Who is Guilty?

Youth Perspectives on the 2007 Pre-Polls Electoral Violence in Kenya
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Guilty? deals with a problem that has become virtually a second skin to our elections – the spectre of electoral violence. It is an account of pre-polls electoral violence in Kenya and seeks to examine the role of the youth and that of others whose role may not have been properly highlighted to date through monitoring and data analysis. Young people have over the years been accused of being the perpetrators of electoral violence in Kenya. Indeed young people who today constitute the majority of the African population, have been roundly accused of perpetrating violence round the continent - in both war and in peace time. For a continent whose 52 states are characterized by violence, social fracture and instrumentalized ethnicity, this is a very strong indictment indeed. But to what extent is this a problem of young people? And to what extent is it society’s?

Guilty? is a report based on Youth Agenda’s monitoring of the pre-election campaigns in Kenya pre-December 2007. This is the organization’s groundbreaking work into investigating the phenomenon that is youth and electoral violence in the country. It lays the foundation for a process that seeks to understand and lay open the factors and drivers behind youth pull into violence in the country. The study is important because electoral violence is not only a threat to democracy but because such violence has cost hundreds of lives and brought great misery to thousands over the years. In the run up to 1992 elections alone, for instance, an estimated 779 people were killed in election related violence and over 300,000 internally displaced. This terrible and unprecedented phenomenon was repeated in 1997.

Guilty? seeks to expand the information available on electoral violence by investigating the nature, form and extent of the misuse and abuse of young people in perpetrating electoral violence. The purpose is to promote positive
youth participation and not to defend delinquency. The report therefore is a contribution towards encouraging more positive youth participation in the electoral process, promoting peaceful, democratic elections and good governance in Kenya by providing researched information and specific recommendations on possible remedies thereof.

**Guilty?** is also a youth response to society; a society that seems to have long tried, condemned and convicted the youth of all varieties of political crimes conceivable. Society’s prejudice is best illustrated by the biased and stereotypical view that the media, a powerful driver of public opinion, has presented *ad infinitum ad nauseam* about the youth especially within the electoral process. The face of electoral violence is invariably youth. Consequently whether or not it is committed by youth, it will be blamed on the youth. It is not uncommon to see on print or electronic media footages, faces of very mature perpetrators with the caption describing them as “youth”. But while the face of electoral violence is youth, anonymous and criminal, the face of peace is to the same degree that of elderly, definitive and responsible senior citizens. This in utter disregard of the fact that many young people have been and are actively involved in peace building across the nation while at the heart of the most heinous electoral offences are very elderly people. The sum total is that the simple stereotypes have frozen images that are harsh on the youth and easy on every one else. And thus while the media has over time reinforced the image of young people as criminal perpetrators, it has failed to investigate the drivers of this youth delinquency.

**Guilty?** is less of an indictment and more of a challenge for society to take greater responsibility and start addressing the electoral violence scourge holistically. It is hoped that our society will appreciate the complexity of the problem and environmental factors that have produced today’s angry youth. It is also less of a justification of youth delinquency and more of a contribution to the quest for solutions to the problem by expanding our knowledge. There is little gain for society excelling in condemning the youth
but failing the responsibility test. This report is a challenge to a society that has not only pulverized its youth into a powerful enemy from within but having done so, has proceeded to stick its head deep in the sand like the proverbial ostrich. While most would protest loudly that they are not responsible for producing today’s yobs, there is evidence everywhere around us that confirm that today’s rebellious and angry youth are the consequence of a society that long lost a humane value system and concomitantly its moral authority to sit in judgment of the country’s young. This is a society bereft of any sense of community and a society in which role models are so few and far in between. And there are few spheres this is more visibly displayed than in our politics – especially electoral politics.

**Guilty?** is a report by young monitors who want to provide an account of the recurrent problem of electoral violence beyond the traditional boundaries of election monitoring and reporting in the country. Are the youth guilty of all the crimes they are accused of in the perpetration of electoral violence? Is the rest of society an innocent victim? Read on and find out.

**Kepta Ombati**  
Chief Executive
Acknowledgements

This report is a tribute to all young people of Kenya and those in society who at different points have shared the frustrations of violence during electioneering period and in their own ways attempted to provide solutions. The report is meant to persuade society in general and the various relevant players in particular, to review their views and take another look at the perennial problems of use, misuse and abuse of youth during electoral processes, in a more meaningful and constructive way. The Report is the product of the efforts of many people and institutions. While it may not be possible to name each one of them here and to explain their contribution in detail we wish to acknowledge the contributions of some of them whose critical input has made this report possible.

We would first and foremost like to thank the Youth Agenda monitors around the country whose findings, contributions and comments were the basis for this report. We recognize helpful comments, suggestions and critique offered by the peers who participated in the mapping of the areas covered and later the report reviewed for validation. Their critical input refined our perspectives and vision for the task.

We thank the Youth Agenda staff who worked tirelessly and with great enthusiasm throughout the project. Special thanks go to the technical team of Eustace Kinyua, Joseph Mutua, Paul Oulu GPO, Ndolo Asasa and Geoffrey Birundu for analyzing, collating and validating the data collected by our monitors and preparing information that was useful in the preparation of this report. We thank them for being resilient under pressure and for working long hours over many drafts to ensure that this report is delivered. We acknowledge the technical support provided by our consultants, Projects and Allied Consultants. We thank our Chief Executive Kepta Ombati and former Programme Officer at YAA George Tinega for their leadership and great technical support. We also remain indebted to all YAA Board members for their encouragement and advise. We thank in particular Danny Irungu,
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Susan Kariuki
Programs Co-ordinator
Chapter I. Introduction

The Youth Agenda
The Youth Agenda envisages a Kenyan nation in which the right to vote and be voted for into public office is a substantive and not abstract entitlement. This project was designed as a critical intervention towards the achievement of this goal. The following were the specific objectives of the project; to monitor and document cases of use and abuse of youth in electoral violence and other crimes such as bribery over a period of 6 months; to provide early indicators of the likely developments during the next general elections; to publish a report on the findings; to present the report to the public for the purpose of informing and expanding the debate and range of remedial interventions required. The report provides information that is useful to policy makers, party leaders, youth organizations and other stakeholders such as the Electoral Commission of Kenya for the purpose of remedial action. It should help stakeholders in mapping out strategies to decrease or eliminate the culture of impunity in the use and abuse of youth in electoral processes.

The Youth and Electoral Violence Monitoring Project
The project acknowledges that democracy cannot take root in an environment characterized by violence. It also acknowledges the fact that election by, and of itself, does not constitute democracy. It appreciates that bad leadership and lack of effective participation – meaning free and full participation – by the electorate is a major contributory factor to Kenya’s governance problem. This is exacerbated by the culture of impunity which has taken root in our body politic. This report and follow-up work is intended to contribute towards good governance in Kenya by reducing electoral violence and corruption and improving the electoral environment especially for women and young people. It is a pioneering work providing youth perspective to electoral violence which should assist all stakeholders including policy makers, political party
leaders, law enforcement agencies, youth-serving and youth organizations in understanding the complexity of electoral violence and the involvement of young people in Kenya.

Elections in Kenya over the years have been characterized by violence, bribery and intimidation. Such violence has often resulted in loss of life, destruction of livelihoods and denying people their rights to vote as polling station cannot be accessed. The above was well witnessed in the first two multiparty elections of 1992 and 1997. It is well known that much of this violence is usually perpetrated by the youth, but two facts that are understated are that, first, the youth also form majority of the victims. And second, the youth perpetrators are also mostly at the tail end of the perpetration chain. The real masterminds – be it the politicians themselves or their organizers – are usually older people who are angels by the day and devils at night. People who in public are peace-makers but in private are war-merchants.

Though significant efforts have been previously made by various institutions to monitor and document electoral violence and other malpractices in the country, little focus has gone towards addressing the root causes and the role of different players in the electoral violence chain. Most of the monitoring initiatives have also tended to kick in on the last mile while violence takes root much earlier. This poses a great challenge to election monitors and observers and to democracy in general.

Early signs within the period of this monitoring exercise indicated a potentially violent and “dirty” election for several reasons. First, whereas there was marked improvement of the electoral environment in 2002 leading to the first genuine free election in Kenya’s history, there was little reason to believe that the improvement would hold in 2007. The acrimonious fallout of the former partners in the National Rainbow Coalition (NARC) government and the disintegration of the independence party, Kenya African National Union (KANU), provided a dangerous cocktail for an explosive election. Secondly,
within intra-party elections, there had been significant violence. Examples include the Liberal Democratic Party (LDP) elections in May 2006 and the confrontation between the various KANU factions following the holding of parallel National Delegates Conferences in Nairobi and Mombasa leading to the overthrow of the previous office bearers. In the violence that erupted in the streets of Nairobi on December 5, 2006, scores of people were injured and an administration policeman killed following clashes between supporters of the ousted officials and contingents of the anti-riot police. Violence had also been witnessed in other parties such as FORD-Kenya where there was another attempt to stage a coup. In all these, the violence bore the indelible face of youth with the older politicians fanning clashes from the background or sidelines.

The monitoring sought to establish the nature, form and extent of the use and misuse of the youth. The nature of violence is either planned or spontaneous while form seeks to find the kind of violence perpetrated. Was it fatal assault, physical assault resulting not in death but grievous injury or was it verbal assault. Other forms monitored and reported on are Destruction of property, Obstruction, Incitement to violence and Hate Speech. Extent on the other hand sought to establish the levels of youth participation in the chain of electoral violence. The chain consists of three main parts: planning, financing and execution. Extent also sought to find out the geographic prevalence of the offences as well as the political party prevalence.

This monitoring exercise is founded on the belief that democracy cannot flourish in an environment of political violence, intimidation and impunity. Yet effective response demands for evidence-driven action. This project is therefore responding to this challenge. The overall objective was to monitor, document and produce a reliable report on the form, nature and extent of use and misuse of youth in the run up to the 2007 General Elections. The survey was carried out from September to November 2007.
Methodology
The report is compiled from primary research consisting of data from the field through observation and interviews. These were complimented by secondary sources such as media reports as well as reports by other monitors and observers whose findings were referred to, in verification of accounts received from the Youth Agenda field monitors.

To achieve the objectives of this project, the following activities were conducted;
• Mapping out the entire country in order to isolate flashpoints and to determine the provinces and constituencies to be covered.
• Recruiting, training and managing a network of 30 field monitors complimented by 13 media monitors.
• Collecting, collating and verifying information from the field and other sources (such as other monitors, observers and media houses).
• Data entry, analysis and generation of aggregated and disaggregated statistics on the variables under study. The analysis is both quantitative and qualitative.
• Preparation of the pre-print report.
• Review of the pre-print report.
• Production and publication of final report.

Fig 1.1: Mapping By Province and the Number of Monitors
Criteria for Mapping areas Monitored
The areas monitored were selected based on four key parameters;

- Areas with a history of electoral violence.
- Areas with high likelihood of experiencing violence in the 2007 General Elections.
- Areas considered strongholds of various parties.
- Areas with young candidates vying for parliamentary seats.

