

Conflict Analysis of the 2007 Post-election Violence in Kenya

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Abstract

Kenya has been riddled with conflict and violence throughout its brief history as a nation. The 2007 post-election violence in Kenya, however, was of a different magnitude. In this paper, I perform an analysis of the conflict to examine why widespread violence erupted in the wake of Kibaki's presidential reelection. I look at the history of the conflict, examine stakeholders, and employ a variety of conflict analysis tools in an attempt to get to the root of the cause of the conflict.

Key Words: Kenya post-election violence, land dispute, tribal conflict,

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“I don’t know whether Kibaki won the election”

-Sam Kivuitu, Kenya Election Committee Chair, Jan 2, 2008

1. Introduction

The carnage was horrific: 1,500 dead, 3,000 innocent women raped, and 300,000 people left internally displaced. Most of these atrocities happened in the first 14 days after the 2007 Kenyan general election. The severity of this conflict unfolded in a span of 59 days between Election Day, December 27th, 2007 to February 28th, 2008, when a political compromise was reached. The magnitude of the trauma and structural violence that took place in Kenya after the fourth multi-party general election took both Kenyans and the international community, alike, by surprise (Maupeu, 2008). In retrospect, the violence that occurred could not only have been predicted, it could most likely have been prevented.

One of the foundations of this conflict analysis is that what took place during the Kenyan 2007 elections had its roots in a weak national constitution. This constitution has progressively lacked a healthy checks and balances system between the executive, legislative and judicial branches of government. Over the span of three decades, amendments to the constitution were made to systematically erode these balances in favor of strengthening presidential powers. The result of these broad powers effectively made the presidential office equivalent to a dictatorship, which gave the president the ability to use and abuse this power without restraint.

The quote at the top of the page is pregnant with irony and is an example of what can occur as a result of a strong yet corrupt executive branch. Mr. Kivuitu was the chairman of the Electoral Commission of Kenya (ECK), the governmental organization that certifies

the election results. The irony is that in 2007 he certified that Kibaki won the election apparently without actually knowing whether or not he had won. Why would he do this? As a testimony to the imbalance of power in the executive branch, the leading ECK staff, including the chairmen, are appointed by the president. Therefore, one possible explanation is that he feared losing his job. But how did the presidential office in Kenya become so powerful?

History of the Conflict

The country of Kenya was ruled by the iron hands of two men in succession from 1963 to 2002: Jomo Kenyatta (1963-1978) and Daniel Moi (1978-2002). In 2002, there was a change: the ruling political party, the Kenya African National Union (KANU), that had ruled the country since independence, collapsed. It collapsed beneath a new political party comprised of an alliance that had formed between all of the major Kenyan tribes. This political stakeholder was named the National Rainbow Coalition (NARC). The election victory was a landslide. Mwai Kibaki of the NARC won 62% of the vote on a platform of fighting corruption, forming a coalition government that shared power amongst the various tribes, and changing the constitution within 100 days of being elected to limit the executive power that had ballooned over the previous four decades (Mutua, 2008; Calas, 2008). People across Kenya from all tribes felt hope that the country's government was finally on the verge of a system of governance that would have accountability through shared power.

Yet, within weeks of the election, the memorandum of understanding (MOU) that forged the tribal factions into the NARC alliance and that got Kibaki elected had effectively collapsed (Mutua, 2008: 285). The agreement in the MOU to share power within the cabinet did not occur, as four key positions that were to be created, including that of a Prime

Minister position, did not materialize forward (Mutua, 2008: 284). Kibaki, from the Kikuyu tribe, broke his election promise and filled many appointed positions with fellow tribesmen, thus following in the footsteps of his presidential predecessors by selecting people for appointed positions primarily through tribal bias (Mutua, 2008: 285). This in turn led to discrimination of many people of other tribes who were more qualified.

