

IMPUNITY WATCH MAGAZINE

ISSUE 001:

JUSTICE DENIED
FOR THE VICTIMS OF THE
POST ELECTION VIOLENCE
IN KENYA



DEDICATION

THIS MAGAZINE IS DEDICATED TO ALL VICTIMS OF THE 2007-2008 POST ELECTION VIOLENCE IN KENYA.

ACKNOWLEDGEMENTS

THE KENYAN SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) AND THE UNIVERSITY OF NAIROBI LAW SCHOOL ARE SINCERELY GRATEFUL TO ALL THE INDIVIDUALS WHO CONTRIBUTED TO THE SUCCESSFUL PUBLICATION OF THIS MAGAZINE.

IN PARTICULAR, WE WISH TO THANK THE FOLLOWING NAIROBI UNIVERSITY LAW STUDENTS FOR DEDICATING THEIR TIME AND LEGAL KNOWLEDGE IN ENSURING THAT THIS MAGAZINE IS A SUCCESS: TOPUA LESINKO, MARTIN MURIITHI, LEON NDEKEI, NAHASHON KIBIWOTT ROP, KARUGU MAINA, MWARIRI ANNE, NYABUTI BRIAN, EKUSI LORE, JENNIFER GITHU, NATASHA KANIARU, KEVIN NGETICH, KENDI NTARA, CALEB SIMIYU AND NANCY CHEGE.

WITHOUT YOU, THE IDEA OF AN IMPUNITY WATCH MAGAZINE WOULD BE A PIPE DREAM. SPECIAL THANKS GOES TO PROF. PATRICIA G. KAMERI-MBOTE, DEAN OF THE NAIROBI SCHOOL OF LAW, FOR HER GUIDANCE THROUGHOUT THE COURSE OF THIS PROJECT.

WE WOULD ALSO LIKE TO THANK THE ICJ KENYA SECRETARIAT, IN PARTICULAR STELLA NDIRANGU, EDIGAH KAVULAVU, NELLY WAREGA AND SILAS KAMANZA FOR THEIR USEFUL INSIGHTS AND TECHNICAL EXPERTISE ON INTERNATIONAL CRIMINAL JUSTICE.

LASTLY, ICJ KENYA THANKS ITS DEVELOPMENT PARTNERS FOR THEIR KIND FINANCIAL SUPPORT.

FOREWORD

THE IMPUNITY WATCH MAGAZINE HIGHLIGHTS THE PLIGHT OF VICTIMS OF HUMAN RIGHTS VIOLATIONS IN KENYA AND THE AFRICAN REGION. THIS IS THE PREMIER EDITION AND IT PLACES SPECIAL FOCUS ON THE PLIGHT OF VICTIMS OF THE 2007-08 POST-ELECTION VIOLENCE IN KENYA. THE MAGAZINE IS A BLEND OF ILLUSTRATIONS OF SCENES OF THE VIOLENCE THAT ROCKED KENYA IN 2007-08, AND NARRATIONS OF STORIES TOLD BY SOME OF THE VICTIMS OF THE VIOLENCE.

THE IDEA OF DEVELOPING THIS PUBLICATION WAS CONCEPTUALIZED BY THE KENYAN SECTION OF THE INTERNATIONAL COMMISSION OF JURIST AND THE UNIVERSITY OF NAIROBI LAW STUDENTS. THE ROLE THAT THE ACADEMIA AND THE CIVIL SOCIETY PLAY IN HIGHLIGHTING HUMAN RIGHTS VIOLATIONS AND PURSUING JUSTICE FOR VICTIMS CANNOT BE GAINSAID. A COUNTRY THAT CONDONES IMPUNITY FOR COMMITTING INTERNATIONAL CRIMES PROVIDES THE PERFECT BREEDING GROUND FOR VICES SUCH AS CORRUPTION, EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES, CLOSING OF THE CIVIC SPACE, ELECTORAL MALPRACTICES AMONG OTHERS.

THE IMPUNITY WATCH MAGAZINE PROVIDES A PLATFORM WHERE VICTIMS' ISSUES CAN BE ARTICULATED IN AN EASY TO READ AND UNDERSTANDABLE MANNER. IT IS HOPED THAT SUBSEQUENT EDITIONS OF THE IMPUNITY WATCH MAGAZINE WILL BE LAUNCHED EVERY 17TH OF JULY EACH YEAR AS THE WORLD COMMEMORATES THE INTERNATIONAL CRIMINAL JUSTICE DAY. THIS DAY MARKS THE ENTRY INTO FORCE OF THE ROME STATUTE FOR THE INTERNATIONAL CRIMINAL COURT (ICC). IN ADDITION, THIS DAY CELEBRATES THE STRIDES THAT HAVE BEEN MADE TOWARDS ENDING IMPUNITY AND THE CONTINUED COMMITMENT TO ENSURING ACCOUNTABILITY FOR INTERNATIONAL CRIMES.

IN KENYA, INTERNATIONAL CRIMINAL JUSTICE DAY HAS A SPECIAL IMPORTANCE DUE TO THE COUNTRY'S EXPERIENCE WITH THE ICC AS A RESULT OF THE 2007-2008 POST-ELECTION VIOLENCE. THE POST-ELECTION VIOLENCE WAS THE WORST EVER EXPERIENCE IN THE HISTORY OF KENYA. THOUSANDS OF INNOCENT CIVILIANS WERE KILLED, MAIMED, RAPED AND DEFILED. PROPERTY WORTH MILLIONS WAS LOOTED AND HOUSES BURNT DOWN TO ASHES.

THE IMPUNITY WATCH MAGAZINE HAS FIVE SCENES. SCENE ONE IS A TALE TOLD BY ONYANGO, A SENIOR CITIZEN, WHO GIVES HIS ACCOUNT OF SOME OF THE HUMAN RIGHTS ISSUES THAT HAVE BEDEVILED THE COUNTRY SINCE ATTAINING INDEPENDENCE. HE PAINTS A PICTURE OF HOW THE POST-ELECTION VIOLENCE WAS CONCEIVED. SCENE TWO ILLUSTRATES HOW THE 2007-08 POST-ELECTION VIOLENCE WAS ORCHESTRATED IN KENYA. SCENE THREE ILLUSTRATES HOW THE VIOLENCE WAS STOPPED THROUGH THE INTERVENTION OF THE AFRICAN UNION. SCENE FOUR ILLUSTRATES HOW THE PARLIAMENT OF KENYA FAILED TO INSTITUTE A SPECIAL TRIBUNAL TO INVESTIGATE AND PROSECUTE THOSE WHO BORE THE GREATEST RESPONSIBILITY FOR THE CRIMES. LAST BUT NOT LEAST, SCENE FIVE ILLUSTRATES HOW THE ICC INTERVENED IN THE KENYAN SITUATION AND SOME OF THE CHALLENGES THAT IT FACED SUCH AS WITNESS INTERFERENCE.