Events Monitored
The monitors followed both planned and unplanned campaign events for both individual politicians and political parties. These consisted of campaign rallies, political meetings, door-to-door campaigns, meet-the-people tours, road shows and party primaries/nominations events.

Electoral Offences Covered
Electoral violence took different forms. The main ones were fatal attacks, physical assault, verbal assault, destruction of property, obstruction, incitement to violence and hate speech. Bribery was also found to be relevant as a cause of electoral violence either because it was an inducement to cause violence or because recipients fought over it. Table 1.1 below gives an overview of the prevalence of the different forms of electoral violence and election violence-related offences monitored.
Tables 1.1: Overview of Reported Electoral Violence and Related Offences

<table>
<thead>
<tr>
<th>Form of Incidence/ Offence</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fatal Assault/ deaths</td>
<td>1.67</td>
</tr>
<tr>
<td>Physical Assault</td>
<td>26.67</td>
</tr>
<tr>
<td>Verbal Assault</td>
<td>25.00</td>
</tr>
<tr>
<td>Destruction of Property</td>
<td>5.00</td>
</tr>
<tr>
<td>Obstruction</td>
<td>8.33</td>
</tr>
<tr>
<td>Incitement of violence</td>
<td>8.33</td>
</tr>
<tr>
<td>Hate Speech</td>
<td>15.00</td>
</tr>
<tr>
<td>Bribery</td>
<td>10.00</td>
</tr>
<tr>
<td>Total</td>
<td>100.00</td>
</tr>
</tbody>
</table>

The most prevalent form of electoral violence was physical assault at 26.67% followed by verbal assault at 25% while the least prevalent was fatal attacks at 1.67%.
Chapter 2. Overview of Electoral Violence in Kenya

Definition
Electoral violence has been defined as ‘Political violence that is geared towards winning political competition or power through violence, subverting the ends of the electoral and democratic processes. Its tool of trade is the intimidation and disempowerment of political opponents. Electoral violence takes place not just at election time, but in periods leading to elections, during the elections themselves and in the period immediately following elections such as during the counting of ballots’.

Background
Every one of the 9 elections held in the country since independence - in 1963, 1969, 1974, 1979, 1983, 1998, 1992, 1997 and 2002 – and most of the by elections in between, have been characterized by varying degrees of electoral violence. And the youth have been at the centre of it all. While the 2002 election was arguably the least violent and the most democratic, the 1992 was the most violent. In the ‘92 elections, the first after the country’s return to multiparty politics in 1991, the country witnessed unprecedented election-related bloodbath as a result of the politically instigated ethnic clashes. The clashes instigated by the then Moi-KANU regime claimed the lives of over 700 Kenyans. This was repeated again in 1997. Observers have noted thus:

“The country has therefore seen forms of violence each election year, in many instances, resulting in deaths of the innocent. The level of electoral violence has varied across

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1. Makumi Mwagiru in Political and Electoral Violence in East Africa (Friedrich Ebert Stiftung and Centre for Conflict Research, Nairobi Kenya, 2001)
elections. The 2002 general elections were, for instance, relatively violence-free. The elections were a stark contrast with the 1997 and 1992 elections which were undoubtedly violent. Indeed the history of post-independent Kenya, clearly shows that the successive three post-independence regimes have used violence as a means of entrenching their dominance and hold onto power. However, even in the 2002 election, there were a significant number of incidences of violence, bribery and intimidation in what was otherwise regarded as a historical and peaceful election process. The Central Depository Unit on Electoral Violence in Kenya showed that a large percentage of political thuggery committed were incidences of assault. Other incidences involved threats, intimidation, hate speech, inter ethnic violence and forcible disruption of public meetings - in most cases perpetrated by political parties either singly or jointly, the police and terror groups like the Mungiki, Jeshi la Embakasi and Kamjesh. The government too was blamed for perpetrating violence. Similarly, the 2005 referendum elections were relatively non-violent but still saw instances of political violence in the nature of incitement to violence, hate speech and misuse of state resources/abuse of public office. Again, the violence was largely masterminded by the political class.

Worryingly, electoral violence in the country in the recent past has taken a gender dimension where female aspirants have been harassed and assaulted with a view of intimidating them from contesting. Electoral violence therefore continues to be a major governance problem in the region.

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2 See the Kenya Domestic Observation Programme (KDOP) in its report When Kenyans Spoke for details.
4 Ibid page 3-4
5 Central Depository Unit (CDU) Report on Electoral Violence January, February, March, April 2002
While in all past politically instigated and electoral induced ethnic clashes, the youth were condemned for perpetrating violence as ethnic warriors, what is less acknowledged is the fact that the youth were also the biggest victims and casualties. The majority of the dead, for instance, in all instances have been young people. And while many reports concede that electoral violence is rampant in Kenya, there is little knowledge on nature and extent of youth involvement in electoral violence beyond the fact that, invariably, the youth are the one social group that is most visibly engaged and used to perpetrate and spread violence. It is for the purpose of unraveling this apparent dilemma that the Youth Agenda undertook this research to study the patterns, extent, character and form of youth involvement in electoral violence. Since violence is generally perceived to be perpetrated by the youth, the question for this research is whether this is only a perception or the truth. This project also sought to monitor young people’s participation in politics in the early stages of the 2007 political campaigning so as to establish the extent to which 2007 mirrors other election years in Kenya.

This study builds on previous efforts focused on encouraging non-violent participation in elections by the youth. In 2002, for instance, the Youth Agenda and the Friedrich Ebert Stiftung developed a code of conduct for youth participation in politics. This was in appreciation of the fact that the youth have a critical role in shaping the future and destiny of their nation and therefore need to rededicate themselves to a number of shared civic values. These values include:

- Political participation
- Civic responsibility
- Political tolerance
- Gender sensitivity and consciousness
- Patriotism and nationalism

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7 Challenge to Leadership: A Code of Conduct for Youths Participating in Politics (Nairobi, 2000)
Legal Regime Governing Elections

The essence of free and fair –and by extension violent free - elections in Kenya is guaranteed by the laws and various institutions in place to guide the conduct of elections. These laws and institutions define the electoral process and systems to be used.


The electoral process in Kenya is, in addition to the Republic’s laws, also subject to the international legal standards codified in the international and regional conventions and protocols to which Kenya is a signatory and that deal with the right to vote and the guarantee to a free and fair election. These include the Universal Declaration of Human Rights (UDHR), The Civil and Political Rights Covenant, Convention for the Elimination of Discrimination Against Women (CEDAW) and the African Union (AU) Protocol on Democratic Elections. These instruments promote fundamental rights and freedoms that obligate the state and community to uphold the right of every voter to participate freely in elections and to be protected from all forms of violence including electoral violence.
Underpinning these international instruments analyzed in Chapter 10 are the following guiding principles:

- All citizens have equal rights to participate as voters and/or candidates;
- Voters must have access to political information;
- Legislation must provide for fair and non-partisan election administration;
- All participants in the electoral process, including electoral administrators, election officers, candidates, parties and all others must behave in a manner that promotes free and fair process of election and discourage conduct that would jeopardize the integrity of the process. This conduct includes the respect for political rights and activities of others, acceptance that everyone has the right to freely debate political issues and promote different political viewpoints and an understanding that no one has the right to interfere with political parties efforts to spread their message or with other citizens’ political activities.
- Legal and institutional frameworks must provide oversight and enforcement of election laws which ensures that essential measures are taken to monitor the actions of persons and special interests and create conditions for free and fair elections.
Chapter 3. Findings and Analysis

The following different forms of electoral violence and related offences were monitored: deaths, assault, and destruction of property, obstruction, incitement to violence, hate speech and bribery.

Forms of Electoral Violence
The most prevalent forms of electoral violence were physical assault (26.67%) while fatal assault was the least cited at 1.67%. Verbal assault at 25.00% was the second most prevalent and in many cases was linked to physical assault and other offences. Table 3.1 below gives the summary of the distribution of the different forms of violence monitored.

Fig: 3.1 Electoral Offences distribution
Nature of Electoral Violence

Electoral offences were divided into spontaneous and pre-planned. Spontaneous violence are those incidences where there was no prior plans to unleash violence. These included incidents where violence was as a result of provocation or chance meetings that turned ugly. Pre-planned violence on the other hand represents incidences where attacks were pre-meditated. Fig 3.2 below gives the breakdown of the nature of the offences that were reported.

*Fig: 3.2 Nature of Electoral Violence*

From the analysis above, most of the incidents of electoral violence were pre-planned. Pre-planned electoral violence represent nearly three quarter of all the reported incidences at 71% compared to 20.73% for the spontaneous violence. The Incidences represented by Unknown, are those in the borderline; that is to say, those incidences that it is not clear to establish whether they were spontaneous or pre-planned.
**Extent of involvement in Planning**

The findings indicate that youth were responsible for planning 7.32% of all incidences of pre-planned violence. Older perpetrators were responsible for 17.07% while the majority of cases were planned jointly. Joint planning accounts for 57.32% of all cases while it was difficult to establish responsibility for the remaining cases.

*Fig: 3.3* Extent of Involvement in Planning

![Pie chart showing extent of involvement in planning.]

**Source:** YAA SPSS DATA

**Extent of involvement in financing Electoral Violence**

The vast majority of funding for electoral violence came from non-youth sponsors which account for a whooping 60.98% compared to youth sponsors at 7.35%. Cases of shared sponsorship account for 14.63% while the rest came from sources whose age it was difficult to establish.
**Fig: 3.4** Extent of Involvement in Financing

![Pie chart showing extent of involvement in financing](image)

**Extent of Involvement in Execution**

In execution, the youth were the main actors taking the lead with responsibility for 54.88% of all the cases while older people account for only 14.63%. Shared responsibility account for 18.29% while the remainder of cases it was difficulty to determine who exactly was responsible.

**Fig: 3.5** Extent of Involvement in Execution

![Pie chart showing extent of involvement in execution](image)
**Electoral Offences by Region**

Most of the offences were committed in Rift Valley Province which accounts for 20.62%. Western (19.51%), Central Province (17.07%) and Nyanza (12.20%) were the other most violent regions with double digit percentages. The least violent was Coast with only 4.88% of all the reported cases. Fig 3.6 below gives the distribution of violence across the regions.

*Fig: 3.6: Electoral offences by Region*
**Forms of Incidences Per Province**

Different forms of violence were not experienced uniformly across the regions. Prevalence varied across the regions. Fig 3.7 below gives a breakdown of the incidences in each of the 8 provinces.

**Fig: 3.7: Forms of Electoral Offences Committed Per Province**

![Forms of Electoral Offences Committed Per Province](image)

**Incidences against Political Party**

This represents incidences reported against political parties as aggressors.
Fig 3.8: Incidences Reported Against Party

ODM was the most culpable party in perpetrating violence at 46.15%. This is almost double that of its main opponents, PNU at 24.07%. ODM-K at 3.70% was the least offensive while NARC Kenya was more violent at 11.11% relative to KANU at 5.56%.