Whether the decision to keep the massive executive power that Kibaki had campaigned to reform was premeditated, or whether he succumbed to certain pressures by his fellow tribesmen to hoard power within the tribe once in office may never be known. The result was the same: the disintegration of the NARC party and the broken promises of a shared government and new constitution. This left many citizens tasting what could have been and frustrated over what should have resulted from the new government coming to power in 2002. This frustration fueled the violence that took place after the election in 2007.

2. Worldview Analysis

a. What are the life experiences that have shaped how this person understands conflict?

The life experience that has shaped the typical Kenyan citizen's understanding of conflict is similar to those in post-colonial nations that have succumbed to dictatorship. In the Kenyan context, this translates into the average citizen believing that the executive branch always wins, and that those in power will do whatever it takes to stay in power. This was seen with Kenyatta (a Kikuyu who was Kenya's first president) who utilized his position to consolidate power by encouraging KANU members of parliament (MPs) to make significant ratifications to the constitution between 1964 and 1969, thus effectively create a dictatorship.

Upon Kenyatta's death in 1978, Moi (from the Kalenjin tribe) assumed the presidency through his constitutional right as Vice President, and was able to take advantage of the vast infrastructure of executive power Kenyatta had created. This was especially seen by Moi's ability to abolish the multiparty system through an amendment to the constitution in 1982, effectively making him head of both the executive branch and Parliament. (Mutua, 2008: 66). Even when the multiparty system reemerged in 1991, Moi was able to use his position to limit the opposition through intimidation as well as create votes through voting fraud in the elections of 1992 and 1997. For example in the 1992 election, it is estimated that around 1 million youth were not allowed to register to vote because they were denied the national identity cards needed to register (Mutua, 2008). This is an example of structural violence.

The Kenyan citizen's life experience of understanding conflict through the dominance of the executive and political elite is illustrated by the fact that the constitution was amended 28 times from 1963 to 1992, each time limiting the freedom of its citizens and expanding the power of the executive and political elite. In contrast, the US Constitution, which from 1788 to 1992 was amended 27 times, with arguably 18 of the 27 protecting or expanding freedom of its citizens. An example of the dominance and corruption of the political elite in Kenya is seen in the salary and allowance of the average MP: \$169,625 as of 2004 while the average Kenyan income is \$400 (*Economist*, December 16, 2004). This is in comparison to the US congressional salaries of \$158,100 during that same time period. This discrepancy is due to the MP's setting their own compensation instead of an external committee like in many other countries, which is yet another example of an unethical practice seen in government.

The many amendments to the Kenyan constitution were possible, because the original constitution of 1962 1) was not created by the political leadership from the various tribes similar to how the US constitution was created in the Continental Congresses, and 2) did not allow Kenya to be truly independent from Britain since it had a governor in the executive branch who was answerable to the Queen (Mutua, 2008: 60). These two points led an initial amendment to the constitution to create the Kenyan republic and office of president. As Mutua so eloquently puts it: what resulted was that “the colonial state survived, and it morphed into a postcolonial variant, only too ready to continue tormenting its subjects” (Mutua, 2008: 60). Had the Kenyan political leadership “owned” the initial constitution, it would have more likely had a chance to succeed through a healthy checks and balances system between the three governmental branches.

b. What cultural group does this person belong to that shapes their view of the conflict? What identities does this person hold that benefit from engaging in conflict?

The questions of how culture and identity shape peoples view in regards to conflict are very similar questions in the Kenyan context, and have their roots in their tribal identity. Within Kenya, there are five main tribes: Kikuyu (22%), Luhya (14%), Luo (13%), Kalenjin (12%), and Kamba (11%). The Kalenjin people are more of a compilation of smaller tribes, namely: the Kipsigis, Marakwet, Nandi, Pokot, Endorois, Sabaot, Terik, Elgeyo and Turgen. The commonality that united Kalenjin in the early 1950’s and made them one of the five main tribes was their common language.