WE TRUST THAT YOU WILL FIND THE IMPUNITY WATCH MAGAZINE USEFUL.

SAMWEL MOHOCHI



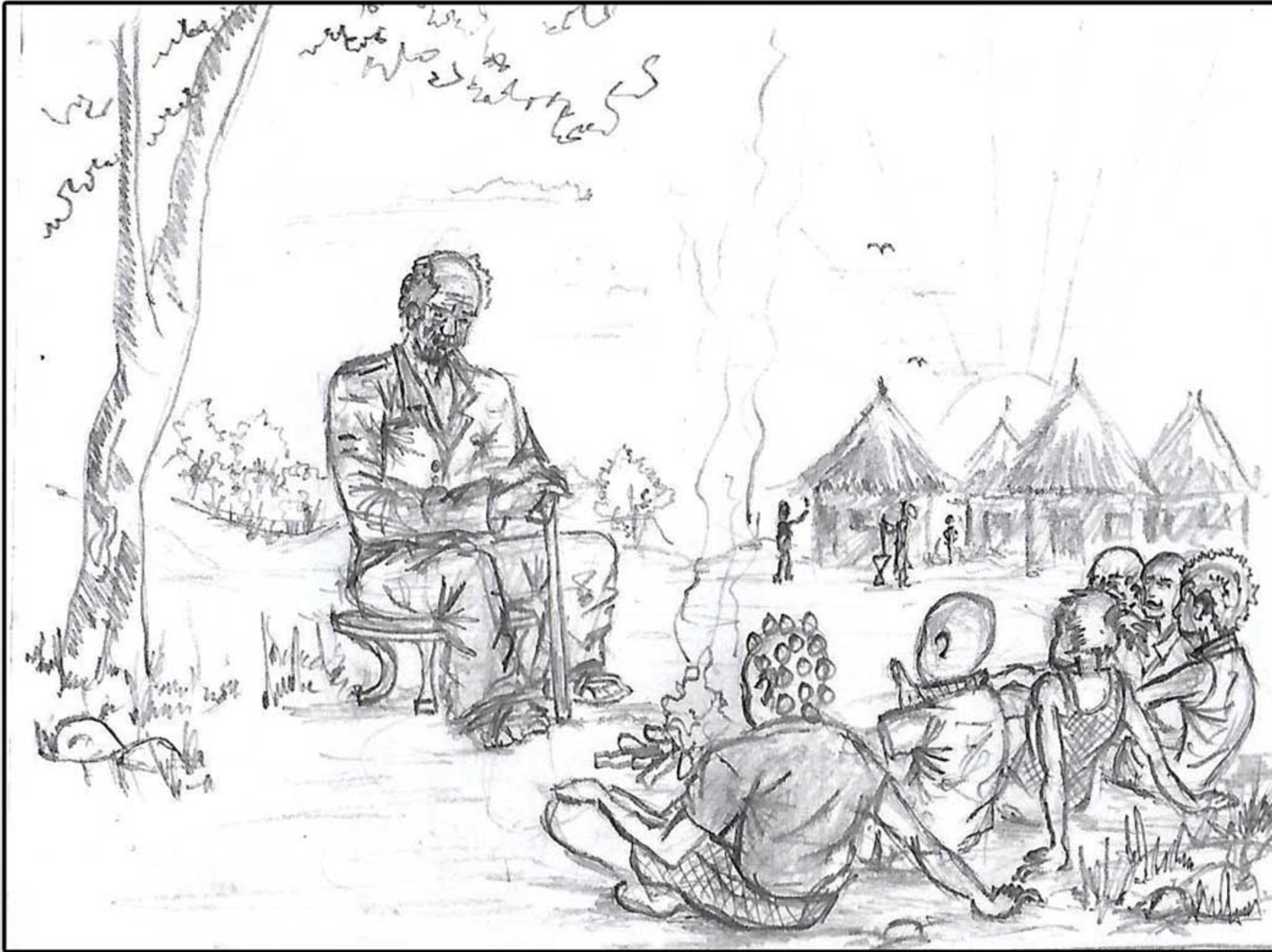
EXECUTIVE DIRECTOR, ICJ KENYA

SCENE 1

ONYANGO'S TALE

ONYANGO WAS BORN 62 YEARS AGO AND HE IS VERY FORTUNATE TO HAVE SEEN SEVERAL GENERATIONS COME AND GO. TODAY, HE CONVENED HIS ENTIRE FAMILY AT HIS KIAMBAA HOME FOR A FAMILY GET TOGETHER.

ON THIS PARTICULAR DAY, IT HAPPENS TO BE ALMOST TEN YEARS SINCE KENYA EXPERIENCED THE WORST POLITICAL TURMOIL SINCE ATTAINING **INDEPENDENCE**



HIS SIX GRANDCHILDREN SIT AROUND THE **FIREPLACE** LOOKING AT HIM CURIOUSLY.

