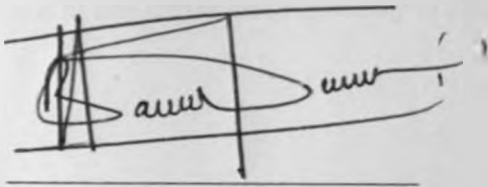
**UNIVERSITY OF NAIROBI**

**DEPARTMENT OF HISTORY AND ARCHAEOLOGY IN  
PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE  
AWARD OF THE DEGREE OF MASTER OF ARTS IN ARMED  
CONFLICT AND PEACE STUDIES**

**OCTOBER 2010**

## DECLARATION

I, Okwaro Barrack Muluka hereby declare that the work contained in this project is my own and has never been submitted for a degree in any other University.

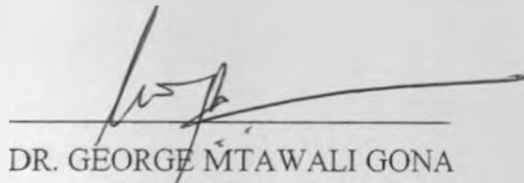


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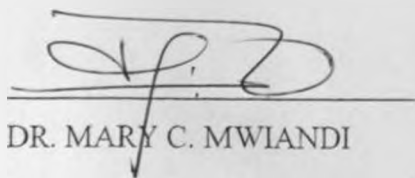
This project was submitted for examination with our approval as the university supervisors.



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16/11/2010

DATE

## DEDICATION

To Mama Roselyn for telling me to go to school and to my special friend and wife Dorothy for love, tenderness and patience, even when I am unreasonably stubborn, and to Lorraine, a special gift to any father and especially to me and to the mothers of Africa.

## ACKNOWLEDGEMENTS

This work has enjoyed the intervention of numerous people, all of whom it would be difficult to thank. For their individual contributions have always been varied. While I thank all of them in a general sense, I wish to single out my supervisors, Dr. Mary Mwiandi and Dr. George Gona, for the incisive guidance and criticisms throughout the time I have been working on this study. They have been truly inspirational and I am eternally indebted to them in a very special way for their patience which saw them read through several drafts of the work at various stages.

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Some of my closest critics were my classmates and my friends. While I benefitted immensely from them, I want to single out for special mention Baithaulu Alaine, Dume Wanda, Carol Rintari and Salome Mwendar. The work was also read by my wife Dorothy who has usually gone beyond the call of a patient and loving wife and mother to take on the role of a teacher and intellectual guide. I also enjoyed encouragement from my dear friends and colleagues – Prof. PLO Lumumba, Ruth Kyengo and Jeremiah Lenya.

I also thank the patient people of the three villages under study in Maai Mahiu for their cooperation with me and with my team of assistants, even when they were under so much adversity. But perhaps the most humbling source of inspiration have been my children Eugene and Lorraine, who every so often surprised me with the gift of one relevant book or the other. I am grateful to them for their love and support. So, too, have I enjoyed support from my foster children, Patience and Walter and from our assistant at home, Rose. While the support I received was of immense benefit to me, and while I share with all those who assisted me the credit in this work, I take responsibility for any blemishes it may have, which should be put to my own lack of objectivity.

## ABSTRACT

Displacement of people due to armed violence is a traumatic condition for the victims, on account of the instability and bleakness of makeshift life away from home. It is to be expected that displaced persons should return to their former homes when the turbulence that dislodged them settles down. Yet even when the turmoil of armed violence has seemingly settled down, it is not always that the displaced have gone back to their former homes. Why?

In Kenya internal displacement has occurred regularly since the multiparty General Elections of 1992. The Rift Valley Province has borne the brunt of both the violence and displacement.<sup>1</sup> This has been despite strong official pronouncements by the State against acts of violence and disruption of people's lives by such violence during elections.

With each cycle of violence, more people have been displaced and in particular during the post election violence of 2007 - 2008, that arose out of the worst political conflict in Kenya's history. The atrocities experienced by most victims made some of them to look for new settlements elsewhere, instead of returning to their former homes, in spite of pressure and even incentives from the State and from the international community. Some of these IDPs bought land in areas which they believed would be safe for them to settle in. Among these were the members of Fumilia Narok, Vumilia Eldoret and Jikaze Villages, all of which are in the Maai Mahiu region of Naivasha, where this research was carried out.

Violent conflict and displacement in Kenya's Rift Valley has usually taken on a distinctly ethnic character. In order to try and unravel the ethnic factor in the displacement and next to that the reasons why IDPs elected not to return to their former homes, this research was tasked first with trying to establish the patterns of ethnic composition and settlement in the areas where the IDPs

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<sup>1</sup> Kenya promulgated a new Constitution in August 2010, which at the time of the writing of this project paper was in the process of changing the administrative structure of the country, to restructure the system of administration known as Provincial Administration to conform to and respect the devolved government structure that the new Constitution introduced. It was likely at the time of writing that the restructuring could abolish provinces and replace them with a yet to be known arrangement. But throughout this study, administrative units are referred to as they were prior to the August 2010 change of the Constitution of Kenya.

were scuttled from. The study, therefore, starts by discussing settlement of diverse peoples in the Rift Valley Province of Kenya as a curtain raiser to ethnic conflict. It then moves on to discuss the history of displacement in Kenya and in Rift Valley in particular, to appreciate how this presaged the 2007 – 2008 election violence and displacement and the impediments to return thereafter, despite the right of return.

This research is cast in the conceptual framework of the right and dilemma of return of displaced persons. It then examines the nature of the legal protection given to returnees, and whether this protection affords sufficient safeguards for the protection of all returnees, including IDPs. Further, the work examines the impediments to IDP return and the possibility of conditions under which IDPs could consider to return.

In order to examine these issues, this study assesses the protection afforded to the IDPs under the international legal regime. We examine domestic responses to the issues involved in the return considerations. The analysis emphasizes the lack of a distinct protection regime under international law and the failure of the Kenya Government to domesticate and effect the limited protection provided in international law and programmes in the aftermath of conflict. We conclude with emphasis on the need for both an elaborate protective legal regime for IDPs and observance of whatever legal protection exists, to preclude self-feeding cycles of displacement and impunity.

## TABLE OF CONTENTS

Declaration.....	ii
Dedication .....	iii
Acknowledgements .....	iv
Abstract .....	v
List of acronyms and abbreviations .....	xi
Operational definition of terms .....	xii
<b>CHAPTER ONE .....</b>	<b>1</b>
<b>INTRODUCTION.....</b>	<b>1</b>
1.0 Maai Mahiu internally displaced persons' community.....	1
1.1 Historical background .....	3
1.2 Statement of problem.....	9
1.3 Objectives of the study.....	10
1.4 Justification of the study .....	10
1.5 Study scope and limitations .....	10
1.6 Literature review .....	11
1.7 Conceptual framework.....	18
1.8 Research hypothesis.....	21
1.9 Methodology .....	21
<b>CHAPTER TWO .....</b>	<b>23</b>
<b>SETTLEMENT OF PEOPLES IN KENYA'S RIFT VALLEY AND THE CREATION     OF 'OTHERNESS' AND ROOTS OF DISPLACEMENT .....</b>	<b>23</b>
2.0 Introduction.....	23
2.1 Early migrations into the Rift Valley in Kenya, 1000 – 1885 .....	24
2.2 Kalenjin dispersion, 1600 – 1800 .....	26
2.3 White settlement & migration of African labour into White Highlands 1896 – 1960....	27
2.4 World War I: Further European incursion and creation of squatters.....	29
2.5 Cash economy and the makings of African land rebellion .....	31
2.6. The White Highlands begin opening up to Africans .....	31
2.7 Rift Valley's ethnic composition at the return of multi party politics 1991 .....	34
2.8 Conclusion .....	35

<b>CHAPTER THREE .....</b>	<b>37</b>
<b>HISTORY OF DISPLACEMENT OF PEOPLES IN KENYA, 1895 to 2008 .....</b>	<b>37</b>
3.0 Introduction: Push-and-pull factors and the creation of internal refugees.....	37
3.1 Displacement during the colonial period .....	37
3.2 Displacement during the Mau Mau Revolt.....	43
3.3 Settlement schemes and displacement, 1960 – 1973 .....	46
3.4 Displacement by ethnic clashes, 1991 – 2008 .....	47
3.5 The December 2007 to February 2008 displacement .....	53
3.6 Conclusion .....	54
<b>CHAPTER FOUR.....</b>	<b>56</b>
<b>THE 2007 ELECTION VIOLENCE AND THE CREATION OF INTERNALLY     DISPLACED PERSONS.....</b>	<b>56</b>
4.0 Introduction.....	56
4.1 Political incitement and negative ethnicity .....	56
4.2 Perceptions of past injustices on the land question.....	61
4.3 Resurgence of perceived historical power rivalry between the Luo and Kikuyu communities .....	65
4.4 Perceptions of relative deprivation in administration and use of taxes.....	68
4.5 Economic based ethnic resentment .....	69
4.6 Lapse in security .....	71
4.7 Impunity and disrespect for laws .....	73
4.8 Conclusion .....	74
<b>CHAPTER FIVE .....</b>	<b>75</b>
<b>THE RIGHT OF RETURN: WHY THEY ELECTED NOT TO RETURN .....</b>	<b>75</b>
5.0 Introduction.....	75
5.1 Electoral politics and serial displacement.....	75
5.2 Desolation from recurrent cycles of violence and displacement .....	77
5.3 Politics and contestations of constitution making.....	78
5.4 Atrocious memories and fears .....	79
5.5 Semblance of settlement .....	81
5.6 Protection of children from bad memories .....	81



5.7 Uncertainty and fear of repulsion and rejection.....	82
5.8 Unyielding animosity over land.....	82
5.9 Impunity and insecurity .....	83
5.10 Groping for ethnic solidarity in the face of the unknown.....	85
5.11 Precipitate closure of IDP camps.....	86
5.12 Conclusion .....	86
<b>CHAPTER SIX .....</b>	<b>87</b>
<b>CONCLUSION .....</b>	<b>87</b>
6.0 General observations.....	87
6.1 The right to return .....	89
6.2 Impediments to return .....	92
<b>BIBLIOGRAPHY .....</b>	<b>94</b>
Oral Interviews.....	94
Newspapers.....	97
Archives .....	98
Journal Articles .....	99
Books .....	100

## LIST OF TABLES

Table 1: Maai Mahiu IDP Community .....	2
Table 2: People interviewed.....	22
Table 3: Europeans in Western Kenya's White Highlands.....	32

## LIST OF ACRONYMS AND ABBREVIATIONS

AD	Anno Domini (In the year of Our Lord)
AU	African Union
DAT	Darfur Atrocities Documentation Team
DCIO	District Criminal Investigations Officer
ECK	Electoral Commission of Kenya
EU	European Union
FGD	Focus Group Discussions
GEMA	Gikuyu Embu Meru Association
IDP	Internally Displaced Person
KAMATUSA	Kalenjin Maasai Turkana Samburu Alliance
KANU	Kenya African National Union
KNDR	Kenya National Dialogue and Reconciliation
M BCE	Millennium Before Christian Era
MOU	Memorandum of Understanding
NARC	National Rainbow Coalition
NEPAD	New Partnership for Africa's Development
OCPD	Officer Commanding Police Division
OCS	Officer Commanding Police Station
ODI	Overseas Development Institute
ODM (P)	Orange Democratic Movement Party
ODM-K	Orange Democratic Movement-Kenya
P3	Police Form 3
PNU	Party of National Unity
U.S.	United States of America
UN	United Nations
USSR	Union of Soviet Socialist Republics
WWI	First World War
WWII	Second World War

## OPERATIONAL DEFINITION OF TERMS

### **Refugee**

The definition in United Nations High Commission Convention Relating to the Status of Refugees (1951) is adopted and used throughout. A refugee is, accordingly, a person who being out of his country of nationality or habitual residence and who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is unable or, owing to such fear, unwilling, to avail himself of the protection of that country.<sup>2</sup>

### **Internally displaced person (IDP)**

A person, who owing to fear of persecution or violent attack by persons who enjoy arbitrary leverage in his place of habitual residence, is forced to leave, his place of habitual residence within his country in search of safety and self-preservation elsewhere, but remains within the national borders of his country. Such a person is ordinarily understood to be under the protection of his national Government.<sup>3</sup>

### **Migration**

Movement of people from one place to another in search of better life and livelihood. Accordingly, migration can be internal (where it does not traverse national boundaries) or international (where national borders are traversed), temporary or permanent, and voluntary or forced.

### **Voluntary migration**

Free willed movement of a person or persons from their place of usual habitation, in search of a better and more hospitable place to live in.

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<sup>2</sup> United Nations. UN International Convention for Refugees. Article 1 of the UN International Convention for Refugees. New York: UN Publication, 1951.

<sup>3</sup> Inference is made from the UN's definition of the refugee (above) and from the protection that it offers the refugee to surmise that the IDP ought to enjoy State protection along the same lines. However, under international law the plight of a person under persecution at home is only recognized as a case for protection when such a person has crossed an international boundary in search of protection.

**Forced migration**

Compulsory movement of a person or persons from their place of usual habitation, in search of a better and more hospitable place to live in, usually in response to capricious leverage and exercise of power by an arbitrary authority or authorities.

**Temporary migration**

Migration at whose beginning the migrant has in mind that when conditions get better in his place of habitual residence, he will return to continue living in the place, or a migration where although the migrant intended not to return, he is forced by circumstances in the new habitation to return to his place of original habitation.

**Permanent migration**

Migration at whose beginning the migrant has it in mind that he intends not to return, or one where although the migrant only intended to be away for a short while ends up settling in the intended place of short sojourn for a long time – usually for a generation or longer, where a generation is taken to be about 27 years.

# CHAPTER ONE

## INTRODUCTION

### 1.0. Maai Mahiu internally displaced persons' community

This study focuses on three composite villages that constitute the Maai Mahiu Internally Displaced Persons (hereafter IDPs) settlement in the escarpments of Kenya's Rift Valley. This settlement came into existence in September 2009 as a consequence of post-election violence that rocked parts of Rift Valley Province, following General and Presidential Elections in the country in December 2007. The settlement is located adjacent to Maai Mahiu Township at the bottom of the Rift Valley. This township was located less than ten kilometres away from the border between Central Province and Rift Valley Province, at the time of the election violence and the settlement.

The election violence victims, who settled here in September 2009, were disturbed from various parts of Rift Valley Province, but mainly from around Eldoret and Narok towns.<sup>4</sup> Their ethnic composition was largely made of Kikuyu, Akamba and Kisii families. There were also a few Kalenjin and Luhya women who were married, or had previously been married, to men from the ethnic communities listed above.<sup>5</sup>

After moving to Maai Mahiu the IDPs formed self help groups which were given descriptive names depending on where the IDPs were displaced from. Among them are Jikaze, Vumilia Eldoret and Fumilia Narok.<sup>6</sup> The name Vumilia is derived from Kiswahili, to mean 'Persevere,' or 'Don't lose heart.' Jikaze is the Kiswahili word for 'remain strong and firm.' The migrants chose the two names to give themselves fortitude in the face of the adversity of displacement. Those who came from Narok preferred to use the alphabetical 'f' instead of 'v' to refer to their village as 'Fumilia' rather than 'Vumilia,' to distinguish them from their neighbours who came from Eldoret. Accordingly, we refer to them as Fumilia Narok throughout this study, while those who came from Eldoret are referred to as Vumilia Eldoret.

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<sup>4</sup> Oral interview, Joshua Mbugua, Vumilia Narok, 28/05/2010.

<sup>5</sup> Ibid.

<sup>6</sup> Oral interview, Joshua Mbugua, Vumilia Narok, 28/05/2010.

These people were afraid or reluctant, or unable for other reasons, to return to their former homes after the cessation of the violence that unsettled them in the first place. They, therefore, sought through their self help groups to work together to find alternative hospitable settlements.<sup>7</sup> While they initially arrived in Maai Mahiu as destitute displaced people, they eventually found and bought land there by pooling together relief money that was given to them by the Kenya Government.<sup>8</sup> On this land, they established their new permanent homes, with no intent to go back where they originally lived.<sup>9</sup> Although the main focus of this study is the three IDP settlements above, it is important to mention that there are, in fact, six IDP villages in Maai Mahiu. They include Jikaze, Vumilia Eldoret, Fumilia Narok, Maono, Amani and Neema.<sup>10</sup> Their individual populations and acquired land area are tabulated below:

**Table 1: Maai Mahiu IDP Community**

NAME OF THE FARM	TOTAL POPULATION	AREA (acres)
Jikaze	821	17.5
Vumilia Eldoret	1313	30
Fumilia Narok	262	7.5
Maono	105	2.5
Amani	334	8
Neema	208	2.5

**Source:** Table generated from the statistics derived from oral interviews with camp chairmen.

<sup>7</sup> Oral interview, Julius Nderitu, Vumilia Eldoret, 29/05/2010.

<sup>8</sup> Oral interviews, Focus Group Discussion, Vumilia Eldoret, Fumilia Narok and Jikaze, 01/06/2010.

<sup>9</sup> Ibid.

<sup>10</sup> Oral interview, Monicah Njeri Karanja, Vumilia Eldoret, 29/05/2010.

## 1.1 Historical background

On 27 December 2007, Kenya went to General Elections that threw the country into a spin of unprecedented violence. The violence followed the rejection of the presidential election results by one of the contesting parties, the Orange Democratic Movement (hereafter ODM) Party. The eye of the violent storm was the Rift Valley Province. In a matter of weeks, some 663, 921 people were displaced in the violence in Western Province, Nyanza, Rift Valley, Central and Nairobi Provinces.<sup>11</sup> The majority of these were in Rift Valley Province.<sup>12</sup> Up to the time of this study, some of the victims of the post-election violence remained in IDP camps in diverse parts of the province.<sup>13</sup> Others, however, had moved out of the camps and established new settlements elsewhere having failed, or otherwise been unable to go back to their places of regular habitation prior to the elections and the violence.

That IDPs could not go back to their former abodes is the big question that concerns this study. Election-related violence and attendant massive displacement of people in Kenya did not begin with the 2007 elections. Indeed, this kind of displacement is traced back to the return of the politics of political party competition in 1991.<sup>14</sup> The culture of election violence and displacement of people is accordingly a significant part of the Moi legacy for Kenya. A brief survey of the Moi years (1978 – 2002) is useful for a deeper insight into the eruption of December 2007 and the unsettling aftermath for IDPs. Equally important is an appreciation of the political undercurrents in the first five years of the post-Moi dispensation as a curtain raiser for what was to follow.

### 1.1.1 The Moi legacy

Daniel Toroitich arap Moi became the Second President of the Republic of Kenya following the death of the first President, Jomo Kenyatta, on 22 August 1978. Moi moved swiftly to consolidate his power base through the then ruling party, the Kenya African National Union

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<sup>11</sup> W. Kimathi, 'Internal Displacement: Kenya's Protruding Eye Sore Thumb,' in *Nguzo za Haki, A Publication of the Kenya National Commission on Human Rights*, Issue 9, Nairobi, December 2009, p. 3.

<sup>12</sup> Ibid.

<sup>13</sup> J. Komen and B. Bii, 'Refugees still in transit camps,' in *The Sunday Nation*, 25 October 2009, p. 22.

<sup>14</sup> P. Mutahi, 'Political Violence in the Elections,' in H. Maupeu et al: *The Moi Succession Elections 2002*, Nairobi, Trans-Africa Press, 2005, p. 69.



(KANU).<sup>15</sup> Within the first four years of his presidency, Moi made KANU a veritable political dragon and a vehicle for tyrannical leadership, exercise of power and accumulation of wealth.<sup>16</sup> In 1982, he made Kenya a *de jure* one party State under this political behemoth. The high noon of political intolerance and arbitrary rule had set in.<sup>17</sup>

Agitation for political reform and for opening up of democratic space in Kenya gradually followed. It initially assumed an underground character through the activities of the Mzalendo Mwakenya Movement and its *sub rosa* publication, *Pambana*.<sup>18</sup> Mounting State intolerance, however, saw underground dissent give way to unbridled defiance and open agitation for change. This agitation was in its element from 1988, following massively rigged parliamentary elections, through a newly introduced queue voting system that was called *mlolongo* (Kiswahili word for 'queue').<sup>19</sup> KANU was the only party that could field candidates for the elections, now that Kenya was a *de jure* one party State. It turned out, therefore, that the 1988 elections were in fact selections. Only individuals who were politically correct and who accepted to toe the President's line found their way to Parliament in these massively rigged elections.<sup>20</sup>

Although the 1988 elections were a triumph for the State over its both imagined and real opponents, these elections also laid the ground for KANU's downfall. There followed spirited efforts by those who were locked out of legitimate political competition to push for alternative platforms for political relevance and expression.<sup>21</sup> This push gained impetus with the wavering of communism in the Soviet Union from 1989 and achieved further force with the ending of the Cold War in November 1991.<sup>22</sup> Kenyan political activists and civil societies joined the global voices that were then asking for expanded political space in their countries. Eventually, in the same month, Parliament amended Kenya's Constitution to make the country a multi-party

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<sup>15</sup> D. W. Throup & C. Hornsby, 'The Creation of the Moi State' in D. W. Throup and C. Hornsby's, *Multiparty Politics in Kenya: The Kenyatta & Moi States & the Triumph of the System in the 1992 Election*, Oxford, Nairobi, Athens, James Currey Publisher, 1998, pp. 26 – 31.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid. p. 40

<sup>19</sup> Ibid. p. 38; also H. Maupeu et al: *The Moi Succession Elections 2002*, Nairobi, Trans-Africa Press, 2005, p. 37.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid. p. 44

<sup>22</sup> Ibid., p. 72

democracy, once again.<sup>23</sup> The place was presently awash with dozens of political parties, each portraying itself as the votary of democracy and good governance.<sup>24</sup>

For its part, KANU demonized the emerging parties as bastions of ethnicity and even 'zoned' off parts of the country as closed KANU sets.<sup>25</sup> They were no go areas for the political competition. Such zones included whole swathes of the Rift Valley Province, parts of Western Province and Coast Province. The zoning became quite urgent as the country gravitated towards the first multi-party elections in the Daniel arap Moi era, in 1992.<sup>26</sup> The zones gave political competition an ethnic outlook, with President Moi's Kalenjin community equating political opposition to hostility to the then largely Kalenjin-led and dominated Government. In this, Moi had willing lieutenants and political gadflies from other tribes, especially in parts of Western, Coast and Eastern provinces.<sup>27</sup>

The most fundamental outcome of the zoning off of parts of the country as closed KANU sets was eruption of political violence and ethnic bloodletting in the closed zones. The violence was specifically directed against people from ethnic communities that were perceived to be opposed to KANU and to President Moi. These were mainly Kikuyu, Luo and to a limited extent segments of the Luhya and Kisii that did not seem to be solidly with Moi and KANU.<sup>28</sup> The targeting was tantamount to ethnic cleansing of the closed KANU zones, with the result that members of the targeted communities fled from their homes at the behest of armed Kalenjin elements and arsonists.<sup>29</sup> There came into existence an arbitrary militia known as the 'Kalenjin Warriors.'<sup>30</sup>

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<sup>23</sup> Ibid., p. 87

<sup>24</sup> D. Throup & Charles Hornsby, 'The Rise and Fall of the Opposition, December 1991 – October 1992', in David Throup and Charles Hornsby, *Multi-Party Politics in Kenya: The Kenyatta and Moi States and the Triumph of the System in the 1992 Election*, Oxford: James Currey 1998, pp. 92 – 172.

<sup>25</sup> H. Maupeu et al: *The Moi Succession Elections 2002*, Nairobi, Trans-Africa Press, 2005, p. 39.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> D. Throup & C. Hornsby, *Multi-Party Politics in Kenya, op. cit.*, pp. 81 – 83.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

Their victims became internally displaced persons (IDPs), taking temporary shelter in IDP camps in diverse places in the three provinces of Western, Coast and Rift Valley. The same experience was to repeat itself during the 1997 General Elections, following almost the same pattern.<sup>31</sup> It is instructive that both in 1992 and in 1997 the situation thawed, or would at the very least seem to have thawed, soon after the elections and the forming of Government. The IDPs in the main seemed to have returned to their former homes, picked up the thread of life and settled back to the normal ebb and flow of life. This stands in stark contradistinction with the situation surrounding, and especially following, the 2007 General Elections.<sup>32</sup>

### **1.1.2 Mwai Kibaki's first term of office and the groundswell of political violence and displacement**

In December 2002, President Moi went into retirement, paving way for a combined opposition, under the banner of the National Rainbow Coalition (NARC), to take over from KANU. They romped into power on the electoral promissory note of making wide reforms. Key among these was a new Constitution. They promised to deliver this within the first 100 days of the new Government. Mwai Kibaki, therefore, became the Third President of the Republic of Kenya amidst unprecedented public hope.<sup>33</sup> But Kibaki soon fell out with some critical members of the new alliance, on questions that pertained to an alleged memorandum of understanding (hereafter MOU) on sharing of power in the new post-Moi era.<sup>34</sup> Their differences began taking a hostile turn in 2003. Two camps of politicians, who had been united in their campaign for a new constitutional dispensation in the run up to the 2002 General Elections, were now openly hostile to each other, over the Constitution. In particular, they differed sharply on what kind of Executive Authority the country should have.<sup>35</sup> These differences split NARC into two distinct factions with unyielding political wrangling over a two year period.<sup>36</sup> These differences culminated in a divisive politically charged national referendum on the Constitution in

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<sup>31</sup> H. Maupeu et al: *The Moi Succession Elections 2002*, Nairobi, Trans-Africa Press, 2005, pp 70-71.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid. p. 59.

