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Daily NATION / Special Report



**Report of the
Judicial Commission
appointed to inquire into
tribal clashes in Kenya**

The Hon. Mr Justice A.M. Akwumi

PART IV: NORTH EASTERN



CHAPTER FOUR:

Pasture the main cause of clashes in North Eastern

Because of the insufficient time at the disposal of the Judicial Commission, we were unable to go to the North Eastern and the Eastern provinces to hear evidence about the tribal or clan clashes that took place in these parts of the country from 1991 to July 1998, when the Commission was established. We were, however, able to hear at Nairobi, the evidence of two witnesses about the clashes in these provinces. One was a businessman, Mr Wacky Chachole, from Moyale, and Mr Jeremiah Matagarro, the Provincial Police Officer of North Eastern Province.

Geographically, economically and socially, it can be said that these provinces are a neglected region with no roads, only a few schools, ill equipped hospitals and of little economic significance. The main economic activity in the region is livestock rearing. The pastoralist communities that live in the region keep large herds of cattle, goats, camels and some donkeys. However, the livestock industry, because of draught and high levels of banditry, is becoming less dependable as a means of livelihood. This has allowed the miraa trade to flourish.

Cattle rustling in the region has been a cultural practice since time immemorial, but is no more a sign of bravery or an essential part of the initiation of boys to manhood. The seemingly unstoppable influx of firearms and ammunition into the region from neighbouring Ethiopia and unruly Somalia, had not only, revolutionised violent procedures, but had also, made banditry a common place occurrence. All this in turn, has made the inhabitants in the region trigger-happy and far from peaceful.

Northern Kenya and the adjacent region is well-known for its insecurity, endemic cattle rustling and inter-tribal and clan clashes. These clashes encompass the three districts of North Eastern Province namely Garissa, Wajir and Mandera; three districts in Eastern Province namely, Moyale, Isiolo and Marsabit; and Tana River District in Coast Province. Tribal clashes in the totality of this region of the country where in nearly all cases, the combatants use firearms, involve fighting between Somali clans, and between Somali clans and the Borana tribe and their cousins such as the Orma, the Burji and the Garre. In a number of cases, support is enlisted by the tribes or clans in Kenya from their kith and kin in both Somalia and Ethiopia. These skirmishes are precipitated and perpetuated by a number of factors amongst them:

(a) Frequent droughts and resultant inadequacy of water and grass. These recurrent droughts, cause the drying up of darns, pans, springs and rivers leaving only a few that endure the severity of such vagaries of weather. Depending on the location of the water



point or grazing areas, the indigenous communities more often than not, give very difficult conditions, which include, cash payments or payments in form of animals for water or grass. This often generates into violent hostilities which can only be dealt with by the survival of the fittest and hence the skirmishes.

(b) Cattle rustling is one of the main causes of tribal and clan animosity and fighting as the victimised group engages in revenge missions which not only lead to theft of large herds of cattle and other livestock, but in addition, lead to loss of human life and multiple injuries to many people.

(c) Proliferation of firearms from the two neighbouring countries. The easy access to firearms from Somalia and Ethiopia has enabled tribes and clans in the region to establish formidable clandestine "militias" which make fighting almost a hobby.

(d) Fervent support of territorial hegemonism for the purpose of securing water and grazing land and of late, political representation in Parliament and local councils. This is enhanced by ignorance and parochialism which also lead to the distrust of neighbouring communities.

The conflicts that these factors give rise to are often resolved through arbitration by provincial administration officers and local elders. In some cases, as a short-term measure, security personnel are deployed to quell the ensuing clashes. In recent years, clashes for water and grazing areas pitted the following clans or tribes against each other:

- In Isiolo District — the Borana versus a Somali clan, the Degodia;
- In Wajir District — the Degodia versus the Ajuran,
- In Mandera and Wajir districts — the Garre versus the Degodia;
- In Moyale District — the Borana versus the Degodia which led to the Bagalla and Budhudha massacre on 4th October 4, 1998, which left scores dead and injured;
- In Tana River District — the Degodia versus the Orma, and in the same district, the Ogaden versus the riverine Bantu tribes of the Munyoyaya, Pokomo and Malokote; and
- In Tana River District also the GaIjael who are recent immigrants from Somalia versus the Orma and the Sanye.