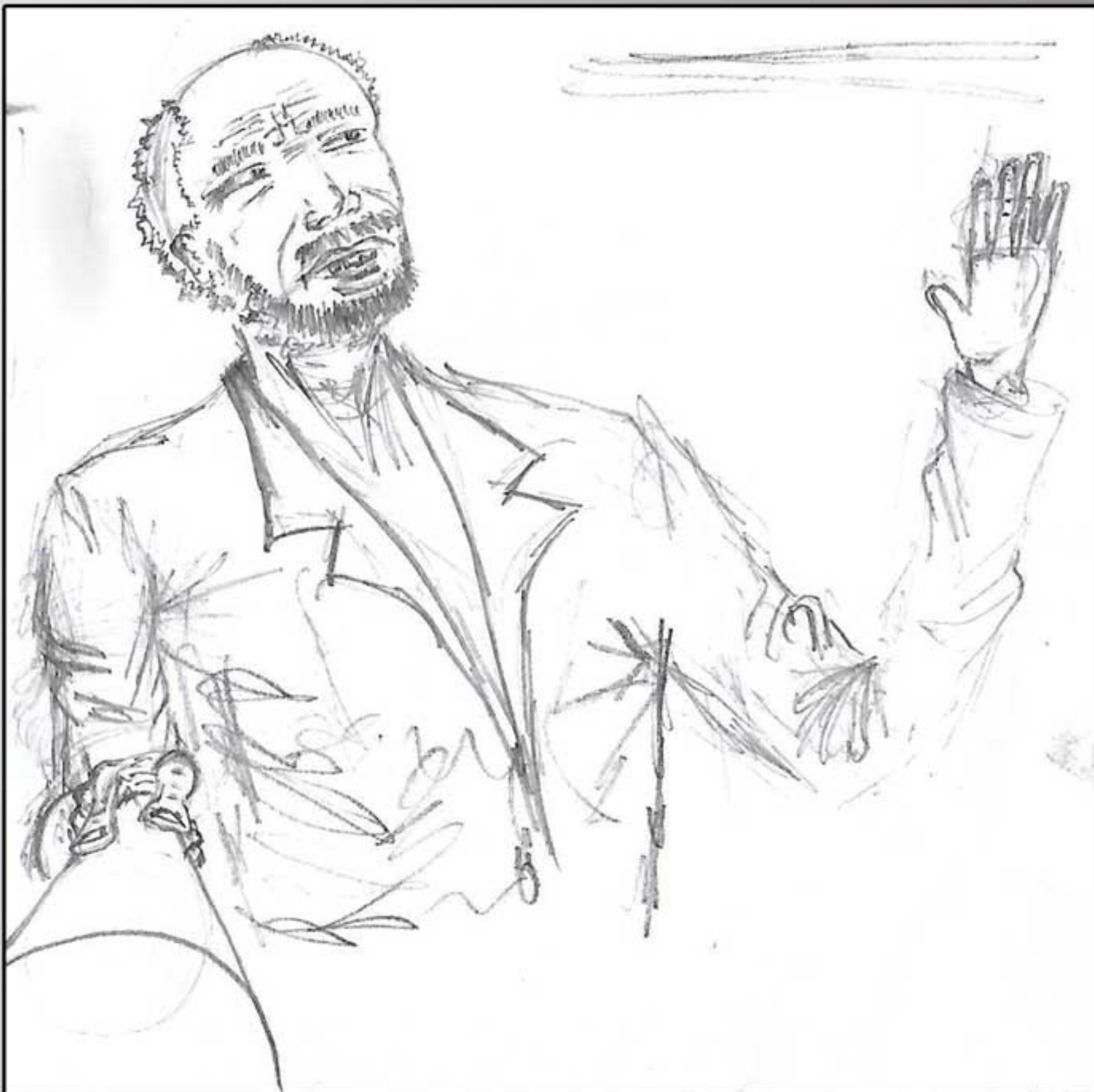


TODAY MZEE ONYANGO LOOKS SOLEMN. THE WRINKLES ON HIS FACE, USUALLY HIDDEN BY A BANANA SIZE SMILE, ARE SHOWING EVEN MORE

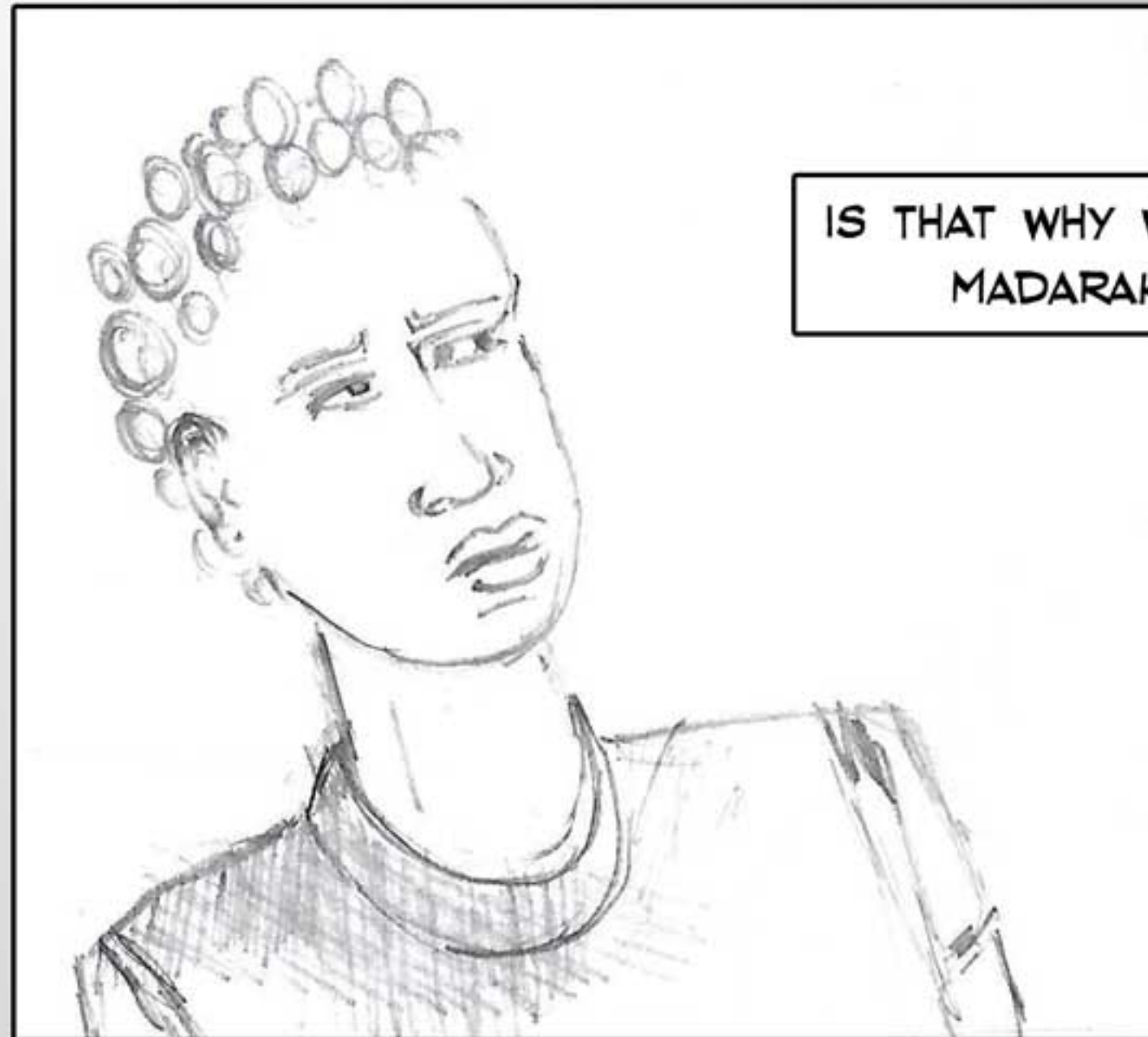


ONYANGO:

(SMILING) DID I EVER TELL YOU THE TALE OF HOW THIS **BEAUTIFUL COUNTRY** CAME TO BE?



A ***LONG TIME*** AGO, BEFORE YOU WERE BORN, THE COLONIALISTS CAME TO RULE THIS COUNTRY. THEY TOOK ALL OUR LAND AND FORCED US TO WORK UNDER HARSH CONDITIONS IN ORDER TO EARN A LIVING. THE PEOPLE COULD NOT WITHSTAND THE CRUEL TREATMENT. THEY FOUGHT FOR INDEPENDENCE AND ON THEIR VICTORY OUR NATION WAS BORN.



IS THAT WHY WE CELEBRATE
MADARAKA DAY??

ONYANGO:
'YES MY CHILD. IT WAS AFTER GAINING INDEPENDENCE THAT THE WAR OF
DOMINATION BEGAN. HOWEVER, SLOWLY TRIBAL TENSIONS STARTED GROWING.
THIS WAS CATALYSED BY LEADERS WHO CREATED A GOVERNMENT OF EXCLUSION.
WALIKOSEA SANA WANANGU.'