<sup>34</sup> Ibid.

<sup>35</sup> D. Mugonyi, 'Broken Promise: Big day that never was: Kibaki holds up bid to set up review committee', in *Daily Nation*, 30 June 2009, p. 1.

<sup>36</sup> See for example Times Team, 'Raila and Kalonzo could face treason charges,' *Kenya Times*, 02 November 2005, P.1; and E. Onyango, 'Banana and Orange Teams trade blame over violence' *Kenya Times*, 03 November, 2005, P.1; and E. Otieno, 'State House abused,' *Kenya Times*, 06 November 2005, p.5.

November 2005.<sup>37</sup> The competition between the two antagonistic political camps pitted their *de facto* leaders, Mwai Kibaki and Raila Odinga, against each other in a volatile General Election campaign throughout 2007, culminating in a tense election on 27 December 2007.<sup>38</sup>

At about 7.00 pm on 30 December 2007, Samuel Kivuitu, the Chairman of the Electoral Commission of Kenya (hereafter ECK) announced, amidst mounting anxiety over delayed release of the results of the Presidential poll, that Mwai Kibaki had won a second five year term. Kibaki was sworn into office at a hurriedly convened and rather clandestine ceremony at State House, Nairobi, less than an hour after the announcement of his victory. His chief competitor for the Presidency, Raila Amolo Odinga, and his ODM rejected the results. They refused to recognize Kibaki. They accordingly called their followers out to protest against what they termed the stealing of the election by Kibaki and PNU.<sup>39</sup>

The ensuing protests and outrage swiftly took on a violent turn, hitherto never witnessed in the history of Kenya.<sup>40</sup> It shook the country. In Rift Valley Province, Western, Nyanza, Nairobi and in parts of Coast Province, PNU supporters, both real and imagined, were targeted for reprisals. The reprisals took the shape of looting, rape, arson, killing and forced eviction of people from their homes and locale. Cases of sodomy were also reported in Rift Valley.<sup>41</sup> Within days, there were camps holding IDPs in various parts of the country. Displacement took on a new high when PNU supporters took up retaliatory measures of their own and especially unleashed the dreaded Mungiki militias against their adversaries.<sup>42</sup>

The country was veritably burning and flowing with blood. It took the intervention of international Good Samaritans, led by the former UN Secretary General, Dr. Kofi Annan, to bring the belligerents to a discussion table and for them to work out an acceptable cessation of

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<sup>37</sup> Times Team, 'Vote Banana. Civil Servants ordered', *Kenya Times* 17 November 2005, p. 3; also N. Musau,

'Orange vows to defy Kibaki ban on rallies,' *Kenya Times*, 29 November 2005, P. 1.

<sup>38</sup> A. Savula & J. Murimi, 'Rearing for grand battle: Leaders predict high political temperatures before election,' *The Standard*, 01 January 2007.

<sup>39</sup> B. Namunane and K. Ongosia, 'Annan Arrives today for mediation,' *Daily Nation*, January 15 2008, p. 46.

<sup>40</sup> B. Namunane, 'Hurdles Annan team faces in brokering peace and ending political deadlock: President rules out sharing power with ODM saying it would be unconstitutional,' *Sunday Nation*, 27 January 2008, pp. 14 – 15.

<sup>41</sup> KNHCR, *On the Brink of the Precipice: A Human Rights Account of Kenya's Post Election Violence*. KNHCR, 2008, p. 5.

<sup>42</sup> *Ibid.* p. 29.

hostilities and a return to normalcy. A National Accord and Reconciliation Act was agreed upon and taken through the motions of Parliamentary legislation, with four reformatory agenda. It paved the way for the belligerents to work together in what was dubbed an equal power sharing arrangement. A new Grand Coalition Government was named in April 2008. The hostilities were declared to be over. Kibaki remained President. Odinga became the Prime Minister and supervisor of the Cabinet.<sup>43</sup>

To demonstrate that the hostilities were over, the President and the Prime Minister jointly toured the troubled parts of the country from April to September 2008, preaching the need for peace and reconciliation. They assured their supporters that hostilities had come to an end. The President even visited the Prime Minister in his rural home as a demonstration of a new found political amity.<sup>44</sup> They appealed to people in the troubled areas to live together peacefully. IDPs were asked to return to their homes. Their neighbours, who had displaced them, were asked to receive them back and to live with them peacefully.<sup>45</sup> The Government went a step further and provided transport to ferry back home the IDPs. There was also a cash kitty of KShs. 35 000.00 for each returning family. It was to help displaced families to quickly settle down in their previous homes.<sup>46</sup>

But, in spite of the peace accord that was reached and a Grand Coalition Government that was formed, many IDPs would not go back home. Many remained in the IDP camps for long, way after the formation of the new Government and proclamations of peace. Others put the KShs. 35 000.00 given to them by the Government into a common kitty and bought land elsewhere.<sup>47</sup> Although they more or less left the camps voluntarily, they did not go back home. Others remained in the camps until such a time as they were forcibly evicted by State Security apparatus. They, too, did not go back home, choosing instead to settle in new homes, elsewhere.

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<sup>43</sup> B. Namunane, 'Kibaki and Raila unveil coalition team: Partners in delicate balancing move to satisfy party, regional and gender politics,' *Daily Nation*, 14 April 2008, p. 3.

<sup>44</sup> Africa Confidential, 'Bondo Welcomes Kibaki: Premier Odinga fetes Kibaki in his Bondo home in a rare spirit of amity,' in *Africa Confidential*, 25 September 2009, Vol. 50 – No. 19, p. 4.

<sup>45</sup> Ibid.

<sup>46</sup> P. Wachira, 'Resettling displaced far from concluded,' in *The Standard*, 17 August 2008, p.5; also S. Mkwale, 'State orders IDPs camping outside DC's office dispersed,' in *The Standard*, 06 January 2009, p. 8.

<sup>47</sup> Ibid.

The Government, for its part, helped some of the IDPs to settle in new communal areas, in lieu of their previous homes.<sup>48</sup> Both the IDPs and the Government seem by this action to have accepted the immutable nature of this displacement. The question of IDPs going back to their previous abodes seems to have lost its place on the post-conflict reconstruction agenda. That remained the state of affairs at the time of this study, as IDPs took up settlement in places that began assuming the nature of permanent new abodes.

## 1.2 Statement of problem

Internally displaced persons are not new to Kenya. They appear to have come with nearly every general election since the restoration of multi-party politics in 1991 and to wither away soon after the election. Yet the IDP problem in the wake of the 2007 – 2008 election conflict seems to have become hardcore. At the time of this study, some IDPs remained in the original camps where they first took refuge at the moment of rapture, while others had taken up alternative residence that seemed to be taking on permanent character, elsewhere.<sup>49</sup>

All this was in spite of the fact that the two principal personalities (President Mwai Kibaki and Prime Minister Raila Odinga) around whom the violence that rocked the country after elections played itself, had stated clearly that they had ended their post-election differences and hostilities and that the conflict was over. At the time of this study, the two antagonists were working together in a Grand Coalition Government. They had made numerous pleas to IDPs to go back home.<sup>50</sup> But the displaced persons would not go back. The Government, in point of fact, used a combination of methods in the effort to make them go back from providing lorries to ferry them away to providing cash incentives of KShs. 35 000.00. Still the people would not go back.<sup>51</sup> Why would they not do so, despite their right of return and apparent restoration of normalcy? This is the fundamental concern of this study.

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<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> D. Itumbi, 'Kenyan President and Prime Minister embark on a joint three day reconciliation tour of the Rift Valley.' *Africa News*, Thursday 24 April 2008, P.1.

<sup>51</sup> J. Komen and B. Bii, 'Refugees still in transit camps.' *Sunday Nation*, 25 October 2009, p. 22.

### **1.3 Objectives of the study**

1. To investigate the reasons for IDPs' reluctance to return to their former abodes.
2. To establish the conditions under which they would return.

### **1.4 Justification of the study**

The question of return of IDPs to their former domiciles and impediments to return, following apparent resolution of conflict, has not been adequately addressed in scholarly discourse. Studies on IDPs in Kenya, and indeed elsewhere in Africa, have tended to be limited to declamatory concerns about the material adversity that informs their condition as IDPs. They have fallen short of going beyond preoccupation with the abjectness of the living conditions of IDPs. A study that seeks to unravel impediments to the return of IDPs in a post conflict resolution and reconstruction phase therefore justifies itself. Apart from helping to appreciate the foundations of the conflict better, such a study could be a useful pointer to some of the issues that require to be addressed in post-conflict reconstruction in situations such as the one in this study.

### **1.4 Study scope and limitations**

This study was carried out among IDPs in the specific new settlements in Maai Mahiu, known as Vumilia Eldoret, Jikaze and Fumilia Narok Villages. The spotlight was on why they would not return to their original abodes after the post election violence that sparked off their displacement in December 2007 – February 2008 had ended. We did not study any other IDPs outside the range of the three villages in Maai Mahiu as this was not in our scope.

Our interest in this community was distinctively occasioned by the fact that these IDPs had bought new land and were building permanent abodes there. They did not intend to go back to their previous abodes. Why? This was our focus. We did not include in our focus a survey of conditions and standards of living in the community under study. Nor was the impact of non-return to the IDPs under study included, nor indeed the impact of their settlement in Maai Mahiu to their new environment. We did not talk to the communities living where the IDPs lived prior to their displacement. This study has not, therefore, taken into account possible alternative views

from any such communities. We also did not talk to law enforcement officers, and especially the police, who come in for censure by the IDPs.

### 1.6 Literature review

Emerging studies in armed conflict and peace in Africa, and indeed elsewhere, recognize the domestic refugee whom they expressly refer to as an internally displaced person (IDP). But they do little on the question of the right to return and considerations that inform the decision not to return. While the return of the refugee is often discussed, that of the IDP has attracted insignificant attention.

In 'Survey Methodology and the Darfur Genocide', Jonathan P. Howard discusses challenges to documenting the humanitarian crisis in the Darfurian War in North-Western Sudan. He is primarily concerned with highlighting the constraints of conducting surveys in extreme environments, such as situations in which on-going warfare has created IDPs.<sup>52</sup> In particular, he brings the searchlight to rest on the work of the Darfur Atrocities Documentation Team (DAT), which was commissioned by the U.S. Department of State in June 2004. While recognizing the tendency of extreme situations to cloud the reality, Howard contends that a broad raft of field methods can nonetheless illumine the reality. Howard then goes on to present a capsule of the humanitarian crises that surveys have brought out in the war in Darfur. A glaring omission in this study is the question of return and the considerations around it.<sup>53</sup>

Robert Collins comes quite close to addressing this concern in the essay 'Disaster in Darfur: Historical Overview.' He places the Darfurian conflict in its geo-historical perspective. He argues that the war in Darfur arises out of competition for environmental scarcities – and especially for land, pastures and water. As a result, the State-backed Janjaweed have displaced the non-Arab Fur, Massaleit, Daju and Berti.<sup>54</sup> His concern is best captured in his citation of former US Secretary of State, Colin Powell, who observed after visiting IDP camps in Darfur in

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<sup>52</sup> S. Totten. 'The U.S. Investigation into the Darfur Crisis and Its Determination of Genocide: A Critical Analysis', in Totten, Samuel & Eric Markusen (eds), *Genocide in Darfur Investigating the Atrocities in the Sudan*, New York: Rutledge, 2006, p. 72.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid, p. 3.



2004 that 'those IDPs, of whom there were thirty thousand, who ventured from their camp were regularly assaulted as part of the consistent widespread pattern of atrocities (killings, rapes, burning of villages) committed by Janjaweed and Government forces against non-Arab villagers.'<sup>55</sup> But he says nothing on the right to return and of the fears around this question.

It is instructive that both Howard's and Collins' studies are concurrent with the conflict in Darfur, as the war was still on-going at the time of their studies. Questions of post-conflict return would, therefore, seem to be premature at this stage. This may, in part, account for absence of attention to this question in their studies. Darfur has not reached the stage where armed conflict is declared to be over, peace proclaimed and IDPs invited to return home. Situations in which armed conflict is still on-going, such as Darfur, do not necessarily present ideal occasion for study of fear of return. Indeed, the return of Palestinian refugees informs both political and intellectual discourse.<sup>56</sup> But the debate of return of Palestinian refugees is complicated by the fact that the conflict between Palestinians and Israel remains unresolved. The question of return in this case has in point of fact only served to compound the conflict.<sup>57</sup> Such conflicts are best studied within the context of unfolding events and fears concomitant to the armed conflict. This is what these scholars have attempted to do.

In a separate study, Collins sets out to make a comprehensive survey of the history of modern Sudan. He concerns himself with the main themes in modern Sudanese history. They are themes built around revolution and civil war, which have been the kingpins of Sudan's history over the past fifty years. He notes that the country has attracted international attention as a breeding ground for Islamist terrorism and for the war between the north and the south. In more recent times, there is the war in Darfur. Collins traces the history of Sudan across a timeline of 200 years. He seeks to snugly tie the present to its past so that the anatomy of the endemic armed confrontation in the country may be properly appreciated in the fullness of its history. Despite the fact that this study is made against a wealthy timeline, no attempt is made to address what

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<sup>55</sup> Ibid. p. 20.

<sup>56</sup> See for example Sari Hanafi, 'Opening the Debate of the Right of Return' in *Middle East Report* No. 222 (Spring 2002) pp 2 – 7, Middle East Research and Information Project. Stable URL: <http://www.Jstor.org/stable/1559261> accessed 17/02/2010

<sup>57</sup> Ibid.

became of IDPs in the conflicts of yesteryears. Concern is instead limited to transient attrition and efforts to provide humanitarian relief.<sup>58</sup>

Weiss has grappled with this concern in the paper 'Whither international efforts for internally displaced persons?'<sup>59</sup> He observes that nationalistic, ethnic and communal tensions are the predominant factor in war and displacement in the post-Cold War world. As a result, civilians in need of humanitarian intervention in armed conflict situations are to be found not in refugee camps in neighbouring countries (with the UNHCR orchestrating help and protection), but within the war zones themselves. Weiss's primary concern centres on the absence of formal protective systems and instruments within the ambit of international humanitarian law, for IDPs. He focuses on offering some possible avenues for protection of IDPs, having made the point that they now outnumber refugees by far and hence urgently call for a protective regime and instruments. Weiss does not, however address questions of return.<sup>60</sup> But what needs to be done so that these people can return to their original abodes? Are there any conditions under which return could be facilitated? These are the unanswered questions.

Weiss revisits this concern in the paper titled 'Internal exiles: What next for internally displaced persons?' Instructively, this is an anniversary publication in which the author makes an appraisal of motions towards institutionalization of a protective regime for IDPs, subsequent to the setting up of the first mandate for the Representative of the UN Secretary General on IDPs. He decries the slow progress made towards going beyond a set of general principles on protection of IDPs and creating a recognized international legal framework and a proper institutional sponsor for protection of IDPs along the same lines as the UNHCR. Moreover, Weiss notes that while the number of refugees has been on the decline (globally) that of IDPs is on the ascendancy. Protective and institutionalized emphasis therefore, he argues, should be shifting apace towards the IDP. He does not, however, go outside the perimeter of seeking comfort for the IDP during the time of his displacement and entrenching such comfort in the protection of internationally

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<sup>58</sup> R. Collins. *A History of Modern Sudan*. Cambridge: Cambridge University Press, 2008. pp. 33-52

<sup>59</sup> Weiss, G. Thomas. 'Whither International Efforts for IDPs?' in *Journal for Peace Research*, Vol. 36, No. 3 (May, 1999), pp. 363 – 373; <http://www.istor.org/stable/424699> – Accessed on 17 February 2010 at 12:20.

<sup>60</sup> Ibid.

recognized instruments. Issues of return and the fears and allied concerns around them are not addressed.<sup>61</sup>

W. Thomas Mallison and Sally V. Mallison, however addressed the question of return in a paper titled 'The Right of Return.' This is a legalistic peroration on the right of Palestinian refugees to return to their homelands under Israeli occupation since 1948. Theirs is essentially an analysis of major UN resolutions on the Palestinian Question and why, in the view of the two writers, Palestinian refugees should return to their homelands. It is instructive that in this context, focus is on Palestinian refugees rather than on IDPs.<sup>62</sup> Nonetheless they make a fundamental argument on the right to a home and of return of refugees as provided for in various international instruments. Such considerations for refugees in international instruments provide a valuable basis for arguing the case of the right of return for IDPs.

Similar focus is evident in Sari Hanafi, where he argues the case for opening up of debate for the return of Palestinian refugees and seeks, in particular, that areas that Israel has considered to be no go zones in any possible dialogue – such as the possibility of a two state solution to the conflict – should be considered.<sup>63</sup> IDPs do not fall into this prism of discourse.

Barry N. Stein, on the other hand, exemplifies the preponderant international concern about civilian populations in armed conflict, in the paper 'The commitment to refugee settlement.'<sup>64</sup> Stein's concern is whether there will continue to be adequate resources within leading refugee recipient countries – like the United States, Canada, France and Australia – to continue hosting large refugee populations, especially from Third World countries. Stein's focus is symptomatic

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<sup>61</sup> Ibid.

<sup>62</sup> Mallison, Thomas, W. & Sally, V., Mallison, 'The Right of Return', in *Journal of Palestinian Studies*, Vol. 9, No. 3 (Spring, 1980), pp. 125 – 136. California University Press; <http://www.jstor.org/stable/2536553/> - Accessed 17 February 2010 at 13:06

<sup>63</sup> Hanafi, Sari, 'Opening the Debate on the right of Return'. in *The Middle East Report* No. 222 (Spring, 2002). Pp. 2 – 7; <http://www.jstor.org/stable/1559261> - accessed 17 February 2010 at 12:47.

<sup>64</sup> Stein, Barry, N., 'Commitment to Refugee Resettlement.' in *Annals of American Academy of Political and Social Science*, Vol. 467, *The Global Refugee Problem: U.S. and World Response* (May, 1983), pp. 187 – 201; <http://www.jstor.org/stable/1044937> - Accessed 17 February 2010 at 12:50.

of the Cold War era, when there was hardly any mention whatsoever on IDPs, while refugees hogged all the attention.<sup>65</sup>

Recognition of the IDPs, the need for a protective regime and the question of return is the great unwritten conundrum facing both the international community and the scholar. Ali Mazrui and Michael Tidy discuss the consequences of disunity and civil strife, in their volume *Nationalism and New States in Africa*. They look at the Sudanese civil wars of 1955 and 1962 – 1972 and the humanitarian crises the wars generated. They discuss at some length Government counter-offensive against reprisals in Southern Sudan where villages were destroyed and thousands of civilians died. They also note that thousands more fled into the forests or as refugees across the borders into Uganda, Zaire, Kenya and Central Africa. But they also go on to note that by October 1955 the uprising in the south was under control.<sup>66</sup>

It is instructive that Mazrui and Tidy specifically mention refugees but not IDPs. They nonetheless talk of 'thousands who fled into forests.' Although they do not specifically refer to them as IDPs, such are the kinds of people whom we today acknowledge to be IDPs, or domestic refugees. While Mazrui and Tidy observe that by October 1955 the uprising in Southern Sudan 'was under control'<sup>67</sup> it is not clear whether we are to conclude from this that those who had fled into exile in the forests or into other countries should now feel safe enough to return. Similarly, does the returning of calm in a place that has been under violent conflict necessarily mean that the place is now secure enough for all who lived in this place antecedent to the armed eruption to safely come back home, or could the securing of the place, in point of fact, signify their defeat and be all the more reason why they should fear to return? Mazrui and Tidy do not attempt to address this question. Perhaps it is not part of their focus and interest.<sup>68</sup> It would be interesting to raise similar questions with regard to the IDP situation in Kenya.

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<sup>65</sup> Ibid.

<sup>66</sup> A. Mazrui and M. Tidy, *Nationalism and New States in Africa*, Nairobi, East African Educational Publishers, 1994, p. 195

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

In the same volume, Mazrui and Tidy address the implications of the refugee element for Ethiopia during the Ogaden War in the period 1973 – 74. They underscore the attrition of the influx of Somali refugees into Ethiopia after the war and famine in that period. The refugee element is seen to have caused both military and humanitarian problems. It also led to lawlessness, as groups of refugees resorted to cattle-raiding and armed robbery.<sup>69</sup> Concern here is clearly restricted to the adverse impact of Somali refugee presence in Ethiopia. Questions of internally displaced persons in the wake of the Ogaden War are not addressed at all, unless we are to understand that the Ogaden War did not give rise to internal displacement. Consequently, nothing is said of the question of return, relative to both the refugees and the IDP; and nothing at all on the fears that inform their lives and especially these fears vis-à-vis the question of return.<sup>70</sup>

Mazrui and Tidy also discuss the endemic Hutu versus Tutsi strife in Rwanda and Burundi. They bring the searchlight to settle on the Tutsi reprisals against the Hutu, following the Hutu rising of 1972. They note that the systematic Tutsi purging of Burundi of all Hutu who had received any education led not just to the killing of about 200,000 Hutus, but also to the fleeing into exile, mainly into Tanzania, of some 70,000 Hutu refugees, who by 1984 were still domiciled in Tanzania, as refugees.<sup>71</sup> There is no discourse on the Hutu who may have remained in Burundi, unless we are to infer that there were no Hutu left in Burundi in the wake of this violent strife, or that if they remained, they were not displaced and lived free of the kinds of fears that are likely to occasion and attend internal displacement.

Russell King discusses migration in the volume titled *Origins: An Atlas of Human Migration* (2007). He sees migration as the movement of people from home in search of a different, safer and better place to live in.<sup>72</sup> It is the history of the world, as he asserts humans are born migrants, he says.<sup>73</sup> They want to enjoy peace, tranquillity and predictability. King draws a distinction between internal and international migration: between forced and voluntary moves; and between permanent versus temporary moves.

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<sup>69</sup> Ibid. p. 271.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid. p. 222.

<sup>72</sup> Russell King. *Origins: An Atlas of Human Migration* (Cape Town: Struik Publishers, 2007, p. 8.

<sup>73</sup> Ibid.

In all these cases, man has left habitation that is not adequately suited, or hospitable, in search of a more hospitable place.<sup>74</sup> King examines human migration since the dawn of mankind, drawing it through the Ancient World, the Medieval World, the Expanding World, the Industrial World and the New World, all the way to the Modern World. This is an immensely rich narrative in which we see migration from 1.9 m B.C.E when the first Homo erectus leave Africa, during a warm interlude in the planetary climate, and spread throughout Europe and Asia, to the year 2005 when Europe begins to grapple with the problems of un-integrated second generation immigrants as riots break out in France and as young militant Islamists commit terrorist acts in London.<sup>75</sup>

Although King distinguishes between voluntary and forced migration, on the one hand, and internal and international migration, on the other, he does not recognize internal displacement as a form of forced migration, nor does he examine the plight of the IDP and the dilemma of return. He is satisfied to look at forced migration through such prisms as the forcible ferreting away of people into slavery, while internal migration is seen through such innocuous mirrors as the rural urban drift in search of presumed better livelihoods. There is no place for return and obstacles that inform non-return. He discusses temporary migrants as people who may return to their original abode as in the rural-urban-rural drift because the migrant did not find the comfort expected in the new home and was therefore circumstantially forced to return.<sup>76</sup> He does not, however, discuss the forced migrant who is faced with the dilemma of conditions under which he may consider returning to the abode he was ejected from.

In a chapter titled 'The Graves are Not Yet Full' in the volume *The State of Africa: A History of Fifty Years of Independence*, Martin Meredith discusses the successive displacement of the Tutsi and Hutu populations during the Rwanda Genocide of 1994. Issues of return are only allusively referred to, with respect to both the internally displaced and the refugees who fled to Goma in the Democratic Republic of Congo.<sup>77</sup> The immediacy of humanitarian attention and care that is

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<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

attendant to displacement in armed conflict easily explains the absent-to-discursive attention that the right of return and factors attendant to its elusiveness have received in scholarship. Yet, this humanitarian concern may not be adequately addressed to its logical end, if issues of return have not be taken into account. The fears and other encumbrances around them require unravelling as a prerequisite to conclusive engagement with the humanitarian situation.<sup>78</sup>

### 1.7 Conceptual framework

This study is undertaken against the dual concepts of the exclusionary logic of politics of identity and the notion of the right of return of people displaced from their homes by political violence. The concept of the exclusionary logic of politics of identity has been used by scholars like Mary Kaldor to study humanitarian consequences of what has been referred to as “New Wars.”<sup>79</sup> One of the most striking characteristics of armed conflict in the post-Cold War situation is the high incidence of intra-state conflict, especially in Africa.<sup>80</sup> Scholars like Kaldor prefer to use the expression ‘New Wars’ to refer to this phenomenon.<sup>81</sup>

These scholars assert that the ‘New Wars’ are fought around identity politics. This stands in contrast with ideological and territorial competitions that defined armed confrontation in the Cold War Years and before. The identities that have informed intra-state war in Africa are founded around ethnicity and religion. Ethnicity and religion have created or enforced political identities that generate, or foster, exclusiveness of perception, attitude and treatment of members of other groups.<sup>82</sup> In the circumstances, the frontiers of the moral community have narrowed down manifestly as to be politically and culturally exclusionary.<sup>83</sup>

Moreover, the methods of ‘New Wars’ focus on the exertion of political control through the expulsion by dominant groups of their relatively disadvantaged adversary groups, usually defined by distinct exclusionary political or cultural identities. These activities are usually carried out by decentralized and non-regular armed groups. Their immediate goal is to get rid of

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<sup>78</sup> Ibid.

