

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-216-4700
Fax: 212-736-1300
Email: hrwnyc@hrw.org

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www.hrw.org

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Hearing, "The Immediate and Underlying Causes and Consequences of Flawed Democracy in Kenya."

United States Senate Committee on Foreign Relations, Subcommittee on African Affairs

Testimony of Chris Albin-Lackey on Behalf of Human Rights Watch February 7, 2008

Thank you, Chairman Feingold, and Members of the Committee, for inviting Human Rights Watch to participate in this hearing. My name is Chris Albin-Lackey and I am a senior researcher with the Africa Division of Human Rights Watch. Just over a week ago I returned from a research mission that began our ongoing assessment of the human rights impact of Kenya's post-election crisis. We will be carrying out more research on the ground in the coming weeks that will seek to document the effect of the ongoing violence on ordinary Kenyans, identify the individuals most responsible for fomenting it and contribute towards charting a way forward that addresses the underlying causes of the crisis.

Watching the chaos that is threatening to tear Kenya apart today, it is easy to forget that just over a month ago Kenyans lined up in the millions to cast their votes in peace. If those voters' rights had been respected to begin with, the members of this Committee would likely have been able to join the world in congratulating Kenya on a tremendous stride towards consolidating its democracy. Instead Kenyans are faced with a sudden tide of violence that threatens to derail hopes of socio-economic progress in Kenya and damage the prospects of democracy across the continent.

Of course, Kenya's violence has roots that run far deeper than the disputed polls of last December. Underlying causes of the anger and division that have boiled over in recent weeks include longstanding injustices related to land ownership and political marginalization; the failure to enact important constitutional reforms; the political manipulation of ethnicity; impunity for past episodes of violence; and other core issues that successive Kenyan governments have completely failed to address. Whatever way forward Kenya finds from the current impasse must include serious and credible efforts to tackle these issues. It should now be belatedly clear to all of Kenya's leaders just how dangerous a mistake it was to let these issues fester over time.

At the same time, however, the complexity of the ongoing violence must not distract Kenya's leaders or the international community from the problem that was the immediate trigger for the violence—the rigging of the Presidential polls. The solution to the broader crisis must include a guarantee that the right of Kenya's voters to have their freely expressed choice of government respected is upheld in the end.

Because of the number and complexity of the underlying issues and because of the terrible intensity of the ongoing violence, Kenya's leaders and the international community may feel tempted to cobble together a political bargain that sweeps the causes of the chaos back underneath the rug. This would be a serious mistake. Such an attempt would lay the groundwork for future crises, just as the failure to address underlying causes in the past set the stage for today's upheavals.

The international community, including the United States, has a crucial role to play in seeing to it that any political settlement lays the foundations for lasting peace; ensures accountability for the crimes that have destroyed so many lives in recent weeks; and is grounded in an unequivocal respect for human rights and the principles of democratic governance.

Kenya's December Elections

Kenya's December elections should have been an important milestone for Kenya and for Africa. After a closely-fought campaign Kenyans turned out in massive numbers to cast their votes in peace. There were serious irregularities reported on both sides in some areas. However, the most damaging acts of fraud were committed during the final stages of tallying, when the Electoral Commission of Kenya (ECK) presided over what was by all appearances a desperate last-minute attempt to rig the Presidential contest in favor of incumbent Mwai Kibaki.

In the closing hours of the tabulation process a lead of over one million votes for opposition candidate Raila Odinga evaporated under opaque and highly irregular proceedings and was transformed into a razor-thin margin of victory for Mr. Kibaki. The result was also entirely at odds with the ODM's successes in the parliamentary vote.

The entire process quickly fell apart in confusion. In the face of public outrage and mounting pressure to reverse the move, four electoral commissioners publicly denounced the apparent fraud. Even the head of the ECK later said that he could not determine who actually won the vote. Nonetheless Mr. Kibaki tried to pre-empt any challenge by having himself hurriedly sworn in to a second term in office before Kenyans even had time to register their outrage.