Political parties in Kenya typically fall under tribal lines, valuing ethnicity above political ideology and policy. This is due to the perception that the party offers the best hope

for one within the tribe to assume power and then share state resources with tribal members (Mutua, 2008: 22). The result of this view has historically been tribalism or prejudice across tribes, and favoritism within the tribe.

A subtle example which highlights this idea of identification of people within the tribe was recently seen when interviewing an employee from my company, Esau Rao, who is a Luo, for this research paper. When asked several pointed questions about the 2007 post-election violence, this man referred to President Kibaki, a Kikuyu, by his last name, but referred to the ODM challenger, Raila Odinga, also a Luo, as "Raila" (Rao, August 30, 2009).

In an email from this same man, Mr. Rao, on January 9, 2008 during the height of the post-election violence, he detailed a quote on a flyer that had been posted around Kijabe, a Christian mission base bordering the Rift Valley Province (an epicenter of the conflict). It further illustrates the culture and identity of tribe in the context of the conflict:

" It is a mockery of justice for the Luos to continue eating minced meat and driving big cars in Kijabe while our brothers and sisters are living in the cold in Maimahiu, Limuru, Eldoret and Nakuru. 300,000 Kikuyus are living like refugees in their own country having been reduced to paupers. 460 have died. We shall not be killed during the Mau Mau and be killed today by uncircumcised beings. We swear by the sacred Mugumo tree that when we descend upon Kijabe, we shall not leave any Luo alive..." (Rao, January 9, 2008)

This flyer prompted Mr. Rao (a Luo), and his family to move to a friend's house away from Kijabe to live in hiding for several days, in concern for their safety.

c. What values does this person hold that shape their response to conflict?

As mentioned above, the Kenyan culture is deeply tribal. The average person identifies with the tribe and values the tribe. In addition to this, Kenyans are an inherently agrarian society (Cussac, 2008). This means that land is very important. Indeed, the topic of land has been an acute issue in the majority of conflicts since Kenyan independence, the history of which is discussed in detail under the Stakeholder mapping tool.

Besides valuing land and tribe, Kenyans, like many Africans, are deeply spiritual and value their faith traditions. Kenya is predominately Christian, with 45% being Protestant and 33% being Roman Catholic. This vast majority means that the Church can and does play a key role in politics (Maupeu, 2008). The Church's role in politics stems historically from how the British used Christian missions to "penetrate communities" and spread a Christian message laced with British culture (Maupeu, 2008: 280). During this colonial era, the Church was intimately tied to politics. Indeed, the movement for constitutional reform following the 1992 elections "was enegised by calls for a new constitution by the Catholic Church and the Church of the Province of Kenya [now the Anglican Church of Kenya]" (Nasong'o, 2007).

3. Stakeholders

Political Parties & Tribes

The main stakeholders in the 2007 general election conflict are seen in Table 1. With the failure of the NARC party, many who were left out of power from the failed power-sharing MOU in 2002 formed the Orange Democratic Movement (ODM). The ODM was largely comprised of a tribal alliance between the Kalenjin, Luhyas and Luos. Kibaki and the Kikuyu in power formed the Party of National Unity (PNU).

The three main tribes involved in the 2007 post-election violence were the Kikuyus, Luos and Kalenjins. The Luhyas were a part of the ODM, however, not much is written about their involvement. As Mutua puts it: “The reality on the ground is that most African political parties are not communities of political ideology or philosophy; rather they are vehicles of ethnic nativism” (Mutua, 2008: 22). This statement holds true in Kenya and is illustrated in the Stakeholder Map in Figure 1.

International Community

Attempts by the ODM to stage public, peaceful protests in Nairobi and other cities were squashed by the police after Kibaki made them illegal through an executive order. Kibaki, on the other hand, was legally certified as the president and had the legal right to ban the protests, especially if the protests could compromise the stability of the government. The first to step in to mediate a solution between the PNU and ODM was led by an African Union negotiator along with a combined team of the French, British, US diplomats (Lafargue & Katumanga, 2008). After this mediation attempt failed, the former Secretary of the UN, Kofi Annan stepped in and negotiated a power sharing deal between Kibaki and Odinga where Odinga would become Prime Minister and the ODM would be given 10 cabinet positions. This deal was very similar to that which should have occurred in 2002 under the NARC’s pre-election agreement.