Forms of Incidences by Party
Disaggregating the offences reported against each party, it becomes clear that just like in the case of regional spread, electoral violence was not uniformly spread across the political parties. There are significant variations of the different forms of violence witnessed across the different political parties. Fig. 3.9 provides a breakdown.
Fig 3.9: Electoral Offence by Political Party (Party as the Aggressor)

Whereas it would appear that KANU and NARC were guilty of only the offence of obstruction, it is more out of the fact that many incidences that may otherwise have been attributed to the two parties were instead attributed to their dominant partners, PNU and ODM to which they were affiliated. Furthermore, the cases reported with respect to the two parties are largely limited to the party primaries.
Nature, Form and Extent of Misuse and Abuse

3.1 Fatal Attacks/Deaths

Case
- On 6th October 2007 in Hamisi constituency, bodyguards of Mr. Stanley Livondo shot and killed one young man and seriously injured two others. In the incident after Mr. Livondo addressed a meeting in Hamisi, he was confronted by a group of young people who were demanding “sitting and listening allowance” that prompted one of his bodyguard to shoot at the crowd. 

The death was as a result of election-related spontaneous violence but was also an example of use of excessive force by politicians. No action was taken against the offenders.

3.2 Physical Attacks/Assault

Most of the physical attacks and assaults reported involved ODM and PNU supporters. However, other smaller parties such as FORD-People and FORD-Kenya were also actively involved.

In most of these incidences, young people were affected in violence both as perpetrators and as victims. However, while youth were involved in execution, the planning and financing was mainly by elderly politicians and sponsors.
Cases

- In the infamous Nyachae campaign rally of 21st September 2007 at Nyamarambe, the Minister was allegedly actively involved in issuing orders and cheering as the youth shot arrows at his political rivals who included Mr. William Ruto and Mr. Omingo Magara, both national officials of the ODM Party. The Minister subsequently praised the youth and urged them to continue perpetrating violence against those opposed to him and his presidential candidate, PNU’s Mwai Kibaki. *This was a case of violence that was planned and financed by elderly sponsors but executed by youth.*

- In Webuye constituency at Dina Market on 19th September 2007 a nominated councilor and Mr. Wanduasi personal assistant to then Minister Musikari Kombo, led a gang that attacked a group wearing NARC-Kenya T-shirts. The gang was allegedly acting in “defense” of FORD-Kenya, which perceived NARC-Kenya proponents as “invaders” of their territory. During the attack, several women (Margaret Nasibwondi Wekesa, Florence K. Wabuke, Carol Njenga, Mary Matunda, Florence Shedacha, and Finike Imbuka) sustained serious injuries all over their bodies after the offending gang stripped them naked at the instruction of the two young men. *This was a case of an incidence planned and executed by youth. It is however alleged that the planners had the tacit approval of their elderly employers. It is also a case of gender-based electoral violence perpetrated by young people against women at the behest of gerontocrats.*
The survey shows that the weapons of choice for young people involved in the fights were stones, machetes, walking sticks, clubs, bows and arrows, spears, iron rods and guns in that order. Damage caused ranged from inflicting of serious injuries, maimings and death.

This is a young man assaulted by fellow youths in Nairobi during the pre-election violence Incidents.

Gender-based violence
There were several cases of gender-based electoral violence reported. The prominent ones are listed below. There were two incidents in Nairobi and one in Eastern and Western each.
While the police were required to be vigilant against breakdown of law, they in most cases used excessive force against peaceful demonstrations.
3.3 Destruction of property
Competing political camps engaged in systematic destruction of campaign materials belonging to rival candidates and camps. The most common was tearing down and defacing of posters. Most of these were pre-meditated and were financed by elderly politicians and interested parties though executed by youth.

Cases
- In Vihiga constituency, one of the candidates’ agents led a group of young men in tearing down posters of a rival candidate in the same party. The said agent told the group of young men to “protect” a particular section of the constituency from the rival candidate as it was their candidate’s “zone” that no one else should touch. *Both candidates were elderly and it is alleged that the youth acted at the behest of one of them.*

- On October 19th 2007 in Kamwaura and Molo areas of the Rift valley, armed attackers raided a village and set fire to houses perceived to belong to people from a rival political camp. Two people were killed in this incident: Alex Gachiri Kuria aged
40 and Francis Karanja Mateni aged 35. The attackers also stole livestock and torched six houses belonging to Zebedeo Mogaka, Samson Ombiga, Evans Omwenga, Ronald Ontiri, Mukoto Amwayi, and Josephine Mokaya.

The age of the attackers is not given but the attack was premeditated.

- On 17th October 2007 in Nyanza Province, a parliamentary aspirant, Okoth Obado, in Uriri constituency had his car extensively damaged after an attack from a group of armed youth. The body and windscreen of the car were damaged by stones thrown by the attacking group.

The youth were reportedly acting at the behest of an elderly politician against another old opponent.

3.4 Intimidation/Obstructions
The favoured forms of intimidation were heckling and booing of opponents. Intimidation was mostly caused by the youth and was directed at both the rival opponents (mainly older people) and their supporters (mainly fellow youth).

Case
- On 28th September, 2007 in Emuhaya, Mr. Laban Mengo, a parliamentary candidate in the constituency publicly asked the youth in his village to ensure that on polling day, anyone who was not from that village does not cast their vote at the village primary school (polling centre) regardless of whether such would-be voters are registered at this polling centre.
3.5 Incitement to violence

Competing political candidates and their supporters openly and routinely used words that were likely to incite those listening to them to engage in acts of violence. Monitors reported, for instance, cases in which some candidates “instructed” their youth supporters not to allow “outsiders” to visit or campaign in their areas.

A look at the survey findings on incitement to violence shows that:

- Any little incidence was sufficient to trigger off violent reactions. This may range from the mere wearing of colours of a rival party to belonging to the “wrong” ethnic community.

- The principal direct cause of violence is incitement by leaders who are predominantly elderly and excitable followers who are predominantly youth.

- Some of the violence was triggered by fights over bribes offered by political leaders (usually elderly) and sharing of these bribes (involving poor followers who were mostly youth).

- The most prevalent forms of incitement were public utterances though provocative literature such as leaflets and actions such as tearing of posters of rival candidates were also significantly cited as causes for break out of violence.

Though some young politicians and activists also directed violence, it is the elderly politicians and supporters who mostly incited violence. And though some elderly politicians and supporters were involved in directly perpetrating violence, it is mainly the youth who executed the attacks. Thus, while the youth perpetrated violence, the attacks were organize and funded mainly by much older people usually the elderly politicians or their supporters.
Cases

- On 21st September, 2007, in a FORD-People rally held at Nyamarambe in Gucha district, Mr. Simeon Nyachae, reportedly incited a group of armed youth (known as Chinkororo) to violence. As a result of the Minister’s instructions, these warriors attacked and seriously injured several politicians, including the local area MP Omingo Magara and other senior ODM party officials who were visiting the area.

- On 3rd October 2007, at Liwo village in Kongelae location Kacheliba Constituency, North Rift, one of the Parliamentary aspirants of DP asked his supporters to cane members of the “Kibaki Tena” Presidential campaign team aligned to KANU faction for failing to join his political camp.

3.6 Hate speech/Abusive language

A look at the findings on abusive language shows that:

- Though mostly used by men, abusive language was not limited to men only. Women too engaged in the use of abusive language.

- Though some of the abusive language bordered on or constituted real defamation, no case was prosecuted thus laying firm basis for impunity.

- Young people were not immune to hate speech. Monitoring reports indicate that young people were also involved in inciting and issuing orders for violence.
Cases

- In Emuhaya constituency, some local youth leaders ordered other youth to lynch or stone anyone who asks for their voters’ card numbers to be entered in nomination application forms even though it was a requirement for all candidates to demonstrate voter support of their candidature, alleging that this amounted to vote buying. This incident nearly led to the stoning of one of the Parliamentary candidates, Professor Mwanje Enonda, as he solicited written voter support for his nomination.

  *This is a case of hate speech by youth against an elderly candidate. It is not clear whether the youth inciter were acting on instructions or on their own.*

- In a public rally in the same constituency, a parliamentary aspirant sought to incite the local populace against an opponent, in a homophobic attack. The offender dismissed his opponent as a homosexual unfit to lead because he grew up in Mombasa town at the Coast. The aim was to incite community hatred against the opponent by spreading homophobia apparently in an attempt to exploit the cultural hostilities and taboo within the Maragoli community against gays with the effect of exposing the target to not only ridicule but indeed to the danger of physical attacks. This incident nearly led to a fight between supporters of the two candidates/aspirants.

  *Though a case of an elderly candidate inciting voters against another elderly candidate, it created a basis for a youth-youth confrontation.*
In another incidence in the same constituency, a physically disabled civic aspirant was subjected to ridicule and verbal abuse by one of his rivals due to his disability condition. An outgoing councilor allegedly said at a public meeting that “disabled people like Mr. Kwache should be on the streets begging and not in politics”. Some members of the public present wanted to attack the councilor and his supporters but were restrained by Mr. Kwache, the victim, who asked them not to be violent but to show their annoyance by voting his abuser out.

This is a case of one responsible elderly candidate taking charge of a volatile situation precipitated by another elderly but reckless candidate.

Hate speech and other forms of harassment were also directed towards presidential candidates. In one incident in Western Province, a group of rowdy youth heckled and shouted down the ODM Kenya Presidential candidate Hon. Kalonzo Musyoka and his running mate Hon. Julia Ojiambo marring their campaign efforts. Monitors reports indicate that the incident was not entirely spontaneous and unplanned.

Universities were not immune to the poisoned electoral environment and students were fully sucked into the vortex of hate speech, instrumentalized ethnicity and violence.
Cases

- In one instance at Egerton University, an argument erupted between students supporting the two main rival parties, ODM and PNU, on 16th September 2007. One group of students was monitored vilifying another thus; “Kikuyus have dominated other tribes for a long time and it is time to go!” This is a case of spontaneous confrontation by young people against fellow young people. Though there is no evidence of direct incitement by older people, it is evident that the ethnic attacks are motivated by social tensions beyond the students within the nation’s body politic.

- In another incidence at the University of Nairobi on 10th October 2007 a group of students in full PNU party colors attacked their ODM aligned colleagues as they were coming from a meeting at the graduation square, while mocking them thus; “ODM should not think that the campus is in Kisumu...” Reports indicate that this was a pre-meditated attack though it is not clear where the instructions came from.

Hate speech was however prevalent and not limited to the communities of the main presidential candidates.

Case

- In Emuhaya constituency, a relatively young PNU parliamentary aspirant, Mr. Sikalo Ochiel, reportedly declared at a public meeting attended mostly by young people that one
of his rivals Mr. Kenneth Marende of ODM was supporting Hon. Raila Odinga because he had sold part of the Bunyore territory (Maseno) to the Luos, and further asked people to be prepared to “...push the Provincial boundary back to Lela in Luo land..” under his leadership. 

*This is a case of a young candidate spreading ethnophobia.*

Propaganda and hate speech often took a dangerous turn during the campaigns.