...FLASHBACK...
A POLITICIAN AT A RALLY CALLING FOR CONSOLIDATION
OF THE TRIBAL VOTE TO ENSURE THAT OTHER TRIBES
ARE NOT IN CONTROL



POLITICIAN:

'OUR PEOPLE MUST PURSUE OUR INTERESTS AT ALL COSTS.
VOTE FOR ME AND I WILL LOOK AFTER OUR PEOPLE.'



WAIRIMU: WHAT DO YOU MEAN GRANDPA?



ONYANGO:

THE **POLITICIANS** POLARISED THE PEOPLE ALONG TRIBAL LINES. THEY CREATED A NARRATIVE THAT KAMAU AND ODHIAMBO ARE PITTED AGAINST EACH OTHER DUE TO THEIR DIFFERENT ETHNIC BACKGROUNDS. ODHIAMBO HATED THE FACT THAT KAMAU SEEMED FAVOURED IN GOVERNMENT. BOTH KAMAU AND ODHIAMBO **DID NOT** CARE MUCH ABOUT ABDI, CHEPLETING OR WAFULA. IT WAS A POLITICS OF **EXCLUSION**.

SCENE 2

BUILD UP TO POST-ELECTION VIOLENCE



ONYANGO

"THE 2007-2008 ELECTION IS ONE UNLIKE THE REST. IT WILL GO DOWN AS ONE OF THE **MOST CONTESTED** IN THE RECENT **KENYAN HISTORY**"

-ONYANGO



...**FLASHBACK**...
2007 - ELECTION PERIOD...
ONYANGO AND HIS WIFE WANJIKU AT
THE POLLING STATION QUEUE EARLY
IN THE MORNING

KENYANS WOKE UP VERY EARLY IN THE MORNING TO GO
AND CAST THEIR VOTES



LOCAL & INTERNATIONAL NEWS
REPORTERS WERE ALREADY THERE



UNASIKIA VIPI
BAADA YA KUPIGA
KURA?



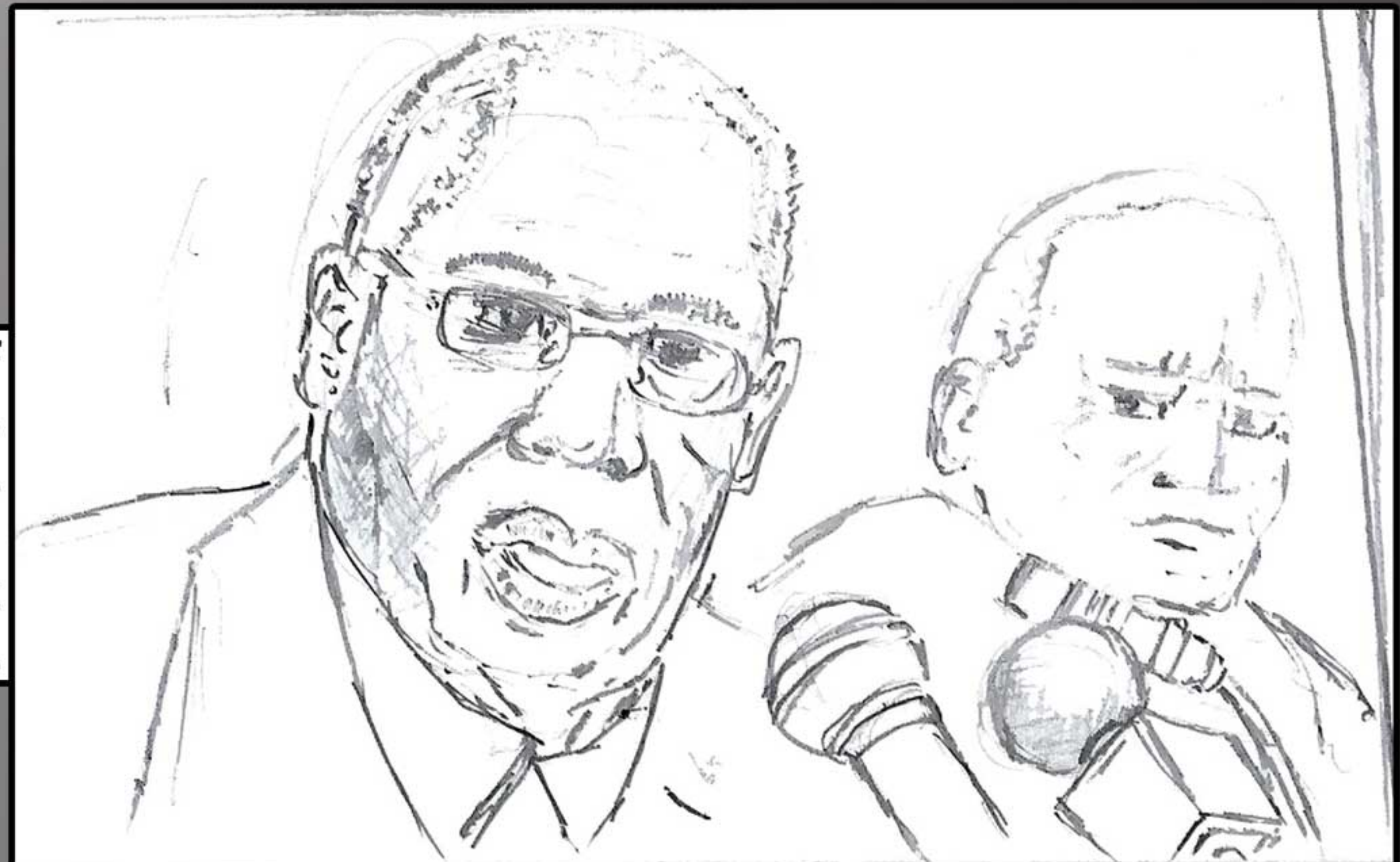


THE ENTIRE ELECTION PERIOD WAS **PEACEFUL**.
LOCAL AND INTERNATIONAL
MEDIA FOCUSED THEIR ATTENTION
ON WHAT WAS HAPPENING IN KENYA.

AFTER FOUR DAYS OF COUNTING
THE VOTES, IT WAS TIME FOR THE
RESULTS TO BE **ANNOUNCED**.

A FAMILY WATCHES AS THE CHAIRMAN OF
THE ELECTORAL COMMISSION OF KENYA,
MR. KIVUTU ANNOUNCES THE RESULTS.

MWAI KIBAKI IS ANNOUNCED AS THE
WINNER OF THE ELECTIONS.