Land & Government

The issue of land in Kenya is central in its history of conflict and is an example of structural violence. This is in part because of long and complex histories of land dealings among tribes. Often the members of the tribe in power were unethically given or allowed to use land, frequently at the expense of other tribes. This is also in part due to the complex legal structure surrounding land (there are at least 42 laws that apply to land, some of which

contradict to the other) combined with the weak judicial branch to carry out these laws effectively (Maupeu, 2008). During the 2007 post-election violence, the historic land issues between the Kikuyu and Kalenjins continued to be a major cause of conflict.

In 1939, under British colonization, the Kikuyu were forced to move from the Central Province by the British, making way for an exclusive community of white settlers known as the 'White Highlands' (Mutua, 2008: 55). Many Kikuyus traveled north to settle in the Rift Valley. After Kenya became independent from Britain, even more people from the Kikuyu tribe settled in the Rift Valley, protected by Kenyatta's power (Cussac, 2008). Some would say Kenyatta "gave" this resource rich land to the Kikuyu. But from the Kikuyu point of view, they were unjustly made to leave their land in the Central Province by the British, and were expected to go elsewhere (Cussac, 2008; Mutua, 2008: 54).

Similar to what Kenyatta did with the Kikuyu in the Rift Valley during his tenure (1963-1978), Moi (1978-2002) did with the Mau Forest, the most lush part of the Rift Valley. Given that the forest is government trust land, Moi used his position to grant executive permission for his tribal community, the Kalenjins, to settle there. Kibaki, also using the same executive power, expelled the Kalenjins from the Mau Forest in 2003, with most returning, arguing that they had a right to the land that "Moi gave them"(Cussac, 2008).

This expulsion, along with the promise of future expulsion attempts played a large part in the Kalenjin bands militantly evicting the Kikuyu from their homes, destroying their dwellings, and occasionally murdering those resisting these actions after the election results were announced (Cussac, 2008).

In an example of the dynamic nature of conflict, Kibaki in 2008 once again called for the removal of the Kalenjins from the Mau Forest. This time, the Kalenjins lobbied Odinga as Prime Minister and part of the ODM Luo-Kalenjin alliance, to resist the executive order.

While he initially came to their aid, he changed his mind mid-way when the main river feeding the hydroelectric plant began drying up due to the settlers. His denial of their request led to increased threats against the Luos by the Kalenjins (Rao, August 30, 2009; Nairobi Chronicle, July 28, 2009).

In 2003, Kibaki set up a commission to document the history of illegal land disbursements during the Kenyatta and Moi eras. This resulted in the *Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land*, otherwise known as the Ndung'u report – a 244 page document with nearly 1800 pages of appendices intimately outlining the common practice by corrupt politicians of illegally awarding land for political gain.

Youth

Post-election violence resulting from the abnormalities seen in the 2007 election in Kenya involved many facets of society. Perhaps the most volatile of these were youth with little opportunity within the previous Kibaki government for jobs and had even less hope for the future. The ODM understood this and harnessed the youth vote by organizing them, for the first time in a Kenyan election, into voting blocks (Cussac, 2008; Mutua, 2008). This vehicle of organization combined with Kibaki making peaceful demonstrations illegal is thought to have been why the youth violently reacted after the announcement of the Kibaki victory (Cussac, 2008).

4. Stages of Conflict Tool

Pre-conflict: Over 500 Kikuyu youth were killed by police from June to October 2007. One theory for this is that the Kikuyu leaders that were loyal to Kibaki were trying to control their ethnic voting base which made the youth frustrated with Kibaki for not following through with 2002 election promises for jobs (Cussac, 2008). Additionally,

hundreds of people were killed and tens of thousands displaced in Mount Elgon region, bordering Uganda over land issues (Medard, 2008).