Case

- Field monitors from the Rift Valley province reported cases of distribution of leaflets warning of impending land reforms that would evict non-Kalenjins if ODM/Raila won the elections and implemented his policy of *Ugatuzi*. This led to raised anxiety in cosmopolitan parts of the province and heightened possibility of violent conflict as the land question remains extremely emotive issue in the region.

3.7 Bribery

According to the survey findings, bribing of voters by competing candidates is one of the most widespread forms of electoral offences. This bribery which comes in different forms is variously referred to as “gonywa”, “chai”, “sukari”, “erongori”. The most widespread, reported in all the regions where the survey took place, is the distribution of cash.
The size of bribe distributed ranged from Ksh. 10 to Ksh. 1,000. In some of the constituencies in Western and Nyanza provinces, some people were offering cash in exchange for voters’ cards – literally enticing voters to sell their electors cards and thereby lose their right to vote.

**Cases**

- On 16th September 2007 in Langata constituency, the PNU parliamentary candidate, Mr Stanley Livondo, openly and publicly dished out cash bribes to youth to induce them to accompany him into Kibera where he publicly distributed hundreds of bicycles as further inducements terming them campaign “rewards” to the residents during the campaign periods.  
  
  *This highlights a case of a young candidate misusing other young people as well as perpetrating voter bribery.*

- During the NARC Kenya primaries, Orange Democratic Movement (ODM) campaigners in Vihiga District were reportedly purchasing and destroying NARC Kenya membership cards to undermine the local people’s participation in the in NARC Kenya primaries.  
  
  *Both young and old agents participated in both the purchasing and the selling of their cards.*
On 5th October 2007 in Amagoro Constituency, one of the Parliamentary candidates, Mr. Sospeter Ojaamong, engaged in an exchange of insult with an opponent called Papa after Papa told the community that Ojaamong has not brought any development to the community. Later Mr. Ojaamong was reportedly distributing notes of Ksh. 100 to voters at a funeral.  

*Ojaamong is a relatively young leader.*

Bribery was perpetrated by clothing it in euphemisms such as ‘tea’ or “sitting allowance” for people to attend meetings. There is evidence that this is as much demand driven as it is fuelled by ready supply. However there were instances where the people refused to take the bribes on grounds of their party loyalty.
Chapter 4. Media Coverage of Violence

Media monitoring was focused on the four main daily newspapers and their four weekend editions with the highest circulation figures nationwide. These are the East African Standard, the Sunday Standard, the Daily Nation, the Sunday Nation, the People Daily, the People on Sunday, Kenya Times and the Sunday Times. Fig. 4.1 below provides information on how the media reported the incidences.

**Fig. 4.1 How the Mainstream Media Reported the Incidences**

The Media did a fantastic, though uneven job in reporting on electoral violence. More than 50% of all incidences reported by the media were covered within page 1 – 5 and the back pages which may connote high significance. However there were several shortcomings. Three of them were highlighted by our media monitors. First, the media across the board was less robust in pursuing investigative journalism. This denies the public an opportunity to understand the drivers of electoral violence. Some media houses as well as individual reporters, editors and sub-editors took sides and therefore many incidences may have gone unreported due to self-censorship while in others, truth may have been embellished.
Secondly, media also focused largely on incidents involving prominent politicians and other personalities and ignored incidences involving less well known individuals. Incidences involving less prominent personalities were given a passing mention with relatively smaller, obscure spaces in the newspapers. The news reports of Hon. Raila Odinga and his campaign team being asked to vacate a hotel in Karatina which happened on 22nd August 2007, for example, received wide media coverage over a three week period while incidences of a group of women being beaten and stripped in Webuye for wearing “unwanted” party T-shirts did not make it to any of the papers. While understandable, the consequence is that there is distortion of the overall picture of incidences in terms of frequency, spread and complexity.

Reports on involvement of the more prominent parties were also more readily available than those involving small parties. Consequently most reports focused on ODM, ODM Kenya, PNU and NARC Kenya. There is no evidence however that good media coverage resulted in direct redress beyond lip service condemnation and demands for action from the police and ECK. It is important to note that such calls for action recorded by the survey were made by aggrieved parties and only when they were on the receiving end.

Thirdly, incidences occurring in urban centres received more coverage than those occurring in rural areas. There were rare moments, though, when incidences occurring in rural areas that would make “dramatic” newspaper stories were covered. An example is a story of arsonists razing a house and sending a short text message to Professor Shianyisa Khasiani, an aspirant in Shinyalu constituency, asking her to surrender a title deed of her land. Though not involving a widely known political personality, such reporting served well to highlight the violent tribulations this candidate was being subjected to, despite her distance from the nearest urban centre.

Coverage seems to have been fairly evenly distributed among the 4 media houses but Kenya Times had more reports of electoral violence reports
accounting for a total of 39% followed by *The People Daily* at 22%. *The Nation* and *The East African Standard* were tied at just under 20%. Fig 4.2 below provides a summary of the distribution among the main media houses.

**Fig. 4.2 Share of coverage per selected media (Print)**
From fig 4.3 below, September (34%) seems to have been the most violent month while November was the least eventful with only 2% of all covered cases. Though the bulk of the incidences took place in the first 8 months of the year - accounting for nearly 54% of all cases covered -, the last 4 months were more intense. The 4 months account for 34% of all incidents covered.

Fig. 4.3 Mainstream Media Reports over the Months
Chapter 5. Conclusions

First, this report shows that while young people are and have been involved in the perpetration of political violence, it also shows that they have been largely engaged at the tail end of the electoral violence chain. To provide an effective solution, it is imperative to focus on all the stages of this chain; planning, financing and execution. The findings of the monitoring project also reveal that electoral violence thrives in an environment of impunity. The threshold of compliance and enforcement of law is unacceptably low. It is for this reason that the architects of the misuse and abuse of young people in perpetrating electoral violence have multiplied over the years. Law enforcement agencies have wrongly focussed their attention on the youth who are mere pawns in this dangerous political game while protecting the principal perpetrators. This must change. They must cease using youth as scapegoats and soft targets. The cosmetic response to this problem must be replaced by a genuine desire to improve Kenya’s electoral hygiene.

Secondly, there is a firm link between incidences of electoral violence and incitement, hate speech, bribes and instrumentalization of ethnicity by politicians. In many incidences where monitors cited violence, it was almost always a consequence of prior incidents of incitement, use of hate speech and/or inducement by a politician from either of the rival sides. This also confirms that the “foot soldiers” of electoral violence, mostly young men, take their cue from politicians, either on the basis of perception (that their man – very rarely a woman – is under threat) or upon express planning, financing and instructions by the politicians involved. An insignificant number of incidences cited by both the field and media monitors appear to have occurred spontaneously. Preceding most cases of violence were a well defined “aggressor” group/individual and clearly defined aggrieved parties.
Thirdly, the report findings indicate that belonging to the same party was not deterrence to engagement in violence by young people. Indeed it was not a factor in any people organizing, financing and directing violence. Political party leaders’ response to electoral violence targeting anyone other than people known to be their supporters was ambivalent at best and at worst complicit. They did not raise a voice when their rivals were on the receiving end of electoral violence of whatever nature, even where this occurred in their presence. In many incidences, political party leaders seemed to be encouraging perpetuation of violence when they warned of having our own youth who are capable.”

Fourthly, as long as there is a huge bulge of unemployed, idle and disillusioned youth, there will always be ample supply of soldiers in the wars of politicians. How can we expect these youth to be decent to society when society is so nasty to them every waking day?

Fifth, electoral violence thrives in environments devoid of issue-based politics. Where tribe, clan and personalities displace issues and party organization, then the contest is reduced to brawn. As long as electoral contests are won by reason of force rather than force of reason, there will always be violence.

Sixth, the findings indicate that the Electoral Commission of Kenya was unable or unwilling to take decisive action against perpetrators of electoral violence. Indeed, the monitoring findings indicate that the most tragic and helpless public institution in the wake of electoral violence is the Electoral Commission of Kenya. In all the incidences where the ECK was made aware of a commission of a violent electoral offence either through the media or reports by aggrieved parties, the most it did was to condemn, lament or issue warnings.
This report confirms the need for thoroughgoing reform of the ECK and a review of the electoral laws to rid them of loop holes that planners and financiers of violence have thrived on and to rethink our electoral system.

Furthermore, in our view, there is need for a rethink of our electoral system. The single member constituency, first past the post, winner take all system seems to encourage both electoral violence and corruption. Proportional representation or mixed member proportionate representation may be a better option for Kenya.

Seventh, the police is culpable of the same offence of complacency, inaction and complicity especially when involving prominent politicians and sponsors. The findings suggest that the police were reluctant or complacent in pursuing cases of violence involving influential and powerful people. In the widely reported Nyamarambe and Hamisi violence incidents, for example, the police did not take any decisive action against those who were widely reported to have been involved as inciters and aggressors. This calls into question the objectivity of the police force and double standards in dealing with electoral violence. Response to cases of electoral violence by state agencies must not only be, but indeed must be seen, to be fair to all. The law should be applied equally to all without fear or favour.

Moreover, the report further reveals that the police had opportunities in some cases to act before commission of electoral offences of a violent nature but did not use such opportunities. In some of the worst incidents, police were present in the midst of visibly armed gangs of young men, who were making audible threats of violence, but they watched without intervening. In the Nyamarambe incidence, for instance, the police not only participated in the rally as politicians incited armed youth to engage in violence but indeed failed in their duty by not enforcing the law and apprehending the perpetrators. ECK Vice-Chairman Gabriel Mukele observed thus: “The police were at the
Kisii meeting, where armed youths were seen attacking some politicians, why were they not arrested and prosecuted? The AG and the Police boss must be blamed for protecting the rich and powerful". This suggests need for serious reforms in the police charged with the responsibility of policing the electoral process.

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9 The Saturday Nation, 26/9/07
Chapter 6. Recommendations

Electoral Commission of Kenya (ECK)

To be effective and deliver on people’s expectations, the ECK must enjoy the trust and confidence of the broad public otherwise their actions will be politicized. ECK should be subjected to fundamental reforms. These reforms should include:

1. Making the Commission truly independent by replacing nomination by political parties with open recruitment of commissioners through a competitive process. The problem being less of insufficient law and more of uncertainty in enforcement of sanctions against offenders, suggests that the basis of appointment to the commission needs to be revisited to ensure that individuals appointed to the commission have the moral authority and the courage to enforce law without fear or favor.

2. Granting the Commission powers to establish and manage a special police force that will take orders from only the Commission. This is to ensure that there is effective enforcement of electoral laws and especially the Election Offences Act and the Election Code of Conduct (which is part of the National Assembly and Presidential Elections Act).

3. ECK needs to respect young people and stop treating them as easy targets for punishment while avoiding elderly sponsors who organise and finance electoral violence and other related offences.

4. ECK should be granted powers to disqualify errant parties fielding rogue candidates and/or disqualify the rogue candidates as well as heavily fining the offenders to provide strong deterrent measures.
5. Given that many of the election offences took place well before the official campaign period, ECK should ensure that it monitors party activities for the whole of the election year rather than focus on the campaign period alone.