Violence erupted even before the announcement of results as concern and suspicion about delays spread through the country. Within hours of the results' announcement Kenya began to slide headlong into the violent chaos that has steadily grown worse ever since.

The Violent Aftermath of the December Polls

The violence that has followed Kenya's disputed Presidential poll presents a complex picture that varies considerably across different parts of Kenya. Aside from opportunistic violence and looting the crisis so far has taken on three central dimensions.

First, scores of Kenyans have been shot by police officers in circumstances that were generally unjustifiable and in some cases amounted to extrajudicial killings.

Second, the announcement of the Presidential election results sparked ethnic violence which at first was primarily directed at members of Mr. Kibaki's Kikuyu tribe. That violence has now spawned a proliferation of ethnic-based reprisal attacks, some of them in communities that had been peaceful in the immediate aftermath of the elections. These reprisals are degenerating into a self-perpetuating cycle that has become more difficult to stop with every passing day.

Third, violence has been accompanied by a rapid deepening of polarization characterized by attempts to silence, threaten and intimidate voices of moderation and dissent including human rights defenders, political dissidents and ordinary people.

The most important fact that must be taken into account moving forward is that most of the violence cannot be seen as spontaneous. In many cases attacks were actively incited and in some cases directly organized by community leaders, local politicians and others. At the national level, the efforts of political leaders on both sides to rein in the excesses of their supporters have been woefully inadequate at best. Worse, there are allegations that prominent individuals on both sides have been actively involved in fomenting violence.

1) Police Violence

The Kibaki government reacted to the public outrage that greeted its declaration of victory in the presidential poll by imposing a blanket ban on public demonstrations. That ban is patently illegal under Kenyan law. The government tried to defend the ban as necessary to prevent violence in the wake of the polls. As it turned out, however, heavy-handed police enforcement of the protest ban claimed dozens of Kenyan lives in circumstances where the police's use of lethal force was unjustified at best.

The most egregious patterns of police brutality were seen in the city of Kisumu on the eastern edge of Lake Victoria. Kisumu is a stronghold of ODM presidential candidate Raila Odinga, whose family has its roots in the area. Post-election protests there degenerated into violence and looting following the announcement of Kibaki's victory. The police, initially caught off guard, ultimately reacted by using lethal force to disperse the crowds and prevent further looting. The Provincial Police Officer (PPO) for Nyanza Province, which includes Kisumu, acknowledged to us that she ordered officers to use live ammunition to disperse looters.

In fact the police in Kisumu went much further than merely using live ammunition to disperse looters. Long after the crowds in the city center had dissipated, police officers drove into the slums and opened fire on any group of people they deemed suspicious. We

interviewed several people who were shot while calmly watching the police drive past them; many said they did not flee because it did not occur to them to imagine that the officers would try to gun them down.

We met a fifteen year-old boy who was shot from behind one evening while fleeing in terror from policemen who had opened fire without warning at a crowd of ODM supporters in the slums; he spent the night bleeding in the dirt near the side of a road. A week later he remained in constant pain because his family could not afford to see a doctor, buy pain medication or even find a pair of crutches to help him move around. Another young man lost his leg below the knee when police shot him outside of the store where he worked as a clerk— ironically he had been there with other employees to help protect the store from looters. And one woman described to us how her husband was shot in the back from the window of a police car as he stood talking on the phone near the road. He died, and when she later went to the police to file a complaint she was simply told to go away.

Such stories were disturbingly prolific. The police reacted with the same disregard for human life when faced with fresh protests a week later even after provincial police officials pledged to us that they would cease their use of live ammunition. All told at least 44 people were shot and killed by the police in Kisumu, many of their bodies stacked high in the local mortuary. Dozens more were shot and wounded. A colleague and I spent a day in Kisumu's slums interviewing victims of this violence on a day when fresh protests were being held and the sound of police gunfire rang through the streets around us throughout the day. The same afternoon Kenyan television showed a police officer in Kisumu shoot a man who had been making faces at him and then walk over to kick the man as he fell to the ground and died. On that day, January 16, eight people were shot dead by police in Kisumu, including a ten year old boy playing outside his home.