KIBAKI IS LATER **SWORN IN** AS
THE PRESIDENT AT STATE HOUSE

THE PEOPLE OF KENYA
HAVE SPOKEN CLEARLY, WE HAVE EVIDENCE
THAT THE RESULTS WERE **FALSIFIED**,

WE CALL UPON OUR SUPPORTERS
NOT TO ACCEPT THESE RESULTS

RAILA ODINGA CLAIMED TO HAVE WON THE ELECTION AT
A PRESS CONFERENCE AND WENT AHEAD TO URGE HIS
SUPPORTERS TO STAGE **COUNTRYWIDE DEMONSTRATIONS**
TO EXPRESS THEIR DISSATISFACTION WITH THE
PRESIDENTIAL RESULTS

WHAT HAPPENED AFTER THIS WAS **BRUTAL...**

PURE CHAOS!!



POST-ELECTION VIOLENCE BEGINS!

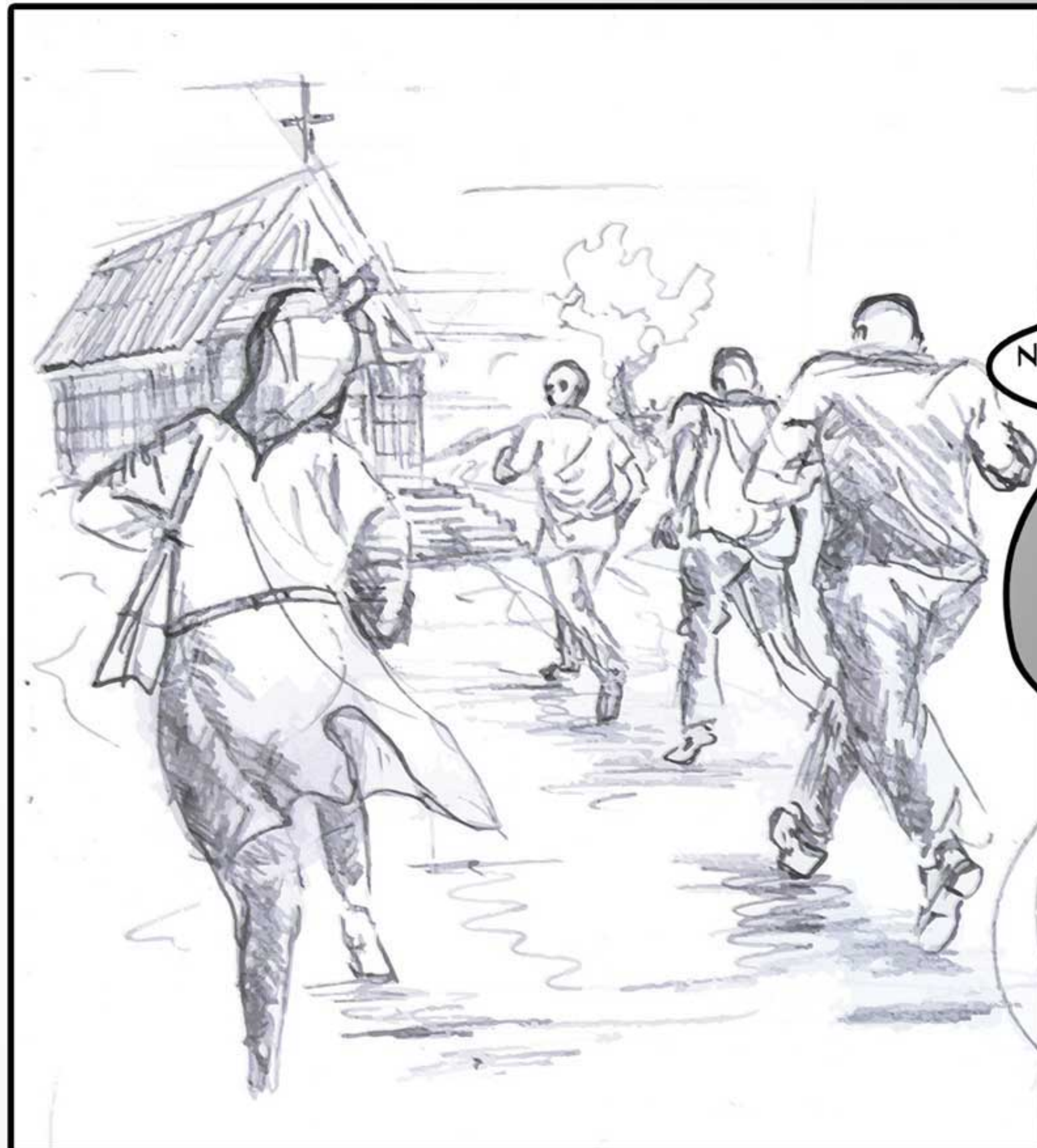


-BURNT TYRES ON THE ROAD.
-CIVILIANS ENGAGING THE GENERAL
SERVICE UNIT IN RUNNING BATTLES.



KIAMBAA...

PEOPLE WERE RUNNING FOR THEIR
DEAR LIVES... SEEKING REFUGE IN
THE **CHURCH**



NYINYI NDIO MNAIBA
KURA HAPA



KRAKK!!
SMASH!