<sup>79</sup> M. Kaldor, *New and Old Wars Organized Violence in a Global Era*, Cambridge: Polity Press, 2000.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

everyone with a different identity.<sup>84</sup> They, therefore, create an environment which pushes away communities that they consider as being of different political or cultural identity.<sup>85</sup> Behind the conceptual background of the logic of politics of exclusion, this study taps from 'push and pull' migration theorists to consider the right of return and impediments to return by IDPs. The main interest was to survey the push and pull factors that led the IDPs of Jikaze, Vumilia Eldoret and Fumilia Narok communities to their present settlement in Maai Mahiu, as specific identity groups and why they will not go back.

Push and pull theorists of migration studies have argued that people do not just migrate from one place to the other. Ravenstein, an English geographer, used census data from England and Wales to develop his Laws of Migration.<sup>86</sup> He concluded that migration was governed by a *push-pull* process, which included unfavourable conditions in one place. The conditions can include oppressive laws, heavy taxation and conflict, which push people out of their abodes. On the other hand, there are presumed to exist favourable conditions in an external location where the unravelled population will run to. As internal factors push them out, external circumstances pull them in. This study sought to explore such factors in the case of the IDPs in Vumilia Eldoret, Jikaze and Fumilia Narok in Maai Mahiu, behind the background of the exclusionary logic of politics of identity and the notion of the right of return.<sup>87</sup>

Perhaps the most basic expression of the right of return is that contained in the Universal Declaration of Human Rights, Article 13, which states that everyone has the right to leave any country, including his own (when pushed by inhospitable factors), and to return because of the strong attachment to it. The attachment acts as a pull factor. In the local Kenyan scenario, this would mean that every person has a right to leave his home and to return if the conditions are favourable.<sup>88</sup> From the push and pull perspective, it is understood in such circumstances that the conditions in the original place of abode are now attractive to re-migration to the abode of origin. From the exclusionary logic of identity politics, it is understood that an identity group, which

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<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> L. Everett, *A Theory of Migration*, Pennsylvania: University of Pennsylvania Press, 2010, pp. 20-40.

<sup>87</sup> Ibid.

<sup>88</sup> Centre for Human Rights, *United Nations Action in the Field of Human Rights*, Geneva: United Nations Publication, 1994, p. 107.



was expelled by a dominant group as a distinct political or cultural identity group, will no longer suffer exclusion because of belonging to the cultural or political identity group.

It is a generally recognized principle of international law that a Government, exercising political control over a country or an area, has a legal obligation to protect the population of that territory. Therefore, it cannot be argued that the IDPs who were expelled, or fled from the Rift Valley during a period of post election conflict in 2007 – 2008, no longer had any rights with regard to the province in which they had lived, simply because of ethnic animosity caused by the election violence.<sup>89</sup>

Where expulsion or prevention from return results in the breakdown of the law, Article 15 of the Declaration (which stipulates that everyone has the right to a nationality), becomes a further relevant protection of the right of return. And certainly, where a population has been forcibly expelled, the right of return derives from the illegality of the expulsion itself, because those expelled clearly have the right to reverse the illegal act by returning to their homeland. It should follow logically that the people who were expelled from some parts of the Rift Valley were expected to reverse the situation by returning to their homes.<sup>90</sup>

The four Geneva Conventions assume the right of return in numerous articles and provisions. For example, all four Conventions provide that any formal denunciation of one State (or for the Kenyan case denunciation of one's territory by another internal group) for violating provisions of the Conventions, shall not take effect until peace has been concluded, and until after operations connected with the release and repatriation, and in the case of Convention IV, Article 158, re-establishment of the persons protected by the present Convention have been terminated (Convention I, Article 63; Convention II, Article 62; Convention III, Article 142; Convention IV, Article 158). The underlying assumption of these provisions, and the numerous prohibitions in international law against involuntary repatriation under conditions of danger, can only be that of an absolute and universally accepted right of return.<sup>91</sup>

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<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

In 1948, the UN adopted Resolution 194, which specifically applies the right of return to the Kenyan IDPs. Paragraph 11 states that, the refugees or IDPs wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of, or damage to property, which under principles of international law or in equity should be made good by the Governments or authorities responsible. The UN has reaffirmed this resolution practically every year since its adoption with near unanimity. Kenya has both signed and ratified these conventions. The question then arises, why can't the IDPs return when they enjoy the protection of the law?

### **1.8. Research hypothesis**

1. That there are political, historical and cultural factors that have made IDPs reluctant or unable to return to their original abodes.
2. That if certain political, historical and cultural factors are addressed, it may be possible for IDPs to consider returning to their places of original abode.

### **1.9 Methodology**

This study was mainly qualitative. Accordingly, a combination of survey and naturalistic methods were used. Naturalistic surveys require that in-depth analyses of phenomena are carried out in their natural setting. We engaged with primary sources through interview guides with the IDPs under study. The three villages in focus had a total population of 2396 people, including some 699 (or 29 percent) aged 40 and above while the remaining 1697 (or 71 percent) were below 40. About 30 percent of the population was aged between 18 and 39 while the remaining 31 percent was below 18. Our interview target group, therefore, comprised of a population of about 1413, being the population above 18 years (or 59 percent of the population). The population was fairly homogeneous and we were, therefore, satisfied to do with a reasonable representative sample.

We sampled some 141 persons for interviews, representing just about 10 percent of the adult population. This comprised of 104 persons aged 40 and above (being 15 percent of that population) and some 37 persons aged between 18 and 39, or 5 percent of that population. The

assumption was made that the decision to return or not would rest more with the older generations than with the younger persons. The sample also included more women than men (on a ratio of 6:4) for our exploratory mission had revealed that there were more women than men in the population. answering to about that ratio. Of the 141 in the initial sample, we interviewed 112 respondents, or 79 percent of the original sample for the survey. These included 70 women and 42 men. Less men were available for the interviews than had been sampled while the women were more or less within the sampled numbers. The youth numbers, too (ages 18 to 39) did not show any significant disparities from the initial sample. We engaged with the respondents first as individuals and afterwards engaged with some of them in focus group discussions (FGDs).<sup>92</sup> We worked with four research assistants who helped us with data collection in the field over a three week period.

**Table 2: People interviewed**

Population range		
Total population in three villages	2396	100%
Age 40 years and above	699	29%
Below 40 years	1697	61%

Other primary sources included reports from the Kenya National Archives and reports from various commissions and non-governmental organizations (NGOs). Archival reports were particularly useful in the study of migration and settlement of people in the Rift Valley Province in the period immediately leading to Kenya's independence and after. There were also other useful reports by NGOs on recent findings on the 2007 elections and the ensuing violence. We also consulted secondary sources, largely in the form of newspaper reports, journal articles, cyber sources, as well as other library sources on the subject.

<sup>92</sup> See the index for the interview guide.

## CHAPTER TWO

### SETTLEMENT OF PEOPLES IN KENYA'S RIFT VALLEY AND THE CREATION OF 'OTHERNESS' AND ROOTS OF DISPLACEMENT

#### 2.0 Introduction

This chapter deals with settlement of diverse peoples in Kenya's Rift Valley Province and the creation of the notion of 'otherness' in the province. Understanding of the interplay between settlement and attendant perceptions of 'otherness' provides a critical basis to an appreciation of the dynamics of displacement of 2007 – 2008. These are dynamics that have often reduced political competition to a zero-sum ethnic game, particularly after 1992.<sup>93</sup>

Ethnic based political mobilization and patronage has generated contending so-called 'outsiders' versus 'indigenous' narratives in multi-ethnic parts of Kenya.<sup>94</sup> This has been particularly so in the Rift Valley Province, where the Kalenjin have for example perceived themselves to be the 'indigenous' or 'host' community and everybody else 'an outsider.'<sup>95</sup> The failure by the Kikuyu, Kisii, Luo and Luhya to support the then President Daniel arap Moi in the 1990s was perceived by the Kalenjin as 'abuse of generosity' of the 'host' Kalenjin community and brought reprisals against the so-called outsiders.<sup>96</sup>

Discourses of 'otherness' are, therefore, central to the kind of violence that ruffled the Maai Mahiu IDPs in this study. A historical summary of the settlement patterns in the Rift Valley is useful for understanding of the evolution of contending and antagonistic citizenship narratives and the violence and displacement that they have engendered. It also helps to illuminate how political, historical and cultural factors have fed IDPs' reluctance, or inability, to return to their original abodes. This understanding is also useful for the appreciation of conditions under which IDPs could consider the possibility of return.

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<sup>93</sup> Op cit. KNHRC Report p. 18.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid. p. 19.

## 2.1 Early migrations into the Rift Valley in Kenya, 1000 – 1885

The Rift Valley Province of Kenya is inhabited by people from almost all of Kenya's ethnic groups, with varying numerical presence. Attraction to the region arises out of the fact that it is one of the country's most fertile and arable areas.<sup>97</sup> Some of Kenya's communities arrived in this province during the migration period in the pre-colonial era. These communities included the Kalenjin, the Maasai and some members of the Luhya.<sup>98</sup> Other groups moved into the North Rift during the colonial period in search for employment on the White created settlements, or the White Highlands as they commonly got to be known. These predominantly include the Kikuyu and the Kisii.<sup>99</sup> These communities were to remain in the North Rift and settle permanently after the colonial period, while others moved in through the one million acre settlement scheme programme that was introduced just before independence.<sup>100</sup>

According to the official National Atlas of the Survey of Kenya, the Rift Valley Province was first inhabited by Cushites. These Cushites would appear to have been absorbed and assimilated by later arrivals and in particular Highland Nilotes.<sup>101</sup> The Highland Nilotes comprised of the ancestors of the current Kalenjin people, who migrated into the region probably during the first century A.D.<sup>102</sup> The word Kalenjin itself is derived from the word *Kaale-ii* which means 'Listen to what I am about to tell you.' As a name for these people it was coined recently for political reasons.<sup>103</sup> The Kalenjin sub-ethnic groups are today seven in number. These are the Pokot, Marakwet, Keiyo, Tugen, Kipsigis, Nandi and the Sabaot. Before their expansion, the ancestors of the Kalenjin were largely concentrated on the eastern fringes of Western Kenya.<sup>104</sup>

The ancestors of the Kalenjin migrated into the Rift Valley and Western Kenya from somewhere in the north, perhaps from an area in Ethiopia, north of Lake Turkana. They moved in as one

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<sup>97</sup> G.W.B, Hunting Ford, *The People of Kenya- No. 11*. The Nandi Nairobi: Ndia Kuu Press pp. 1-2.

<sup>98</sup> M.P.K. Sorrenson, *Land Reform in the Kikuyu Country* Nairobi: Oxford University Press, 1967, p.16.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> G.O.K, *National Atlas of Kenya Fifth Edition*, Nairobi: Survey of Kenya 2003, p.9.

<sup>102</sup> Ibid.

<sup>103</sup> *Kaale-ii* is a Kalenjin word which means, 'Listen to what I am about to tell you.' It was used in political public meetings from about 1950 – 1963 with the intention of identifying those who understand one common language, whoever responded to 'I say [Kaale-ii] was regarded as a Kalenjin.

<sup>104</sup> G.W.B, Hunting Ford, *The People of Kenya No 11* The Nandi Nairobi: Ndia Kuu Press, pp. 1 – 2.

group, comprised of present day Nandi, Kipsigis, Tugen, Terik, Elgeyo, Marakwet, Pokot and the Elgon Kalenjin (the Sebei, Kony, Bok and Bongomek).<sup>105</sup> This perspective is supported by scholarly sources which indicate that the proto-Kalenjin society came into being among the Southern Nilotes, who lived north of the Mau. The evolution of the society in the centuries before the year 1000 involved a long-term incorporation of Southern Cushitic peoples<sup>106</sup>, whom they found in this area.<sup>107</sup>

It would also appear that a notable Bantu element, the Sirikwa, was incorporated through the practice by Kalenjin-speaking men of marrying wives from a society speaking an early version of Luhya-Gishu. From around 1000, they proceeded to expand over considerable new territory, from Mt. Elgon in the north-west as far as the southern Nyandarua range and the Rift Valley areas of southern and central Kenya. Other Kalenjin expansions went westwards in the modern-day Luhya-speaking lands south of Mount Elgon, where both Bantu speaking and Southern Cushitic communities had apparently been previously established.<sup>108</sup>

The Maa-Ongamo speaking peoples appeared on this landscape as a notable departure from these trends. They were a whole distinct ethnic element on the central East African scene. Their migrations into the Rift Valley are traced to a point near the Lotuko Hills of far southern Sudan. From here, the Maa-Ongamo spread southward toward the Baringo and Laikipia regions north and north-west of Mt. Kenya, about the eighth century of our era.<sup>109</sup> Their initial southward expansion appears to have incorporated many of the Baz, the lowland Eastern Cushites who had previously inhabited the Turkana Basin.<sup>110</sup> South of Baringo and Laikipia, the formerly dominant communities were probably Southern Cushitic in language. Once in the Mount Kenya region, the proto-Maa-Ongamo split into two societies. The Maa proper came to dominate the Baringo basin and Laikipia and continued to be strongly influenced by their Kalenjin neighbours on the south

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<sup>105</sup> Gideon S. Were & Derek A. Wilson, *East Africa Through A Thousand Years*, 1968, P. 48.

<sup>106</sup> *Ibid.* (See also Andrew Fedders and Cynthia Salvadori, *Peoples and Cultures of Kenya*, Nairobi, (Transafrica), 1979, p. 45.

<sup>107</sup> *Ibid.*

<sup>108</sup> H. Ibrek, UNESCO General History of Africa. Vol. III. p. 301.

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

and west. The Old Ongamo spread south to concentrate in the plains of the Kilimanjaro and Pare Mountain region.<sup>111</sup>

## 2.2 Kalenjin dispersion, 1600 – 1800

The ancestors of the Kalenjin first settled on Mt. Elgon as a single group without different inter-ethnic groups as they appear to be at present. At Mt. Elgon the Kalenjin group split into smaller units after which they separated and dispersed to occupy different regions in the North Rift. It is believed that this movement took place between 1600 and 1620 AD.<sup>112</sup> The first group to leave the original concentration at Mt. Elgon appears to have been the ancestors of the Pokot people.<sup>113</sup> The second group to disperse was that of the Endo, Tugen, Marakwet and Keiyo, while the last group to disperse is said to have been that of the ancestors of the Kipsigis, and Nandi.<sup>114</sup> The Sebei on the other hand settled in what is Uganda today. These groups settled on the east and south of the Uasin Gishu Plateau, where they became ethnic groups with some degree of distinct characteristics, although they maintained their main cultural characteristics that are common in the entire Kalenjin sub-communities.<sup>115</sup>

The other groups moved and claimed the whole territory comprising of the current day Uasin Gishu, Nandi, Kericho, Baringo and Nakuru districts. The other territories included Kakamega escarpment on the west, Eldoret in the east and the Kerio Valley plus its surroundings. In this region, they displaced the Maasai who had settled earlier in the Uasin Gishu Plateau in the 17th century. The Sabaot subgroup remained around Mt. Elgon and settled on the Elgon Escarpment. These settlements became important and influenced the social, economic and political life of the Rift Valley for a long period until 1920 when the British took over Kenya.<sup>116</sup>

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<sup>111</sup> Ibid.

<sup>112</sup> C. Chesaina. *Oral Literature of the Kalenjin* Nairobi: East Africa Educational Publishers, 1991 p. 1.

<sup>113</sup> W.R. Ochieng', *A History of Kenya* London: Macmillan Publishers Ltd., 1985, p. 27.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> A. Okoth. *A History of Africa, Volume One: African Societies and the Establishment of Colonial Rule, 1800-1915* Nairobi: East African educational Publishers p.35.

### 2.3 White settlement & migration of African labour into White Highlands 1896 – 1960

The period 1896 to 1960 was witness to dominant European settlement in the Rift Valley, informed by British land policies that attempted to build a White agrarian economy to pay for the Kenya-Uganda Railway.<sup>117</sup> The migration of the Kalenjin people into most parts of the Rift Valley had displaced some of the communities that lived in the region, such as the Kwavi sections of Laikipia and Uasin Gishu Maasai who had originally settled in Uasin Gishu. The Kwavi Maasai were always referred to as the Losegalai Maasai.<sup>118</sup> These two groups controlled the entire region due to their military might.<sup>119</sup> Later the Uasin Nkishu and Laikipia Maasai's military supremacy had come to an end when they got involved in internal conflicts which combined with natural calamities to weaken them. The Kwavi Maasai had continuously engaged in raiding their neighbours for cattle and fought with distant communities.<sup>120</sup>

At the beginning, they were successful in their wars with the Pastoral Maasai. But towards the middle of the nineteenth century, fortune turned against them. Earlier, they had suffered a disastrous defeat when they attacked the Gogo and the Maasai section of Kisongo.<sup>121</sup> In both cases many of the invaders were killed. Other factors also contributed to the weakness of the Kwavi. They suffered a string of misfortunes, such as natural calamities.<sup>122</sup> The coming of European occupation at the end of the 19<sup>th</sup> century wrapped up their fate.

Europeans, mostly from Britain, the Boers from South Africa and some from the Scandinavian countries formed a small but dominant population in land relations in the Rift Valley.<sup>123</sup> Most of the land that European migrants occupied in the region was alienated from Africans through a series of land ordinances between 1896 and 1939.<sup>124</sup>

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<sup>117</sup> B. Berman, *Control & Crisis in Colonial Kenya: The Dialectic of Domination*, Nairobi: EAEP, 1992, pp 51 – 57.

<sup>118</sup> G.S. Were and D. Wilson. *East Africa Through a Thousand Years, A.D. 1000 to the Present day*, London: Evans Brothers Limited, 1968. p. 91.

<sup>119</sup> KNA, Waller *The Maasai of Kenya: A study of colonial conservation*, p. 4. (unpublished)

<sup>120</sup> *Ibid.*

<sup>121</sup> G.S. Were and D. Wilson. *East Africa Through a Thousand Years, A.D. 1000 to the Present Day*. London: Evans Brothers Limited, 1968. p. 93.

<sup>122</sup> *Ibid.*

<sup>123</sup> W. Maloba. *Mau Mau and Kenya: An Analysis of a Peasant Revolt*, Nairobi: EAEP. 1993, p. 26

<sup>124</sup> *Ibid.*



earliest European settlements in the districts of the Rift Valley date to about 1905. Between 1905 and 1910 the number considerably increased and by the latter date the farms thereabouts were practically all been taken up. The European farmers in the Rift Valley began large scale agriculture and tried at various times to grow wheat, peas and latterly linseed. The farms close to the coast were not taken up till 1912. Most of the settlements on these farms tried to grow coffee and some kept pigs. The coffee took much longer to grow than in lower and hotter places, but it eventually did quite well. Maize was also largely grown in Trans Nzoia and Uasin Gishu Districts.<sup>125</sup>

The progress of European settlement suffered a setback during the First World War. Little or no new land was opened up during the war period. In 1919, however, there was a large influx of settlers almost altogether ex-navy and ex-army men. The principal area of new land opened up was to the east and south of Kericho as far as the Dare River, where several large syndicates obtained concessions.<sup>126</sup> Several of these were done in 1919. The country around Manga and Kericho was also given out to large syndicates. In 1919, a large block of 25, 000 acres was given out to the British ex-military men as a reward after the World War 1.<sup>127</sup> The land was situated in Kipkaren, Kaimosi and Kamukuywa.<sup>128</sup> And the first members of the colony arrived in Kericho early in 1920. During 1918 to 1920 most of the farms in and about Kericho and Soik were taken up by Europeans who flocked in, in large numbers.

As the Europeans moving in the Rift Valley in large numbers the region's districts were divided into two major categories, based on racial lines. The first category was that of settled districts, consisting of European farms and they remained strictly inhabited by the European settlers. Most of the development was initiated in the settled districts. The second category comprised of the Native districts, which were reserved strictly for the African people.<sup>129</sup> Very little in terms of development was done in these African regions.

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Ochieng'. *Historical Studies and Social Change in Western Kenya: Essays in Memory of Professor Gideon S*  
Nairobi: East African educational Publishers. 2002, p.113.  
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NA, PC/RVP.2/8/1, Uasin Gishu District Annual Reports 1913-1914.

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<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> W. Ochieng', *Historical Studies and Social Change in Western Kenya: Essays in Memory of Professor Gideon S. Were*, Nairobi: East African educational Publishers, 2002, p.113.

<sup>128</sup> Ibid.

<sup>129</sup> KNA, PC/RVP.2/8/1, Uasin Gishu District Annual Reports 1913-1914.

On the whole, British engagement with what is today Kenya saw hundreds of European settler farmers brought in to settle in what came to be known as the White Highlands. Most of these farms were in the Rift Valley.<sup>130</sup> To legalise the European settlements and manage the African people, the British colonizers passed and enforced all sorts of racist and inhuman laws. They included the Crown Lands Ordinances of 1902 and 1915. These ordinances deprived the Africans the right to their lands by shifting the Africans into the Native Reserves Region.<sup>131</sup> Governor Charles Eliot began to actively promote European settlement in the so called White Highlands by encouraging white farmers from South Africa, New Zealand, Australia and Britain to come in and settle.

#### **2.4 World War I: Further European incursion and creation of squatters**

The end of the First World War had an important impact on settlements in the Rift Valley as the colonial Government opened the soldier settlement plan. The European soldiers who had fought in the war were rewarded with land in the Rift Valley.<sup>132</sup> This meant more land was to be taken from the Africans and, therefore, increased economic pressure in the reserves, forcing Africans to migrate to the highlands in search of employment. Africans migrated to the Rift Valley from all parts of the country, although the majority of the migrants were Kikuyu from Central Kenya. Most landless people began moving to the region in 1909 to work on European farms.<sup>133</sup> The African job seekers included the Kikuyu, Embu, Kamba, Meru, Nandi, Kipsigis, Luhya, and Kisii people.

These African communities had been deprived of their land rights, yet land had in the past been their principal means of production, subsistence and economy. This alienation from their land was the basis for the surge in African influx into the wage labour force on the White Highlands in the Rift Valley. Alongside land alienation, taxation also played a major role in African labour migration to the White Highlands. Taxation was a double edged sword which encouraged

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<sup>130</sup> M. wa Kinyatti, *History of Resistance in Kenya 1884-2002*, Nairobi: Mau Mau Research Centre, 2008. p. 29.

<sup>131</sup> M.P.K Sorrenson, *Land Reform in the Kikuyu Country* Nairobi. Oxford University Press 1967, p. 15.

<sup>132</sup> KNA, PC /RVP 2/2/1 Uasin Gishu District Annual Reports 1913-1914.

<sup>133</sup> T. Kanogo *Squatters and the Roots of Mau Mau 1905-63*, Nairobi: Heinemann, Kenya 1987, P. 14,

peasant commodity production, apart from forcing Africans to sell labour in the White Highlands.<sup>134</sup>

Moreover, during the WWI there had been additional need for military labour, forcing the colonial Government to pass laws which required the Africans to work by force on the White Highlands. Such laws included the documentation system which was introduced in 1919, infamously known as the *Kipande* registration system. In the same year, 1919, the colonial Government introduced the notorious Northey Circulars, which required the involvement of the provincial administration in the recruitment of labour from the Native Reserves for the settlers in European farms, hence contributing towards African movement into the region.<sup>135</sup>

The African squatter conditions began deteriorating from the mid-1920s due to African reserves becoming overcrowded. The land in the reserves could not support the high African populations. They also lacked basic facilities, such as health care services, sanitation and transport and communication services. Their adversity was accentuated by lack of markets for their products. Africans, therefore, flocked from the reserves to become squatters in the Rift Valley on White owned farms. By 1930, squatter labour became the main source of labour on settler farms and estates in the Rift Valley, a majority of whom were the Kikuyu people.<sup>136</sup>

Thousands of Kikuyu squatter families migrated from the central part of Kenya to the Rift Valley. These Kikuyu families joined with those who had moved to the Rift Valley starting from 1909.<sup>137</sup> As from 1909, some Kikuyu had a notion that land in the Rift Valley was very fertile and free for the taking. Some believed that there were also free sheep which they could acquire, and hence would become very rich.<sup>138</sup> The above notion made many Kikuyu to migrate to the Rift Valley, most of whom settled in the North Rift.

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<sup>134</sup> A. Okoth 'A History of Africa', Volume One: African Societies and the Establishment of Colonial Rule, 1800-1915 Nairobi: East African Educational Publishers, p.35.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> T. Kanogo, *Squatters and the Roots of Mau Mau 1905-63*, Nairobi: Heinemann Kenya 1987. pp. 13-18.

<sup>138</sup> Ibid.

The squatter system that was introduced by the colonial Government highly contributed to the migration of different communities into the Rift Valley. Although during the emergency period, from 1952 to 1960 the British colonial Government repatriated most Kikuyu, Embu and Meru from the Rift Valley to their ancestral districts in Central Province, most of them sneaked back before independence, while others moved into the region through the Government's one million acre settlement scheme programme that was introduced towards independence to settle landless Africans.<sup>139</sup>

Before the European settlers arrived in the Rift Valley region of Kenya, Africans benefited from the existence of communal land ownership, which allowed them usage for living, grazing and cultivation space as populations increased.<sup>140</sup> Traditional land usage in Kenya's Rift Valley assumed the availability of cultivation or grazing space for people who had no land of their own. This ensured stability of African societies and co-existence, through sharing of the land which remained an available resource.