Kisumu presented the most widespread examples of police brutality and outright murder of civilians but those patterns were not unique. Police in Nairobi shot demonstrators under circumstances that remain largely unexplained on every day that significant opposition protests attempted to convene in the capital. All told, Kenyan police themselves admit to having shot and killed 81 people between December 27 and January 24 and wounded many more. Dozens more police killings have been reported since then.

The police have announced an investigation into these deaths. This is a welcome step but an investigation run solely by the police without independent oversight and control or real transparency will lack credibility.

It is important to highlight the fact that Kenya's police force has made effective efforts to protect many of the people threatened by ethnic violence throughout the post-election period. Those efforts must be encouraged and supported in every possible way by Kenya's government and by the international community. But the positive actions of the police in that context do not offset the need for investigations and prosecutions in response to the scores of people police shot and killed without any justification.

2) Ethnic Violence Sparked by the Presidential Polls

When Mwai Kibaki was officially declared the winner of Kenya's Presidential vote, parts of Kenya's Rift Valley erupted almost immediately into widespread interethnic violence. That initial wave of attacks in the Rift Valley was primarily directed at members of Kibaki's Kikuyu ethnic group.

That violence in turn has spawned a series of ethnic-based reprisal attacks in other parts of the country with Kikuyu militias attacking ethnic communities seen as broadly supportive of the opposition. Those reprisal attacks now threaten to spark fresh violence in response and push the situation further out of control. Tens of thousands of people have been displaced in this violence and several hundred killed.

Anti-Kikuyu Violence in the Rift Valley

We have carried out detailed research into the nature and impact of ethnic violence in and around the town of Eldoret, which has seen some of the most brutal attacks. It is worth noting that this region has suffered previous waves of ethnic violence in the past, particularly during the 1992 and 1997 elections, but less severe in scale. Those past events established patterns of impunity and political manipulation of grievances that helped fuel the current crisis.

In many communities around Eldoret post-election violence erupted with incredible speed and force. For the most part clashes pitted mobs made up of Kalenjin and other ethnic communities who are broadly supportive of the ODM against former neighbors who belong to Mr. Kibaki's Kikuyu ethnic group. The end result in most of the rural communities we surveyed was the complete destruction of every Kikuyu home and the displacement of every last Kikuyu family. Hundreds of people were killed in the process.

In all cases the attacks seem to have been aimed at driving Kikuyu residents permanently away, not massacring them. But in many cases bloodshed was the result. In some communities Kikuyu residents attempted to defend their homes and families and deaths resulted on both sides. In one widely-reported incident in Kiamba, not far from Eldoret, at least thirty people were burned alive inside the church they had sought refuge in. We interviewed several young men who participated in the murder of those people. They all insisted that they had not actually intended to kill any of the people inside the church when they set fire to it. But they were just as vigorous in asserting that they would murder any of their former Kikuyu neighbors who dared return.

In some cases violence caught its victims entirely unprepared. In other cases people said they had some warning of what was coming. We interviewed several displaced people whose neighbors warned them after the announcement of results that they would be attacked if they did not leave their homes immediately. One Kikuyu man told us that his young children came home the day after the results were announced and were upset because other children had been taunting them, saying that they were going to have to "move back to where they come from." Later that day the family was forced to flee before a mob that looted their home and then put it to the torch.

Underlying Causes, Incitement and Organization

The ethnic divisions laid bare in the aftermath of the elections have roots that run much deeper than the Presidential polls. The one issue that is more important to many local Kalenjin communities than any other is the disputed ownership of local land— a problem that no Kenyan government has made a good faith effort to address since independence. That tremendous failure of governance lies at the heart of the widespread anger that exploded in the wake of the elections.