THE PEOPLE SAVE
THEMSELVES BY
**LOCKING THE
DOORS...**

...BUT ONLY FOR
A **FEW HOURS**

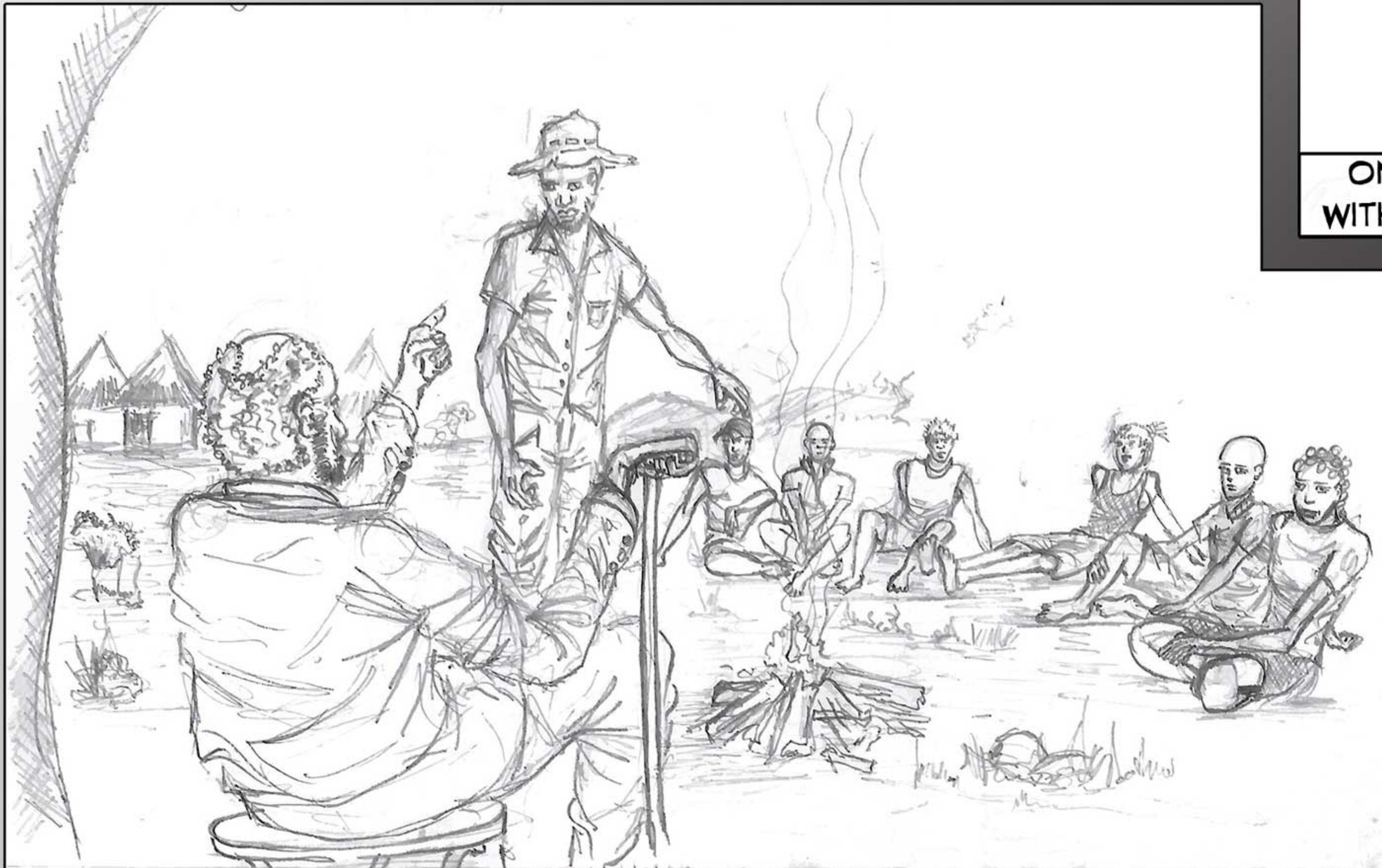


THE MOB COMES BACK AT **NIGHT**
TO **BURN THEM** INSIDE THE CHURCH!!



THE WITNESS

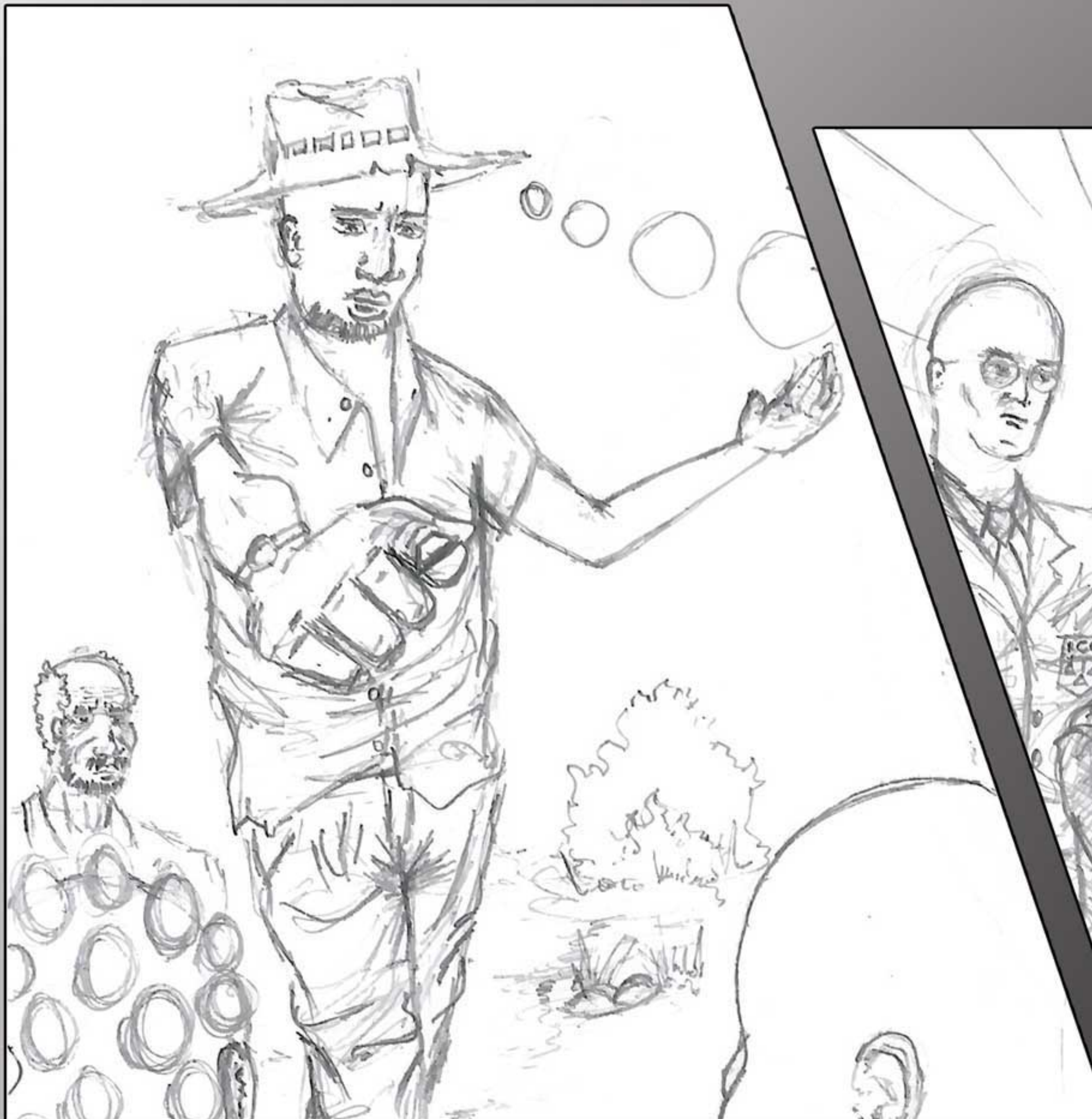
ONYANGO JUNIOR, DAUDI'S FATHER, JOINS THEM JUST IN TIME TO CATCH HIS FATHER AT THE PEAK OF HIS SPEECH



ONYANGO JUNIOR
WITH A SOLEMN LOOK

ONYANGO, (POINTING TO ONYANGO JUNIOR WITH A SOLEMN LOOK ON HIS FACE) "JUNIOR'S WIFE WAS IN KIAMBAA THAT DAY"

ONYANGO JUNIOR: 'YES SHE WAS. SHE WITNESSED THE ENTIRE ORDEAL' (LOOKING & POINTING AT DAUDI)
'YOUR MOTHER HAD GONE TO TAKE FOOD TO THOSE SEEKING REFUGE AT THE CHURCH. SHE CAUGHT
SIGHT OF THE ARSONISTS PLACING SOME MATTRESSES SOAKED IN PETROL AROUND THE CHURCH.
SHE HID IN THE BUSHES AND WATCHED AS THEY SET THEM ON FIRE,,,'