6. This report confirms the need for thoroughgoing reform of the ECK, a review of the electoral laws to rid them of loop holes that planners and financiers of violence have thrived on and to rethink our electoral system. In our view the single member constituency, first past the post, winner-takes-it-all system seems to encourage both electoral violence and electoral corruption. Proportional Representation (PR) or Mixed Member Proportionate Representation (MPPR) may be a better option for Kenya.

**The Police**

An effective and impartial police force is required to enforce the law irrespective who the offender is.

1. There should be established a special police unit under the ECK to deal with electoral offences and enhancement of security around the electoral process. Police effectiveness in providing security and keeping public peace is more likely to be enhanced if the ECK is assigned a special police unit during election year that will be answerable to only the ECK.

2. Investigation and prosecution of prominent politicians and individuals would be the strongest signal against perpetration of electoral offences not the targeting of small fish.

**Civil Society**

Civil society remains a critical actor in the democratization process and the quest for a civil political culture in Kenya. The civil society can therefore help in cleaning up the mess that is our electoral process in a number of ways;
1. Civil society organizations should conduct voter education on an ongoing basis rather than during the electoral period. Observation indicates that voter education conducted during or close to the electioneering period is of little consequence. This is because neutral and objective voter or civic education is virtually impossible in a charged political environment.

2. While civic education should target the whole community, there is need to give greater focus to young people than has been the case before and to nuance civic education to fit in with their language and imagery. This is not only because young people are now the largest voting bloc but more importantly because they are the greatest victims of electoral violence.

3. Civic education should be provided in schools and colleges with a strong message against electoral violence and other related offences. This civic education should clearly and persuasively present the case for greater civic responsibility in young people. It should be noted that non-electoral violence in schools is what later translated to election violence.

4. The civil society should introduce an award to be awarded to the political party/parties that promote the eradication of electoral violence and support such a party/parties through positive incentives. Similarly the civil society should consider introducing a Shame List to name the political parties that perpetrate violence.

5. The Youth Agenda Code of Conduct and the AIESEC creed should be integrated into the civic education curriculum for young people and fully employed in preventing, mitigating or managing electoral violence.
Political Parties

The passing of the Political Parties Act 2007 is a step in the right direction. When implemented we expect that the Act will transform political parties from private members clubs into public institutions that are accountable to members and whose leaders can be held accountable by the members. It is a good place to start but unfortunately in its current form, it is unlikely to be of significant value in the transformation of youth participation. Tanzania and South Africa provide good examples of how young people can be meaningfully involved in party leadership and management. Kenya should borrow from these examples. The act should:

1. Open up political parties to meaningful and substantive youth participation in party politics. This way, youth will acquire a sense of dignity and responsibility and inspire others above the culture of violence.

2. Reward parties that encourage positive participation by young people and punish those that continue misusing youth in conducting acts of thuggery and violence.

3. Political parties need to carry out political education among their members and candidates particularly in relation to the laws governing elections to enable them avoid committing offences that could jeopardizing their own interests.

4. Though unattractive in the short run, parties need to impose strict discipline in their ranks and files because in the long run only the best disciplined and the most responsible parties will thrive in the increasingly sophisticated electoral field in Kenya. Parties therefore need to not only condemn violence, but to actively discourage their members from involvement in perpetration of violence.
5. Sanctions should include barring errant candidates from vying or disqualifying errant or/and heavily fining offenders to provide strong deterrent measures.

In addition to the foregoing;
6. Political parties must not only enforce the electoral code of conduct but must be seen to do so. Political parties that fail to discipline their members should be disqualified from elections and denied public funding proposed under the Political Parties Act 2007.

7. Aspirants who engage in violence at the primaries are likely to engage in violence in the main contest as candidates. Parties should disqualify such candidates failure to which the electoral commission should have the powers to disqualify such candidates.

8. Candidates who plan and finance electoral violence should be disqualified.

9. Failure to nullify elections on the basis of perpetration of violence has fuelled impunity. There should be special electoral courts that must be more efficient in enforcing the law.

The Media
Media is a very important shaper and driver of public opinion. An independent, robust and critical media is a great asset in the fight against electoral violence and misuse of youth. The converse is true. Kenya’s media is very influential and fairly free. It can play a greater role in bringing political hygiene to our electoral process if it did the following:

1. Be more analytical and historical and less episodic and descriptive. The media should inform Kenyans who plans, finances, incites as well as who executes electoral violence.
2. Raise the accountability bar by not playing soft ball with duty bearers such as the ECK and the police. To date, for instance, none of these institutions have given a credible answer on who the real perpetrators and sponsors of violence are and why they have not been punished.

3. Put more emphasis on investigative journalism so as to provide more information on the individuals that misuse and abuse the youth in perpetrating electoral violence.

4. Highlight the positive participation of youth in the electoral process so as to encourage more positive participation and to discourage delinquent behavior.

The Youth

1. The youth need to understand that they cannot escape responsibility for their actions and for their part in perpetrating violence. Every young person therefore has a responsibility to resist misuse and abuse whatever his/her circumstances.

2. The youth should, and indeed must, advocate for political tolerance if electoral violence is to be eradicated and democracy flourish in Kenya. The youth should consolidate the national youth movement by appointing peace ambassadors in every ward and constituency and in every political party doing political work in their areas to promote peaceful, issue-based and positive political processes and elections.

3. The youth should reject conscription to menial assignments within political parties and instead take greater leadership responsibilities within political parties in order to influence positive change.

4. The youth should support and work with women to reduce political in general and electoral violence in particular. Youth should therefore
promote, propagate and pursue strategic partnership with women in political parties and in the electoral process.

5. The youth should continue to document incidences of electoral violence with a special focus on the sponsors and organizers of electoral violence so that this information can be used to bring to book abusers of youth in the electoral process.

6. Young people however need protection from ECK which considers them soft targets for punishment while avoiding the elderly politicians who organize and finance electoral violence and other related offences.

**Society**

Society should:

1. Engage the youth more meaningfully in the search for solutions to electoral violence as well as other political, economic and social problems. Youth are not irresponsible people but they are discontented as a result of exclusion hence their anger which is partially expressed in electoral violence.

2. Go beyond empty rhetoric and expand/open up opportunities for gainful employment for the youth who are deeply disillusioned by a society that has excelled in hypocrisy and double speak.

As part of the strengthening of our democracy:

3. Society must support only those political parties that enhance peaceful participation in electoral processes.

4. The youth and women must take greater leadership roles within political party leadership. This is to enable them play a greater decision-making role and to free youth and women from abuse as report shows that the vast majority of electoral violence incidences were perpetrated by people who are men and old. While women are acknowledged for their
compassion and sense of community, young people are known for their idealism and affinity to embrace change. Thus the two population cohort have important values to bring into leadership which would in turn improve the electoral environment and reduce the prevalence of misuse and abuse of young people in perpetrating electoral violence.

5. It may be useful to assign a “watch list” status to regions or constituencies with a history of electoral violence as monitoring indicate that there is a tendency for recurrence of violence in such areas and have monitors and poll watchers work closely with relevant agencies especially ECK Peace Committees and security agencies to plug electoral violence.

**Government**

Although not directly attributable to in this study, electoral violence is inspired by the existence of ethnic, political lords around whom militias are established. These militias who surround the ethnic political lords are the same ones who give “legitimacy” to violence at the very lower levels – the constituency and civic contests. Government working with the ECK and the police should get serious about dismantling the militias who surround the ethnic political lords. *Chinkororo* and *Amachuma* of Kisii, *Baghdad Boys* related to Luo politicians, the *Mungiki* of the Kikuyu politicians, the *Kalenjin Warriors* of the Kalenjin politicians, the *Angola Msumbiji* of the Luhya politicians, the *Jeshi la King’oo* of the Ukambani politicians, the *Republican Army* of the Miji Kenda politicians, the *Sabaot Land Defense Force* associated to the Sabaot politicians, the former *Jeshi la Mzee* associated with KANU etc should all be investigated with a particular focus to establish the financiers and planners behind these groups. The chain of violence should then be cut at this point and the culprits punished. This is a critical step towards liberating and saving the youth of Kenya and society from this death trap.
Chapter 7. Post Election Violence - Post Script

Quite obviously, the post election violence that followed the announcement of the disputed results by the Electoral Commission of Kenya on December 30, 2007, completely eclipsed the pre-election violence in both scale and severity. The violence cost the lives of at least 1,100 Kenyans especially in Rift Valley, Nyanza, Central and Nairobi Provinces and an estimated 350,000 were Kenyans uprooted from their homes and rendered Internally Displaced Persons (IDPs). Property worthy more than KES 90 billion (about 1/3 of GDP or 1/6 of our Annual National Budget) was destroyed and many sectors of the economy crippled. Overall economic growth rate previously projected by government to hit a new high of 7.2% has instead shrunk to 2.4%. Ethnic animosity has reached unprecedented levels and government sits precariously on a shaky arrangement called the Grand Coalition Government. The country is deeply divided and hurt in spite of this arrangement.

Not surprisingly, the youth have received universal condemnation as perpetrators of the atrocities of this post election tragedy. Indeed there is vast documentary evidence that has captured young people engaged in all forms of violence both as civilians and as police in spontaneous as well as in instigated and organized violence. The highlights of youth participation have been as follows:

- The youth barricaded roads blocking the movements of vehicles.
- They used boulder, lit bonfires on the roads and sometimes sat on the roads themselves.
- The youth looted properties from business premises and homes and set many others on fire.
- Gangs who were thought to be Mungiki members in Naivasha started to

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harass women by stripping them for wearing trousers and mini skirts.

- The youth were not only in the forefront battling with the police but also with fellow Kenyans.
- In Nairobi, the youth attending a mass funeral service at Ligi Ndogo in Nairobi turned violent and destroyed property when police lobbed tear gas canisters at what was initially a peaceful mass funeral service for those killed in the post election violence.

### Forms of violence

Indeed, some analysts\textsuperscript{11} have identified and categorized this violence into different forms:

- Spontaneous violence – not well organized.
- Militias violence – well organized.
- Police violence – well organized.
- Communal violence – counter/revenge attacks.

What however is conveniently lost is the fact that the youth of Kenya who stood up and poured into the streets of towns across the country and in fields in the countryside to defend democracy were, as Prof. Okoth Okombo has argued, the heroes of the nation. They put their lives in line for country, political decency, truth and justice! These young people played many other very positive roles including defending Communities, providing humanitarian aid, advocating for democracy, peace building and conflict prevention, management and mitigation, filing media reports from the frontlines and, in the case of the uniformed forces, peace keeping. Not all members of the uniformed forces were criminal.