The land issue, along with long-unfulfilled promises of constitutional reform to address demands for greater local autonomy, created fertile ground to sow the seeds of violence but the Rift Valley's post-election bloodshed did not arise spontaneously. In fact it is very clear that much of the violence was actively incited and organized, at least at the local level.

We were able to interview people from several different communities who directly participated in attacks on local Kikuyu families. The stories they told us were eerily similar. In community after community, we heard that in the days before the elections community elders, local ODM mobilizers and other prominent individuals called meetings to urge violence in the event of a Kibaki victory. In many communities people were told the same thing word for word— that if Kibaki was announced as the winner it must mean the polls had been rigged and the reaction should be “war” against local Kikuyu residents.

The violence that followed in the hours immediately after the announcement of Kibaki's victory was the result of incitement that primed communities for a violent reaction but it the attacks themselves were not organized in any deeper sense. We spoke with several Kalenjin from small rural communities who told us that the few Kikuyu farms around their homes were destroyed within hours of the announcement of the election results. In other areas the attacks began when word reached local residents of the destruction in neighboring communities, from which local leaders urged them to draw inspiration.

In contrast to that initial wave of violence, subsequent in the days that followed were in many cases meticulously organized by local leaders. In many areas around Eldoret community elders called meetings where they urged residents to prepare themselves to band together with groups from neighboring communities to attack larger population centers. In some cases the elders threatened to burn down the homes of anyone who did not attend these meetings. In other cases community leaders demanded that those not participating directly in the violence pay an informal tax to support the young men who did so.

In several cases these planned attacks were ultimately carried out as planned. For example we interviewed Kalenjin residents from several small rural communities outside of Turbo, a town west of Eldoret. They told us that after burning down all of the scattered Kikuyu farms around their own homes community leaders called mandatory meetings and instructed people to gather and march on Turbo itself the next day.

The following afternoon groups of young men from numerous farming communities gathered at a central point and marched together towards the town. They were turned away by police but elders and other community leaders organized another attempt for early the next morning. This time the mob caught the police unawares and rampaged through the town. When we visited roughly two weeks later, nearly every Kikuyu home and business in the entire town lay in ruins and several thousand displaced people were living under police guard in a tent camp just outside the town. In Eldoret town itself, some of the town's relatively few remaining Kikuyu homes were burned down almost every night we spent there.

Reprisal Attacks and the Ongoing Proliferation of Violence

The initial strife in the wake of the election largely took the forms described above but the picture has quickly grown considerably more complex. Stories of anti-Kikuyu violence around Eldoret and in other places have sparked reprisal attacks every bit as brutal in other parts of Kenya. Kikuyu militias in Naivasha, Nakuru and other towns have led pogroms targeting local communities of Luo, Luhya and other minority groups seen as being associated with the ODM and, by extension, with violence against Kikuyu elsewhere in the country.

An especially worrying development has been the assassination of two ODM Members of Parliament, one representing the Nairobi constituency of Embakassi and another who won the Rift Valley seat of Anapuria. These killings provoked further clashes, especially in the southern Rift Valley between Kalenjin and Kisii communities.

In the districts of Trans-Nzoia and Molo, fighting which preceded the election has begun anew after a brief lull. We estimate that at least seventy more people died last week alone. The Kenyan Red Cross has revised its estimate of 800 total deaths and now believes that at least 1000 people have lost their lives.

By all appearances this latest phase of violence is no more spontaneous than the Rift Valley violence that helped to spark it. The Kikuyu militias responsible for the bulk of the atrocities seen in recent days are well organized. Most worrying of all are reports that some of the violence is being carried out by the widely-feared Mungiki sect.

The Mungiki are a brutal criminal gang that promotes a violent brand of Kikuyu chauvinism. In 2007 the group was driven underground and badly weakened through a bloody and abusive government campaign aimed at its suppression. Kenyan National Commission of Human Rights alleges that Kenya's police summarily executed hundreds of suspected Mungiki members in the process.