Confrontation: After the December 30th 2007, EKC announcement was made that Kibaki was reelected and he was then illegally sworn in within 35 minutes, breaking with the tradition of having an inauguration day (Mutua, 2008: 246). After this announcement, the ODM they mobilized to protest. Kibaki then made these protests illegal, and used police throughout the country to squelch ODM gatherings (Maupeu, 2008).

Crisis: The peak of the conflict was reported to be January 3, 2008 with ODM-PNU confrontations evolving into tribal violence that left thousands of dead and hundreds of thousands of people displaced (Lfargue and Katumanga, 2008).

Outcome: On February 28, 2009 a power sharing deal brokered by Kofi Annan between Kibaki (PNU) and Odinga (ODM) was signed.

Post-conflict: In August 2009, Kofi Annan handed over a list of alleged perpetrators to the International Criminal Court, after the Kenyan government ignored his demands to set up independent tribunals to try those causing the post-election violence in 2007 (CNN.com, August 3, 2009).

5. Dimensions of Conflict Tool

Three of the dimensions that often come to play in conflict are material, relational and cultural. As has been covered throughout this paper, the material issues that had a role in the Kenyan post-election conflict include land, employment and money in the form of bribes. While land and employment have been discussed, illegal money practices are also well documented among the Kenyan ruling class. Perhaps the largest of these was brought to light by John Githongo, the anticorruption czar appointed in 2003 by Kibaki, when he

uncovered a \$750 million overbilling scheme that had originated during Moi's tenure. More disturbing to Githongo was that many of the senior officials in Kibaki's government who were supposed to be against corruption, were involved in the scheme. Githongo fled to Britain after briefing Kibaki after realizing Kibaki's desire was to maintain the status-quo by doing nothing (*Economist*, February 26, 2009).

As mentioned, the central relational issue in post-election conflict was tribal in nature. Politics in Kenya fall along tribal allegiances. Politically, the Kikuyus of the PNU opposed the Luo-Kalenjin-Luhya alliance that formed the ODM. This political dynamic was another facet in the ethnic tensions felt toward Kikuyus in the wake of the controversial 2007 election results (Maupeu, 2008).

Looking at the conflict from the third dimension, the fact that politics and tribal ethnicity are intimately connected in Kenya is a cultural phenomenon. Another cultural dynamic that was involved in the conflict is part of the African culture that values elders over its youth. This, combined with a culture of corruption, cronyism and patronage led to violent responses from the youth as detailed previously. While these separations are helpful for analysis, they are synthetic in that the material (land/money), relational (tribal) and cultural (corruption) are all inter-related.

6. Conflict Tree Tool

The conflict tree in Figure 2, summarizes the post-election Kenyan conflict seen in 2007. At the center of the conflict is a culture of corruption that has its "roots" in a weak constitution that, over time, yielded an imbalance of power to the executive branch of government through dozens of amendments. This resulted in many injustices involving tribes, land and youth that had no legal recourse due to a weak judicial system. Arguably the

most significant weakening of the judicial branch came during the Moi era when he ended judicial tenure by firing the judges who were challenging his policies.

7. Conclusion

Post-election violence resulting from the abnormalities seen in the 2007 election in Kenya involved many facets of society. It involved youth who had little opportunity for employment despite Kibaki's 2002 election promise of job creation. Barred from peacefully protesting in public, many youth violently reacted after the announcement was made of the questionable Kibaki victory (Cussac, 2008). The post-election violence was also seen when Kalenjin tribesmen violently reacted against their Kikuyu neighbors due to long standing land disputes.

Yet, it is easy to make the case that even if Odinga had been elected president, little would be different unless the Kenyan constitution was changed to hold the executive powers more accountable through a balanced system.