It is also lost on many commentators that young people felt cheated. Whereas understandably, though not acceptable, the announcement of the suspect results was seen as a loss for Mr. Raila Odinga, what is glossed over is the

\textsuperscript{11} Kenyans for Peace, Truth & Justice (KPTJ) Reports on Electoral Violence
fact that the voters felt cheated in their own right. And the majority of these voters were young people who went to the polling stations with the confidence that they had the power to make a difference at the ballot box. According to the Commonwealth Election Monitoring Report for Kenya, the youth who constitute the majority of registered voters had taken a stronger and more active interest in the electoral process with significant numbers of them presenting themselves as candidates for parliamentary and civic election. Indeed the youth also turned out in large numbers as voters in a process that was hailed as being peaceful despite the many administrative and logistical problems like polling stations opening late and names missing from the registers. The voter education and registration drive of 2006 through 2007 and the voter registration and party nominations of 2007 all contributed in delivering a huge population of young voters. Constituting over 60% of all registered voters, young people became the single largest voting block for the first time in the history of Kenya. And they formed their traditional lobbies such as Vijana na Kibaki, Young Patriots for Change (YP4C), Vijana na Raila, Young Kenyans for Raila (YK4R) and KIPYA. And then there were also fresh drives such as the highly successful and ground breaking Vijana Tugutuke campaign whose focus was to get more young people registered as voters. Young people knew that this was their election and went to the ballot box confident that their vote would make a difference.

The Youth Agenda is commissioning a research into the devastating post-election violence and role of the youth thereof. However, we find the views of the distinguished University of Nairobi scholar, social and political analyst, Prof. Okoth Okombo, in the paper below - titled The Role of the Youth in the 2007 Election and the Post-Election Violence in Kenya very insightful and have reproduced them here with his kind permission. We trust that you will find them useful.
Chapter 8. The Role of the Youth in the 2007 Election and the Post-Election Violence in Kenya

By Professor Okoth Okombo

Living in a democracy [nowadays] means youth has the right (sic) to have a say in how things are run – locally, nationally and globally. Doing that in practice means two things: participating in their community and being active citizens. Sr. Caterina Cangia [Youth: A Gift and a Challenge]

Introduction

The published version of the Tangaza Occasional Papers / No. 16 (Rastello, 2004) draws our attention to [the] “Youth challenge” in the modern world. In the said Tangaza publication (Cangia, 2004: pp 16-17) two concepts are used to categorize what is expected of the youth in a democracy: participation and active citizenship. By active citizenship is meant: Understanding rights and responsibilities as citizens in a democracy and having the skills and confidence to put them into practice (p. 17). And, by participation is meant: Playing an active part in the decisions and, most of all, taking action to change things for a better community. (Ibid.)

In the civic education programmes normally provided to Kenyan citizens (cf. Constitution of Kenya Review Commission, 2001), the goal is to empower citizens to make informed choices. My framework in this paper selectively merges the above perspectives (the Tangaza perspective and our civic education prospective) to arrive at a perspective more or less similar to the AISEC youth action plan for the 21st century citizen, which packages the key

12 Prof. Okoth Okombo is a professor at the University of Nairobi and a highly esteemed political analyst
attributes required of the youth in this century under the general concept of responsibility. According to AISEC (1994, pp 18-21), the responsible individual (read, citizen) is characterized as follows (loc.cit):

- **Value-driven:** “Values drive the individual’s actions.”

- **Sensitive to the surrounding:** “Sensitivity to one’s surroundings spurs actions and reactions. [This requires] a person who has enough knowledge and understanding to intuitively sense when something is wrong and must change”.

- **Accountable:** “An ingrained sense of responsibility for the present and the future helps us to see that we have a common future to which we are all accountable”.

- **Unselfish:** “The responsible individual fights for personal rights and for the rights of others... [and] seeks personal development and development of others. [Moreover, the responsible individual] sees the diversity of cultures not as a barrier to friendship but as an interesting dimension of ethnicity and traditions to be learned, taught and explored.”

Thinking along these lines, I see the question being addressed here as one regarding responsible citizenship among our youth in the 2007 elections and in the post-election violence. Thus, we can ask ourselves: **To what extent did the Kenyan youth play a responsible role (i.e. act as responsible citizens) in the 2007 elections and in the post-election violence?** In the attempt to answer this question, I look at the Kenyan youth in terms of their motivation (what drives them) and their instrumentality (what gives them the ability to carry out that which they are motivated to do).
Contextually, I look at the reported youth activities in terms of “the real world of African democracy” (Sandbrook, 2000: pp 23-47). In particular, I take cognizance of Sandbrook’s idea that most African democracies (in my view, including Kenya) are still pseudo-democracies: “the sort of political regime(s) that [occupy] the hazy terrain between genuine representative or multiparty democracy, on the one hand, and authoritarianism, on the other”. In other words, they have not made the “second transition”, i.e. “the phase of consolidation in which all major actors accept the rules of the democratic game...” (loc. cit.)

The youth of Kenya participated in that game in various capacities, particularly as voters, agents, protesters and also as candidates for both civic and parliamentary seats. Although most of the discussion in this paper looks at them in the first three capacities, some attention is later given to their role as candidates (section 4.0).

**The Youth and the Scramble for Legitimacy in Kenya’s Power Politics**

In general terms, the political game in which we are investigating the role of the Kenyan youth is generally defined by Dikshit (2000:5) as follows:

A fundamental problem for the rulers in any state
is related to converting power into Authority, that is,
the right to rule, which comes into existence only when
the citizens recognize the right of the political masters
to govern; and to make laws; and the citizens’ duty to
obey those laws.

Having defined the quest for authority by those who wield political power, Dikshit (loc.cit) draws a useful distinction between “legality of authority” and “legitimacy of authority”, saying inter alia:
Legitimacy implies voluntary acceptance by the ruled of the ruler’s authority to govern. In modern societies such an authority is derived from popular support obtained through free and fair multiparty election contests.

The Kenyan events that are being examined here (the 2007 elections and the post-election violence) had to do with the politicians’ scramble for authority and the citizens’ struggle to ensure that none of the competing politicians grabbed it only through legality without legitimacy. In both events the participation of the youth was deemed significant. Their attractiveness to the contending parties depended on their **instrumentality**: their capacity for carrying out both constructive and destructive assignments.

The instrumentality of the youth depended on two of their attributes: their energy and their numbers. The energy or vitality is universally acknowledged. (cf. Cangia, 2004:16). The numbers depended on the demographic facts of the Kenyan voter registration. According to information obtained from the *Youth Agenda* (quoting ECK sources), the youth constituted approximately 60% of voters registered for the 2007 elections. Thus the youth vote was a much sought-after vote by the contending political parties and individual candidates.

The instrumentality of the youth, based on their energy and their numbers, was reflected in the wide range of youth groups that were formed to campaign especially for the presidential candidates, featuring such groups as:

- **Vijana na Kibaki** (a pro-Kibaki youth group).
- **Youth Patriots 4 Change** (a pro-Raila youth group).

Such groups, and various less prominent ones, gave their numbers, beauty and vitality to their favourite candidates in the 2007 elections. They played both positive (responsible) roles, e.g. singing and dancing to popularize...
their candidates, and negative (irresponsible) roles, e.g. beating up those campaigning for the rivals of their candidates.

While their capacity for constructive or destructive (responsible or irresponsible) participation depended on their instrumentality, what they actually did and whom they did it for depended on their motivational attributes, including:

- **Their idealism:** their belief in and commitment to the idea of “democratic citizenship” – based on “the desire and ability of young people to be part of the process that determines what happens to one’s life and the lives of others in the community.” (Cutler, 1996:2).

The Kenyan youth did believe that they could make a difference in shaping the future of Kenya. In the pre-election period, they had organized and participated in a wide range of “youth leadership forums, community forums, meetings and public education activities”, whose outcome, among other things, “was to have increased consciousness among youth and their leaders.....” (*Youth Agenda*, interview).

In terms of our explanatory parameters this idealism can be seen as a strong sense of responsibility. In the expression of Mokwena (1996), it is about the youth “taking the initiative.” In this perspective, the youth participate in public affairs (especially decision-making) because it is their right, since the future belongs to them and the decisions made today will affect them more than they will affect the older citizens.

As we shall point out again at a later stage, the idealism of the Kenyan youth accounts for the positive aspects of their participation in both the 2007 elections and the post-election violence that erupted upon the declaration of the presidential election results.
• **Their poverty:** the poverty arising from the joblessness of the Kenyan youth was a definite factor in the negative (irresponsible) aspects of their participation in the 2007 elections and as re-stated below, the post-election violence. In informal interviews based on convenience sampling, Kenyan youth repeatedly mentioned their poverty as their reason for having, among other misdeeds:

i. Sold their voting cards.
ii. Asked candidates for money.
iii. Harassed the rivals of their candidates.
iv. Formed hired crowds for candidates they did not support.
v. Joined bands of youths for hire by candidates who needed them for defense or offence.

When interrogated on the irresponsibility of such actions, a number of Kenyan youth express elements of cynicism, disillusionment and even bitterness about the Kenyan society, which they believe has been immensely unfair to their (the youth’s) generation.

• **Their excitability:** the youth are prone to getting excited whenever there are events which are a bit out of the ordinary, such as election campaigns. The noise, the dancing, the public exchanges, and even the occasional insults and scuffles brought a measure of excitement to which the youth by their nature would be more attracted than would their older counterparts. Moreover, they would not just be attracted as onlookers but as active participants.

Thus, if there were ugly but exciting incidents in the 2007 elections, nature would dictate that the youth would be more likely to get involved in such incidents.

**Extending the Logic to the Post-Election Violence**
The logic of the instrumentality and motivation of the youth as explained above extends rather effortlessly to their participation, in the post-election
violence. Post-election violence scenes portrayed in the Kenyan mass media (print and electronic) suggested that the youth were the most prominent participants in the violence.

Considering their energy and numbers (the basis of their instrumentality) one would expect them to form the vanguard of the expression the anger that characterized the suspicions about the genuineness of the declared presidential results. One would also expect that if anyone wanted to use any group of citizens to fight their battle for defensive or offensive purposes they would target the youth.

Looking at the types of motivation for youth participation in political activities, as outlined above, it is clear that the youth would have been involved in the post-election violence with or without instigation by individuals or groups of individuals with personal or collective interests in the results.

If we take the view that the violence erupted out of the citizens’ disappointment with the result, we can see the idealism of the youth making them the most likely group of citizens to come out and demonstrate their anger especially in a violent manner. Everywhere in the world the youth are more likely to fight for their rights in situations where older citizens would show some restraint.

The tendency of the Kenyan youth to engage in destructive activities in such circumstances may also be explained by their poverty and the cynicism, anger and disillusionment that emanate from it (the poverty). The poverty of the Kenyan youth would also explain their readiness to be hired by interested persons who might want someone to do some dirty jobs for them. In general, their idealism, poverty and excitability would explain their participation in the post-election violence whether we see the violence as spontaneous or instigated.
In terms of responsible citizenship, it is arguable that if the youth acted irresponsibly in the post-election protests, the negativity of their behaviour is not in the mere fact that they protested, but in the violent nature of the protest, especially the fact that it targeted people whose only crime was that they were ethnically identified with a given presidential candidate in a particular neighbourhood.