## **2.5 Cash economy and the makings of African land rebellion**

The European presence opened up new possibilities for development of cash agriculture which was introduced in the Rift Valley. Initially Europeans allowed their African labourers or squatters to cultivate some crops on the land that they lived on for their survival.<sup>141</sup> But, later as Europeans expanded their production, they began to place restrictions on the Africans squatting on their land. The Africans were unhappy with the poor conditions and colonial laws, hence in 1950s the growing rural frustrations exploded into the Mau Mau rebellion.<sup>142</sup>

## **2.6. The White Highlands begin opening up to Africans**

At this time, Europeans were a worried lot and most of them planned to leave the country. Thus began a trend that would get to its peak soon after independence and within it the seeds of future displacement as various African ethnic communities moved in as distinct language community

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<sup>139</sup> Ibid.

<sup>140</sup> C Leo 'The Failure of the Progressive Farmer in Kenya's Million-Acre Settlement Scheme in *The Journal of Modern African Studies*, Vol. 16, University Press, 1978, p. 620.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

groups to occupy land previously in the hands of European settlers. Moreover, some whites remained in Rift Valley even after independence and would continue to be a part of the North Rift population.<sup>143</sup> Although the bulk of Europeans left as Kenya moved towards independence, some continued remained as farmers resident in the North Rift as shown in the table below:

**Table 3: Europeans in Western Kenya's White Highlands**

Year	Trans Nzoia	Uasin Gishu	Kericho	Total
1962	1,320	1,211	1,294	3,825
1969	628	668	616	1,912
1979	721	289	265	1,275
1989	252	304	160	721

Source: William Ochieng', *Historical Studies and Social Change in Western Kenya*, Nairobi: East African Educational Publishers, 2002, p.294.

The Mau Mau rebellion was so destructive to the settler farming economy that some settlers started leaving the country, more so when the British Colonial Government planned to grant independence to Kenya. Due to the African's spirited fight for their lost lands, the colonial authorities began to plan a programme of African small-holder settlement.<sup>144</sup> This programme involved setting up a fund by the British and World Bank which was to enable Government purchase land from departing European settlers and sell it to willing African buyers who could afford the price. As the programme went on, large numbers of landless Africans began to descend on areas chosen for the programme in the Rift Valley. This forced the Government to expand the settlement areas into what become known as the Million-Acre Scheme, which was designed to accommodate 35,000 families.<sup>145</sup>

<sup>143</sup> Ibid.

<sup>144</sup> Ibid, p. 621.

<sup>145</sup> Ibid.

As the race for the farms intensified, some poor Africans who could not purchase farms on their own formed societies through which they managed to purchase large farms and shared the land among themselves, according to each one's contribution.<sup>146</sup> These farms would include Wamuini, Ngenia, Nyakinyua, Kondoo, Rukoine, Kiambaa, Mafuta, Rironi and Vumilia Farm, to mention a few dominated by the Kikuyu. The Luhya bought Big Tree, Sirende, Kiminini, Weoya, Botwa, Sinoko and Matunda farms, among others. The Kalenjin bought Tulwet, Waitaluk, Kaplamai and Ziwa farms. While the Kisii bought Nyabomo, Goseta and North Kisii farms in Trans Nzoia. The Teso bought Amagoro farm.<sup>147</sup> These farms and many others explain why the Rift Valley is so cosmopolitan. These purchases were often informed by ethnic tension, arising out of secrecy that surrounded some of the transactions. Simeon Nyachae who served as Provincial Commissioner for Rift Valley Province at this time has written:

Another remarkable incident was at Chepsir area near Kipkelion. The incident was created by Mr. Jones, a settler who negotiated with a company owned by Kikuyus and Kisiis, called Nyagacho. The group raised money and bought the farm, but Mr. Jones had not informed the Kipsigis who were his neighbours that he was selling the land. Even before the transfer of the land was complete, Mr. Jones took the money and invited the Nyagocho group to take over the land. When tension flared up, Mr. Jones sat in his house and left the two groups – Nyagocho and Kipsigis – to confront one another.<sup>148</sup>

The question of African land ownership in the Rift Valley goes back to the late 1950s when the White Highlands were opened up to Africans after the amendment of the laws that had excluded African land ownership. The Colonial Government was forced to effect the amendment of land laws by African rebellion against the foreign rule. The British carried out a major revolution in African land ownership and farming as outlined by the Swynnerton Plan of 1954, which suggested the change of land ownership from customary tenure to individual freehold. The

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<sup>146</sup> KNA, DC/KBT/1/8/39, Kikuyu Land Application, 1962

<sup>147</sup> Ibid.

<sup>148</sup> S. Nyachae, *Walking through the Corridors of Service: An Autobiography*, Nairobi, Mvule Africa Publishers, 2002, p. 70

purpose of the plan was to give incentive to African farmers to move from subsistence agriculture to modern and planned farming for money.<sup>149</sup>

The Plan was geared to creating an organized agricultural marketing system of Kenya, bring a steady and high return to the farmer for his produce. It also planned to give agricultural long-term credit to farmers by allowing them to pledge their land against borrowing by use of their permanent titles over land.<sup>150</sup> This incentive encouraged ethnic competition of land in the Rift Valley's White Highlands. Different ethnic groups began nursing the idea of excluding other ethnic groups from settlement regions that they controlled. These groups also began protecting their long-term future by preventing other groups from encroachment to what they laid claim.<sup>151</sup> The foundation for future violent land relations and displacement had been laid.

## **2.7 Rift Valley's ethnic composition at the return of multi party politics 1991**

According to the 1989 and 1999 Census, there are over 42 tribes living in Kenya, as well as non-African groups, such as Asians and Europeans. A majority of these groups are represented in the Rift Valley.<sup>152</sup> The Rift Valley is, therefore, considered to be a multi-ethnic, multi-religious and multi-racial society. These communities have inter-married over the years and some members assimilated into dominant groups that some have almost lost affinity with their ancestral origins, including ancestral lands of origin.

Apart from the Kalenjin, the Rift Valley is inhabited by Bantu speaking peoples, such as the Kikuyu, Meru, Gusii, Embu, Akamba and Luhya. These groups have practised agricultural farming while the Nilotic groups, such as the Kalenjin, Maasai and Turkana, have engaged in pastoralism and some limited agricultural activities. The minority Cushitic communities living in the Rift Valley, such as the Somali, live in towns, with a majority engaging in trade.<sup>153</sup>

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<sup>149</sup> N.S. Carey Jones. 'The Decolonization of the white Highlands of Kenya' in *The Geographical Journal*, Vol. 131, No. 2 (Jun. 1965) .P 186 <http://www.jstor.org/stable/1793793> Accessed: 14 /03/2009.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid. 188.

<sup>152</sup> GoK, *1999 Population and Housing Census: Counting our People for Development Vol. 2*. Nairobi: Government Printers 2000.

<sup>153</sup> Ibid.



Apart from African groups, there is also the Asian community most of whom moved to the Rift Valley during the construction of the Kenya-Uganda railroad. The Asian community in the Rift Valley inhabited towns where they engaged in trade. The Rift Valley region has remained a major population recipient since independence because of its high potential land, sparse population and the Government policy of re-settling the landless.<sup>154</sup> These facilitated the continuing migration of people from the more densely populated districts, such as those in Central Province and Western Province, into the Rift Valley. Statistics of the population of the Rift Valley in 1999 indicated that the population was composed of 53 percent Kalenjin, 21 percent Kikuyu, 15 per cent Luhya and 3 percent Luo.<sup>155</sup>

## 2.8 Conclusion

This chapter set out to give a brief history of the origins of settlement of Kenyan communities in the Rift Valley Province and the creation of the notion of 'otherness'. The chapter has described the migrations and settlement of various ethnic groups in the province. As these ethnic groups moved into the Rift Valley, they maintained their ethnic group identities. This factor has through a long historical timeline, had great influence on relationships among neighbours. The relationships have often taken the shape of both real and perceived ethnic competition for opportunities, sometimes flaring up into bloody violence and leading to displacement of members of certain ethnic communities by militias from their dominant neighbours. This has been particularly so where the competition has been for political opportunities.

Politics of 'ethnic mobilization' have moreover had practical implications of 'outsider' versus 'indigenous' discourses that have presaged violent ethnic conflict and displacement of people in Rift Valley. While the Constitution of Kenya has recognized the citizens' rights to live and own property anywhere in the country,<sup>156</sup> the Constitution has co-existed with the socio-political reality that people belong to certain ethnic communities and that they came here in different ethnic streams at different times in history. Membership of an ethnic community has had the

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<sup>152</sup> G.O.K, *Uasin Gishu District Development Plan for 1979-1983*. Nairobi: Ministry of Finance and Planning 1979.

<sup>153</sup> Ibid.

<sup>154</sup> Laws of Kenya, *The Constitution of Kenya*, Revised Edition (1998), 1992, Article 75 was in effect at the time of the displacement of 2007 – 2008. This protection has since been replaced and enhanced by *The Constitution of Kenya of August 2010*.

exclusionary impact of being perceived to grant some people 'rights' to things like land ownership, while also excluding others from similar enjoyment of such 'rights.'

Presumed 'rights' 'granted by ethnic citizenship' are what frame the discourses of the 'foreigner - indigenous' or 'outsider - indigenous' tension and conflict. Fundamental questions arise on whether Constitutional rights can be derogated and subordinated to presumed 'ethnic rights'. Conversely is the question of whether citizens can be guaranteed protection against arbitrariness that is founded in such presumed 'ethnic rights.' In the event that there is no clear protection both in law and practice, then citizens are prone to live in internal exile against their will. Internal displacement has been a part of Kenya's history over a lengthy timeline, which has now contributed to nascent reluctance, or inability, by IDPs to return to their original homes after conflict. Understanding of its historical dynamics could also help find conditions under which internal exiles could consider possible return. We shall address this in the next chapter.

## CHAPTER THREE

### HISTORY OF DISPLACEMENT OF PEOPLES IN KENYA, 1895 to 2008

#### 3.0 Introduction: Push-and-pull factors and the creation of internal refugees

Kenyans have been internally displaced over a long historical timeline. It goes far back to colonial times and comes up as recently as 2007 to 2010. The displacement factors are as diverse as colonial land policies, state efforts at development projects, natural disasters and violence, among others. Violence for its part is linked to ethnic competition for opportunities, as well as repression as a tool of political competition.<sup>157</sup>

This chapter attempts to give a historical summary of displacement in Kenya from 1895 to 2008 and the factors informing the displacement. This is in the interest of wider appreciation of the story of displacement in the Rift Valley Province in 2007 to 2008. Displacement over this timeline has had a thread line and a combination of happenings and circumstances that has led to the current reluctance, or inability, by IDPs to return to their original abode. The overall experience of displacement in Kenya, therefore, provides a valuable historical background to understanding the problem of IDP reluctance or inability to go back after the 2007 to 2008 violence and displacement. It could also help in the search for conditions under which they could possibly consider to return.

#### 3.1. Displacement during the colonial period

We have seen in the previous chapter that most of the current Kenyan communities came from different parts of Africa from the north and the northwest. As they moved into what is Kenya today, many occupied territories which are believed to have previously been occupied by a people called the Ndorobo. These were hunter gathers who lacked a sedentary settlement culture.<sup>158</sup> Towards the end of their migration and settlement as part of the Eastern throng of the Bantu speaking peoples' migration into East Africa, many Kikuyu, Chuka, Embu, Meru and

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<sup>157</sup> Ibid.

<sup>158</sup> G. Kershaw, *Mau Mau from Below*, Nairobi: East African Educational Publishers, 1997. p.19.

Akamba displaced the Ndorobo.<sup>159</sup> The displacement of the Ndorobo by the incoming communities marks the beginning of the history of displacement in Kenya. Apart from the displacement of the Ndorobo, displacement was to continue until the coming of the European colonialists.

In the last decade of the 19<sup>th</sup> century, Kenya had a marked presence of a European settler community. The history of settler occupation of Kenya is intrinsically linked with the then Uganda Railway. Wunyabari Maloba has argued:

The railway was built using British Government Funds and represented the most expensive official expenditure in the newly acquired territory. This expenditure in itself demonstrated the British Government's commitment to securing a firm foothold, not only in 'Uganda, but also in British East Africa, a territory that, after 1920, became known as Kenya. Once the railway had been constructed, it had to be put to profitable use. Because Kenya and Uganda lacked minerals, the railway could be profitable only if it stimulated agricultural production in the interior.<sup>160</sup>

To facilitate this agricultural production, it became the deliberate colonial office policy in London to stimulate agriculture in Kenya by encouraging outsiders to settle in Kenya. 'On the one hand, the Foreign Office considered making Kenya 'America of Hindus' by encouraging Indian colonization. Others in the office favoured British colonization of the territory. In the end, European colonization of Kenya's White Highlands was settled upon as the most viable alternative.'<sup>161</sup>

The occupation meant that African land was to be taken by Europeans. Protests by Africans were rebuffed as the European settlers demanded that those Africans who already resided on the land should leave. By 1907 – 1909, smaller African tracts of land continued to be taken by the incoming European settlers until the end of the 1<sup>st</sup> World War.<sup>162</sup> The early stages of land alienation were to intensify between the First World War and Second World War. During this

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<sup>159</sup> J. Kenyatta, *Facing Mount Kenya*. Nairobi: East African Educational Publishers, 1995 (ed) p. 25 – 26.

<sup>160</sup> W. Maloba, *Mau Mau and Kenya: An Analysis of a Peasant Revolt*, Nairobi: EAEP, 1993, p.24

<sup>161</sup> Ibid.

<sup>162</sup> G. Kershaw, *Mau Mau from Below*. Nairobi: EAEP, 1997, p. 86.

period, African land was taken for public services.<sup>163</sup> The situation translated into Africans losing their land, hence being displaced either locally or to other places within Kenya.

The White settlers' occupation of Kenya was achieved largely through the efforts of the newly appointed High Commissioner, Sir Charles Eliot, from 1902, and a few newly arrived settlers who congregated around Nairobi. It was Eliot's view that the new territory would have to be developed as 'a White man's country.' He proceeded to bar Indians from occupying the highlands, allowing only a few to occupy the low lying areas.<sup>164</sup>

At no point was it ever considered that the development of agriculture in Kenya could be by the indigenous Africans as agents of commercial agricultural production. It was taken as a matter of course that Africans were 'so primitive, so disorganized, that it would be centuries before they would be able to assume the gigantic task of commercial farming.'<sup>165</sup> Eliot's African was:

... greedy, and covetous enough ... he is too indolent in his ways and too disconnected in his ideas, to make any attempt to better himself, or to undertake any labour which does not produce speedy visible result. His mind is far nearer the animal world than is that of the European or Asiatic, and exhibits something of the animal's placidity and want of desire to rise beyond the stage he has reached.<sup>166</sup>

The ground was therefore laid for alienation of African land for settler agriculture. This alienation was the foundation of settler agriculture in the White Highlands. Arbitrary transfer of land from Africans was essentially complete by 1914, except for some additions after the First World War and after the Kenya Land Commission recommendations of 1930.<sup>167</sup>

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<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

<sup>165</sup> Ibid. p. 25

<sup>166</sup> Eliot, Charles, *The East Africa Protectorate*, 1966, New York, 1966, p.2.

<sup>167</sup> B. Berman, London, James Currey. *Control & Crisis in Colonial Kenya: The Dialectic of Domination*, 1990, pp. 141 – 142.

With this land alienation, internal displacement of Africans in Central Kenya and in the Rift Valley Province was on in earnest. It was displacement whose aftermath would reverberate for well over 100 years. To buttress it in law, the displacement was finished in the mould of self-serving colonial legalisms:

These settlers saw their position as being similar to that of earlier settlers in other British dominions, like Canada, New Zealand, Australia and of course South Africa. They were in Kenya to found a 'White man's country' modelled specifically on South Africa. The political and economic implication of these sentiments was that Africans would be treated as labourers, providing labour which would in turn give settlers the prosperity needed to lead a comfortable, secure life. The Africans would in the circumstances have to be controlled and disciplined. In the years ahead, up to 1923 and beyond, the settlers agitated for self-rule in one form or another, and specially for severe legislation in dealing with African, or 'kaffirs'.

... In 1896 the Land Acquisition Act allowed the administration to *acquire land compulsorily* (note the italics) for the railway. This was followed by the Land Ordinance Act of 1902. This ordinance enabled settlers to acquire land, allocated by the commissioner, on a ninety-nine year lease, in ordinances like these and others that followed, the colonial State allocated to itself the responsibility of giving out land to White settlers and other alien economic establishments in the territory. The theory and practice was that all Africans were tenants at the imperial Government's will, and therefore had no land rights that could not be abrogated by imperial decree. Besides, it was felt that Africans' occupation of land and their claim to it were detrimental, for they did not contribute to what the colonial State regarded as economic development. What this meant to the economic future of Africans in Kenya is that their access to land, their principal means of production and livelihood, was severely limited, especially in Central Kenya. <sup>168</sup>

But perhaps the most significant ordinance was that of 1915. Apart from increasing the powers of the governor, it also increased the lease years from 99 to 999 years. The governor could now 'grant, lease or otherwise alienate, in His Majesty's behalf any Crown Lands for any purpose and on any terms as he may think fit.'<sup>169</sup>

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<sup>168</sup> W. Maloba, *Mau Mau and Kenya: An Analysis of a Peasant Revolt*, Nairobi: EAEP, 1993, pp. 25 - 26.

<sup>169</sup> *Ibid.*, p. 26.

The 1915 ordinance also established the Native Reserves and empowered the governor to reduce the reserve lands as he deemed fit. This ordinance in essence established the creeping boundary of the Highlands and created great insecurity on the part of Africans. Even within the congested confines of the Native Reserves their land tenure was not secured against encroachment until 1939, because the colonial Government accepted the settler argument that land found suitable for European settlement should be added to the highlands, wherever it became available.<sup>170</sup>

After alienating some of the Kikuyu land, the British colonial Government turned to the Rift Valley. The Government promoted European settlement in the Rift Valley, resulting in further displacement. As the locals of the Rift Valley faced displacement on one side, on the other hand the Kikuyu who had been displaced in Central Province decided to try their luck in the Rift Valley starting at around 1906 and 1907.<sup>171</sup> In the Rift Valley, the Kikuyu found that most of the land was unoccupied, hence they thought it was free. This made them to invite their relatives to join them. At that time the people could use the land which the Europeans did not need. After the First World War, many individuals and their households joined their kin in settlements in the Rift Valley.<sup>172</sup> Although the Kikuyu thought that moving into the Rift Valley was a positive move that allowed them access to land, it was all centred on displacement. First, the Kikuyu had been displaced from Central Province and now they displaced those that formerly lived in the Rift Valley and cemented the foundation for future land struggles and displacements.

The movement of Africans from other parts of Kenya into the Rift Valley opened doors to the squatter system of settlement in the region. By the end of the First World War, the squatter system had been firmly established in the Rift Valley, comprising of the majority of the agricultural workers on settler plantations.<sup>173</sup> Most of these squatters were a product of displacement caused by the British Government when it declared a protectorate over Kenya. In Kiambu-Limuru areas about 60,000 acres of Kikuyu land were alienated between 1903 and 1906.<sup>174</sup>

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<sup>170</sup> Ibid.

<sup>171</sup> G Kershaw, *Mau Mau from Below*. Nairobi: EAEP, 1997, p.91.

<sup>172</sup> Ibid.

<sup>173</sup> Tabitha, Kanogo, *Squatters and the Roots of Mau Mau 1905-63*, Nairobi: Heinemann Kenya, 1987, p.9.

<sup>174</sup> Ibid.

The indiscriminate alienation of African land rendered several thousands landless.<sup>175</sup> Those displaced through loss of land to the European settlers in Central Kenya, provided labour for European farms within Central Kenya, or elsewhere. By 1910 there were 11,647 Kikuyu who were squatters on Kiambu-Limuru settler farms.<sup>176</sup> Some of these squatters were the original owners of the farms. The shortage of land due to alienation rendered many families landless. As a result, there was a wave of Kikuyu movement to the White Highlands in search of employment as early as 1910.<sup>177</sup>

Those migrants relocated to the Rift Valley from Central Province shifted in the main because of emerging land pressures in Central Province. These were beginning to render land inadequate for the residents, as compared with the Rift Valley. Some of the Kikuyu, who moved to the Rift Valley before 1918, were large stock owners who needed more land for their livestock. Availability of good quality grazing land in the Rift Valley was a great incentive for migration.<sup>178</sup> As the Kikuyu moved in with the large stocks, they occupied territories that were once occupied by Rift Valley communities, causing displacement of various communities.<sup>179</sup>

Apart from the main issue of land, other factors also contributed to migrations and displacements in Kenya. For instance, poverty was a factor in displacement in the Kikuyu country. The landless or the *Ahoi* (poor African outsiders allowed by the Kikuyu to settle in Kikuyu country), for instance lived in extreme poverty so that they opted to get land in the forests in the Rift Valley.<sup>180</sup> Although the regions were forested, they were homes to some communities, such as the Ndorobo.

Other people moved into the Rift Valley to evade taxes imposed on African farm labourers in Central Kenya by the colonial administration, although such insulation mechanisms were to prove short lived. The White Highlands were regarded as a haven for people wishing to escape paying of taxes, while others wanted to escape conscription into the carrier corps during the

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<sup>175</sup> Ibid. p.10.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

<sup>178</sup> T Kanogo, *Squatters and the Roots of Mau Mau 1905-63*, op. cit. p.12.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.



WWI.<sup>181</sup> Africans hoped that moving to the White Highlands would assure them of security against the British colonial Government's move to forcefully recruit them into the army. Such movement was in itself displacement as many were still recruited, anyway.

Although almost all factors of movement and displacement were colonial triggered, some of the reasons for displacement at this time were endogenous. Some African communities' fear of witchcraft, hostile neighbours and family feuds played a part in making individuals to move to the Rift Valley Province.<sup>182</sup> Most Africans believed in the power of magic and witchcraft, which they saw as a cause of suffering of their family members, whenever calamity struck. Such a situation would force them to move, or be displaced, to other territories which they perceived as safe from such wicked powers.

Hostile neighbours and family feuds were also major triggers of displacement. Some African families habitually moved from one place of abode to the other to avoid conflict with their neighbours, or with other family members. Movement into Kenya's Rift Valley Province by diverse Kenyan communities both before and during the colonial time falls into this prism.<sup>183</sup> Although most of the early displaced migrants into the Rift Valley Province during the colonial dispensation were the Kikuyu, there were also other displaced people in the province, including squatters from the Akamba, Nandi, Kipsigis, Marakwet, Keiyo and Tugen.<sup>184</sup> After WWI, the Luo, Luhya and Kisii also arrived as squatters. At about this time, the colonial Government further alienated more of Nandi land. The alienation forced further migration to Uasin Gishu and Trans Nzoia, increasing the number of squatters. The spin off was resentment and discontent among the squatters. It would contribute to the outbreak of the Mau Mau revolt.

### **3.2. Displacement during the Mau Mau Revolt**

Land grievances and discontent against the European settler community in Kenya led to increasing acts of violence against the settlers and against Africans who were perceived to collaborate with them. This was particularly so in Central Kenya among the Kikuyu, Embu and

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<sup>181</sup> Ibid.

<sup>182</sup> Ibid. p.13.

<sup>183</sup> Ibid.

<sup>184</sup> Ibid. p.27.

Meru communities. There was also palpable unrest and deterioration of public order in parts of Rift Valley and Nairobi. In September 1952, the Attorney General and the Native Chief Commissioner visited London to seek approval for new repressive legislation to suppress the unrest. But the measures were never to be implemented. The new colonial Governor, Evelyn Baring, bypassed the instruments of Government and declared a State of Emergency on 20 October, as a precursor to brutal pursuit for restoration of order.<sup>185</sup>

The British Government launched atrocious militaristic operations, such as Operation Jock Scott, which fuelled displacement among the Kikuyu, Embu and Meru. The operation secured the arrest of 181 identified leaders of Mau Mau, and anticipated permanent exile for these leaders, preferably in some remote part of the British Empire.<sup>186</sup> These leaders were displaced from their homeland to remote areas of Kenya.

As the war against Mau Mau intensified in early 1953, thousands of Kikuyu who had been displaced fled to the Aberdares and Mt Kenya forests, where they prepared to launch a guerrilla campaign against the colonial Government and its collaborators. The Mau Mau guerrilla campaign, therefore, was enough justification needed by both the Nairobi and imperial Governments to declare war against the movement. The colonial Government decided to pursue a military assault against the armed insurgency of Mau Mau. In order to justify the military assault, Nairobi passed dozens of Emergency Laws to ensure its absolute control over the actions of its colonial subjects.<sup>187</sup>

Governor Baring's Government took powers to enforce communal punishment, curfews, and individual and mass movements of people to confiscate property and impose special taxes, to issue special documentation and passes, to censor and ban publications, to disband all African political organizations, to control labour, to suspend due legal process and detain suspects without trial, even to control African markets, shops, cafeterias and all transport, including buses.

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<sup>185</sup>B. Berman, *Control & Crisis in Colonial Kenya: The Dialectic of Domination*, Nairobi, East African Educational Publishers, 1990, p. 338

<sup>186</sup>A. Clayton, *The Killing Fields of Kenya 1952-1960 British Military Operations Against the Mau Mau*, Nairobi: Tran Africa Press 2006, p. 21.

<sup>187</sup>Caroline Elkins, 'Detention, Rehabilitation and the destruction of Kikuyu Society', in E. S. Atieno Odhiambo and John Lonsdale, *Mau Mau and Nationhood*, Oxford: James Currey, 2003, pp. 192-197.

taxis and bicycles.<sup>188</sup> Finally, the Government also took powers to create concentrated villages in the African reserves, barbed-wire cordons in urban centres like Nairobi and concentrated 'labour lines' in European farming areas.<sup>189</sup> The Africans found these measures both harsh and humiliating. There were massive displacements of Africans who sought to avoid these conditions.