'...LATER ON, SHE WAS CALLED TO BE A WITNESS IN THE KENYAN
CASES AT THE INTERNATIONAL CRIMINAL COURT (ICC)'

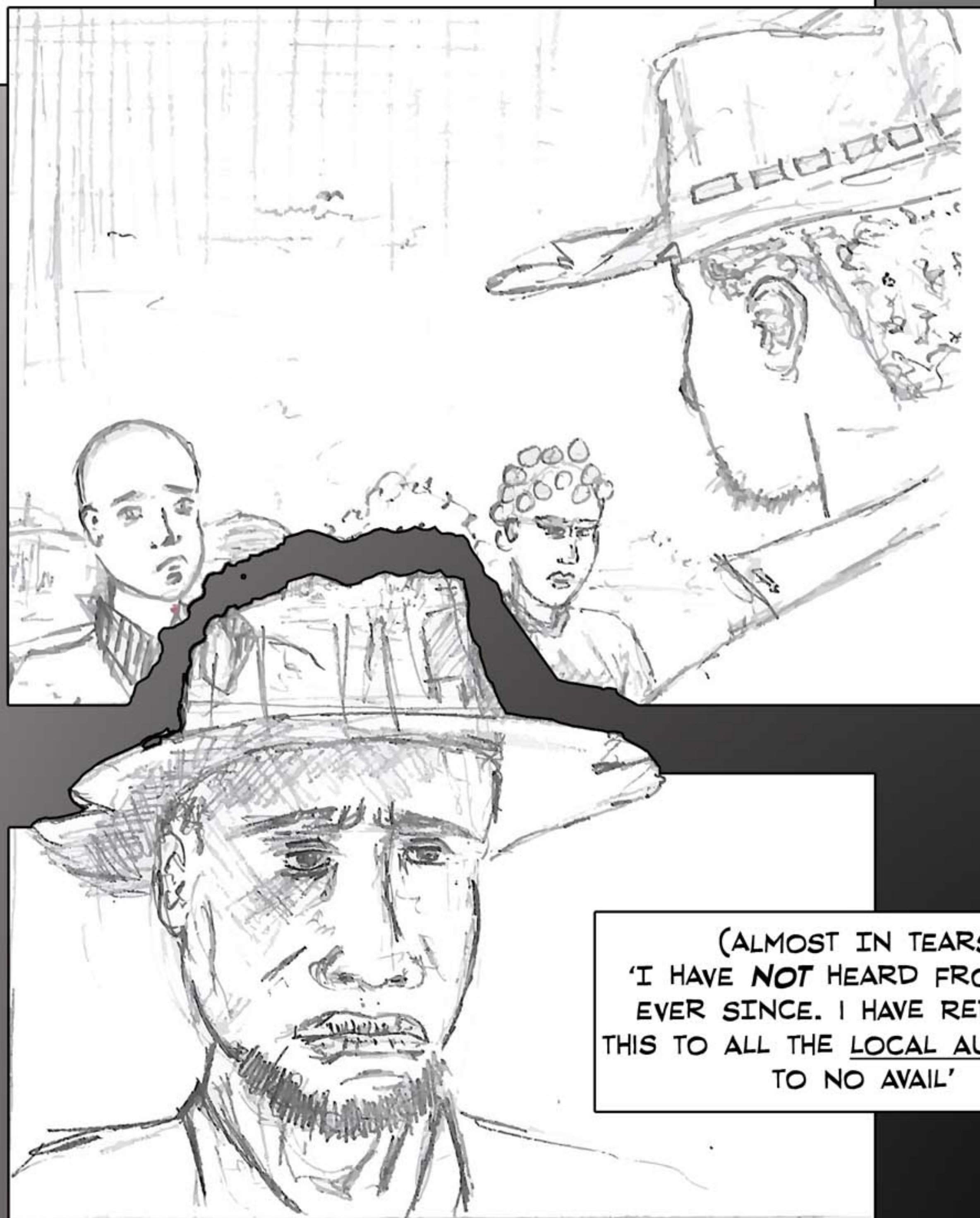
FLASHBACK ... JULY 2010...
WANJIKU MEETS TWO ICC AGENTS



ONYANGO JUNIOR: (LOOKING AT DAUDI) 'THEY RELOCATED YOUR MOTHER TO A PLACE THEY DID NOT TELL ME. FOR A WHILE WE COMMUNICATED THROUGH A SECURE LINE, HOWEVER, AFTER ABOUT NINE MONTHS, WE COMPLETELY LOST CONTACT. -THIS WAS AROUND THE TIME SHE WAS SUPPOSED TO TESTIFY'



ONE OF THE AGENTS SHAKES HANDS WITH WANJIRU



(ALMOST IN TEARS)
'I HAVE **NOT** HEARD FROM HER
EVER SINCE. I HAVE REPORTED
THIS TO ALL THE LOCAL AUTHORITIES
TO NO AVAIL'