The principal causes of these inter-communal conflicts namely, disputes over water and grazing rights, territorial aggrandisement and hegemonism, have through the desire for political representation, acquired a complicated and serious political dimension. For instance, the recent skirmishes between the Borana of Isiolo who are indigenous to the area and the Degodia immigrants from Wajir, stem from competitive politics. In the 1970s and 1980s, the Borana invited the Degodia to help them ward off incessant attacks from the Ogaden Somali clan of Garissa. For sometime, it worked. However, come the



1990s the population of the Degodia had increased so much that in many localities they enjoyed numerical superiority over the Borana and wanted to propose their own candidates for parliamentary and civic seats. At this point, the Borana asked them to leave, which inevitably led to bloody armed skirmishes.

Similarly, the Degodia were invited by the Orma in Tana River District to help them fight against the Ogaden of Garissa District. But thereafter, the immigrant Degodia did not only outnumber the indigenous Orma but also dominated them socially and economically. The Degodia for instance occupied key water points and the best grazing areas in the district and even sought to nominate candidates for parliamentary and civic elections which incensed the Orma who demanded that the Degodia should go back home to Wajir. The Degodia refused to do so. This, naturally, led to fierce tribal skirmishes which left many dead and injured.

The five-year Degodia and Ajuran skirmishes in Wajir District, which began in 1991 during the run-up to the 1992 General Election was intensified by the Degodia winning the two, and the only parliamentary seats in the district. The Ajuran then took the government to court for neglecting them and which led to the creation of a third constituency in Wajir, which was seen as an attempt to appease them.



CHAPTER FIVE: RECOMMENDATIONS

What the commission recommended

In our view, it is not the lack of adequate security personnel and equipment or preparedness that contributed to the tribal clashes. The Police Force and the provincial administration were well aware of the impending tribal clashes and if anything, connived at it. Human nature being what it is, it was not easy for the members of the Police Force and the provincial administration, after the long time one party political system, the only regime under which they had grown up, operated, prospered and flourished, to now adjust to, let alone completely and with wide open arms welcome the introduction of a political system that was in principle not only contrary to what they had enjoyed, but also, one which on the face of it, might adversely affect their status quo. They were, to put it realistically, an intrinsic part of the one party system. As Francis Gichuki honestly put it when asked why he allowed senior Kanu politicians to pressurise him in the discharge of his duties, into taking certain courses of actions:

"My Lords, in a political government, we have to be cautious. This is a political government."

The circumstances that initiated and fanned the tribal clashes, were not so much logistical, as the negligence and unwillingness on the part of the Police Force and the Provincial Administration to take firm and drastic action which would surely, have prevented the clashes from erupting and even if they erupted, would have brought the initial clashes to a speedy conclusion and discouraged further clashes.

s=9.75 Stamp out warlike instincts

Pageflagger f=FranklinGothic No.2 DropCap d=6,6 F Text f=Times Ten Roman s=8.75 w=8 l=9.25 Furthermore, tribal leaders and politicians should not be allowed to get away with actions that will pit one tribe against another. Even in other countries which are considered more civilised than our country, racial, tribal, ethnic or even religious clashes are not unknown. It is therefore, most important that in our country where tribalism is still manifested and widespread, where tribal clashes had only recently occurred, where rampant violent cattle rustling is still a traditional way of life, and where particularly, in the North Eastern Province, the land is flooded with illegal firearms and ammunition and the customary inter-clan battles continue to rage with impunity, that



strong and firm measures must be taken to stamp out the prevalent warlike instincts of the lower classes of the society.

In this regard, then incitement and abetment of tribal or inter-clan clashes by social and political leaders as well as by the members of the security, police and administrative services, should no longer be tolerated. And to show that government takes this seriously, those who have been shown to have in one way or another taken part in or aided and abetted the tribal clashes should, as happened in the past, not be spared. Appropriate action as recommended hereunder must be taken against them. This will also deter those thinking of fanning tribal animosities and taking part in resultant violent clashes from doing so. Because human nature is what it is, one cannot expect a perfect world but with time, and more education, things are bound to change.