By most accounts it seems clear that the Mungiki have rapidly rebuilt their strength in recent weeks and that they have done so largely unchallenged by the police. It is not yet clear whether this is due to some level of official complicity or if it has been possible simply because the police are so badly overstretched trying to contain the growing violence. There are allegations that highly-placed individuals close to the Kibaki government have helped reactivate the Mungiki to help carry out violence against ethnic

communities that are broadly supportive of the ODM. Those allegations must be fully investigated.

This emerging cycle of reprisals carried out in response to violence in other parts of Kenya has the potential to perpetuate itself independently of the direction of political events. Each new set of clashes tears Kenya's rapidly-widening ethnic divisions wider still and ratchets up the level of public anger on all sides. The more this violence spreads and takes on a dynamic of its own, the harder it will be to bring a halt to even if a political settlement is ultimately reached between the government and the ODM.

The cycle of reprisal and counter-reprisal has already seen bloodshed spread to parts of Kenya that were peaceful in the immediate aftermath of the elections. Many of the communities worst affected in recent days, like Nakuru and Naivasha, were initially peaceful even as Eldoret, Kisumu and Nairobi's slums were burning. If a political solution to the crisis is not reached soon, there is every reason to worry that violence will spread to still new corners of the country, becoming harder to contain as it draws more and more people in.

The Impact of Violence on Affected Populations

Hundreds of Kenyans have lost their lives in the bloody aftermath of the elections; most estimates now put the total number of people killed at above one thousand. But the impact of this violence on the communities it has targeted extends well beyond the number of people who have lost their lives.

The Kenyan Red Cross now estimates the total number of displaced people to be 304,000. Entire communities have been uprooted. In many communities around Eldoret every last Kikuyu resident has been chased away and their homes destroyed behind them. We interviewed dozens of people living in IDP camps in that area and the overwhelming majority told us they did not think they would ever be willing to return to their former homes. Unfortunately the reasons for that reticence are only too obvious. In many communities around Eldoret, residents who had burned down their Kikuyu neighbors' homes and run them off told us flatly that they would murder anyone who attempted to return and rebuild their lives. The same fears will be felt just as acutely by the many communities of Luo, Luhya and other groups that have been driven from their homes by Kikuyu militias in other parts of Kenya.

There are dimensions to this catastrophe that have not yet been uncovered. Most notably, widespread patterns of gender based and sexual violence have accompanied the broader chaos in some areas but it is not yet clear just how many women have suffered such attacks. Some experts believe that the violence has led to a spike in HIV infections due to sexual violence. Reports from several hospital mortuaries indicate that large numbers of men have been forcibly circumcised or mutilated in other ways before being murdered. And there are real threats of further violence against people whose lives have already been torn apart. We interviewed many people around Eldoret who said that they were planning attacks on local displaced persons camps that had not yet been executed only because those camps are guarded by police and military personnel. But the fact is that the

security forces are already overstretched and the risk of violence against displaced persons is real. Two weeks ago 18 displaced people were murdered during an attack by armed militiamen on an IDP camp at Kipkelion.

3) Growing Polarization and Silencing of Dissent

Apart from the terrible impact of the violence itself the most disturbing trend revealed by our investigations has been an astonishingly deep and rapid polarization along ethnic lines across much of Kenya. This trend has been fueled by concerted attempts to spread disinformation and hate speech that legitimize further violence in the eyes of many. Increasingly, human rights advocates and other individuals on all sides who denounce ongoing violence have been targets of intimidation and threats that have partly succeeded in silencing moderate voices so badly needed in many communities.