The violence may have something to do with our conflict culture but the asymmetric nature of the conflict (involving a government side and a non-government side) required that the government side find it expensive to take an oppressive option in resolving the conflict. (cf. Ramsbotham, Woodhouse and Miall, 2005: 21-22). In line with this perspective, it is arguable that it was the unruly behaviour of the Kenyan youth that brought the government side to the negotiating table and not the mediation skills of the Annan team. In this regard, there is a sense in which the post-election behaviour of the youth had elements of responsible citizenship. It is their violence on fellow citizens that remains questionable.

The question that remains at this stage is the kind of protest culture that we need to cultivate as we try to promote a culture of responsible citizenship in our youth. We certainly don’t want to throw away the baby with the bath water: to make our youth shy away from responsible citizenship as we discourage them from developing a culture of violent protest.

**The Youth as Candidates in the 2007 Elections**

Our concentration so far has been on the role of the youth as voters, agents and protestors. We have not given direct attention to the role of the youth, especially at the election stage, as candidates seeking positions of political leadership. According to *Youth Agenda* (e-mail communication). “There was a large number of aspirants who were young people (35 years and below), for parliamentary and civic seats.” Regardless of how many of those young people actually succeeded in securing elective positions in the 2007 elections,
the mere fact that the Kenyan youth found it necessary to push the agenda of “taking the initiative” (Mokwena, 1996) to the level of wanting to participate in the highest policy-formulation (including law-making) organs of the state was itself a significant indication of the spirit of responsible citizenship. As Cutler (1996:1) explains:

The participation of young people in public policy is not limited to issues that are in the interest of young people only. Such participation is essentially about the citizenship of young people – their right and ability to exercise choice and influence policy in other matters of public life.

In documenting the role of the youth in the 2007 elections, their participation in the electoral process as candidates for civic and parliamentary seats (even if much of it may not have gone past the nomination stage) deserves some significant mention. Their achievements in such efforts, like much else in our politics, will continue to be influenced by the realities of Kenya’s pseudo-democracy status (cf. Sandbrook, 2000) and the intricacies of “the politics of Nationalism and Ethnicity” (Kellas, 1998) in Kenya.

**Summary and Conclusion**

We started this discussion by looking for the explanatory parameters that we could use to make sense of the role our youth played in the 2007 elections and the post-election violence. Going through some of the relevant literature, we reviewed the concepts of participation, active citizenship, and making informed choices. Finally, we settled on the more general concept of **responsibility** (or responsible citizenship), characterized by one’s being:

- Value-driven.
- Sensitive to surrounding.
- Accountable, and
- Unselfish.

As defined by AISEC’s youth action plan for educating the 21st century citizen.
We then looked at the Kenyan youth in terms of their motivation (what drives them) and their instrumentality (what gives them the capacity / ability to carry out whatever they are motivated to do). Contextually, we acknowledge the fact that the youth activities had to be seen within “the real world of African democracy” (Sandbrook, 2000) and especially the fact that Kenya is arguably a pseudo-democracy (op.cit).

In a narrower context, we identified the actual political activity in which the Kenyan youth were involved as having to do with political leaders scrambling for legitimacy of authority. In this scramble, the attractiveness of the youth derived from their instrumentality (based on their energy and numbers), while what they actually did depended on their motivation (especially idealism, poverty and excitability).

Guided by their motivation in different circumstances, their instrumentality was reflected in the activities of the various voter / campaign groups such as Vijana na Kibaki (a pro-Kibaki youth Group) and Young Patriots 4 Change (a pro-Raila youth group). In such groups, as well as in un-named youth crowds, they played roles that were both positive (e.g. singing, dancing, shouting, etc. to popularize their candidates) and negative (e.g. beating up and/or insulting opponents, soliciting for money from candidates, etc.).

In the post-election violence, their activities could still be seen in terms of their motivation and their instrumentality. Here, the negativity of their violence (on people and property) captured immediate attention, but one must not fail to acknowledge the positive role they played in protesting against perceived electoral malpractices. One also needs to acknowledge their positive participation as candidates, signaling their awareness of the need for youth participation in public affairs not just as voters but also as decision/policy-makers.
To conclude, let us remember the question we asked ourselves in the earlier stages of this discussion: **To what extent did the Kenyan youth play a responsible role/act as responsible citizens in the 2007 elections and the post-election violence?**

In terms of the responsibility parameters (characteristics) we borrowed from AISEC (1994), we may summarize our conclusion as follows:

i. In terms of being **value-driven**, the youth played a responsible role only to the extent that their actions were based on **idealism**. Otherwise, in many cases, it was their poverty and excitability that seemed to be prominent.

ii. In terms of **sensitivity to surroundings**, they seemed to see wrong and right mainly in terms of the interests of the groups they supported/belonged to.

iii. In terms of **being accountable**, they tended to display narrow interests with a weak sense of common future.

iv. In terms of **being unselfish**, they displayed a low degree of readiness to fight for the rights of those who belonged to the opposite side in their dispute or even those who were neutral in the dispute. Any sense of right displayed was only about their side’s rights.

Thus, generally speaking, although idealism was displayed in the cases where the youth seemed to be value-driven, poverty and excitability featured most prominently. These observations seem to suggest that we (as Kenyans) need to pay some good attention to the material and social welfare of our youth, and cultivate in them a positive protest culture so as to improve their level of responsible citizenship.
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Youth Agenda. E-mailed responses to interview questions.
Chapter 9. Legal Regime Governing Elections in Kenya

The laws that provide the framework for the management and administration of elections in Kenya are as follows:

1. The Constitution
The constitution is the supreme law of the land and takes precedence over all the other laws. The constitution defines the electoral system in Kenya\(^\text{13}\), which is categorized as a ‘First–Past the Post system’\(^\text{14}\). The constitution further defines the manner in which the elections of the president \(^\text{15}\) and the elections of the members of parliament are to be held.\(^\text{16}\) Also included are the qualifications and disqualifications for election\(^\text{17}\) and qualification and disqualification for registration as a voter.\(^\text{18}\) Essentially, the right to vote is guaranteed for any registered voter unless one is specifically disqualified by a specific law.\(^\text{19}\)

The constitution then provides the types of elections that can be held during an election year, namely, presidential, parliamentary and civic elections.\(^\text{20}\) However, by-elections can be held for presidential, parliamentary or civic seats.\(^\text{21}\)

The constitution also provides for the Electoral Commission of Kenya (ECK) as the institution mandated to conduct elections. The functions and powers of

\(^{13}\) Sections 1A define Kenya as a multi-party state.
\(^{14}\) Ibid Sections 5(3)(f)
\(^{15}\) Ibid section 5
\(^{16}\) Ibid section 32
\(^{17}\) Ibid sections 5(2) and Sections 34 and 35
\(^{18}\) Ibid section 43
\(^{19}\) Ibid section 32
\(^{20}\) Ibid section 42A (b)
\(^{21}\) Ibid section 6, 10, 12, 39 and 40
the ECK include registration of voters and maintenance of registers, election dispute resolutions and directing and supervising elections. The Constitution also provides for appointments to the ECK and for the independence of the ECK so as to create an impartial body. The Constitution generally gives direction about registration, constituencies, dispute resolution, appointments of returning officers and other election officers and other functions that pertain to elections and or the ECK.

2. The National Assembly and Presidential Elections Act
This National Assembly and Presidential Elections Act reaffirms one’s right to vote and spells out in detail the manner in which elections shall be conducted including the registration of voters, determination of any disputes arising with regard to the registration of voters and election petitions and how they are to be handled. The Act also provides a timeline on how elections are to be conducted from the time parliament is dissolved. The Act further provides for the Elections Code of Conduct. All political parties that are interested in participating in any of the elections and persons willing to take part in elections as candidates, member of a political party or supporters are expected to subscribe to it.

ECK is given the powers under section 34 of the Act to make regulations that would enable it to better carry out the purposes of the Act. A number of regulations made and approved by parliament include:

- The National Assembly Elections (registration of voters) Regulations;
- The Presidential and Parliamentary Elections Regulations;
- The National Assembly Elections (election petition) Rules.
- The National Assembly and Presidential Elections (electoral code of conduct) Practice Rules 2002.

The Election Code of Conduct is aimed at promoting conditions that would be conducive to free and fair elections - where any political activity such as a campaign, support for a candidate or a party is done without fear, coercion,
intimidation or reprisals. The Presidential and Parliamentary Elections (Amendment) Regulations 2002, give guidance on campaigns, election petitions, nominations and appointment of ECK staff. The Act also contains schedules that cover the Election Code of Conduct.

3. The Local Government Authority Act
The Local Government Authority Act deals with the establishment and constitution of local government areas including their powers and functions. The Act also provides for the role of the minister for local authorities in the management of such Authorities. It also deals with nominations and elections of councilors including the qualification for registration as voters and candidates for civic seats. The elections are traditionally held concurrently with the National Assembly and Presidential Elections and officiated by ECK. Consequently, the regulations relating to the National Assembly and Presidential Elections therefore apply in the local authorities elections too.

4. The Election Offences Act
The Election Offences Act provides for sanctions where one commits an electoral offence. The Act, however, does not specifically define what an election offence is but gives instances or acts done that would amount to an election offence. Such offences may be committed by any person and election officer or may be an act done that relates to voter’s registers and electors cards. The offences under this act are numerous\(^{22}\). For the purposes of this report, some of these offences are:

- Sell or offer for sale, buy or offer to buy ballot paper;
- Be in possession of another persons voters card without the owners or official permission;
- Sell, or offer for sale, or buy or offer to buy a voters card;

\(^{22}\) Section 3 of the Election Offences Act. Also see a deeper discussion on this offences in Chapter 2 of the Election Manual published by the ECK
• Bribe a voter with money or anything else of value in order to influence her/his decision on how to vote;
• Solicit for, or receive a bribe so as to vote one way or another;
• Prevent or obstruct, or bar a person from going to vote;
• Threaten, or cause fear, or trick a voter so as to influence the way he/she votes or to deter that person from voting;
• Prevent, obstruct or bar a person from presenting his nomination papers to the returning officer for nominations;
• Put in a ballot box anything else other than a ballot paper;
• Vote in an election with no authority to vote;
• Destroy, change or alter a voter’s card without authority to do so.

The sanctions provided under the Act include imprisonment for a term not exceeding five or four years depending on the offence. These offences are to be acted on by police officers like other crimes - by being investigated and the suspect being then charged in a court of law.

5. The Public Order and the Preservation of the Public Security Act
This Act relates to the holding of public meetings by political parties and their candidates. It was amended in 1997. Essentially, the Act requires that those who want to hold such a meeting need to notify the Officer Commanding the Police Station (OCS) nearest to the venue of the intended meeting in a prescribed form giving notice of not less than three days and not more than fourteen days. Following the 1997 amendments to the Act, the police no longer license meetings but rather require notice for the sole reason of providing and maintaining security. However, in practice police often act as if they are a licensing authority even though this is in contravention of the law. Such a meeting can be stopped or a license denied where the police are apprehensive that the holding of such a meeting will result in a breach of public order.
6. The Penal Code

The Penal Code is the principal law that covers all criminal offences and penalties in Kenya. Most of the offences committed within an election are also prohibited under the Penal Code. Such offences include violence, carrying of offensive weapons, bribery and even assault. These offences also fall under the Election Offences Act and one can be prosecuted under either of these laws.