Once empowered by legalism both from London and by local legislation, two initiatives dominated the colonial Government's initial civilian counter-insurgency efforts and betrayed its propensity for capricious and inhumane tactics. The Government initiated displacement through repatriation of most of the Kikuyu population living outside the reserves, back to their native land units in Central Province. The displacement through repatriation began in late 1952 and gained pace after each Mau Mau attack. The Kikuyu throughout East Africa were displaced through these repatriations.<sup>190</sup>

As the displacements through removals and screening methods became increasingly indiscriminate, the Kenya Legislative Council voiced concern. The outcry from European settlers, combined with the Government's policy of forced displacement, created a day-to-day capriciousness that dominated Kikuyu lives throughout the Emergency. By early 1953, a crisis was brewing as the administration in the Rift Valley, empowered by the Emergency regulations, fulfilled settler demands and began repatriating thousands of squatters back to the overcrowded ring fenced Kikuyu reserves. This was done at an average of 2,500 Kikuyu being moved out of the transit camps weekly. Children were not spared these displacements.<sup>191</sup> They were separated from their parents, and most of them disposed to local missionaries, approved schools or distant relatives in the reserves.<sup>192</sup>

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<sup>188</sup> Ibid.

<sup>189</sup> Ibid.

<sup>190</sup> A. Clayton, *The Killing Fields of Kenya 1952-1960: British Military Operations Against the Mau Mau*, Nairobi: Tran Africa Press 2006, p. 21.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

### 3.3 Settlement schemes and displacement, 1960 – 1973

As Kenya moved towards independence, the British colonial Government proposed the settlement scheme model to settle Africans on small farms amongst the European farmlands. It soon became apparent, however, that such small schemes would not satisfy African desires, especially in the political sphere.<sup>193</sup>

Although it became legally possible for Africans to own land in the former White areas, very few Africans were in an economic position to purchase land from Europeans. In order to transfer this land to many landless Africans in Kenya, large scale land settlement schemes were proposed. These schemes were underway on the attainment of internal self-Government in 1963, and came under the new Department of Settlement in the Ministry of Lands and Settlement at that time.<sup>194</sup>

On the eve of independence in 1962, plans were already underway for the purchase of approximately a million acres of European owned land in the highlands. Land classification had been made and the areas considered suitable for 'high 'density' farming were selected, leaving areas not suitable for this type of farming for 'low density' settlement or ranching. Areas already intensively used for plantations of coffee, tea, pineapples and sisal were also left out. This arrangement was made in order to settle the maximum number of Africans with the minimum amount of disruption to the economy of the country.<sup>195</sup> The idea of high and low densities introduced a new dimension of social groups over and above ethnic groups in land ownership and relations in Kenya. Land ownership was now classified in terms of income rather than just who first owned such land. As noted by J. W. Howard, the Chairman of Land Development and Settlement Board:

For High Density Smallholder Schemes target income shall be net 25 – 40 Sterling pounds per annum after allowing for subsistence and annual loan repayment charges. These schemes are subsidized in respect of supervision, assistance in moving on to holdings. The Very High

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<sup>193</sup> F. Furedi, *Mau Mau War in the perspective*, Nairobi. EAEP, 1991, pp 169 – 176.

<sup>194</sup> M. J. Dillon, *The Settlement Schemes of the Former 'White Highlands', Kenya A Case Study of Nvandarua*, M.A. Thesis, Ottawa: Carlton University, 1970. pp. 12-14.

<sup>195</sup> *Ibid.*

Density Schemes will target income about 10 Sterling pounds per annum loan re-payment charges, but working up to 25 Sterling pounds per annum after a few years. These schemes are subsidized on the same basis as the High Density Schemes, but the land purchase is additionally subsidized in order to assist very urgently landless and destitute Kikuyu, Kamba, Maragoli and Banyore. Low Density Smallholder Schemes, target income net of 100 Sterling pounds per annum after allowing for subsistence and annual loan re-payment charges. These schemes are subsidized as to land purchase on the same basis as the High Density Schemes.<sup>196</sup>

The first three years of the settlement schemes were also the last three years before independence; the Government was operating under severe political pressure. Some African leaders were promising free land for all at independence. This rush for settlement produced a lot of displacements. Many people without land, and who could afford, rushed to purchase these farms. Those who lacked capital to purchase the land were dispossessed of their ancestral land.<sup>197</sup> Thus even though the land may have originally belonged to your family, you now watched helplessly as someone with funds bought it from a settler.<sup>198</sup> Resettlement without consideration of original owners of land before the colonial occupation laid the foundations of the solidified grievances that were to mature into ethnic violence that caused the worst displacements in Kenyan history.

### 3.4 Displacement by ethnic clashes, 1991 – 2008

It is clear that the dynamics of the ethnic conflict and internal displacement of persons that has informed the period from 1991 to 2008 have long standing history that we have in the preceding pages traced back to the pre-independence years. The Moi years, otherwise referred to as the Nyayo Era, however had a dynamic of their own that gave gravitas to violent conflict and displacement during the period immediately leading to and after the reintroduction of multi-party politics in Kenya, in November 1991 and indeed far beyond.<sup>199</sup>

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<sup>196</sup> KNA, DC/ KAPT/1/9/60- K. E. M. Movement in General, 1958.

<sup>197</sup> T. Kanogo, *Squatters and the Roots of Mau Mau 1905-63*, Nairobi: Heinemann Kenya 1987, p. 169 – 175

<sup>198</sup> Ibid.

<sup>199</sup> P. Wanyande, 'The Politics of Coalition Government' in Peter Wanyande, Mary Omosa and Chweya Ludeki *Governance and Transition Politics in Kenya*, Nairobi: University of Nairobi Press 2007 pp. 107-130.

Following the foreclosure of political legitimacy of KANU in 1982, there was throbbing, albeit often underground, pressure for expansion of space for political competition. While this pressure went underground in the mid 1980s, it burst into open defiance and calls for change in the period immediately after the end of the Cold War in 1989, partly as a response to the wave of change that was sweeping across the global community, but also because of home-grown grievances.<sup>200</sup> Until this time, Kenya had enjoyed a semblance of illusory political stability, since the advent of independence. However, notwithstanding foreign perceptions of Kenya as a stable country, she slowly began exhibiting signs of political tumult that assumed the character of ethnic suspicion and hostility.<sup>201</sup>

Soon after repeal of Section 2A of the Constitution and restoration of political pluralism, conflicts broke out between, or within, ethnic groups in various parts of the country. This was especially so in those areas contiguous to the Rift Valley Province and in Rift Valley itself.<sup>202</sup> While ethnic suspicion was not new to Kenya, the clashes that emerged from the 1991 were noticeably different in character, scale, complexity, and consequences. Beginning in 1991, in the euphoria of democratization and the anticipation of the historic 1992 elections, the ethnic clashes that erupted were a reflection of deeply held political fears about reversal of fortunes on the part of the ruling Rift Valley political elite.<sup>203</sup>

Their harbinger was a Majimbo rally that led to the Kapkatet Declaration.<sup>204</sup> Kalenjin politicians issued stentorian threats against detractors of the KANU Government and vowed to eject 'non natives' (read 'non-Kalenjins') from Rift Valley Province because of the introduction of multiparty politics.<sup>205</sup> The first sparks of violent conflict erupted at Tinderet in Nandi District on Miteitei Farm.<sup>206</sup> They targeted the Luo, Luhya and the Kikuyu who were seen as the main agitators for political change. In this first attack, about 10 people were killed and 50,000

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<sup>200</sup> Ibid.

<sup>201</sup> NCCK *The Cursed Arrow: the NCCK Contemporary Report on the Politicised Land Clashes in Rift Valley, Nyanza and Western Provinces* Nairobi: NCCK, 1992, pp 25-27.

<sup>202</sup> Ibid.

<sup>203</sup> W. Oyugi et al. *The Politics of Transition in Kenya From KANU to NARC*. Nairobi. Heinrich Boll Foundation. 2003. pp 156-157.

<sup>204</sup> David Throup, & Charles Hornsby, *Multi-Party Politics in Kenya*, Oxford: James Currey 1998, pp 81 – 82

<sup>205</sup> Ibid. p. 188

<sup>206</sup> M.J. Kathina, *Unveiling Women as Pillars of Peace Peace Building in Communities Fractured by Conflicts in Kenya*, New York: UNDP 2000, pp. 12 – 13.

displaced.<sup>207</sup> Following this initial attack, youths from the Kalenjin community extended their activities and closed the road leading to Kisumu in western Kenya. The Luo community counter-attacked, leading to death on both sides. Fighting continued throughout the region bordering the Kalenjin community.<sup>208</sup> The greatest devastation in relation to loss of property and human life occurred when Kalenjin youth attacked the Bukusu community in Western Kenya. During the first six months of clashes in these regions, over 100,000 people were displaced.<sup>209</sup>

Relations between ethnic groups then deteriorated steadily, despite the fact that Luhya leaders, like Elijah Mwangale and Moses Mudavadi, had long been key figures in Moi's inner circle. The conflict escalated, dividing settlers along ethnic lines. The fighting spread along the Nandi-Luo border with Kisumu District.<sup>210</sup> Violence then swept through the Rift Valley to Western Province, through Trans Nzoia to Bungoma.<sup>211</sup> Throup and Hornsby have given an astute anatomy of the escalation of violent confrontation:

By mid-January 1992 ethnic clashes were so widespread that the Roman Catholic Bishops issued a pastoral letter, condemning the incidents and castigating the Government's failure to take action. Certain officials, the Bishops suggested, were abusing their authority, and had issued inflammatory statements inciting violence. The Minister of Local Government William Ntimama, for example, declared Narok District 'a KANU zone.' Attempts by the opposition to establish branches or enlist recruits, he warned, would be resisted by force. Oginga Odinga responded to the warnings from Kamotho and Ole Ntimama by declaring that FORD would retaliate if its members were attacked. In mid January the violence began again in Kamasai in Nandi District, where about 20 people – Mainly Luhya – were killed and more than 1,000 rendered homeless.<sup>212</sup>

The clashes went through four distinct phases characterized by the triple attributes of arson, murder and displacement of residents. The first phase came in 1991, in the wake of the Majimbo rallies as detailed above. They lasted through much of the first three months of the new

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<sup>207</sup> David & Charles Hornsby, *Multi-Party Politics in Kenya*, Oxford: James Currey, 1998, p. 197.

<sup>208</sup> *Ibid.*

<sup>209</sup> *Ibid.*

<sup>210</sup> David Throup, & Charles Hornsby, *Multi-Party Politics in Kenya*, Oxford: James Currey 1998, p. 193.

<sup>211</sup> *Ibid.*

<sup>212</sup> *Ibid.* p. 193.

multiparty dispensation and were designed to secure KANU domination in Rift Valley Province. The worst affected areas were Rift Valley's western border areas with the Luo, Luhya and Gusii 'settlers.' It was a most critical phase to KANU, when everything possible had to be done to either subdue or displace 'non-natives' in the 30 vital 'ethnic marginals' populated by the Gusii and Abaluhya. The Luo vote was considered already lost.<sup>213</sup>

The second phase targeted Kikuyu residents in Molo, Narok North and the three Eldoret constituencies, once again with the objective of bolstering KANU's prospects in the then forthcoming elections. Many Kikuyu people fled from the constituencies for safety. Elsewhere in Trans Nzoia and Uasin Gishu, many Abaluhya also fled to Bungoma and Kakamega Districts.<sup>214</sup>

The third wave of ethnic clashes and displacement took place in the immediate run-up to the elections in December 1992. KANU leaders got into high gear in their attempts to maximize Moi's vote in the remaining 'ethnic marginals' of Molo, Eldoret South and East, Cherangani and Rongai. This ploy was to succeed everywhere, except in Molo Constituency. Molo MP Njenga Mungai alleged that Kalenjin youths were being transported in Government trucks to the Menengai forest in order to attack Kikuyu settlers. The provincial administration denied these claims. But a local Kalenjin politician, William Lasoi, acknowledged that some Kalenjin youths had moved into the forests 'to prepare for circumcision rituals.' Leaflets were meanwhile circulating widely throughout Nakuru and Kericho Districts, warning non-Kalenjins to leave the area. Several Kericho tea plantations ceased production before the election when their Luo, Gusii and Kikuyu tea pickers fled.<sup>215</sup>

The final wave of ethnic violence at this time took place soon after the elections, in 1993. It mainly targeted Kikuyu communities that had failed to heed the warning not to vote for the opposition. It was time to punish them. A Parliamentary Committee that was set up to investigate and report on these clashes, led by Kennedy Kiliku, identified nine separate clash centres. The attacks were initially concentrated on the Nandi-Elgon-Bungoma border. They spread to the Mau escarpment, where they were concentrated in the Molo and Olenguruone areas. Some 14, 000

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<sup>213</sup> Ibid, p. 195.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid



persons were displaced in Bungoma, 12, 000 in Trans-Nzoia and 13, 000 in the two Nakuru divisions of Molo and Rongai.<sup>216</sup> On the whole, after the election, clashes intensified and kept recurring on a small scale at different times, in various places through 1995. As the next elections approached, the country witnessed a resurgence of conflicts starting in 1996. In August 1997, Mombasa, which was unaffected by earlier conflicts, entered the circus of violence.

We see, therefore, that according to the KANU elite in Rift Valley Province, those who supported the opposition were defined in ethnic terms. They were perceived as 'enemy populations' of doubtful allegiance. Their political actions would be difficult to control. The clashes were, therefore, attempts to drive away such populations, in a bid to create ethnic homogeneity, presumed to operate both as a bloc and block that could offer solid political support. As 'enemy' communities were expunged, KANU strongmen urged vigilantes to create and protect KANU zones.<sup>217</sup>

To seal the idea, the *majimbo* notion was introduced. A series of *majimbo* rallies were organized to promulgate the theory that the Rift Valley was an exclusive Kalenjin, KANU zone.<sup>218</sup> Opposition party leaders were warned not to enter the Rift Valley. Meanwhile, their presumed supporters were being driven out of the Rift Valley in what was to be the beginning of the worst displacements in Kenyan history. The principal areas of conflict included the Rift Valley districts of Nakuru, Molo, Kericho, Nandi, Uasin Gishu, Trans-Mara, Marakwet, Mt. Elgon, Bungoma and, in the Coast Province, Mombasa.<sup>219</sup>

Overall, between 1991 and 1995, there were some 250,000 IDPs, in the Rift Valley and the Western Provinces. The main perpetrators in the clashes were from the Kalenjin and Maasai communities, whose leaders were in the inner circle of the Moi KANU Government. The brunt of the clashes was borne by the Kikuyu, Luo, and Luhya communities, who formed the dominant forces in the opposition politics of the country. Thus, the clashes had an underlying political

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<sup>216</sup> Ibid. p. 197.

<sup>217</sup> W.O Oyugi 'Ethnic politics in Kenya' in Okwudba Nnolis *Ethnic conflicts in Africa*. Nottingham: Codesria 1998, pp. 287-303.

<sup>218</sup> David Throup & Charles Hornsby, *Multi-Party Politics in Kenya*, Oxford: James Currey 1998, p 188.

<sup>219</sup> E. S Atieno Odhiambo, in Bruce Berman, Dickson Eyon and Willy Kymlicka, *Ethnicity and Democracy in Africa*. Oxford: James Currey Ltd. 2004. pp 167-182.

rationalization and were instigated with the sole aim of punishing the communities that were in the opposition.<sup>220</sup>

The most affected districts were Bungoma, Trans-Nzoia and West Pokot. In Trans-Nzoia District, the Sabot ethnic group, which is allied to the Kalenjin community, attacked the Bukusu. Further ethnic clashes occurred in the Kakamega, Kisumu, Kericho Nandi and Uasin Gishu districts. In all these clashes, the surrounding neighbours of the Kalenjin ethnic groups took the brunt of the clashes, forcing thousands to flee their homes. The exercise gave the Kalenjin community an opportunity to expand their territorial domain and economic enterprises through the acquisition of cheap land and abandoned property.<sup>221</sup> The clashes, therefore, led to unprecedented deaths and displacement never seen before in Kenya's history. The land left by the displaced people was subsequently occupied by the Kalenjins.<sup>222</sup> It was estimated that over 1,500 people died in the ethnic clashes that involved the Kalenjins and the Maasai, on the one side, and the Kikuyu, Luo and Luhya, on the other, and that approximately 250,000 people were displaced.<sup>223</sup>

Between September 1993 and March 1995, the Government declared Molo, Burnt Forest and Londiani, all in Nakuru District, to be emergency areas and created security zones that prohibited the entry into the region. It also gave the security forces enormous arbitrary powers. The clashes were believed to have intensified in these areas after it was closed to outsiders, such as journalists and human rights observers. In 1994, widespread ethnic-related violence occurred in the Burnt Forest area, resulting in the displacement of about 30,000 people.<sup>224</sup> Although these displacements caused a worldwide outcry, the worst of displacement in Kenya's history was yet to come. This was experienced after the 2007 disputed elections.

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<sup>220</sup> A. Ahmednasir, 'Ethnic clashes, Displaced Persons and the Potential for refugee Creation in Kenya: A Forbidding forecast', in *International Journal of Refugee Law* Vol. 9 No. 2, London: Oxford University Press, 1997, pp. 196-202.

<sup>221</sup> NCCK, *The Cursed Arrow: the NCCK Contemporary Report on the Politicised Land Clashes in Rift Valley, Nyanza and Western Provinces* Nairobi: NCCK 1992 pp 25-27.

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

### 3.5 The December 2007 to February 2008 displacement

The disputed presidential election results of December 2007 led to widespread violence that lasted for nearly two months and caused the displacement of over 650,000 people<sup>225</sup>. Over 310,000 people fled to live amid host communities where they remained for several months. The remaining 350,000 IDPs took refuge in some 118 camps<sup>226</sup>. An estimated 78,000 houses were burnt down countrywide, and 1,300 people reportedly lost their lives. The situation in Kenya became so hostile that it attracted the immediate attention of the international community which moved in to avert further calamity.<sup>227</sup>

In February 2008, under the auspices of the African Union's Panel of Eminent African Personalities chaired by Kofi Annan, the Party of National Unity (PNU) and the opposition Orange Democratic Movement (ODM) signed the Agreement on the Principles of Partnership of the Coalition Government. The terms of the power-sharing were formalised in the National Dialogue and Reconciliation (KNDR) Accord in the same month.<sup>228</sup>

Although post-election violence ended with the signing of the accord, violence has since caused new displacements in different parts of the country. Displacement was reported in arid areas of northern Kenya in 2009 and early 2010 as a result of inter-ethnic clashes and a state-led disarmament programme, which mostly targeted pastoralist communities. Inter-ethnic clashes between pastoralist communities have commonly tended to undermine livelihoods and lead to displacement. Traditionally, pastoral communities practised cattle rustling to assert dominance over neighbouring tribes. However, the recent proliferation of small arms, the commercialization of cattle rustling and growing competition for natural resources have made these conflicts more violent and frequent. In 2009, it was estimated that over 400 Kenyans died as a result of cattle rustling, and nearly 9,000 fled their homes.<sup>229</sup>

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<sup>225</sup> W. Kimathi, 'Internal Displacement: Kenya's Protruding Eye Sore Thumb,' in *Nguzo za Haki, A Publication of the Kenya National Commission on Human Rights*, Issue 9 December 2009, p. 3.

<sup>226</sup> *Ibid.*

<sup>227</sup> IDMC, 'Kenya: Speedy Reform Needed to Deal with Past injustices and Prevent Future Displacements', [www.internal-displacement.org](http://www.internal-displacement.org). Accessed on, 17/06/2010.

<sup>228</sup> Overseas Development Institute (hereafter, ODI), 'Crisis in Kenya: Land, displacement and the search for durable solutions', 24 April 2008,

<sup>229</sup> The Standard Team, in *The Standard News Paper*, 8 December, 2009.

In November 2009, hundreds of families were displaced from their homes in Isiolo District following an armed attack that left 11 people dead. Hundreds of livestock were stolen in these raids, which also affected women's livelihoods and disrupted children's learning. In December 2009, armed bandits from the Pokot tribe raided a village in Turkana East District, resulting in three deaths and the displacement of hundreds of people.<sup>230</sup> In late 2009, hundreds of people, especially women, were displaced during a Government operation aimed at disarming pastoralists. The operation was characterized by human rights violations, affecting a number of communities. The Kenya National Commission on Human Rights accused Government security personnel of using excessive force that led to loss of lives and of other human rights violations.<sup>231</sup> A similar operation carried out by Government security forces in the Mount Elgon region of western Kenya displaced thousands of people in 2008.<sup>232</sup>

### 3.6 Conclusion

There are many historical factors and circumstances over a lengthy timeline that inform the displacement of people in Kenya and the creation of IDPs. These factors and circumstances have variously pulled and pushed people out of their homes. They have included colonial land policies, land pressure and government development and settlement plans and policies. The sum total has been creation of neighbourhoods in which some people have perceived themselves as 'in groups' and others as 'out groups' in contexts that have in general derogated the rights of perceived 'out groups'. According to the findings of this study, the conflicts experienced in Kenya at different periods have displaced thousands of people, some of whom remain in the displacement camps up to the present.

The history of displacement in Kenya is harrowing, more so in the post one party State. The traumatic impact due to death and other dastardly happenings in conflict and displacement has extended far beyond the immediacy of the violence. Moreover, this history has significantly contributed to the sense of reluctance or inability by IDPs to return to their homes after the 2007

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<sup>230</sup> Ibid.

<sup>231</sup> KNCHR, *On the Brink of the Precipice A Human Rights Account of Kenya's Post Election Violence*, KNHCR, 2008, p. 103

<sup>232</sup> *Human Rights Watch*, 28 July 2008

- 2008 violence and displacement. The next chapter will raise the curtain on the dilemma of return, with victims' narratives of their experience during the 2007 – 2008 violence and displacement in the Rift Valley.

## CHAPTER FOUR

### THE 2007 ELECTION VIOLENCE AND THE CREATION OF INTERNALLY DISPLACED PERSONS

#### 4.0 Introduction

This chapter focuses on Kenya's post election violence of December 2007 to February 2008 and the creation of the IDPs who are the spotlight of this study. Employing the support of the voices of the victims of the violence, the chapter seeks to establish the interplay between the violence and IDP reluctance to go back to their original abodes and the possibility of conditions under which they would consider to return.

We have seen in the preceding chapter that Kenya's election related violence over the period 1991 to 2008 has had its immediate foundations in the repeal of Section 2A of the Constitution of Kenya<sup>233</sup> and the attendant re-introduction of multi-party politics in November 1991. Election violence recurred in 1997 and to a smaller scale in 2002.<sup>234</sup> In all these cases, the violence victims more or less resettled to what seemed like normal life in their places of regular habitation. What was it in the 2007 to 2008 election violence that was especially devastating so that the victims would not go back home? That is the concern of this chapter.

#### 4.1. Political incitement and negative ethnicity

In the run-up to the 2007 elections, the demarcation line between issue based election campaign and stirring up of ethnic propaganda was very tenuous. There was heightened political rhetoric both in ODM and in PNU.<sup>235</sup> This rhetoric hinged heavily on playing up negative ethnic sentiments.<sup>236</sup> Political campaigns bordered very close on inciting and whipping up negative ethnic sentiments between communities.<sup>237</sup> Throughout the campaigns in much of the year, there

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<sup>233</sup> This Constitution was later repealed following a constitutional referendum in August 2010 and promulgation of a new Constitution the same month.

<sup>234</sup> Waki Report, *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, p. 140.

<sup>235</sup> P. Waki, *The Report by the Commission of Inquiry into the 2007 Post Election Violence (Waki Report)*, Nairobi: Government Printer, 2008, p. 52

<sup>236</sup> *Ibid* p. 70

<sup>237</sup> *Ibid* p. 103

was abundant public expression of concern about power either remaining in the 'wrong' political camp, or slipping into the 'wrong' camp.<sup>238</sup> In a political arena that is often founded on ethnic competition for power, ethnic political kingpins created the perception that whole communities were at risk should the presidential poll be won by a candidate outside their tribal camp<sup>239</sup>. Conversely, the tribe or group of tribes, that would win the election, and especially the presidential poll, stood to benefit<sup>240</sup>. The expression 'forty-one against one' – meaning the GEMA community (comprised of the Kikuyu, Embu and Meru) against the rest – came very much in vogue in the campaigns.<sup>241</sup> The country was clearly polarized along tribal lines throughout the campaign.

In the Rift Valley Province, the polarization assumed open political incitement of people, perceived to be indigenes, mostly against the Kikuyu, but significantly against others perceived to be 'outsiders'.<sup>242</sup> The ODM campaign ideology of Majimbo<sup>243</sup> gave the so called indigenes of Rift Valley a good ideological armoury against people from other language communities, who were now openly presented as threatening the interests of the Kalenjin community<sup>244</sup>. The then impending poll was seen as an opportunity to square out the question of the so-called 'settlers' in Rift Valley, and especially that of the Kikuyu community<sup>245</sup>. This incitement happened mostly in cosmopolitan areas where residents from non-Kalenjin and non-Maasai communities were by and large seen as political adversaries, if not the enemies of these two communities. There steadily developed palpable ethnic based tensions with mutual suspicion, hate and sometimes fear, among tribes.<sup>246</sup> Teresia Wambui Kabucha recalls:

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<sup>238</sup> J. Klopp M. 'Ethnic Clashes' and Winning Elections: The Case of Kenya's Electoral Despotism in the *Canadian Journal of African Studies* <http://www.jstor.org/stable/486297>. Accessed on 14/03/2009, pp. 473-512.