This rapid polarization is illustrated vividly by the situation around Eldoret. Following the initial burst of post-election violence, false stories of horrible atrocities committed by local Kikuyu began circulating by rumor and by SMS. Many of these stories bordered on the absurd but in many of the communities we visited the tales were regularly cited in defense of the violence local residents had meted out to their Kikuyu former neighbors. In one small village we interviewed young men who admitted that they had helped burn down the homes of all the Kikuyu families in the area. In defense of their actions they told us they had heard that a Kikuyu man had attacked and disemboweled a Kalenjin milk seller in another part of the Rift Valley.

Such stories follow a common pattern in that they generally concern events purported to have taken place in communities far enough away that local residents have no independent way of finding out that they are false. In this, they display a significant degree of coordination. In addition to justifying violence that has already taken place, some disinformation is being spread with the goal of encouraging further violence. In Eldoret we were confronted with rampant rumors that displaced persons camps were populated almost entirely with armed Kikuyu militia members who were planning brutal reprisals against local Kalenjin communities. These rumors were patently untrue but they appeared to succeed in generating considerable local sentiment in favor of attacking the camps.

That disinformation has been combined with growing patterns of hate speech to make violence seem acceptable to people in many communities. In parts of the Rift Valley it has become increasingly common to hear Kikuyu people referred to as “inhuman” due to their alleged brutality. The same language has been deployed in reverse to justify reprisal attacks carried out by Kikuyu militias in other communities.

All of this has combined with the stark brutality of ongoing violence to polarize communities along ethnic lines to a much deeper extent than had been the case prior to the elections. In many areas people on both sides told us that they no longer believed it possible to live with their former neighbors across the ethnic and political divide. These sentiments are especially worrying in the longer term because they will make it very

difficult to reverse the ethnic segregation that has resulted from the violence due to displacement in many areas.

In the face of all of this, many Kenyans attempting to act as voices of moderation have found themselves faced with threats and intimidation when they try to speak against the violence going on around them. This includes human rights defenders in all communities, who have increasingly been verbally attacked for their perceived failure to stand in solidarity with their own ethnic communities.

Prominent Kikuyu human rights activists have received death threats after taking strong public stands against the fraudulent elections. SMS messages and online petitions accusing some of being traitors to the Kikuyu community have been circulated widely. In Eldoret, some of the activists we worked with are now being threatened with violence for their attempts at exposing and denouncing the violence that has been carried out against local Kikuyu residents. Similar examples are becoming more numerous. Beyond the immediate threat to the lives and safety of these individuals, the trend threatens to contribute to the spread of polarizing rhetoric and hate speech by silencing the people best positioned to argue against it.

The Kibaki government has announced an effort to track the source of hate speech spread by SMS and other means and this is a welcome step so long as the investigations are impartial. It has also lifted a ban on live broadcasts which is important because the ban was not only illegal but also helped create a climate ripe for disinformation. It is imperative that everything possible be done to stop the spread of such incitement now; the longer hate speech and polarizing rhetoric are allowed to take root without interference from competing points of view, the harder it will be to reverse the damage and the easier it will become to incite further violence across the country.

Resolving the Crisis: Peace with Accountability and Justice

The first priority for Kenya is bringing about an end to violence and attending to the urgent needs of the thousands who have been affected by the crisis. But beyond a prolongation or worsening of civil strife there is another immediate danger: the temptation to attempt to secure short-term peace without addressing the real causes of the crisis. Such an attempt would likely end in failure and would certainly prove destructive in the longer term.

The international mediation effort led by Kofi Annan has established the right framework for talks moving forward. Both sides to the political dispute have agreed in principle that in addition to taking urgent steps to end the violence, the underlying causes of the crisis must be addressed. Annan himself has publicly insisted that any agreement must ensure accountability for abuses on both sides along with a credible process of reconciliation. The talks will also seek address the underlying issues that led the election to boil over into violence.

The primary impediment to realizing the potential of this agenda is Kenya's political leadership. Neither side has made any serious effort to bring about an end to violence.

The government and the ODM leadership have both made public appeals for peace but it is abundantly clear that this message has not filtered down as a priority to the local leaders who continue to foment violence.