It is with this backdrop and the facts which the evidence given before us have established, that we make the following recommendations:

The general recommendations that we wish to make are as follows:

1. Tribal loyalty and association seen in the 1992 and 1997 general elections has its roots in pre-independence Kenya. It was promoted and encouraged by the colonial administration with a view to dividing the indigenous people. Independent Kenya stands for unity among all ethnic communities which unity should be nurtured and fostered. Consequently we recommend that any person who, directly or otherwise whips any tribal sentiments should be arrested and charged with appropriate criminal charges as a deterrent against repetition by him or any other person.
2. Land ownership and use in the various clash areas was given as one of the causes of conflict and tribal clashes. In view of that, the government should embark on an ambitious programme to issue title documents to all people who were either allocated land there by the government or who bought the same from previous owners but have not got titles, to minimise land disputes and conflicts in the areas. At the same time the government should respect and protect private rights over land.
3. To inspire confidence in the government, all those who were displaced from their farms during the tribal clashes should be identified and be assisted to resettle back on their farms and appropriate security arrangements made for their peaceful stay thereon.
4. Tribally based settlements should be discontinued.
5. All residents of the places where the tribal clashes occurred should be educated through public barazas and other fora regarding legal land rights as enshrined in the Constitution and the need and importance of respecting them.
6. Inter-ethnic stock theft and cattle rustling was cited as one of the causes of conflict among the various communities. In some areas, like the Trans Mara and Gucha border,



and in Laikipia, this kind of activity is traditional. One of the problems cited which have hampered the fight against the vice is poor communication and poor roads network. Commercialisation of the activity has complicated matters. In view of the fact that past efforts through barazas to discourage the people against the vice had not borne significant results, we recommend that the infrastructure in those areas, particularly road network and communication be improved for easier mobility and communication in tracking down stolen livestock.

Homeguards took part in clashes

We also recommend that the role of home guards, particularly in areas where cattle rustling is prevalent like Mt Elgon and Trans Nzoia districts, should be reviewed. This is in view of the fact that in these two districts and also in Olmoran, there is evidence that they took part in the clashes, and used guns to rustle the cattle of the non-Sabaot.

8. Inciting and irresponsible utterances by all, but more particularly the political leaders, should be dealt with firmly and swiftly.

9. In view of the partisan role of the Provincial Administration officers in the clashes and having regard to the fact that they generally interfered with security operations during the clashes, we recommend that the Police Force should be wholly delinked from the Provincial Administration and be made an independent unit headed by the Commissioner of Police. Likewise the Provincial Administration should be divorced wholly from the activities of all political parties.

10. We will now make recommendations in relation to the following particular areas and in connection with the tribal clashes that took place there.

THE RIFT VALLEY PROVINCE

The following people should be investigated regarding their role in the tribal clashes as recommended in this report:

NANDI DISTRICT

- (a) Willy Kamuren, former MP Baringo North.
- (b) Kimunai Soi, former MP Chapalungu.
- (c) Jackson Kibor, former Kanu chairman Uasin Gishu.
- (d) Chief Philip Kipserem Karoney, Miteitei Location.
- (e) R. K. Kirui former DO, Tinderet Division.
- (f) Senior Chief, Henry arap Tuwei, Songhor Location.



(g) Julius Ndegwa, OCS, Songhor Police Station.

KERICHO DISTRICT

- (a) Timothy Sirma, former DC, Kericho District.
- (b) Nicholas Mberia, former DC, Kericho District.
- (c) Eliud Langat, Deputy Commissioner of Police and former OCPD Kericho.
- (d) William Kikwai, former MP, Kipkelion Constituency.
- (e) Councillors Chumo and Benjamin Ruto from Kipkelion Division.
- (f) Nicholas Biwott, former Minister for Energy.
- (g) Timothy Mibei, former Minister for Public Works.
- (h) Christopher Lomada, former Assistant Minister for Culture and Social Services.
- (i) Willy Kamuren, former MP Baringo North.