<sup>239</sup> Waki Report *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, p. 136

<sup>240</sup> Ibid.

<sup>241</sup> Oral interview, Dorcas Njeri Ngugi, Jikaze Farm, Maai Mahiu, 1/6/2010.

<sup>242</sup> KNHRC, *On the Brink of the Precipice A Human Rights Account of Kenya's Post Election Violence*, KNHRC, 2008, p. 89.

<sup>243</sup> Waki, *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, op cit.

<sup>244</sup> Ibid (See also Waki Report p. 52)

<sup>245</sup> Oral interview, Ziporah Wanjiru Gathoni, Jikaze Farm, Maai Mahiu, 1/6/2010. (See also KNHRC Report p. 89).

<sup>246</sup> They include the Kikuyu, Luhya, Kisii, and Kamba people who were either doing business or engaging in farming in the Rift Valley.

I attended a political campaign rally in Narok town, a few weeks to the elections. A senior Maasai Member of Parliament switched to Maa language a few minutes in his speech. The local D.O., police officers and chiefs were also in the meeting. At the end the meeting, I saw a group of youth descend on a Kikuyu man who was also at the rally. They attacked and slashed him, apparently over an argument related to what the politician had said. They chopped off his hand with a machete. All the guests at the meeting saw what happened but they just passed by the man as he lay in a pool of blood. The police waved us away when we sought their help. The man who led those who committed the atrocity just smiled and gingerly walked away.<sup>247</sup>

Similar political incitement took place in Eldoret. Local Kalenjin leaders made rabble-rousing public pronouncements in the run-up to the 2007 election. Non-Kalenjin communities were portrayed as foreigners who threatened to control the politics of the region. They were painted in the portrait of political enemies of the Kalenjin and as ones who should, therefore, be evicted from the Rift Valley. In Eldoret, non-Kalenjin communities, other than the Luo, were presented at political rallies as sympathizers of President Mwai Kibaki, a Kikuyu, while the Kalenjin community was solidly behind the ODM presidential candidate Raila Odinga, the candidate that had been endorsed by the Kalenjin political elite, despite the fact that he is Luo.<sup>248</sup> Michael Maina recalls:

I used to live in Cheptiret, Eldoret, where many meetings took place. The meetings were presided over by Kalenjin political leaders and other elites. The leaders told the many youths who attended the meeting to remove 'madoadoo' (spots) which meant eviction of residents from non-Kalenjin communities in Eldoret and surrounding areas. These sabre-rattling remarks made our Kalenjin neighbours and friends to become cold towards us and to consciously keep distance from us.<sup>249</sup>

This kind of political incitement has its origins in the presidency of Daniel arap Moi, a native of the Rift Valley. In the advent of the return of multi-parties in Kenya in the early 1990s, President Moi became paranoid of the Kikuyu and Luo communities, whom he saw as rivals who wanted to grab political power from him.<sup>250</sup> He didn't mind the expulsion of the Kikuyu, Luhya and Luo

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<sup>247</sup> Oral Interview, Teresia Wambui Kabucha, Vumilia Narok Farm, 28<sup>th</sup> May, 2010.

<sup>248</sup> Oral Interview, Michael Maina Njuguna, Vumilia Eldoret Farm, 1<sup>st</sup> June, 2010.

<sup>249</sup> *Ibid.*

<sup>250</sup> David Throup & Charles Hornsby, *Multi-Party Politics in Kenya*, Oxford: James Currey 1998, p. 192 – 196.



from the Rift Valley as it was to reduce political competition against him<sup>251</sup> and his party KANU while at the same time denying the opposition the required twenty five percent of the presidential votes cast from the Rift Valley Province, as required by the electoral law.<sup>252</sup> An elder in an Elders' Focus Group stated:

Moi is to blame for what befell us in 2007. He encouraged the Kalenjin to expel the Kikuyu from the Rift Valley following the repeal of Section 2A (of the Constitution of Kenya) in the early 1990s. The same mentality was at work in December 2007.<sup>253</sup>

The Kalenjin and Maasai people hold their elders in high regard. They have a lot of respect and faith in their leaders, upon whom eldership is ceremonially conferred. Thereafter, they listen to them with little or no challenge. This turned out to be a factor that made them to trust and obey anything political leaders said without challenge. When their leaders told them that their survival was at risk because of the perceived foreigners, they swung into action without any reservations.<sup>254</sup> Moreover, there was a feeling that some of the attackers didn't have any immediate reasons relevant to personal risk to make them engage in violence. Some blamed their violent acts on the 'devil that comes every five years in the name of elections.'<sup>255</sup>

Although the ODM Party approached the hotly contested presidential elections in Rift Valley by appealing to the Kalenjin community to support the party in its call for a federal or Majimbo system of Government, it would seem that there was no clear elucidation of what they meant by Majimbo, or common understanding of what Majimbo was in the public mind<sup>256</sup>. Many Kalenjin and Maasai tended to believe, therefore, that Majimbo meant expulsion of the so-called 'settlers.'<sup>257</sup> The Majimbo slogan caused palpable tension in the province, especially when PNU stalwarts made public claims that ODM leaders planned 'to expel certain communities from Rift Valley, should they win the election.'<sup>258</sup> ODM leaders countered these claims with the explanation that what they meant was in fact devolution of development by bringing resources

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<sup>251</sup> Oral interview, Julie Wanjiru, Jikaze Farm, Maai Mahiu, 1/6/2010.

<sup>252</sup> J. Klopp, 'Ethnic Clashes and Winning Elections: The case of Kenya's Electoral Despotism' (Unpublished)

<sup>253</sup> Oral interview, Elders Focus Group Discussion, Vumilia Eldoret Farm, 1<sup>st</sup> June, 2010.

<sup>254</sup> Oral interview, Elders Focus Group Discussion, Jikaze Farm, 1<sup>st</sup> June, 2010.

<sup>255</sup> Ibid.

<sup>256</sup> Waki Report. *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, p. 52.

<sup>257</sup> Ibid.

<sup>258</sup> Ibid, p.136

and services closer to the people. By November 2007, they had shifted from the word Majimbo (which was reminiscent of federalism campaigns of the 1960s) to introduce the word 'ugatuzi.' They explained that 'ugatuzi' meant devolution, and not federalism<sup>259</sup>. But the masses saw it as an excuse to expel settler communities from the province.<sup>260</sup> The ordinary Kalenjin and Maasai saw in the 2007 election an opportunity to 'reclaim their lost land from settler communities' in the Province.<sup>261</sup> The Majimbo/Ugatuzi campaign pledge segregated the people into their ethnic cocoons of 'us' against 'them' and redefined the moral community in the Rift Valley Province.<sup>262</sup> The resultant reasoning was that everybody was to go back to his ancestral home. It is this ethnic feeling that subsequently gave way to the 2007 election violence in an endeavour to evict non-Kalenjin settler communities from the Rift Valley, causing the displacement of hundreds of thousands among them residents of what is now the focus of this study.<sup>263</sup>

In the months preceding the election, the Kenyan public had been balkanized into ethnic voting blocks. The ethnic balkanization was tense and palpable in cosmopolitan regions, such as the Rift Valley Province. The peoples of the Rift Valley had identified with either ODM or PNU. The Kalenjin and Maasai were firmly in the ODM party while the Kikuyu, some Luhya of the Bukusu sub-group and some Kisii were ardent supporters of PNU. The Luhya and Kisii had divided allegiance to both ODM and PNU, while the Kamba were either in both ODM-K and PNU. As the country drew close to December 2007, it was evident that the election was going to be a political contest between the different communities in the Rift Valley.<sup>264</sup> The political scene was punctuated by innuendo to the effect that non-Kalenjin communities would be expelled if they did not throw their support behind ODM. A member of a Kikuyu Youth Focus Group Discussion explained:

ODM supporters told Bantu communities to prepare to leave Rift Valley for supporting Kibaki. There were also rumours that the Kikuyus would be sent out of the Rift Valley. Kalenjin and Maasai on the other hand said they would be soft on us (non Kalenjin and non-Maasai) if we voted for ODM candidates.<sup>265</sup>

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<sup>259</sup> Ibid. p. 148

<sup>260</sup> Ibid.

<sup>261</sup> Waki Report, *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008. p. 136

<sup>262</sup> Oral interview, Julie Wanjiru Kuria, Jikaze Farm, Maai Mahiu, 1/6/2010.

<sup>263</sup> Ibid.

<sup>264</sup> Oral interview, Solomon Waweru Kahingo, Vumilia Narok, Maai Mahiu, 1/6/2010.

<sup>265</sup> Oral interview, Youth Focus Group Discussion, Jikaze Farm, 1<sup>st</sup> June, 2010.

Indeed, non-Kalenjin outright PNU supporters were the first to be attacked by the Kalenjin and Maasai warriors. However, the attacks quickly spread to all non-Kalenjin and non-Maasai people in Kalenjin and Maasai Rift Valley. Some respondents in this study alleged that Luo tribesmen joined hands with the Maasai and Kalenjin to loot from the Kikuyu, the Luhya, the Kisii and the Akamba.<sup>266</sup>

While tensions had been simmering for some time, there was little or no pretence on the polling day. Ethnic based suspicions and tensions at the grass roots burst into the open in polling stations that had multi-ethnic voters. Although voting was in principle through secret ballot, this did not happen in many polling centres in Rift Valley. Non-Kalenjin and non-Maasai voters were openly and keenly watched to see whom they were voting for. The suspicion was extreme as noted by Teresia Wambui Kabucha:

At Loloito Primary Polling Station, Kikuyus and Kisiis were told to vote first as Maasais waited outside. We were forced to mark our ballot papers in the open. But some of us refused. As I pushed my ballot papers in the boxes, after marking them in the corner, Maasai ODM agents grabbed them to see whom I had voted for. AP's in the room came to our aid and ordered that we should be given new ballot papers as we destroyed the earlier ones. The AP's ensured that the agents did not grab our papers again. After voting we were forced to wait in an adjacent classroom instead of going home, because the Maasais outside were getting hostile towards us.<sup>267</sup>

However, the Kenyan Constitution allows one to live anywhere in the republic and to fully enjoy their democratic rights, including entitlement to participate in elections both as candidates and as voters, exercising secret and peaceful balloting.<sup>268</sup>

#### **4.2 Perceptions of past injustices on the land question**

Strong perceptions of historical injustices sit at the heart of the ethnic animosity that informed the post-election violence of 2007 General Elections in Kenya. After independence, most Kenyans expected that the new African Government, led by Mzee Jomo Kenyatta, would correct

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<sup>266</sup> Oral interview, Joel Mwaniki, Vumilia Narok, Maai Mahiu, 1/6/2010.

<sup>267</sup> Oral Interview, Teresia Wambui Kabucha, Vumilia Narok Farm, 28<sup>th</sup> May, 2010.

<sup>268</sup> Ibid.

the land related mistakes that had been created by the colonial Government, as discussed in the previous two chapters. There were high expectations that those who had been alienated from their land would be resettled on it. While Africans expected resettlement, there was corresponding fear and anxiety among European settlers about their future in independent Kenya. At the worst, they feared that their land would be given away to Africans without compensation.<sup>269</sup>

Extensive dialogue involving European representatives, the World Bank and the Colonial Development Corporation settled the matter by setting up a fund and a massive land transfer programme, based on the principle of willing seller and willing buyer.<sup>270</sup> Africans were confounded by this project, which seemed to be giving money to the settlers for land that had not belonged to them in the very first place. Kenyatta explained to the perplexed freedom fighters that this exchange did not amount to purchase, but was only a form of compensation to the settlers, for 'developing the land.'<sup>271</sup> But the struggle for land went on in Central Kenya and in the Rift Valley. KANU and Kenyatta denounced those agitating for land through the Kenya Land Freedom Army (hereafter KLFA) and declared that there would be no free things in Kenya.<sup>272</sup>

The historical, land-related grievances that were never addressed would come back to haunt Kenya in 2007. It is instructive that land debates of the early 1960s were repressed to premature conclusions. Kenyatta avoided the central issue of land redistribution to ex-freedom fighters and other landless people and instead joined in the settlers' attacks against the KLFA.<sup>273</sup> Meanwhile, in Nakuru District, a joint Kikuyu, Luo and Kamba armed resistance against the Kalenjin looked imminent on the eve of independence, over Kalenjin claims of exclusive entitlement to the White Highlands in the district. What had been a national struggle for lost lands now assumed the character of ethnic land struggle with the Kikuyu, Kalenjin, Luhya and Luo as the protagonists.<sup>274</sup>

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<sup>269</sup> T. Kanogo, *Squatters and the Roots of Mau Mau, 1905-63*, Nairobi: Heinemann Kenya 1987, pp. 169 – 170.

<sup>270</sup> *Ibid.*

<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*

<sup>273</sup> *Ibid.*

<sup>274</sup> *Ibid.*

When the Abaluhya Union proposed that Kitale should be their headquarters under a federal system of Government, the Kalenjin saw this as a plot to disinherit them. In the meantime, the Kalenjin leadership gave Kikuyus living in forests in the Rift Valley one month's notice to vacate or expect a Kalenjin invasion. The Luo formed the Luo Union as a safeguard against Kikuyu domination after independence. The Akamba who had until November 1962 been part of KANU now pulled out to form their own Akamba People's Party.<sup>275</sup> While most ethnic groups based their land claims in Rift Valley on ancestral historical rights, the Kikuyu Union in Nakuru based theirs on claims that 'Kikuyu sweat and blood had helped develop the area.'<sup>276</sup>

These questions were never resolved as the Kenyatta Government employed fiat to make selective settlement and to shut out further debate.<sup>277</sup> These questions have lingered on and have become an issue that haunts Kenya to date. It is a volcano that erupts at the slightest provocation. The 2007 elections were an opportune moment for this unresolved issue to play itself out again. At the core of the public discontent were dynamics of land acquisition and land relations in the post-colonial State. The problem of land inequality remained unresolved after independence. Although a number of State commissions were appointed to investigate the land issue, their recommendations were rarely made public and, least of all, implemented by the Government. Land has, therefore, become a thorny issue among communities living in the Rift Valley. It contributed heavily to the displacement that created the IDPs in Jikaze, Vumilia Eldoret and Fumilia Narok in Maai Mahiu.<sup>278</sup>

At independence, the Government, through the Settlement Fund Trust (hereafter SFT) bought land from the white settlers and transferred it to some landless people, over and above encouraging Kenyans to buy back white-owned farms through soft loan schemes, cooperative societies and land buying companies. Since most of the land was in Rift Valley, there ensued large scale land acquisition by the so called 'outsiders' since the exercise was based on the policy of 'willing buyer willing seller.' Some Kikuyu who had been squatting in the White Highlands remained in the region. A good number of them purchased the farms, while others were settled

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<sup>275</sup> Ibid.

<sup>276</sup> Ibid.

<sup>277</sup> N.S Carey Jones 'The Decolonization of the white Highlands of Kenya' in *Geographical Journal* Vol. 131. No. 2 (Jun. 1965) Pp 186-201 <http://www.jstor.org/stable/1793793> Accessed: 14 /03/2009.

<sup>278</sup> Oral interview, Joseph Karanja Chege, Vumilia Narok, Maai Mahiu, 1/6/2010.

by the Kenyatta Government.<sup>279</sup> The local Kalenjin and Maasai communities felt that Rift Valley, which they perceived as their ancestral land, was being taken over by other communities, particularly the Kikuyu.<sup>280</sup> This led to the formation of the informal KAMATUSA (Kalenjin, Maasai, Turkana and the Samburu) Alliance in September 1991, to protect their land and political interests.<sup>281</sup>

In the three subsequent General Elections under the Moi led KANU regime, there was a tendency for 'ethnic cleansing' of opposition-leaning communities from agricultural land in the Rift Valley in what have been called the 'land clashes' of 1992, and 1997 to 1998.<sup>282</sup> During the post-election violence of 2007/2008, Kalenjin and Maasai assailants targeted land owned by such 'settler communities' as was noted at an Elders Focus Group:

The Kalenjin were never happy that Kikuyus owned land in the Rift Valley Province. When one buys two or three acres, they are very angry. They used to say that we were there just for a few days and they were always reluctant to give title deeds to non-Kalenjin land buyers. They also changed the names of the farms that were predominantly occupied by non-Kalenjin communities'.<sup>283</sup>

Violence victims believe that the ruthlessness with which Kalenjin assailants executed their attacks was calculated to instil maximum fear among the non-Kalenjin so that they would leave Rift Valley Province once and for all. The victims believe that this was why they killed, raped and sodomized members of other ethnic communities, as sodomy is not a very common practice in this community.<sup>284</sup> Further, the torching of houses was done to ensure that there were no homes to go back to.<sup>285</sup> Some of the non-Kalenjin people who tried to go back to their homes

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<sup>279</sup> N.S Carey Jones 'The Decolonization of the white Highlands of Kenya' in *The Geographical Journal*, Vol. 131, No. 2 (Jun. 1965) Pp 186-201 <http://www.istor.org/stable/1793793> Accessed: 14 /03/2009.

<sup>280</sup> B. Berman, *Control & Crisis in Colonial Kenya: The Dialectic of Domination*, Nairobi, East African Educational Publishers, 1990, p. 409.

<sup>281</sup> Herve Maupeu, 'Religion and the Elections,' in Maupeu et al, *The Moi Succession Election 2002*, Nairobi (IFRA) Transafrica Press, 2005, p. 39.

<sup>282</sup> Ibid.

<sup>283</sup> B. Berman, *Control & Crisis in Colonial Kenya: The Dialectic of Domination*, Nairobi, East African Educational Publishers, 1990, p.30

<sup>284</sup> Oral Interview, Evans Macharia Suleiman, Vumilia Eldoret Farm, 30<sup>th</sup> May, 2010.

<sup>285</sup> Ibid.

after the restoration of calm in April 2008 found them already occupied by their former Kalenjin neighbours, who were now very hostile to them.<sup>286</sup>

In the Maasai country, land was also a factor in the clashes as people who bought land or leased plots from the Maasai were never given title deeds or lease agreements. Just before the elections in 2007, some Maasai confidentially advised their non-Maasai friends who had bought or leased land in Narok to leave and seek safety away, because 'something was going to happen after the elections.'<sup>287</sup> But in essence they were scaring them away so that they could occupy their land and plots. People who went to check on their land or plots after the violence, found them occupied by the Maasai who were very hostile to them as was related by John Kisio:

I had gone back to check on our land in Mutonyi Village, Narok on Saturday 22nd May, 2010. As I approached the farm at about 4.00 pm, a group of Maasai youths accosted me. They asked me why I was not yet dead. They told me that I was not welcome there. They then descended upon me with *rungus* and *pangas* and beat me senseless. They pulled me to a thicket where I lost consciousness. I only came round in the morning at about 3.00 am and got help from a Good Samaritan. The police at Narok Police Station declined to help me and I had to travel back to Maai Mahiu to get medical attention.'<sup>288</sup>

#### 4.3 Resurgence of perceived historical power rivalry between the Luo and Kikuyu communities

The Luo and Kikuyu communities have often been perceived in the public eye as political rivals.<sup>289</sup> This goes back to the early years of Kenya's independence when an ideological rift emerged between President Jomo Kenyatta and his Vice President, Jaramogi Oginga Odinga, with Kenyatta leaning towards the Western capitalist ideology while Odinga was perceived to have been pro Eastern Communist bloc.<sup>290</sup> In a country that often interprets the activities of leaders to represent whole ethnic communities, the public often perceived the differences

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<sup>286</sup> Ibid.

<sup>287</sup> Oral Interview with John Kahingo in FGD, Fumilia Narok Farm on 1<sup>st</sup> June, 2010.

<sup>288</sup> Oral Interview, John Kisio, Vumilia Narok Farm, 28<sup>th</sup> May, 2010.

<sup>289</sup> *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, pp. 34-50.

<sup>290</sup> B.A. Ogot and W.R. Ochieng, *Decolonization and Independence in Kenya 1940 – 93*, London. James Currey, 1995, pp. 91 – 100.

between Kenyatta and Odinga as differences between their Kikuyu and Luo tribes.<sup>291</sup> Such perceptions have obtained in spite of the fact that Odinga was one of the staunchest campaigners for the release of Kenyatta from detention just before Kenya could gain independence from the British. He became famous for the mantra of "No Kenyatta, no government."<sup>292</sup> These perceptions also fail to take into account the fact that one of the fiercest political schemers against Odinga, as well as a staunch Kenyatta ally in the early years of independence was Tom Mboya, originally a man from the Bantu-speaking Suba community, but who was taken as a Luo as a matter of course, on account of absorption of the Suba into the Luo community on the islands of Lake Victoria.<sup>293</sup>

Historical power rivalries out of these kinds of strained ethnic relations, as well as unsettled grievances borne out of political competitions of this kind, have significantly returned to stir up ethnic relations not just in the Rift Valley, but elsewhere in the country as well. Sometimes such power games and competitions have turned quite catastrophic in their stoking of the embers of future fires of ethnic hate. Such unfinished power games were at play in the political campaigns and subsequent violence in 2007 to 2008.<sup>294</sup>

It is instructive, for example, that the two leading presidential contenders, Mwai Kibaki of PNU and Raila Amolo Odinga of ODM, come from two ethnic communities that played a leading role in the struggle for Kenya's independence. Raila is a son of Jaramogi Oginga Odinga, a freedom fighter who worked closely with Jomo Kenyatta who became the first President of Kenya, while Odinga became the first Vice President. However, soon after independence Kenyatta and Odinga fell out over the economic and political direction that the country should take. The fallout between the two defined itself along two camps that became ideologically and diametrically opposed to each other; and even hostile to each other. The final showdown took place at the infamous KANU Limuru Conference of March 1966.<sup>295</sup> The conference was organized by KANU's Secretary General, Tom Mboya, to cut to size the Odinga camp. Amid antagonistic

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<sup>291</sup> Ibid.

<sup>292</sup> J.O. Odinga., *Not Yet Uhuru: An Autobiography*, Nairobi. E.A.E.P., 1967 (1995 Ed), p. 211.

<sup>293</sup> Ogot & Ochieng. OP Cit.

<sup>294</sup> KNHCHR *On the Brink of the Precipice: A Human Rights Account of Kenya's Post Election Violence*, KNHCHR, 2008. 2008. p. 23.

<sup>295</sup> Maina wa Kinyatti, *History of Resistance in Kenya, 1884-2002*, Nairobi: Mau Mau Research Centre, 2008, p. 397.



disagreements, President Kenyatta was requested to postpone the conference, but he refused addressing the large national gathering in Gikuyu:

*Nii ndikwenda guthikiriria uteti wa ukominiciti. Mucemania ni uguthii na mbere mukiendaga kana mutakwenda. Wakorwo nduuma na undu ungi ukwenda twaririe, ndina wira muingi.* (I don't want to listen to communist agitations. The conference will go on whether you like it or not. If you don't have anything else to discuss, I have a lot of work to do)<sup>296</sup>

The conference abolished the post of a single Vice President for the Party, then held by Odinga, and elected eight Vice Presidents, one for each of Kenya's eight provinces.<sup>297</sup> The Luo saw this as a slap in the face. They recalled how Odinga had campaigned for Kenyatta's release from detention with the famous refrain of 'No Uhuru without Kenyatta.' From this time there was a lot of subterranean animosity between the Luo and the Kikuyu, which kept on haunting the two communities until when the animosity was re-born in the Kibaki-Raila presidential contest of 2007.<sup>298</sup>

Earlier, the assassination of Tom Mboya himself in July 1969 widened the mutual mistrust between the Luo and Kikuyu. It went to a new high when Kenyatta detained Odinga in October that year, following a chaotic meeting in Kisumu, where Kenyatta had gone to open the New Nyanza General Hospital. The hospital had been, ironically, built using funds from Communist USSR.<sup>299</sup> This led to the rift between the Luo (the ethnic community of Mboya and Odinga) and the Kikuyu community (where the then President Mzee Jomo Kenyatta belonged). If the suspicion between the two communities was bridged in the lead up to the 2002 elections where Raila Odinga endorsed and campaigned for Mwai Kibaki (a Kikuyu) as the Presidential candidate for their National Rainbow Coalition (NARC), the suspicions returned as soon as the new Government came into existence in January 2003. There was grumbling within the Odinga

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<sup>296</sup> Ibid.

<sup>297</sup> Ibid. p. 398.

<sup>298</sup> KNHRC *On the Brink of the Precipice: A Human Rights Account of Kenya's Post Election Violence*, KNHRC, 2008, p. 26

<sup>299</sup> Ibid.

camp that Kibaki had betrayed Odinga by failing to honour a pre-election power sharing MOU with Odinga and his troops.<sup>300</sup>

This rivalry transferred itself to the acerbic 2005 Constitutional referendum campaigns that took a decidedly ethnic outlook – placing the GEMA communities led by Mwai Kibaki on one side of the divide, while the rest of the ethnic groups more or less coagulated on the other side of the divide against GEMA. Odinga, a Luo, was perceived as the *de facto* leader of this group that would shortly transform itself into the Orange Democratic Movement (ODM), taking its name from the orange fruit that was their symbol in the referendum. The 2005 referendum, therefore, made its own significant contribution to unfinished old ethnic rivalries, while also becoming itself a new unfinished business.<sup>301</sup> It would return to haunt Kenya in 2007 to 2008.