The Kibaki government has until now reacted to mediation efforts with cynicism and intransigence, clinging to the untenable position that it won the election fairly and will therefore not contemplate any settlement that does not legitimize its hold on power. Instead of working to resolve the issues the Kibaki government has occupied itself with using the violence as a tool to bludgeon the ODM leadership with as-yet unsubstantiated accusations of sponsoring ethnic cleansing and other international crimes.

Practically speaking, progress on resolving the election issue is a prerequisite for progress on all of the other issues. The Kibaki government clearly stands as the primary obstacle to addressing that issue and must be pressured into giving ground so that broader progress is also possible.

The Annan-led mediation process is the best hope of finding a way out of this morass. It is also the only hope currently on offer; there is no fallback plan if that effort fails. It is therefore imperative that the international community, including the United States government, bring all possible pressure to bear on both parties to work in good faith to find a lasting solution to the crisis. That pressure should specifically be aimed at giving substance to what must be the four key pillars of any viable political settlement:

1) Leadership to end the violence

It is not enough for political leaders on both sides to make public statements denouncing violence. The leadership of both sides has failed to forcefully communicate to their supporters that further violence will not be tolerated, let alone encouraged. Supporters of both sides have been actively involved in fomenting and organizing violence. As of now we have no hard evidence that directly implicates the leadership on either side in sponsoring these abuses but both should support further investigations and prosecutions of any individuals who have played such a role. Hollow public posturing is no substitute for real efforts to rein in violence.

There is every reason to hope that a more sincere and urgent effort to rein in violence on the part of both sides' leadership would have a rapid impact. Around Eldoret, for instance, it was the universal opinion of local civil society groups, community leaders and even the people who had been carrying out violence that a clear signal from the ODM leadership that the violence must stop would bring about its end. Whether justified or not, as of now many of the people carrying out violence on both sides across Kenya do not believe they are going against the wishes of their political leaders. Until that changes the political leadership on both sides will bear a share of the responsibility for every life lost and every home destroyed.

This action must be immediate and unequivocal. A more robust effort on the part of Kenya's political leaders to rein in the violence would still achieve results. But it is not

clear how long that will remain the case. If the violence continues to spread and to take on a dynamic of its own, leaders on both sides may lose all remaining power to contain it.

2) Electoral Justice

The violence raging across Kenya has fed on grievances that run far deeper than the results of the Presidential election. Nonetheless it remains true that any durable solution to the crisis must address the spark that set it off. This is true for a number of different reasons.

The peaceful conduct of voting last December was a testament to the fact that Kenyans believed it possible to effect change through the ballot box in spite of all the underlying tensions that have now been laid bare. If the electoral dispute is addressed through a political bargain that does not uphold the democratic rights of Kenya's voters many will lose their faith in the democratic process as an avenue of peaceful change. And, moving forward, Kenya's government will not be able to heal the wounds the past few weeks have opened up if it is not seen as legitimate and accountable to Kenya's citizens.

Just as importantly over the longer term, failing to restore the integrity of Kenya's nascent democracy will have wider repercussions— not just in Kenya but across Africa. Especially coming on the heels of Nigeria's brazenly rigged April 2007 polls and with a looming electoral charade in Zimbabwe at the end of March, an internationally-brokered deal that legitimizes a fraudulent election in Kenya will serve to embolden would-be autocrats across the continent.

An immediate re-run of Kenya's presidential election is not feasible given the more urgent need for healing. The collapse of the electoral process has also highlighted the need for key constitutional and electoral reforms that must precede a new election. But the framework that is ultimately agreed on should ensure a transparent and independent investigation into what went wrong with the December poll. It should also guarantee that a new election will result if that emerges as the best way to ensure that Kenya's government is elected rather than the product of controversy and fraud.

