

# The Hague is the place for the suspects

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Posted Friday, February 13 2009 at 17:43

This week 10 years ago, John Kaiser, an American Catholic priest, testified at the Akiwumi commission hearings in Nakuru, and his submissions caused quite a stir. On the first day, he produced evidence linking three Cabinet ministers to the planning, funding and implementation of the 1992-7 tribal clashes.

But on the second day he really set the cat among the pigeons when he accused President Moi of doing nothing to prevent or stop the clashes. Mr Justice Akiwumi abruptly stopped the proceedings, dismissing Fr Kaiser as a “busybody” and ordering all references to the president deleted from the records. He went further and ordered that the Press immediately stop publishing details of the priest’s allegations.

When it was finally released in October 2002, the Akiwumi commission report did not contain a single reference to the priest’s testimony.

But Fr Kaiser was not a man to be deterred by criticism. In March 2000, he was honoured by the Law Society of Kenya and, in his acceptance speech, he insisted that President Moi be handed over to the International Criminal Court in The Hague.

I recalled these events recently as I followed the debate on the tribunal to investigate the principal suspects named in the Waki report. Fr Kaiser’s doubt about our shallow judicial system was confirmed when Attorney-General Amos Wako failed to take to court a single suspect of the 189 people adversely mentioned in the Akiwumi report.

The absence of witness protection was evident when Fr Kaiser was murdered and his body dumped on the roadside near Naivasha Town in August 2000.

An inquest concluded that it was murder, and the inquest forwarded to Mr Wako a list of names that needed further investigation. That was in August 2007, but until today, the AG has not charged in court anybody named in the report.

Things have changed little in the 10 years, and so The Hague is still the only realistic option to try the principal suspects of the post-election violence.

The ICC has several weaknesses. It is slow, limited in scope, poorly funded and far away. The proposed Kenyan tribunal is a hybrid form of court, with both local and international inputs. And I know investigations carried out by the Kenya police cannot meet international standards. Worse still, so long as the organisers of the violence remain at home they can unleash their militias on the public at any time. Put another way, the one aspect of the violence that has been completely ignored by every state

organ is demilitarisation. The Waki team did not make a single recommendation as to how demilitarising the militias should take place.

MOREOVER, POLICE HAVE GIVEN de facto amnesty to the perpetrators of the violence by not investigating and prosecuting named and known suspects.

Do we expect the militias to disappear or go away? Do we imagine that they have beaten their swords into ploughshares or that their commanders are now born again? Are we not aware that the origin of the marauding gangs in 2007 is the informal militias established by Kanu at the advent of political pluralism in 1991?

By 1992 those in power had discovered that their militias could carry out crimes that they could never have ordered police to do even in a one-party state. So while the violence of last year was horrific, it was not unprecedented as Kenya is now a militarised society.

Last year, both PNU and ODM had close links with the original violence and the military leaders of the post-election violence had learned their trade in the 1990s.

While the politicians may direct the violence, it is not fully state-controlled. Urban gangs emerging from the poverty of the '90s are now "gangs for hire" and, as a result, militia groups have become firmly embedded in the state itself.

Recently, the Friends Church ran an advertisement in the local dailies to say that there was "credible evidence" that there were plans for a new round of violence in Turbo, Uasin Gishu. The advert claimed that training was going on and that local political leaders were involved. I, too, have heard of threatening leaflets circulating in the South Rift.

Why do we take these warnings so lightly? One of the people said to have benefited from the current maize scandal is a businessman and politician suspected of having been involved in the violence. My deepest concern is that such easy money will fund another round of violence should the local tribunal be established. Besides, the unholy and unhealthy alliance emerging between Central and Rift Valley politicians is surely a conspiracy to protect the violence suspects.

This brings me back to my point that it is only the ICC option that will sever the link between the violence orchestrators and perpetrators. A local tribunal would bring the country to a standstill and perhaps usher in another round of ethnic mayhem. It's better to watch the proceedings at The Hague from a distance and break the link between the militias and their grand masters.

Out of sight out of mind: these crooks would surely lose their status and significance if they lacked the opportunity and the means to dish out millions to their village militias.

Fr Kaiser, the priest and prophet, will surely rejoice in heaven to see the suspects pack their bags for the long trip to The Hague.