While a main root cause of both of these expressions of structural violence was the abuse of executive power (*e.g.* jobs and land distribution) stemming from a weak national constitution, what is the way forward for Kenya? Barring a constitutional overhaul, the potential programmatic ways to make an impact on violence in Kenya is through job skill education and microloan programs for youth, peacebuilding education within women's organizations, churches and schools, and legal and information services to aid in settling land disputes.

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Interview with Esau Rao, August 30, 2009.

Correspondence with Eau Rao, January 9, 2008.

Appendix A

Names and Definitions

ECK – Electoral Commission of Kenya is the group that monitors and legalizes the general election results.

KANU – Kenya African National Union was the ruling party in Kenya from 1963-2002.

Kenyatta, Jomo – the first president of Kenya. President from 1964-1978. Of the Kikuyu tribe.

Kibaki, Mwai – president of Kenya. Won the 2002 elections and whose announced victory in the 2007 election sparked country wide violence. Of the Kikuyu tribe.

Moi, Daniel – Vice president under Moi. President from 1978-2002. Of the Kalenjin tribe.

NARC – National Rainbow Coalition was the multi-tribal coalition of all tribes formed to defeat the KANU in the 2002 election.

Odinga, Raila – Current Prime Minister of Kenya. Ran under the ODM party to defeat Kibaki and the PNU in the 2007 general election.

ODM – Orange Democratic Movement, which Raila Odinga ran under in 2007 elections. Comprised of a multi-tribal alliance between Kalenjins, Luos and Luyas.

PNU – Party of National Unity, which President Kibaki ran under in the 2007 elections. Comprised mainly of Kikuyus.

Appendix B Tables and Figures

Timeline Tool

Key: Kikuyu, Kalenjin, Both Kikuyu and Luo, Both Luo and Kalenjin, No color for all three tribes

<u>Date</u>	<u>Kikuyu</u>	<u>Luo</u>	<u>Kalenjin</u>
1939	-MT- Some Kikuyu land in Central Province taken by British. Some resettle in the Rift Valley		
1952-1957	-Kikuyu militia opposes British authorities in “Mau Mau” crisis		
1953	-Jomo Kenyatta imprisoned		
1956	-MT- -Last Mau Mau leader hung		
1960	KANU party forms, elects Kenyatta as leader in Kikuyu, Luo, Kamba alliance.		
1963	-MG- First multi party election. Kenyatta elected		
1964	-MG- Kenya becomes a republic and gains independence from Britain		
	-MG- -Kenyatta becomes president		
1978	Kenyatta dies, Moi assumes presidency		
		-MG- Moi elected president	
1982	Amendment to constitution making Kenya a one party system – Article 2A		
1991	Repeal of Article 2A		
1992	First multiparty elections since 1963, Moi re-elected amidst evidence of rigging		
1997	Second multiparty elections, widespread fraud and violence. Moi reelected		
	Nonviolent, civil disobedient protests yield pressure to change the constitution		
1999	Moi banned from running		
2002	-MG- KANU loses election. Kibaki wins landslide victory.		
	-MT- Kibaki balks at power share in cabinet		
2003		-MT- Kibaki expels Kalenjins from Mau Forest	

<u>Date</u>	<u>Kikuyu</u>	<u>Luo</u>	<u>Kalenjin</u>
2005	The constitution proposed by Kibaki rejected		
Dec 27, 2007	Kenyan's general election		
Dec 30, 2007	Election Committee of Kenya announces Kibaki reelection		
Jan 3, 2008 - MT-	Peak of post-election violence		
Jan 22, 2008	Kofi Annan arrives in Nairobi after mediation lead by African Union fails		
Feb 28, 2008	-MG-	Resolution reached, with power sharing by creating a Prime Minister position	