NAKURU DISTRICT

- (a) Paul Cheruiyot, former DO Olengurune Division.
- (b) Jonathan Mutai, Chief of Amalo Location, Olenguruone Division
- (c) Wilson Maritim, former Assistant Chief, Molo South
- (d) Kipkorir Siele, former DSIO Nakuru District
- (e) Shem Petkay Miriti, former PSIO Rift Valley Province
- (f) All other Provincial Security Committee members, Rift Valley Province, and all District Security Committee members, Nakuru District, during the 1998 Njoro clashes.

NAROK DISTRICT

- (a) Jonathan Kiprop Soi, former DO Mau Division
- (b) William ole Ntimama, MP Narok North Constituency.
- (c) Mwachiti, former OCPD Narok District
- (d) Calistus Akelo, former DC Narok District
- (e) Burudi Nabwera, former Minister of State.
- (f) Maalim Mohammed, former Minister of State (currently Health minister).
- (g) Dr Njoroge Mungai.

OL MORAN DIVISION

- (a) Jonathan Kiprop Soi, former DO Ngarua Division



(b) Mutinda Nguguni, former OCPD Laikipia

TRANS MARA AND GUCHA DISTRICTS

(a) All DSC members in Trans Mara District during the 1997 clashes there.

(b) Julius Sunkuli, MP Kilgoris Constituency

(c) Ferdinard Obure, former MP Bomachoge Constituency.

WESTERN AND NYANZA PROVINCES

Pageflagger f=FranklinGothic No.2 DropCap d=6,6 T Text f=Times Ten Roman s=8.75 w=8 l=9.25 The people mentioned in this part should be investigated regarding their role in the tribal clashes as recommended hereunder:

1. The following persons were adversely mentioned by witnesses from Bungoma, Mt Elgon and Trans Nzoia districts as having been in the forefront of calling for the expulsion of non-Sabaot from the area as long as they refused to support Kanu: Wilberforce Kisiero, Councillor William Chebus Tumwet, John Ngeiywo and Dismas Chemwoli. They addressed political rallies where they warned the non-Sabaot whom they derogatorily referred to as "madoadoa", to either support Kanu or leave the area. They should each be investigated with a view to prosecution.

2. When the clashes were over, and the new Mt Elgon District had been created, as demanded by the Sabaot, Wilberforce Kisiero continued making inciting statements as is reported in a newspaper, which was produced as part of Exhibit 200, in which he warned that the Sabaot would not allow strangers to buy land in the new district. In the period preceding the outbreak of the clashes, he supported the influx of Sebeis from Uganda into Trans Nzoia and Mt Elgon Sub-District saying they were coming back home when in fact these people are Ugandans, who brought in firearms which were used to fight the non-Sabaot. His role in the clashes should be investigated with a view to prosecution.

3. We further recommend that Councillor Masangi Masabwa of Mt Elgon District who was reported in a newspaper report produced as part of Exhibit 200, as having addressed a political rally, giving the non-Sabaot in Mt Elgon District, 11 days to leave or face eviction, should be investigated with a view to establishing his role in the clashes.

4. As for William Chebus Tumwet, apart from his calling for the expulsion of the "madoadoa" from Trans Nzoia, the circumstances under which he took over, occupied and finally sold a piece of land which he had previously sold to the late Ronald Simiyu, a



Bukusu clash victim, should be investigated. This appears to support the allegation that he took part in the clashes and in driving the non-Sabaot out of the area.

5. Mulwa Benjamin Masai Clay of Kapkateny Location, Mt Elgon District, is currently but illegally occupying Susana Nakhumicha's land. He has threatened her with death should she dare set foot on that land. She gave evidence to that effect. The area chief has been of no assistance to her. Investigations should be carried out against the said illegal trespasser, with a view to prosecution.