#### 4.4 Perceptions of relative deprivation in administration and use of taxes

Perceptions of relative deprivation in the distribution and enjoyment of national resources have fuelled the fires of ethnic suspicions that constituted part of the ODM campaign agenda and propaganda in the 2007 General Elections.<sup>302</sup> ODM campaigned on a platform that stated that there were glaring ethnic disparities in Government appointments and in the use of national taxes.<sup>303</sup> They read out lists at campaign rallies to indicate that the status quo disproportionately favoured the Kikuyu, in particular and the GEMA communities in general. They raised their followers' expectations of good things to come, with promises of dismantling what was presented as an unfair pro-Kikuyu-anti-everybody-else economic arrangement in Public institutions, once they got into power after the elections.<sup>304</sup> Political leaders from Kalenjin and Maasai Rift Valley claimed that the management of local resources was done without involving the local communities. This, they said, was because the provincial administration was dominated by the GEMA community. There was palpable desire to end the Kibaki presidency and engage in

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<sup>300</sup> Waki Report. *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, pp. 37

<sup>301</sup> Waki Report *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, p. 41

<sup>302</sup> KNCHR. *On the Brink of the Precipice: A Human Rights Account of Kenya's Post Election Violence*, KNHCR, 2008, p. 24.

<sup>303</sup> *Ibid.*

<sup>304</sup> *Ibid.*

what was perceived as restitution against GEMA dominance.<sup>305</sup> Beneath the 2007 post-election violence, there was therefore a resource conflict. Political power was seen as the avenue to access to national resources and control of the processes of allocating them. Remove Kibaki and GEMA from power and there would be a new bandwagon of ethnic custodians in control. It was understood, therefore, that a new post-Kibaki political power dispensation under the control of Odinga would treat the Kalenjin and Maasai favourably.<sup>306</sup>

#### 4.5 Economic based ethnic resentment

Kikuyu and Kisii migrants in Rift Valley Province are perceived to have done very well economically. Some had set up retail and wholesale trade businesses while others were small scale farmers. Some ran public transport. Others engaged in merchandizing all manner of haberdashery. On the whole, the perception is that 'they have done well at the expense of the Kalenjin and Maasai.'<sup>307</sup> Perceptions of this kind fuelled dangerous resentment among the Kalenjin and Maasai against the so-called 'settlers' and have been catalysts for violence. The perceived 'indigenes' of the Rift Valley have developed the perception in the post-Moi dispensation that the Kikuyu and Kisii have done well because 'they were enjoying favours from the Kibaki Government.'<sup>308</sup>

This is a perception that lacks tangible support. But it is there nonetheless. It probably requires to be analyzed in the context of economic and social organization of the sedentary Bantus, vis-à-vis the nomadic order of the Highland Nilotes. Bantus are generally agricultural communities, while the Highland Nilotes are mainly itinerant cattle herders who are only beginning to settle down. Therefore, when the Kikuyu and Kisii buy one or two acres of land, they seem to know how to make maximum use of the small piece of land than do their Nilotic neighbours. They have been able to produce crops which they sell at a profit and thus become prosperous very quickly. This is unlike the cattle keeping Kalenjin and Maasai who may be challenged for knowledge of small scale cultivation and business. Therefore, the Maasai and Kalenjin have possibly not exploited

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<sup>305</sup> Waki Report, *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, pp., 37-78.

<sup>306</sup> KNHRC *On the Brink of the Precipice: A Human Rights Account of Kenya's Post Election Violence*, KNHRC, 2008, p. 24.

<sup>307</sup> George Gona and Barrack Muluka, *Cultural Methods of Peace Making and Reconciliation in Selected Kenyan Communities*, Nairobi: UNDP, pp. 57-59.

<sup>308</sup> *Ibid.*

the opportunities that enable 'settlers' in their localities to prosper. These sentiments of economic resentment are captured in the happenings that unfolded against the non-Kalenjin and non-Maasai in January and February 2008.<sup>309</sup> Joseph Kairu Ng'ang'a recalls:

After being displaced from our homes we sought help from police officers. They instead told us to go back to Central Province because everything we owned belonged to the Rift Valley. They told us that we had not brought the land from Central Province and that all that we owned belonged to the natives of the Rift Valley. The same sentiments were repeated by the local provincial administrators.<sup>310</sup>

This economic resentment was best seen in the atrocious manner of Kalenjin-Maasai attacks on non-Kalenjin/Maasai people. They burnt their kiosks and shops as well as granaries and crops on farms. They slay people, raped women and sodomized men.<sup>311</sup> This was to punish the so called 'strangers' by grounding them economically. In Kalenjin land, the same economic resentment was also at play. Kalenjin raiders viciously attacked members of non-Kalenjin communities, who were seen to be prosperous. They also attacked people who were seen to be of economic importance to the non-Kalenjin.<sup>312</sup> The attackers were particularly brutal to those non-Kalenjins who were perceived to be economically well-to-do, as explained by Simon Karanja Njoroge:

I was among the first people to be attacked because of my role as the Secretary of Mchanganyiko Co-operative Society in Nandi Hills. I used to fight for the rights of everyone, including the Luos, Luhyas, Kisiis and Kikuyus. I was able to secure a title deed for the co-operative society, much to the chagrin of our Kalenjin members. Our prospective Luhya farm manager was expelled from the farm so that the Kalenjin could have one of their own as a manager. They felt we were going to gain much as compared to them.<sup>313</sup>

These kinds of economic jealousies and resentments were prevalent throughout the Rift Valley in the run up to the elections. There were a lot of rumours doing the rounds to the effect that the prosperous Kikuyu and Kisii would be beaten and their property set on fire if Kibaki and PNU

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<sup>309</sup> Oral Interview, Joseph Kairu Nganga, Vumilia Narok Farm, 28<sup>th</sup> May, 2010.

<sup>310</sup> Ibid.

<sup>311</sup> KNHRC, *On the Brink of the Precipice: A Human Rights Account of Kenya's Post Election Violence*, KNHRC, 2008, pp. 34 – 54.

<sup>312</sup> Oral Interview, Simon Karanja Njoroge, Vumilia Eldoret Farm, 30<sup>th</sup> May, 2010.

<sup>313</sup> Ibid.

won the elections. But amidst subtle warnings that they had unfairly gained from the Kalenjin they were also cautioned that it did not matter what the outcome of the poll would be. It was alleged that they had 'gained enough from Rift Valley and time had come for them to leave'<sup>314</sup>. If they did not leave voluntarily, they would be forced to leave<sup>315</sup>. There was an echo of warnings that had been sounded to the Kikuyu in the province in the early 1960s, as discussed above.<sup>316</sup>

The first targets of the attacks were on the Kikuyu and the Kisii who owned businesses and those who were successful farmers. In some areas, the Kalenjin and Maasai readily sub-divided property which was owned by the so-called non-indigenous. As stated by Macharia Suleiman, 'they readily sub-divided my 16 zero-grazing cows and 32 sheep amongst themselves as they brutally assaulted me, leaving me for dead.'<sup>317</sup>

#### 4.6 Lapse in security

The Kenyan security system collapsed both in the run up to the elections and during the post-election violence. There were signs quite early on that violence was being planned but the security agencies did not act to stop the violence.<sup>318</sup> Other than failing to stop the violence, the security agencies were unable to deal with it when it broke out. The Kenya Police took sides in the election competition and looked the other way when people went to them for help.<sup>319</sup> Police officers sarcastically told people, who were under attack, to go to President Kibaki's home constituency, Othaya, to seek refuge there. They also told violence victims that they had chosen to remain with Kibaki and, therefore, they were supposed to live with the consequences of their decision and their election slogan. '*Si nyinyi mlisema 'kazi iendelee'? Sasa wacha kazi iendelee.* (Did you people not say 'let work go on'? Now let work go on.')<sup>320</sup>

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<sup>314</sup> Waki Report, *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008. p. 96

<sup>315</sup> Ibid.

<sup>316</sup> T. Kanogo, *Squatters and the Roots of Mau Mau 1905-63*, Nairobi: Heinemann Kenya 1987. p. 32-37

<sup>317</sup> Oral Interview, Evans Macharia Suleiman, Vumilia Eldoret Farm. 30<sup>th</sup> May 2010.

<sup>318</sup> Waki Report, *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, pp. 37-78.

<sup>319</sup> Ibid.

<sup>320</sup> Oral Interview, Anastasia Nduta, Vumilia Narok Farm. 28<sup>th</sup> May, 2010.

Apart from their inability to assist the affected people from further anguish, the police officers were themselves engulfed in an ethnic cold war. They only went out of their way to help people from their ethnic communities and looked the other side when people from other ethnic communities sought their help.<sup>321</sup> They were also unwilling to issue P3 forms to injured people so that they could secure medical reports on their assault. This only gave the attackers a free hand to do as they wished. The people of Jikaze and Vumilia felt that a responsive police presence should have scaled down the atrocity.

Moreover, what began as 'cold war' and indifference within the police force gave way to open hostility among police officers. Kalenjin and Maasai police officers openly cast their comrades in bad light and ridiculed them in public view. This development only served to embolden the Kalenjin and Maasai assailants who went in search of more victims.<sup>322</sup> It was as if the Kalenjin police officers were working in cahoots with the raiders, as noted in an Elders' Focus Group Discussion:

We sought refuge at Kericho Police Station as violence raged in surrounding areas. Both the OCPD and the DCIO who were Luo didn't care about us and they did absolutely nothing to help us. Only a Somali OCS was able to come to our aid with a few Kikuyu officers who were present and trying to secure our safety. A Kalenjin officer indicated to a mob at Chepsion Centre that there was a Kikuyu amongst them so that he could be attacked. The attackers shot an arrow at him but it missed him. The Kikuyu officer opened fire at them in self defence and two Kalenjin warriors were killed. His Kalenjin colleague officers only threw tear-gas to disperse the group. It looked like both Kalenjin officers in the Rift Valley and the raiders were working together against non-Kalenjin, especially against Kikuyus and Kisiis.<sup>323</sup>

The hostility among police officers was even more pronounced at Narok Police Station where ODM sympathetic police officers threw out Kikuyu officers from their houses in full public glare.<sup>324</sup> The Maasai raiders cheered as some of those who had sought refuge in the police station were overwhelmed with fear. This act solidified the resolve of the assailants to expel all non-

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<sup>321</sup> Waki Report. *The Report by the Commission of Inquiry into the 2007 Post Election Violence*. Nairobi: Government Printer, 2008. pp. 37-78.

<sup>322</sup> Oral interview, Elders Focus Group, Jikaze Farm. 1<sup>st</sup> June, 2010.

<sup>323</sup> Ibid.

<sup>324</sup> Oral Interview, Teresia Wambui Kabucha. Vumilia Narok Farm, 28<sup>th</sup> May, 2010. (See also Waki Report, p. 75).

Maasai 'settlers' from Narok. The Kikuyu officers were ferried away in a police lorry. At Likia in Molo, Kikuyus were attacked in the presence of police officers. As a women focus group noted, 'In fact an Anti-Stock Theft police officer asked us why we were running towards them yet that was not Othaya.'<sup>325</sup> The Kenya Army is, however, said to have been very helpful to people who sought their help.<sup>326</sup>

#### 4.7 Impunity and disrespect for laws

The 2007 election violence did not happen in isolation as several past acts of impunity gave it anchorage.<sup>327</sup> The spirit of impunity has been rife in the Rift Valley Province since the early 1990s when the so-called 'settler communities' were displaced from their homes and farms.<sup>328</sup> Some people lost their lives and property, yet nothing was done to correct the injustice.<sup>329</sup> This mentality of impunity was blamed on President Moi whose comportment gave the so-called indigenous communities of Rift Valley the impression that it was in order to attack other communities and disinherit them.<sup>330</sup>

From 1991 through to 2007, the non-indigenous settler communities have been consistently attacked and their property looted or destroyed in the Rift Valley Province each time elections are around. People have lost their legitimate property amidst State lethargy. Land, homes and other property have been arbitrarily taken over by members of the Kalenjin and Maasai communities. The assailants have gone Scott free.<sup>331</sup> Thus, killers have continued to enjoy both their freedom and the benefit of looted property while those who lost their friends and relatives mourn in silence. Those who survived the 2007 to 2008 attacks scattered to other areas and continued to lick their wounds.<sup>332</sup>

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<sup>325</sup> A Women Focus Group. Jikaze Farm. 1<sup>st</sup> June. 2010.

<sup>326</sup> Ibid.

<sup>327</sup> Waki Report, *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, p. 140

<sup>328</sup> Ibid.

<sup>329</sup> Ibid.

<sup>330</sup> David Throup & Charles Hornsby, *Multi-Party Politics in Kenya*, Oxford: James Currey 1998, p. 189 and 191

<sup>331</sup> Waki Report, *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, pp. 37-78.

<sup>332</sup> An Elders Focus Group. Jikaze Farm. 1<sup>st</sup> June, 2010.

In the run-up to the 2007 elections, impunity and disrespect of laws was at an all time high. The Kikuyu, Luhya, Akamba and Kisii in Eldoret. Kericho and Molo areas were victimized by their Kalenjin neighbours but nobody went to their aid. Members of the Kalenjin community would raid animals from other communities and when the incidents were reported to the Chiefs and the police, they only listened but never acted.<sup>333</sup> Similar occurrences took place in Narok as the Maasai did with the non-Maasai as they pleased. At times, the Maasai would let loose their animals to graze on other communities' leased crop on the farm and when they reported such incidents to the relevant authorities, nothing was done.<sup>334</sup> Some members of the Maasai community would also intrude into farms owned by other communities, harvest their crops and also take away farm machinery with impunity.<sup>335</sup> The authorities could not help even when there was enough evidence and proof.<sup>336</sup> Two and a half years after the violence, acts of impunity and disrespect for the law continued to permeate some parts of the Rift Valley as was noted in a Focus Group Discussion:

People can't go back to their farms. For example, a young man who tried to go back to their farm in Narok was attacked with machetes, although he survived. In Molo, an IDP who tried to return to his farm was beaten up and cut to death. Our Maasai neighbours are still taunting us in our new homes. They walk through our plots and they become abusive when we ask them why they have followed us, or why they are intruding into our plots. Why does the Government allow Maasai morans to walk around with their *rungus* and Somali swords? They should not be allowed to walk with those *rungus* and Somali swords. We should also be given guns to deal with the Maasais who are still following us.<sup>337</sup>

#### 4.8 Conclusion

This chapter has discussed the causes of displacement that pushed people from their abodes in the Rift Valley Province as supported by the proponents of the pull and push theory. The chapter has traced both the long standing and immediate origins of the conflict that caused people to be displaced and migrate to Jikaze, Vumilia Eldoret and Fumilia Narok.

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<sup>333</sup> Ibid.

<sup>334</sup> A Women Focus Group. Vumilia Narok Farm, 1<sup>st</sup> June 2010.

<sup>335</sup> Ibid.

<sup>336</sup> Ibid.

<sup>337</sup> Ibid.



## CHAPTER FIVE

### THE RIGHT OF RETURN: WHY THEY ELECTED NOT TO RETURN

#### 5.0 Introduction

Internally displaced persons in any given country always have the right to return to their former homes after normalcy is restored.<sup>338</sup> Ordinarily, IDPs, like all people who are forcefully pushed from their place or regular habitation by the vagaries of violent conflict, would be expected to be pulled back to that habitation by such pull factors as previous affinity to the habitation. These may include (but are not limited to) any property that they may have been forced to leave behind, as well as other historical and sentimental attachments to the place, ante-conflict. The proponents of the push and pull theory have argued that factors, such as property, have traditionally acted as a permanent pull incentives to the 'people who were displaced by any conflict.'<sup>339</sup> Although the standpoints of push-and-pull theorists would seem to enjoy much affinity with a wide platform of international conventions and declarations, their perorations have not come to pass in Kenya, after the violent face of the post election violence of 2007 to 2008.

The Kenyan IDPs in Vumilia Eldoret, Jikaze and Fumilia Narok Villages in Maai Mahiu have declined to return to their former homes even after calm was restored. Their stance, therefore, raises questions such as: are the push factors that forced them out constant, or are they still so strong that the IDPs have feared to return? This chapter will discuss the factors that (have) acted as obstacles to return, even after much effort by both the Government and the international community to have them go back to their former homes in the Rift Valley Province.

#### 5.1. Electoral politics and serial displacement

The incursion of politics into day-to-day life in the North and South Rift is such that it has made non-Kalenjin and non-Maasai residents to become serial IDPs. They would go away with the tempest of one election and return to begin afresh only to be unravelled again at the next election. Some of the IDPs, who were displaced in 2007/2008, were going through this

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<sup>338</sup> Centre for Human Rights, *United Nations Action in the Field of Human Rights*. Geneva: United Nations publication, 1994, p. 107.

<sup>339</sup> Ibid.

experience for the fourth time, at the time of this study. Others had been displaced in between elections and had suffered this dilemma up to seven times. The recurrent nature of these violent, and often fatal, disturbances has made it difficult for most IDPs to settle down to normal life. IDPs in the three settlements in Maai Mahiu agonizingly recalled that they had been dislocated from their Rift Valley businesses, farms and homes in 1992 after the re-introduction of multi-party elections in Kenya.

They recalled that the run up to the 1992 elections had been characterised by politically instigated ethnic clashes and had been used by KANU not only to discredit the new multi-party dispensation but also to displace them from their homes and thereby disenfranchise them in the elections.<sup>340</sup> They also recalled that, in 1992, they had been accused of being anti-KANU, the then only political party in the country and whose bedrock support was in the Rift Valley. They had gone on to be forced out of the province because they were presumed to be sympathetic to the emerging opposition parties because opposition kingpins were from their tribes. After the elections, some had found their way back to their farms, homes and businesses only to be displaced again during the next election in 1997 in very similar circumstances. In these dislocations, the Government was perceived as not having shown interest in the plight of the aggrieved, nor did it seem to do anything tangible to help to stem ethnic clashes from recurring.<sup>341</sup> Samson Njoroge explained:

There is no need for us to go back because the violence will recur. This is now the order of things. The violence and displacement has happened repeatedly and we are tired of being chased like animals every five years. All these times, the Government has never come to our rescue, despite the many promises it makes. It is only wise that we don't go back because of our repeated past experience.<sup>342</sup>

The IDPs, therefore, felt that there were no peace networks and guarantees that would encourage them to return to their former homes, farms and businesses as yet. The feelings were lent credence by the horrific narratives of those who made ineffectual efforts to go back, especially to areas that had previously had very few non-Kalenjin and non-Maasai people. The returnees

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<sup>340</sup> W. O. Oyugi, Peter Wanyande and C. Odhiambo Mbai. *The Politics of Transition in Kenya: From KANU to NAK*. Nairobi: Heinrich Boll Foundation, 2003, pp. 28-31.

<sup>341</sup> Oral Interview, Jikaze Men Focus Group Discussion, 1<sup>st</sup> June, 2010.

<sup>342</sup> Oral Interview, Samson Njoroge, Jikaze Farm, 28<sup>th</sup> May, 2010.

continuously told their fellow IDPs that there were threats against them from both the members of the Kalenjins and the Maasai. Their experience was that the Kalenjins and Maasai communities believed that the Rift Valley belonged to them and that, therefore, people from other communities should be expelled, especially if their political stand was different from that of the Kalenjins and Maasai.<sup>343</sup> And as Mary Gathu put it;

They told us that Kibaki had stolen the election and that therefore all the Kikuyu should go back to Central Province. They said that we were thieves 'just like Kibaki' and that we would never run any business in the Kalenjins country again. They told us to make sure we took our breakfast in Naivasha and after that leave for Central Province. They further said that the Kalenjins border was Naivasha, but also cautioned us that even Naivasha was not our home, but Maasai land. They said that the Maasai would chase us further to go to Central Province; that we should only take tea in Naivasha, while in transit to Central Province.<sup>344</sup>

## 5.2. Desolation from recurrent cycles of violence and displacement

The IDPs of Fumilia Narok, Vumilia Eldoret and Jikaze farms were displaced from different parts of Rift Valley. Their experience with the 2007 post-election violence was varied from one place to another only in degree. But in style and substance, it was the same. Moreover, they reported having gone through the same experience in 1992 and 1997. The combined experience minimized their eagerness for return.<sup>345</sup>

Most of the IDPs refused to go back to their former homes, businesses or farms because they lost everything during the violence, as they had done before. Their property fell into the hands of various raiders, looters and arsonists. As IDPs scampered for safety, their assailants carried away their belongings, exposing the IDPs to penury and indigence. Most of the IDPs, therefore, believed that going back would subject them to the same experience as in the past. The

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<sup>343</sup> Oral interviews, Peris Njeri Ngugi, Jikaze, Maai Mahiu, 27/05/2010.

<sup>344</sup> Oral interview, Mary Muthoni Gathu, Jikaze, Maai Mahiu, 27/05/2010.

<sup>345</sup> Centre for Human Rights, United Nations Action in the Field of Human Rights. Geneva: United Nations publication, 1994, p. 107.

happenings of 2007 to 2008 were in many ways a *de ja vu* of their experience in 1992 and 1997.<sup>346</sup> As stated by Mary Muthoni Mwaura:

I can't go back because the Kalenjin warriors carried away all my property as I ran for my life. Even if the Government would compensate me I would not go back because they would still loot my property after five years. They did this to us in 1992 and in 1997. Each time they went away with all our livestock and left us with nothing to hold on. They will do it again if we go back.<sup>347</sup>

Businesses, such as kiosks, were looted and set on fire. Crops in farms were harvested by force when they were ripe for harvest. Where they were not, they were fed to livestock, or set on fire.<sup>348</sup> IDPs who had livestock watched helplessly as their animals were driven away by the raiders. They could only look on while their homes were burnt to the ground and their granaries invaded and looted before going up in flames. Hopelessness blended with anger, bitterness and frustration over unending cycles of displacement, return and fresh displacement. They came to the conclusion that they should seek peace and succour elsewhere. While the principal antagonists in the contestation that sparked this round of displacement – Kibaki and Odinga – proclaimed their reconciliation, the ordinary citizens in the conflict zone did not feel reconciled to their adversaries. The IDPs would not therefore return to dwell among them.<sup>349</sup>

### 5.3 Politics and contestations of constitution making

At the time of this study, the threats that informed IDPs' reluctance to return to their pre-December 2007 abodes were further exacerbated by debates and campaigns for and against the then proposed new Constitution of Kenya. The draft had contentious issues, especially on land. Leading politicians in Rift Valley Province created the perception that members of the Kalenjin and Maasai communities in the Rift Valley would lose their land to 'outsiders.'<sup>350</sup> Every effort should, therefore, be made to keep IDPs away. In Narok, there was outright hostility and violence against IDPs who tried to go back. A young man from Fumilia Narok was beaten senseless and left for dead when he went to check out on their farm.<sup>351</sup> John Kahingo recalled;

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<sup>346</sup> Oral interview, Mary Muthoni Mwaura. Jikaze Farm, Maai Mahiu, 27/05/2010.

<sup>347</sup> Ibid.

<sup>348</sup> Oral Interview, Vumilia Narok Women Focus Group Discussion, 1<sup>st</sup> June, 2010.

<sup>349</sup> Oral Interview, Zachariah Muturi Gathi, Jikaze Farm, 28<sup>th</sup> May, 2010.

<sup>350</sup> Oral Interview, Jikaze Men Focus Group Discussion, 1<sup>st</sup> June, 2010.

<sup>351</sup> Oral Interview, Vumilia Narok Women Focus Group Discussion, 1<sup>st</sup> June, 2010.

I had gone to look at our farm in Narok. I arrived early morning thinking the situation had gone back to normal, but immediately they saw me, they shouted at me, calling me a thief. They attacked me, beating me up until they thought that I was dead then they left me, they broke my arm and injured me on my head. I went to the police to report but they took no action and told me to first go to hospital. When I went to the hospital I was told to come with a P3 Form from the police. When I returned to the police they told me to go back to hospital. I did not get any help. A Good Samaritan eventually rescued me from the roadside where I had collapsed and brought me all the way to Kijabe Mission Hospital.<sup>352</sup>

Such incidents remained an impediment to efforts to convince the IDPs to return to their former homes in the Rift Valley. The risk of harm and even death was very real.

#### **5.4 Atrocious memories and fears**

There has been the sheer memory of the atrocious activities that the IDPs were witnesses to in the wake of the violence. Women and girls were raped. It seemed to be the objective of the assailants to discourage their victims from ever thinking of going back. In this regard, they visited upon them extreme psychological and physical violence. They raped women and girls in the presence of other family members. Such acts were against African morals and culture. They left a profound psychological cicatrix on such families. To ask such victims to go back to the Rift Valley is to remind them of the atrocities that they went through.<sup>353</sup>

Apart from rape of women, boys and men were sodomized. They saw houses and crops torched. Moreover they saw raiders attack them and butcher people whom they knew very well. They watched as their relatives and neighbours hopelessly cried out for help as they withered away in agonizing death. They saw innocent children being killed for reasons they could not comprehend. As they ran away to safety, they saw dead bodies spangled all over the place. These kinds of acts that are uncommon in an African society have had far reaching psychological effect on the victims. The IDPs who went through such acts had yet to overcome the trauma. IDPs in Maai Mahiu did not even want to countenance the possibility of return. Although Maai Mahiu is itself at the top end of the Rift Valley Province, just before getting into Central Province in Limuru, the very mention of the Rift Valley sent signals of negative emotions through the IDPs

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<sup>352</sup> Oral interview with John Kahingo in FGD, Fumilia Narok Farm on 1<sup>st</sup> June, 2010.