3) Accountability and Reconciliation

The underlying grievances and societal divisions highlighted by the violence in recent weeks may have been fertile ground for violence but as discussed above that violence was not simply the spontaneous product of popular anger. Much of the suffering and bloodshed unleashed in recent weeks was actively incited and even organized by individuals in positions of responsibility and power. They must be investigated and held to account for the crimes they have helped sponsor. That accountability must also extend to the Kenyan police, whose crimes have left bullet-riddled bodies piled high in mortuaries in Kisumu, Nairobi, Eldoret, Mombasa and elsewhere. Accountability for those most responsible for all manifestations of Kenya's post-election violence is the only way to ensure that violence will be remembered as an intolerable aberration as opposed to a dangerous new trend.

At the same time, processes of accountability must be supported by deeper efforts at reconciliation and truth-telling to heal divides that have torn whole communities asunder. Kofi Annan called this week for some form of truth and reconciliation commission for Kenya and for UN investigators to look into the catalogue of human rights abuses. The Kenya National Commission for Human Rights has already launched an investigation. Any further investigations should take care to support and complement rather than undermine that effort.

4) Addressing the Deeper Causes of the Violence

In the longer term, the broader context of the ongoing violence and human rights abuse must be addressed. Comprehensive reforms to Kenya's governance structures and laws are needed to redress grievances that have simmered since colonial days, tackle endemic corruption and change the zero-sum nature of political competition. The existing political process is an opportunity to make progress on some of these issues. But more than that, a process that does not guarantee changes in these areas will not eliminate the danger of future bloodshed and will not deliver the kind of peace and justice that Kenyans want and need.

Vice President Kalonzo Musyoka is scheduled to arrive in Washington today. That visit will provide the Administration with a perfect opportunity to deliver its expectations in direct and public form and to articulate the consequences that will follow if both sides do not live up to their responsibilities.

Specific Recommendations to the US Government

Along with the African Union and Kenya's other international partners, the U.S. government has an important role to play in putting pressure on Kenya's political leadership to negotiate a solution to the crisis and to do everything possible to rein in violence while it is still possible to do so. It is essential that what political leverage international players have be used to ensure that the Kibaki government commits itself to negotiating in good faith with a view to solving the crisis, something that they have made no significant move to do until now. There are a number of ways that the Administration can put pressure on both sides to take action on key issues or provide assistance in addressing them.

The Administration should:

- Communicate to both parties that a negotiated solution to the crisis must include, at minimum:
 - an independent and public investigation into the allegations of fraud that derailed the elections;
 - a framework for constitutional and electoral reform aimed at addressing underlying causes of the current violence;
 - accountability for those most responsible for fomenting and carrying out human rights abuses on all sides since the elections;

-a process of truth-telling and reconciliation as called for by Kofi Annan;
-if the actual results of the Presidential poll cannot be reconstructed, a guarantee of new elections after an interim period sufficient to put credible polls in place and conduct them in a peaceful manner.

-- Publicly commit that sanctions will be put in place against any political leader from either side who acts in a manner that impedes a negotiated settlement. Sanctions could include visa bans against political leaders and their associates. The U.S. Ambassador to Kenya has publicly stated that anyone guilty of fomenting violence would be denied visas along with their families. The threat of sanctions should extend to those whose implication in human rights abuses is credibly established.

-- Support an international component to investigations into post-election violence. This could include support for the work and recommendations that will be made by the UN human rights fact-finding mission due to arrive in Kenya shortly. The US should also call for international investigations to complement and support the ongoing work of the Kenyan National Commission for Human Rights.

--Push for the immediate publication of all available information on the outcome of the election. The Administration should urge the International Republican Institute to publish polling data it amassed during the election and should also urge the European Union's election observation mission to publish its final report as soon as possible. Suggestions that this information should not be published to avoid inciting further violence are misguided and undermine efforts to address the election issue during negotiations.

--If Kenya's overstretched police force cannot adequately protect Kenyans at risk of further violence, the Administration should press the Kibaki government to seek international assistance in fulfilling that responsibility.