Knew more than he told inquiry

6. Chief Inspector David Rono, who was the Officer Commanding Kimilili Police Station, knew more than he chose to tell the Judicial Commission. His unwillingness to record statements and forward them to Bungoma Police Station where 80 suspects from Kimilili Police Station were held, led to the release of these suspects, without being charged. This goes to show his connivance in the clashes and he should be investigated with a view to prosecution.

7. The Officer Commanding Endebess Police Station at the time of the clashes, Frederick Kalombo, now retired, knew of an impending attack on the non-Sabaot in Endebess area. John Wekesa Nandasaba, a Bukusu living on Pole Farm, had brought to his attention leaflets circulating in the area warning the non-Sabaot that they would be attacked before December 25, 1991, yet he took no action to prevent the attacks from taking place. He also received a report of the burning of houses on Sabaot Co-operative farm. The report reached him at 5am and by 10am the same morning, he had not left the police station for the farm. This unwillingness to take prompt action by not going quickly to the farm, which was only three-and-a-half km away, is evidence of his connivance in the actions of the Sabaot. His role in the clashes should be investigated.

Mentioned by witness

8. Nathan Bwomnji Kirui, a retired chief of Chongeywo Location in Mt Elgon District came across a group of Sabaot warriors, armed and ready for war. They were on their way to Chelebei sub-location to avenge the killing of Oponyo Chenge. He took no steps to prevent the attack from taking place. Kwarati Kisimani, Chambu Mustuni, Chirono Mustuni and Chebure Shongoi were mentioned by a witness who saw them burning houses in Kapkateny Location in Mt Elgon District. All these people, as well as Nathan Bwomnji Kirui should be investigated with a view to prosecution.

9. We heard evidence to the effect that Sabaot home guards had acquired firearms illegally, which they used to fight the non-Sabaot during the clashes. It was also said that they used these firearms to engage in cattle rustling. The Sebei of Uganda crossed the



border into the mountain region, armed with sophisticated weapons and took part in the clashes in support of the Sabaot. The Sebei have been known to do this for a long time and to engage in cattle rustling. Security forces should be vigilant at the said border to prevent the Sebei from crossing into Kenya.

10. The role, in the tribal clashes of the Sebei, now living in Mt Elgon and Trans Nzoia districts, should be investigated with a view to prosecuting them for offences they may have committed. The government should also take steps to repatriate back to Uganda, all alien Sebei now living in Mt Elgon and Trans Nzoia districts. This will reduce cases of cattle rustling. One Sabaot home guard, Joseph Chemtai, is alleged to have murdered Richard Otwani, a Teso, living in Kapkateny Location in Mt Elgon District. He was arrested and later released. That allegation must be investigated.

11. The Sabaot land issue is a long standing problem. Although it was not the cause of clashes in this region, it provided a good opportunity which was exploited, upon the introduction of multiparty politics, to start the clashes. The government should address this problem as soon as possible so that the same is not exploited again in the year 2002, when the next general elections are due. We recommend that some land be found to settle all the genuine Sabaot landless.

12. With respect to Kuria and Migori districts, we recommend that the security forces deal firmly with people found stealing cattle or engaging in cattle rustling. Those Kuria who are in the habit of trespassing upon the land of the Luo in Migori should be arrested and prosecuted. This will discourage any further acts of trespass and cattle rustling. We make the same recommendation for the area along the Gucha/Migori border.

13. Police officers who were partisan, made it difficult for the clashes to come to a speedy conclusion. In the case of Migori/Gucha clashes, such officers were later transferred from the area. Since it is possible to identify which officers were stationed in the clash areas at the time, investigations should be carried out with a view to prosecuting all those officers who were partisan during the clashes. We make the same recommendations in respect of locational chiefs and their assistants.