7. The Police Act

All the laws concerned with elections deal fully with the role of the Kenya Police in protecting and strengthening democracy. The police are expected to ensure that one’s rights are protected during the period of elections, that laws are respected and that law and order is maintained. It further requires that peace is preserved, property and lives are protected, offenders are apprehended and all laws and regulations are enforced.  

However, the duties, powers and the rights of the police force are provided for in the Police Act. Specifically, Section 14(A) was introduced in 1997 and requires the police to be impartial and objective in political matters and not to accord different treatment to different persons on the basis of their political opinions.

8. Political Parties Act

The Political Parties Act which was passed into law in November 2007, provides a framework for the registration, regulation and financing of political parties in Kenya. It provides for the establishment of the office of the Registrar of Political Parties which shall be an independent office within the ECK. The Act creates incentives and sanctions which if implemented will go a long way in reducing electoral violence and improve accountability of these parties to

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23 Section 14 of the Police Act cap 84 laws of Kenya
their members and to the general public. Provisions regarding participation of women will also encourage parties to open up space for greater and more meaningful participation by women in political party leadership and decision-making processes as these are incentives for funding. Unfortunately, the Act does not make the same provisions with respect to young people. The Act therefore needs further amendments to secure the youth from misuse and abuse by political parties and politicians in the electoral process in particular and all political processes in general.

The provision for public financing of political parties offers a great avenue for transforming political parties as key public institutions unlike in previous times where parties have been private members’ clubs tightly controlled by individuals, families, cartels and tribes with no accountability whatsoever to their memberships.
Chapter 10. International Legal Standards Relevant to Elections

Kenya is a signatory to a number of international and regional conventions and protocols that directly deal with the right to vote and the guarantee to a free and fair election. These instruments also deal with fundamental rights and freedoms that ensure protection from all forms of violence including electoral violence. These instruments include:

1. The Universal Declaration of Human Rights
"Kenya is a signatory to the Universal Declaration of Human Rights requiring, among other things, that the state has an obligation to align its domestic laws to conform to the provisions of the declaration. The declaration guarantees the enjoyment of all the rights under it without distinction of any kind such as race, sex, political or any other opinion. Some of the rights provided under this declaration encompass rights of an individual during elections including but not limited to the following:

- Article 1 provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

- Article 3 provides for the right to life, liberty and security of every person.

- Article 5 provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” This right encompasses components of electoral violence as it essentially provides that no one should be subjected to such treatment even on the basis of their political opinion or aspirations. Torture and cruel treatment is..."
mostly perpetrated by the police against the public but at times is meted by citizens to fellow citizens.

- Article 7 provides for equal protection of the law to all people - and this includes even during election periods.

- Article 19 provides that everyone has a right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

- Article 20 provides that everyone has a right to freedom of peaceful assembly and association and not to be compelled to belong to an association.

- Article 21 gives everyone a right to take part in the government of his/her country directly or through chosen representatives and that the will of the people shall be the basis of such authority of government as expressed in periodic and genuine elections which shall be held by universal suffrage.

All the rights provided for under the Universal Declaration of Human Rights point to the obligation of the state in providing these rights especially during an election period. The perpetration of violence during election period often violates such rights thereby goes against the international standards provided by the law. Every state has an obligation to ensure that it creates an environment where all the rights are enjoyed by all citizens at all times.

2. The International Convention on Civil and Political Rights
Kenya is also a signatory of the *International Convention on Civil and Political Rights*, which, among others requires that:
In Article 2: The state is expected to guarantee the enjoyment of the rights under the convention devoid of any distinction of any kind such as race, sex, language, color, political or other opinion, property or other status.

In Article 3: States must guarantee the enjoyment of human rights equally between men and women. The rights include the right to life, the right to hold opinions without interference which includes the freedom of expression (the right to seek, receive and impart information and ideas), freedom of assembly and freedom of association with others, the right to take part in the conduct of government which includes taking part in genuine periodic elections. Again all these rights are to be guaranteed even where elections are concerned.

3. The International Convention on Elimination of all Forms of Discrimination against Women

Discrimination against women under the Convention means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of their human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. This necessarily includes guaranteeing the right of women to vote in all elections and public referenda and the elimination of discrimination against women in political and public life. This also guarantees the right of women to vie for political offices without discrimination.

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24 Articles 6, 19, 21, 22 and 25 of the convention
25 Article 1
26 Ibid article 7
4. The African Charter on Human and People’s Rights

The Charter provides for the enjoyment of all rights under it without distinction of any kind including on the basis of sex, political or any other kind of opinion. It also encompasses the right to receive and impart any information, the right to assemble with others, the right to participate freely in the government of his country either directly or thorough freely chosen representatives. Among its highlights are:

- Article 3 provides that every individual shall be equal before the law and that every individual shall be entitled to equal protection of the law.

- Article 4 provides that Human beings are inviolable. Every human being is entitled to respect for his life and the integrity of his person and that no one may be arbitrarily deprived of this right.

- Article 5 provides that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. It prohibits all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.

- Article 6 provides for the right to liberty and to the security of the person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law.

- Article 9 provides for the right to receive information encompassing the right to express and disseminate his opinions within the law. These include political opinions.

- Article 10 provides for the right to free association provided that the person abides by the law. It goes on to provide that “subject to the

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27 Articles 2, 9, 11 and 13 of the charter
obligation of solidarity provided for in 29 no one may be compelled to join an association.” This encompasses political association.

• Article 11 provides that “Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”

• Article 13 provides that “Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

• Article 18 imposes an obligation on the State to ensure the elimination of discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. Discrimination in this case includes political discrimination.

• Article 19 provides that “All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.”

• Article 20 provides for the right to existence. It further provides that all persons shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

• Article 26 provides that “States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms
guaranteed by the present Charter.” This right guarantees the right to a fair and impartial hearing including on matters of elections, be it election offences or petitions.

The Charter also imposes duties upon individuals who enjoy the rights as provided for under this charter. It imposes duties on individuals to among others, have regard for the rights of others even as they enjoy their own rights; to respect and consider fellow individuals without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance. The Charter also requires individuals not to compromise the security of the State whose national or resident he is; to preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defense in accordance with the law.

5. The Protocol on the Rights of Women in Africa to the African Charter on Human and Peoples Rights

This protocol is commonly known as The Maputo Protocol. Kenya has not yet ratified this protocol which goes along way in guaranteeing the rights of women. In it, women are guaranteed their space to participate in the political and decision making process of their countries. State parties to the protocol are expected to put in place measures that ensure such participation without discrimination and in an atmosphere of guaranteed security and their right to life.

6. The International Convention on Elimination of all Forms of Racial Discrimination

The Convention provides for elimination of all forms of racial discrimination on grounds of race, colour or ethnic origin. Under this Convention racial discrimination is described as distinction, exclusion, restriction, or preference based on colour, descent, ethnic origin, which nullifies or impairs ones recognition, enjoyment or exercise of human rights and fundamental
freedoms, on an equal footing in the political, social economic, cultural or any other field of life.

The convention further provides that the existence of racial barriers is repugnant to the ideals of any human society. The state should provide for equal treatment to all citizens. The state should put in place mechanism of not discriminating against anyone on racial grounds.

7. Courts Decisions on Election offences

Election offences have been a basis of many of the election petitions filed in court. In 2002, two cases that firmly dealt with the issues of election offences were:

- Election Petition Number 1 of 2005 (MSA) in the case of Hassan Ali Joho vs. Anania Mwasambu Mwaboza and another. The grounds for the petition were violence, bribery and oathing against Mr Mwaboza. In summary, the petitioner claimed that the elections were in contravention of the provisions of National Assembly and Presidential Elections Act, and the Presidential and Parliamentary Regulations. The court went into the merits of these allegations and found that they were not proved.

- Election Petition Number 1 of 2003 (NRB) Peter Agweli Onalo vs Bita Sauti Raphael Wanjala. Some of the grounds of the petition were violence during nominations, use of threat, intimidation and violence on election security personnel. The merits of these allegations were looked into and dismissed by the court.

The analysis of these two cases shows that courts are ready to listen to any election petition that allege any election offence and make a determination thereto.²⁸

²⁸ For a more indepth look into election petitions in general, see Election Petition Case Digest, Kenya International Commission of Jurists ((KJ-Kenya) 2007
Chapter 11. Vox Populi

What Young Kenyans Said

“The drive, Umoja Pamoja, hopes to get youths all over the country to join hands and present a united front against tribalism and poll violence,” *Eric Wainaina* (The Nation, 10/11/07).

What Elders Said

“Previous elections have been related to conflicts where people have lost their lives. So we have decided to preach peace during this year’s elections and I am urging you, as young people, to remain united and refuse to allow yourselves to be used by politicians.” *Ambassador Bethuel Kiplagat*: (Nation, 13/8/07)

“With the heightened tensions we are witnessing today, the elections may turn out to be violent. But I advise you to play an active role in mitigating peace and voting in leaders who are promoters of peace.” *Vice-President, Moody Awori*: (Nation, 13/8/07).

*The Government should act tough on inciters while politicians should exercise restraint and desist from fanning violence*” *Bishop Eliud Wabukala*: (The East African Standard, 27/9/07).

*ECK Vice-Chairman Gabriel Mukele*: “The police were at the Kisii meeting, where armed youths were seen attacking some politicians, why were they not arrested and prosecuted? The AG and the Police boss must be blamed for protecting the rich and powerful” (The Nation, 26/9/07).

“Let ECK ask courts to bar politicians who enlist youth to cause violence at campaign rallies from participating in the General Election.” *KNCHR Chairman, Maina Kiai*: (The East African Standard, 26/9/07).
“People who incite people to violence must be charged without fear or favour.” Chairman of the Parliamentary Forum on Peace and Kajiado Central MP, **Joseph Nkaissery:** (The East African Standard, 26/9/07).

“Unfortunately where cases of violence are being experienced, it is again the youth who are being used by politicians as instruments for these dirty and very risky tasks. This is unacceptable and should be condemned by all quarters.” **Archbishop John Njue:** (Catholic Information Service for Africa, 25/9/07).

“Many a times, politicians have misused young people by funding them to cause chaos during political rallies as part of their campaigns. I appeal to you today not to allow this to happen” Catholic Bishop in charge of Young People, **Salesius Mugambi:** (Catholic Information Service for Africa, 25/9/07).

“I commend President Kibaki for speaking unequivocally against electoral violence. I hope other politicians will follow the President’s advice to ensure violence-free elections” **US Ambassador to Kenya, Michael Ranneberger:** (The East African Standard, 25/9/07).

“We know each other and have stayed as friends. It is very bad to cause violence because of elections which will come and go in one day. Let’s not plant tribalism and hate among the youth. Leaders should leave a sound legacy for the youth” **President Mwai Kibaki:** (The Nation, 24/9/07).

“I urge my opponents to conduct peaceful campaigns and stop misusing the youth by buying them cheap liquor,” **Outgoing Kurugoya-Kutus MP Daniel Karaba:** (The Nation, 6/11/07).