*MT = Major Trauma

*MG = Major Glory

Figure 1. Stakeholder Map

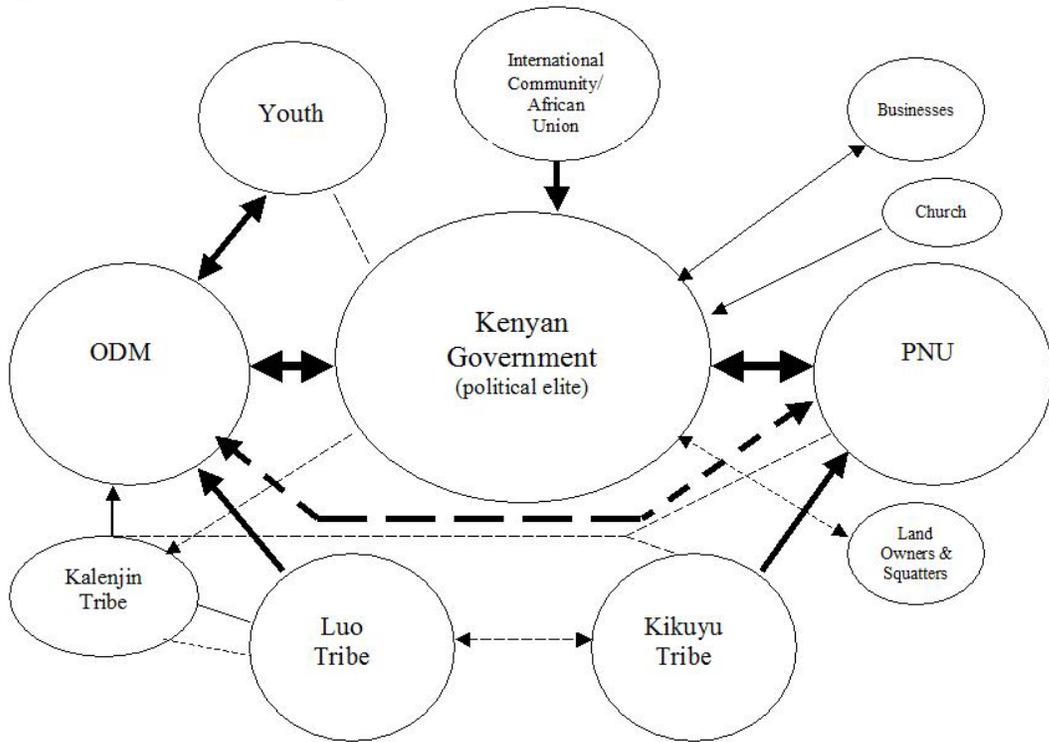


Figure 2: Conflict Tree

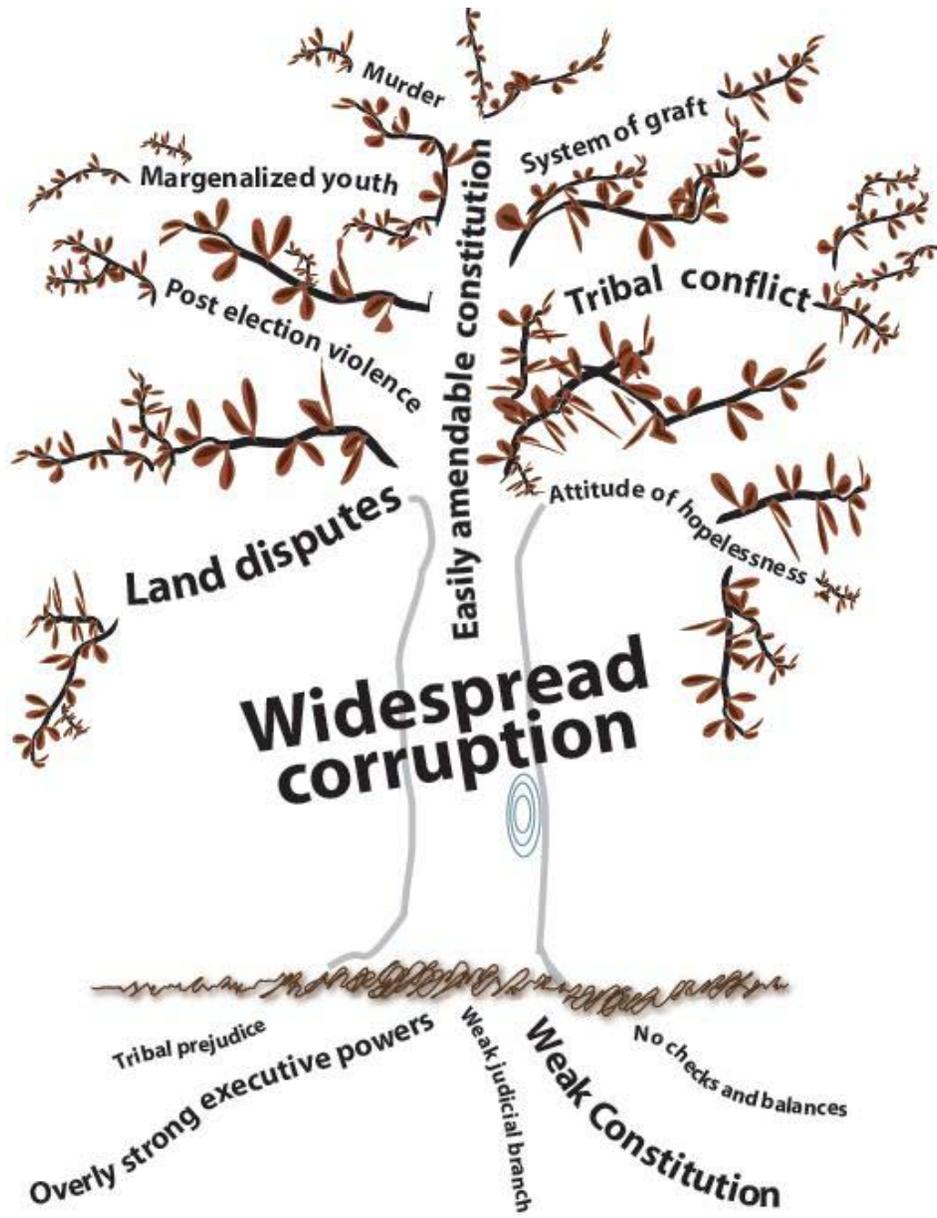


Table 1. Stakeholder Table

<i>Stakeholder</i>	Sources of Power (means)	Needs/Interests (Core Grievances)	Positions
Party of National Unity (PNU)	President, Kenyan Military	Presidency	Won the election in 2007 legally, and should not have to share power
Orange Democratic Movement (ODM)	Prime Minister & Parliament Majority	Presidency & power sharing within the government	“Stolen” 2007 presidential election
Kikuyu tribe	Kibaki (President) Largest tribe (22%)	Land and homes put in jeopardy. Unsafe due to the election	Displaced from homes as a result of the violence
Luo Tribe	Political elites, R. Odinga (Prime Minister)	No jobs. Feared safety from Kikuyu militias	PNU “stole” the election from ODM; Marginalized under Kenyatta and Moi
Kalenjin Tribe	One of the five most populous tribes in Kenya. Some Parliament positions	Kikuyu took their land in the Rift Valley. Government wants to remove them for the land they resettled	Left marginalized and vulnerable through being evicted from the Mau Forest
International Community (UN, French, US, UK and African Union)	Monetary Donations Kofi Annan, diplomat and negotiator	Distrustful of African diplomacy	Desire for honest elections, country stability and justice of violence perpetrators
Churches	Most of the Kenyan population would consider themselves Christians. Pulpit influence	Church leaders and members confused by hopes lost, disillusioned by political promises	Varied, though most were against violent acts
Businesses	Large tax base for governmental funds	Governmental stability	Governmental instability leads to loss of business
Land squatters & owners	Public opinion. Long history on the land.	Land, shelter, safety, food (due to farming)	“This is my land, I’m staying” vs. “This is my land, get off.”
Youth	Large population Supported by the ODM & Prime Minister	No jobs, limited opportunity.	Vulnerable and undervalued, angry