<sup>353</sup> Oral interview, Solomon Waweru Kihigo, Fumilia Narok, Maai Mahiu, 22/05/2010.

at Maai Mahiu, bringing tears into their eyes and a strange blending of expressions of fear and anger on their faces.<sup>354</sup> Evans Macharia Suleiman explained:

I was beaten up and my teeth knocked out before being forced to rape a young girl. They then stripped me naked and sodomized me in front of people, *including* children. How can I go back to live with such people? It is best that I stay in Jikaze village so that I can forget and heal from all the tribulations that I went through.<sup>355</sup>

And Monicah Wairimu said:

I don't want to remember those people in the Rift Valley. They killed many of our people. They killed us. I remember those whom we stayed with, our neighbours who died. One had a shop next to mine. His three children we killed while he watched helplessly. Because of what we saw I don't think I can go back. If the same thing happens, maybe I will be killed this time. No, I cannot go back. Those are not people.<sup>356</sup>

And Miriam Muthoni's explanation brought out the suspicion and fear that rules the hearts and minds of the displaced Maai Mahiu villagers. She said;

It is not possible to go back to live among such people, as they wanted to kill us. Nothing has changed today; they still hate us and will use any slight provocation, or excuse, to eliminate us. Why should we walk to our deathbeds when we know very well what awaits us? It is better for us to remain on these small plots than go to an area where we know we will not come out alive. How do we even face our former neighbours and friends who turned against us and almost killed us?<sup>357</sup>

It is clear that if the principal political antagonists – the PNU and ODM bigwigs – believed that that they had healed their wounds and differences, the ordinary people had a lot of unfinished business to sort out. Women and girls who were raped by the people they knew very well felt that they could only heal if they stayed in their newly acquired village because going back to

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<sup>354</sup> Oral interview with Evans Macharia Suleiman, Vumilia Narok, Maai Mahiu, 22/05/2010.

<sup>355</sup> Ibid.

<sup>356</sup> Oral interview, Monicah Wairimu, Jikaze, Maai Mahiu, 1/6/2010.

<sup>357</sup> Oral Interview, Miriam Muthoni, Jikaze Farm, 28<sup>th</sup> May, 2010.

their former homes and farms would mean meeting the people who raped them. They did not know whether they could live with that.<sup>358</sup>

### 5.5 Semblance of settlement

Though some IDPs, in Fumilia Narok, Vumilia Eldoret and Jikaze had owned land and other property before the 2007 – 2008 post-election violence, a good percentage of the people in the IDP camps were only tenants on their former homes, businesses and farms. They did not own any fixed assets, unlike in their new village, where they now owned small plots. Such IDPs felt that they were better off as they now owned some property, albeit small and modest.<sup>359</sup> Mwangi Muchera explained:

Vumilia Eldoret is ten times better compared to where I came from. I now own some small land though it is a 50 x 100 plot. This makes me sleep soundly at night. This small plot is much better, considering that I owned nothing in North Nandi where I was displaced from.<sup>360</sup>

### 5.6 Protection of children from bad memories

Some parents in the IDP village felt that the 2007/2008 post-election violence was bad for the psychological development of the children. The children were eye witnesses to the violence, alongside their parents. Some watched as their parents were slashed to death. There was fear about the long term impact of the images that the children had seen to their future development as good citizens. It was thought better for the children to grow up away from the places where they had witnessed the violence as part of their healing and proper social adjustment.<sup>361</sup> Anne Wanjiru explained:

Our children need to grow up in a peaceful environment. They also need good education so that they can grow into responsible and successful adults. Taking the children back will only destroy them as they may grow into heartless human beings because of growing up amidst violence, or under unending fear of being attacked.<sup>362</sup>

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<sup>358</sup> Oral Interview, Lucy Nduta Kamau, Vumilia Eldoret Farm, 30<sup>th</sup> May, 2010.

<sup>359</sup> Oral Interview, Mwangi Muchera, Vumilia Eldoret Farm, 30<sup>th</sup> May, 2010.

<sup>360</sup> Ibid.

<sup>361</sup> Oral Interview, Anne Wanjiru, Vumilia Eldoret Farm, 30<sup>th</sup> May, 2010.

<sup>362</sup> Ibid.

## 7 Uncertainty and fear of repulsion and rejection

While some IDPs found peace and a semblance of stability because of settlement in proper homes for the first time in Maai Mahiu, there were those previous renters who would have wanted to return but were unsure of being accepted back. Most of the premises occupied, as we have observed, belonged to Kalenjin and Maasai landlords. Besides the premises having been leased to these people, therefore, it was not clear that the landlords would be ready to lease their premises back to them, should they return. In any event, the landlords had been party to their expulsion and displacement. But even where their landlords had not been hostile to them, such landlords themselves lived under the cloud of fear of their Kalenjin and Maasai tribesmen, who had in the first place threatened to burn the premises, if the landlords did not eject the non-Kalenjin/Maasai tenants. It was not clear that such landlords would now feel secure enough to allow the expelled tenants back. These landlords feared that in the event of violence, they would lose their leased property to arsonists from their own tribes.<sup>363</sup>

## 5.8 Unyielding animosity over land

Despite all other concerns, IDPs fundamentally reported deep animosity and suspicion which had existed for a long time. They claimed that the people who attacked them were not comfortable with them because of the problem of land ownership in the Rift Valley. The land question caused bad blood between members of the Kikuyu community on the one hand and those from the Maasai and Kalenjin communities on the other.<sup>364</sup> The land problem has been a thorn in the Kenyan political flesh since the colonial period as we have seen in the preceding chapters.<sup>365</sup>

With the achievement of independence, Africans believed that they had reclaimed their land rights, but that was not to be. The post-colonial State continued to be evasive on the land issue. In 2002, Kenyans voted in the NARC Government in an election dubbed 'the second liberation', but there was no liberation in the land grievances. The long history of land grievances laid the foundation for ethnic animosity in the Rift Valley, contributing significantly to the 2007 post-election violence. IDPs in Maai Mahiu were keenly knowledgeable about the story of land in

<sup>363</sup> Oral interview, Rachel Kafura, Jikaze, Maai Mahiu, 1/6/2010.

<sup>364</sup> Oral Interview, Mary Wangui, Vumilia Eldoret Farm, 30<sup>th</sup> May, 2010 and James Njoroge Muniu, Jikaze Farm 28<sup>th</sup> May, 2010.

<sup>365</sup> M. wa Kinyatti. *History or Resistance in Kenya, 1884-2002*, Nairobi: Mau Mau Research Centre, 2008. pp. 101-130.



Kenya and of the specific circumstances that had led their particular families to be trapped in the web of the land problem in Central Province and in the Rift Valley.<sup>366</sup>

The land-grievances-driven ethnic animosity was so deep as to complicate family relations. Not even Kikuyu women married to Kalenjin men were spared. They were never fully accepted or integrated into their extended Kalenjin families. They were, for example, frowned upon by their in-laws and in particular their mothers-in-law.<sup>367</sup> Their Kalenjin families disowned them amidst the violence. As Florence Njeri explained:

I was married to a Kalenjin man. I do not know whether I am still married to him or not, but he was my husband. And I was not the only one. There were many of us who were married to Kalenjin men. Although our husbands loved us, the other family members never accepted us into their families. We were never involved fully in family affairs as we were discriminated against. And even our husbands never told us that violence was being planned and I think they had been warned not to leak information even to their Kikuyu wives. During the violence, our husbands were unable to help us, as neighbours and extended family members expelled us alongside our children, who were also their children. It did not matter that these children were their blood relatives. They went ahead to discuss and expel their own blood relatives and told their own children never to go back there, the same way they treated the children's mothers. I think they were just afraid of their own people. They had to be seen to do what their people wanted otherwise they would also be killed. To make the matter worse even after our eviction, our husbands have never called upon us to see how their children are doing. They have also gone ahead to remarry from their own community. It only means that they have forgotten us and their children, or maybe it is just fear of their own people which is ruling them. They have to show them that they are no longer with us. So how do we go back there?<sup>368</sup>

## 5.9 Impunity and insecurity

Apart from violence becoming part of Kenya's electoral process since the restoration of multi-party politics in 1991, impunity has become the hallmark of that violence, as well as other crimes

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<sup>366</sup> Oral interview, James Mwangi, Vumilia Narok, Maai Mahiu, 1/6/2010.

<sup>367</sup> Oral Interview, Florence Njeri, Jikaze Farm, 28<sup>th</sup> May, 2010.

<sup>368</sup> Oral Interview, Florence Njeri, Jikaze Farm, 28<sup>th</sup> May, 2010.

in the country.<sup>369</sup> In turn, this impunity has generated feelings of insecurity, even among the few and isolated IDPs who said they would be willing to consider going back under certain conditions. They could only go back if the Government provided and was seen to be providing adequate security. They would want to see all State security agencies work as one unit with the unambiguous objective of protecting all people, irrespective of their ethnic origins. They could go back if the State managed ethnic diversity in a manner that did not generate ethnic suspicion and politics of recurrent ethnic hatred, violence and selective application of the law.<sup>370</sup> David Mwaura explained:

We will go back if the Constitution is respected and the laws implemented to the letter. The Government should ensure that everybody follows the law. As the law says, Kenyans should be free to own property and live anywhere in the country. After all we are also Kenyans and the laws allow people to own property anywhere, including Eldoret. Eldoret belongs to all Kenyans, who said it only belongs to the Nandi? We will go back if the Government gets serious and there is law and order for everybody, treating everybody equally, throughout the country.<sup>371</sup>

Above all fears that the IDPs listed as reasons why they could not return to their former homes was the twin question of insecurity and impunity. To most of the IDPs, security in the Rift Valley was bad. As things stood, they could not feel assured of their safety if they returned.<sup>372</sup> Some of the IDPs had been displaced from the interior with no single police station in the vicinity. To them, it remained unsafe to try to go back even in the areas where the police were present. They were also concerned that during the violence police officers had clearly taken sides. They had watched and even mocked members of the ethnic communities that were butchered.<sup>373</sup> This sent out the message that even if they should go back, they would not be safe, hence their declining to go back.

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<sup>369</sup> See Waki Report, *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, p. 7 for an incisive expose.

<sup>370</sup> Oral Interview, David Mwaura, Vumilia Eldoret Farm, 28<sup>th</sup> May 2010.

<sup>371</sup> Ibid.

<sup>372</sup> Oral interview, Esther Wanjiku, Jikaze farm, Maai Mahiu, 1/6/2010.

<sup>373</sup> Ibid.

In line with security, most IDPs mentioned lack of commitment on the part of the Government to punish the perpetrators of violence.<sup>374</sup> Since the outbreak of the first ethnic clashes in 1991, the Government of Kenya has never punished those who planned and carried out the violence. This promoted the spirit of impunity. The assailants were still walking in freedom and even openly threatening to carry out further atrocities. The IDPs felt that they had been deprived of justice by fact that those who wronged them enjoyed their freedom as they suffered in the tents. They argued that some of the planners were rewarded with senior Government positions. The reward seemed to be a justification of violence against the IDPS. If the Government was rewarding the planners, it was a strong signal to the IDPs that even if they returned to their former homes, they would be killed and the assailants rewarded.<sup>375</sup>

The state of affairs between April 2008 and the present moment has only seemed to assure the assailants that nothing could be done against them. There was not even a single case in the courts against anyone. Parliament has failed to establish a local tribunal to try the perpetrators of the violence. At the very best, there was talk of people being taken to the International Court of Justice in The Hague. But even this remained vague, as nobody had been arrested so far. "So whom are we talking of trying in The Hague?" they ask.<sup>376</sup>

The IDPs found it laughable that some were talking about forgiveness. But who was it that was to be forgiven? You could not forgive someone who had not even owned up and apologized. As Margaret Mwai noted:

They never apologized to the victims. They have not even acknowledged that they were in the wrong so that normalcy can begin to return after the conflict. In African society the person who had committed atrocities always apologized and cleansing was done for the community to co-exist after a period of hostility. How do we just assume that things are now normal and go back? We made that mistake before. See where that placed us. Why do we want to repeat the mistake?<sup>377</sup>

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<sup>374</sup> Oral interview, Dorcas Njeri Ngugi, Jikaze farm, Maai Mahiu. 1/6/2010.

<sup>375</sup> Oral interview, Mwhaki Muthoni Jane Vumilia Eldoret. Farm Maai Mahiu. 1/6.2010.

<sup>376</sup> Ibid.

<sup>377</sup> Oral Interview, Margaret Wambui Mwai, Vumilia Eldoret Farm, Maai Mahiu, 1/6/2010.

### 5.10 Groping for ethnic solidarity in the face of the unknown

There was clearly the challenge of accumulated resentment and bitterness going back to 1992. No meaningful effort had been made to heal the communities following the violence of 1992 and 1997. This stoked the spirit of ethnic nationalism. Every person today wants to be close to their ethnic groups to be sure of their security. Since most of the IDPs in Jikaze, Vumilia Eldoret and Vumilia Eldoret and Fumilia Narok are of Kikuyu origin, they now feel close to their ancestral land. They openly expressed confidence that in the event of an attack in Maai Mahiu, they expected to get reinforcement from 'their people', unlike in far away Eldoret and Narok.<sup>178</sup>

### 5.11 Precipitate closure of IDP camps

The intention behind the *Operation Rudi Nyumbani* left many unanswered questions among the IDPs. The operation was associated with a lot of abuses, notably the use of force to close down the camps. According to the customary international law any repatriation is supposed to be voluntary, and in the event that the displaced persons were sure of their safety and that of their people and property during return. This was not observed. Government used arm-twisting methods to decamp the IDPs without paying attention to the tenets of proper healing and reconciliation in conflict of this nature.

### 5.12 Conclusion

This chapter discussed the reasons why the IDPs at Maai Mahiu would not return to their former homes. The IDPs demonstrated how they were pushed out of their homes and the factors that pulled them to the current homes. Using the push-and-pull theory, this chapter has attempted to demonstrate some of the major challenges to the return of IDPs to what they previously called home. The notion of home can become complicated in Kenya, depending on who is using the term, where and when – and indeed why. Consequently, it was the disagreement about home and who was entitled to be there that had led many to flee. The political wrangles between PNU and ODM only provided a ripe moment for animosities, tensions and conflicts, that had simmered and remained unresolved for a long time, to burst into a virulent open. Without them being addressed first, to ask the IDPs to return is to send them to the slaughterhouse.

<sup>178</sup> Oral interview. Stephen Mbugua Muthama, Vumilia Narok Farm, Maai Mahiu, 1/6/2010.

## CHAPTER SIX

### CONCLUSION

#### 6.0 General observations

This study drew impetus from the fact that there were internally displaced persons, who following the 2007 – 2008 post election violence in Rift Valley Province in Kenya, had not returned to their places of regular habitation. This was despite assurances, pleas and sometimes even pressure by Government, seeking to make them return. It was noted that violence had broken out following a disputed presidential poll in December 2007. It was further noted that the first lot of the IDPs were victims of violence that targeted both real and imagined supporters of President Mwai Kibaki and his Party of National Unity (PNU).

Kibaki's principal opponent in the elections, Raila Amolo Odinga and his Orange Democratic Party (ODM), had rejected the results of the Presidential poll and called out their followers to mass protest.<sup>379</sup> The protests had degenerated into an orgy of violence. The violence took the shape of arson, sexual violence and even killing of PNU supporters and perceived supporters.<sup>380</sup> In the event, many had to run away from their places of regular habitation and sought safe custody in IDP camps.<sup>381</sup> PNU politicians also rhetorized and occasioned a revenge upsurge of violence that created other IDPs from Central Province<sup>382</sup>.

In April 2008, a Grand Coalition Government had been formed, comprising of the two belligerent sides – ODM and PNU. The two principal antagonists, Kibaki and Odinga, came together to announce to the country and to the world that hostilities were over and that normalcy had returned. Despite the new Government's spirited efforts to disband the camps and intervene

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<sup>379</sup> Waki Report. *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, p. 231.

<sup>380</sup> KNHRC. *On the Brink of the Precipice: A Human Rights Account of Kenya's Post Election Violence*, KNHRC, 2008, pp 3 – 7 (See also Waki Report, pp viii).

<sup>381</sup> Waki Report. *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, p. 61.

<sup>382</sup> Waki Report. *The Report by the Commission of Inquiry into the 2007 Post Election Violence*, Nairobi: Government Printer, 2008, p. viii.

to have the IDPs return to their regular abodes. many remained in the camps well over two years later.

Besides, some IDPs elected to put into a common basket the KShs. 35, 000 that the Government provided to each IDP family as resettlement support, to instead buy consolidated land for new settlements elsewhere. One such settlement is the Maai Mahiu based composite settlement of Vumilia Eldoret, Jikaze and Fumilia Narok. We studied this settlement in an attempt to understand the impediments to return.

We tested two hypotheses. First, that there are political, historical and cultural factors that have made IDPs reluctant or unable to return to their original abodes. Second, that if certain political, historical and cultural factors are addressed, it may be possible for IDPs to consider returning to their places of original abode.

Our findings suggest that there are underlying factors to the conflict that created the internal refugees now domiciled in the three settlements in Maai Mahiu. These factors go beyond the disputed presidential election results of December 2007. It emerges that the presidential results were only the essential trigger point at a ripe moment for a situation that had been simmering for decades. These grievances touch on historical injustices around land, going back to the colonial period. They also touch on perceptions of who should own land in the Rift Valley and, especially, in the North Rift. These are perceptions that have pitted people who perceive themselves as 'indigenes' against everybody else, whom they see as an 'outsider', a 'foreigner' and a 'settler.'

The perceptions on land and land rights have provided a ready partisan and often violent constituency to a local political elite with economic and political axes to grind. In the face of national competition for power and opportunity, the native axe-grinding elite has played up ethnic tensions that span across decades to score short term political goals. Political axe-grinding came particularly into sharp focus beginning at the return of multi-party democracy in 1991. Since that time, General Election campaigns have been synonymous with ethnic hate campaigns. The campaigns have been informed by abiding ethnic resentment founded around perceptions by

the so-called indigene population that the 'migrant communities' are economically thriving, at the expense of the 'indigenous population.'

### **6.1 The right to return**

The law has been put into serious doubt in the face of blatant impunity. The Rift Valley Province of Kenya has created the largest and most afflicted internally displaced persons in Kenya, ever. There were more than 600,000 people registered as internally displaced persons in Kenya, most of whom were from the Rift Valley. These people were expelled, or fled from their homes, with nothing. Their property was either destroyed or looted by the attackers. Their future and the status of their right of return has become one of the most contentious issues in the effort to find lasting peace.

The right of IDPs to return to their homes is deeply embedded international instruments of human rights. Although the embedment into the customary international law is a recent development, historically the right of return was so universally accepted and practised that it was not deemed necessary to prescribe, or codify, it in a formal manner. This was because after the restoration of calm, communities had traditional mechanisms through which ethnic groups that had clashed were pacified and normal co-existence resumed without much mention of past atrocities thereafter.

The most basic expression of the right of return, as we noted earlier, is contained in the Universal Declaration of Human Rights, Article 13, which states that, everyone has the right to leave any country, including his own, and to return to his country. We would understand in a conflict situation that every person has a right to leave his home and to return if the conditions are favourable. The Government has the responsibility to preside over such return. Therefore, it cannot be argued that the IDPs, who were expelled or fled from the Rift Valley during the post election conflict, no longer had any rights with regard to the province in which they had lived simply because they have found new settlements.

Article 15 of the UN Declaration on Human Rights stipulates that everyone has the right to a nationality. This article provides relevant protection of the right of return in a post-conflict

situation. Certainly, where a population has been forcibly expelled, the right of return derives from the illegality of the expulsion itself because those expelled clearly have the right to reverse the illegal act by returning to their homes. While the Maai Mahiu settlers in the community under study may have found some relief from the adversity that had dogged them for close to twenty years, this should not derogate their right of return.

We saw in our conceptual framework that the four Geneva Conventions assume the right of return in numerous articles and provisions. The underlying assumption of these provisions, and the numerous prohibitions in international law against involuntary repatriation under conditions of danger, can only be that of an immutable and universally accepted right of return.

In 1948, the UN adopted Resolution 194, which specifically applies the right of return. We have seen that Paragraph 11 states that refugees or IDPs wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return. This should be made good by the Government or responsible authority. We have seen that the UN has reaffirmed this resolution with near unanimity, practically every year since its adoption. This resolution is particularly noteworthy in that it provides for the return of the IDPs to their homes and not just to their homeland.

It is sometimes argued that Resolution 194 is a General Assembly Resolution, rather than a Security Council Resolution. Some States have, therefore, argued that it is a non-binding resolution. The general principle of when and if a General Assembly resolution can be binding cannot, however, be debated in the Kenyan IDP scenario to invalidate the right of return. Kenya's admittance to the UN as a member State was conditional to acceptance and implementation of all the UN Resolutions, 194 included. Kenya is, therefore, bound to implement Resolution 194 to facilitate the return of the IDPs displaced by the 2007 election violence. The IDPs have not only the right to return to their homes, but guarantee of security as required by law. Article 6 of the International Convention on Civil and Political Rights states



that every human being has the inherent right to life and shall be protected by law.<sup>383</sup> Within this is embedded a fundamental right of return and State sponsored security.<sup>384</sup>

Beyond the foregoing, in Resolution 42/69 of 2 December 1987 the General Assembly reaffirmed the inalienable right of all displaced persons to return to their homes or former places of residence.<sup>385</sup> The General Assembly further declared that, any attempt to restrict or to attach conditions to the free exercise of the right of return by any displaced person is inconsistent with their inalienable right and is inadmissible.<sup>386</sup> It is, therefore, clear that there should be no debate whatsoever on whether the IDPs in Maai Mahiu should go back to their homes in the Rift valley because Kenya is signatory to this resolution. The Kenya Government has a duty to these displaced people.<sup>387</sup> Even in the event that they should find comfort in their present homes to the extent that they do not want to return, the Government owes them restitution and retributive justice for the adversity that they have suffered this far.

In the same Resolution 42/69 G of 2<sup>nd</sup> December 1987 the General Assembly called on all nations, Kenya included, to take immediate steps for the return of all displaced persons. And those Governments, Kenya included, to refrain from all activities or omissions that could obstruct the return of the displaced inhabitants. With all this strong international legal backing, the IDPs in the Maai Mahiu region have a right to return to their former homes without any threat to their lives.<sup>388</sup> Elsewhere Article 17 of the Universal Declaration of Human Rights provides that everyone has the right to own property in any part of the world.<sup>389</sup> This means that the displaced persons in Maai Mahiu have the right to their property (or compensation for their property), which they left behind during the violence that displaced them.

Apart from the conventions and declarations that have been discussed above the Kenyan Constitution, which is the primary source of the Kenyan law, allows Kenyans to live, work and

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<sup>383</sup> Centre for Human Rights, *United Nations Action in the Field of Human Rights*, Geneva: United Nations publication, 1994, p. 107.

<sup>384</sup> Ibid.

<sup>385</sup> Ibid. p. 108.

<sup>386</sup> Ibid.

<sup>387</sup> Ibid.

<sup>388</sup> Ibid.

<sup>389</sup> Ibid.

own property in any part of the country. The State is the chief custodian of the Constitution of Kenya. It is a fundamental failure on the part of the Government to bend to the kind of arbitrariness that has created the Maai Mahiu IDP community. This is a precarious trend that could establish and entrench dangerous precedents which allow people to banish others with such impunity as has informed the post election violence in Kenya's Rift Valley Province from 1991 to 2008.

## **6.2 Impediments to return**

There exist deep-seated ethnic animosities, generally. Communities look at 'out groups' as their enemies. These animosities date back to times just before independence, when the Kalenjin laid special claim to land and forests in the Rift Valley and gave the Kikuyu a month's notice to leave the forests and the province, or else face forced eviction. The cycle of threats has never come to an end. National leadership has failed to address the factors behind these animosities. As a result, hardcore prejudices and stereotypes have developed. These require a special reconstruction and reintegration programme. It may have to be a programme that begins all the way in the school system, addressing both intakes and use of curriculum materials to generate inter-ethnic empathy and acceptance. It is worrying that some IDPs look at their assailants in 'dehumanized' imagery, such as that of the IDP who told us of the Kalenjin community that 'Those are not people.' Similarly, before they were displaced, the IDPs were looked at in the imagery of 'weeds' that should be set on fire. There is need to reconstruct the image of the moral community to include those who are perceived as 'outsiders.'

But people are not likely to empathize with their present day adversaries where they feel that they are the victims of injustice that was perpetrated by these adversaries. The Maai Mahiu IDP community today feels greatly aggrieved. Reintegration efforts that do not take into account the perils that they suffered and the need for restitution are unlikely to enjoy their support. In the end there is likely to be little or no reconciliation. Reconciliation, therefore, must go hand in glove with justice. The process that ejected the Maai Mahiu IDP community from its original abode was illegal. There is the feeling that Government has accepted this illegality as a matter of course and that life should, therefore, just move on as if nothing ever happened.

The IDPs are cynical about Government's ability to vindicate them against their tormentors. It was particularly noted that nobody had ever been taken to book for the atrocities of 1992 – 1997. The 2007 atrocity therefore came at a time when impunity had become a way of life, especially among the elite political cadres. IDPs were of the perception that people whom they had cause to believe had actively planned and funded their asperity were enjoying high profile positions in Government, while at the same time preaching fresh messages of hate in their places of former abode. It was their view that it is this kind of conduct that had led to unyielding cycles of ethnic violence in the Rift Valley Province and displacement of people. Moreover, subsequent to the disturbances of 1992 and 1997, their land had been invaded and taken over by Kalenjin and Maasai tribesmen and this was now all part of history, with no authority in the country doing anything to institute restorative justice. The same has happened in 2007 – 2008. Those who have tried to go back to check on their property after the April 2008 formation of the Grand Coalition Government have been turned away by hostile and armed adversaries. They have painfully watched as their antagonists go on with life on their former premises and graze their former animals as if they have always belonged to them. This is ominous incubation of future confrontation. Genuine State led intervention to address the historical factors and injustices identified in the foregoing pages is required as a matter of priority.

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