THE COAST PROVINCE

The following people should be investigated regarding their role in the tribal clashes as recommended in this report:

PROVINCIAL ADMINISTRATION



- (a) Omar Hussein Gari, Chief of Ngobeni Location, Kwale District.
- (b) Athuman Zuberi Mwakunyapa, Assistant Chief of Pungu Sub-Location, Kwale District.
- (c) Ramadhani Mwalimu Mwaonu, Assistant Chief of Kiteje Sub-Location, Kwale District.
- (d) Nyaume Mohamed, Assistant Chief of Ngombeni Sub-Location, Kwale District.
- (e) Samuel Kipchumba Limo, Provincial Commissioner of Coast Province.
- (f) AP Inspector Mohamed Juma Kutsola, former sergeant attached to DC Kwale District.
- (g) Samuel Kipchumba Limo, Provincial Commissioner of Coast Province.
- (h) AP Inspector Mohamed Juma Kutsola, former sergeant attached to DC Kwale District.
- (i) Mohamed Hassan Haji, former Deputy PC Coast Province.
- (j) David Opala, former DO Matuga Division, Kwale District.
- (k) Paul Orlando, former DC Mombasa.
- (l) Wilfred Kimalat, former Permanent Secretary, Provincial Administration and Internal Security.
- (m) Timothy Sirma, former PC Coast Province.

SECURITY INTELLIGENCE OFFICERS

- (a) Omar Raisi, former Chief Inspector of Police, Mombasa.
- (b) Peter Wilson, former DSIO, Mombasa.
- (c) Shukri Baramadi, former PSIO, Mombasa.
- (d) Wilson Boinett, former Director of the Directorate of Security Intelligence.
- (e) Omais, former Chief Inspector of Police, Mombasa.
- (b) Wilson, former DSIO Mombasa.

POLICE OFFICERS

- (a) Francis Gichuki, former PPO, Coast Province.
- (b) Duncan Wachira, former Commissioner of Police.
- (c) Noah arap Too, former Director of CID.
- (d) Hammerton Mbogo Mwavisa, former OCPD, Kwale District.

POLITICIANS



- (a) Karisa Maitha.
- (b) Rashid Sajjad.
- (c) Rashid Shakombo.
- (d) Suleiman Kamolle.
- (e) Kassim Mwamzandi.

OTHERS

- (a) Juma Hamisi Mwansele
- (b) Mwalimu Masoud Mwahima
- (c) Hisham Mwidau
- (d) Swaleh bin Alfani
- (e) Mohamed Mdogo
- (f) Omar Masumbuko

NORTH EASTERN AND EASTERN PROVINCES

Because of the peculiar conditions of the region, we would recommend as follows:

(a) The communities in North Eastern and Eastern provinces regard themselves as a neglected and forgotten people, which in a way has inspired and also fostered the general lawlessness in the region. One way to combat this state of affairs, is for government to take deliberate steps to open up the region for economic and social development so that the communities in the region are not only, developed economically and socially, but also, made to feel wanted.

(b) Deliberate efforts should be made by the government to invest in water resources in the region so as to ensure availability of adequate water supply to residents and their livestock in order to minimise undue competition for scarce water during prolonged droughts. It is also imperative that the location of water resources should ensure fair distribution so that each community in the region has access to the commodity in their localities. In the past, certain clans enjoyed better access to water which compelled other clans to flock their areas.

s=9.75 Most areas inaccessible

Text f=Times Ten Roman s=8.75 w=8 l=9.25 (c) Government should improve communications, especially road and telecommunication, in this vast region to facilitate patrols and also to enable security personnel to rapidly quell and contain tribal clashes



and banditry. Most areas such as Bagalla and Budhudha, the recent scenes of bloody skirmishes, are almost inaccessible by road and perpetrators of tribal clashes take advantage of such remoteness to unleash terror on their victims.

(d) Improvement of marketing outlets for livestock from the region will reduce overstocking and minimise the pressure on grazing areas. It will discourage the migration of people with their livestock from place to place, and thereby reduce resultant conflicts.

(e) Government should improve the level and extent of education by establishing adult education classes and more primary and secondary schools to enhance literacy and modernity among the communities. Currently, the level of illiteracy among the communities of the region is much higher than that which prevails in the rest of the country and which tends to encourage medieval parochialism and to perpetuate local inter-communal animosities.

(f) Steps should be taken to stamp out banditry, which also leads to tribal animosity, by keeping as much as possible, the northern Kenya border under regular surveillance, and by the employment of more trained indigenous people who know the terrain and the communities in the region well, in the security services.