SCENE 3

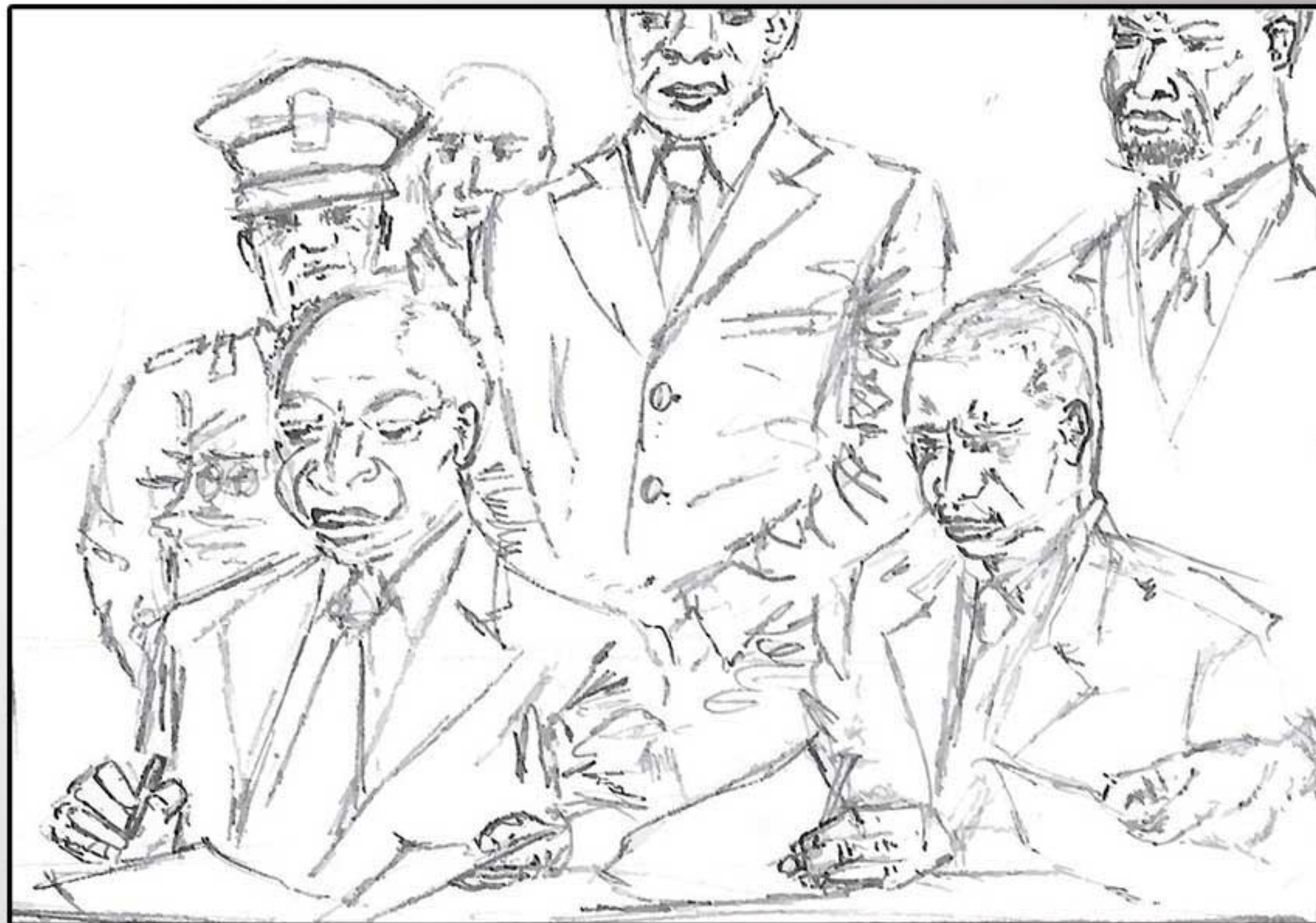
AFRICAN UNION INTERVENTION

ONYANGO (LOOKING AT ONYANGO JUNIOR)
'DO NOT LOSE HOPE MY **SON**. I TRUST
WE WILL FIND HER'



ATIENO: 'HOW DID THE VIOLENCE **STOP**
PAPA?'





ONYANGO:

THE INTERNATIONAL COMMUNITY INTERVENED. THE AFRICAN UNION SENT **KOFI ANNAN** THE UN SECRETARY GENERAL TO **MEDIATE** BETWEEN THE TWO RIVALS.

THEY SIGNED THE NATIONAL DIALOGUE AND RECONCILIATION AGREEMENT BRINGING AN **END TO THE VIOLENCE**

KIBAKI AND RAILA **SIGNING THE AGREEMENT**

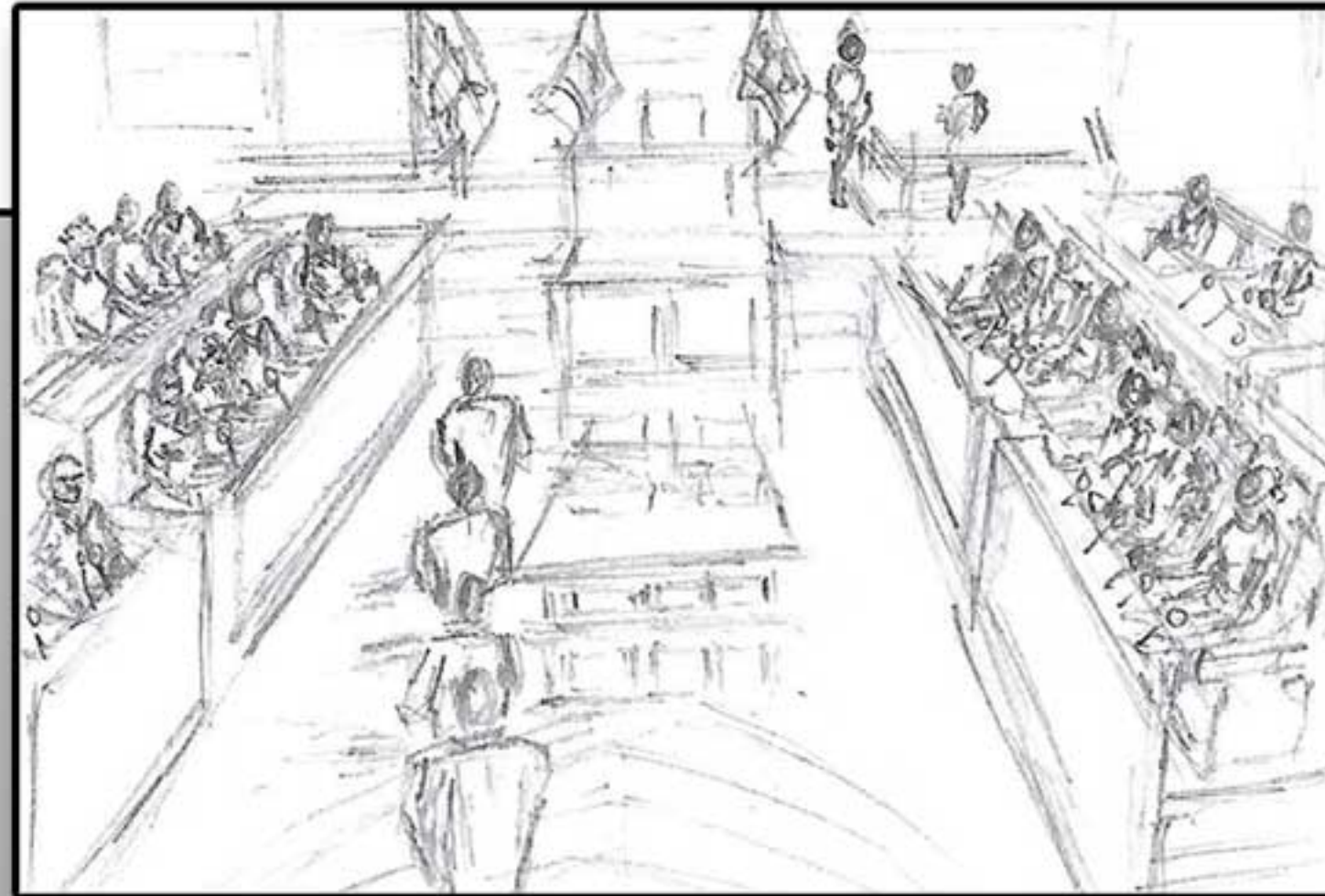
RAILA AND **KIBAKI** SHAKE HANDS
AS **KOFI ANNAN** LOOKS ON



THE COMMISSION OF ENQUIRY ON POST-ELECTION VIOLENCE (P.E.V)
WAS AN INTERNATIONAL COMMISSION OF INQUIRY ESTABLISHED IN
FEB. 2008 TO INVESTIGATE THE CLASHES.
IT PUBLISHED ITS REPORTS AND THE REPORTS WERE
DEBATED IN
PARLIAMENT

SCENE 4

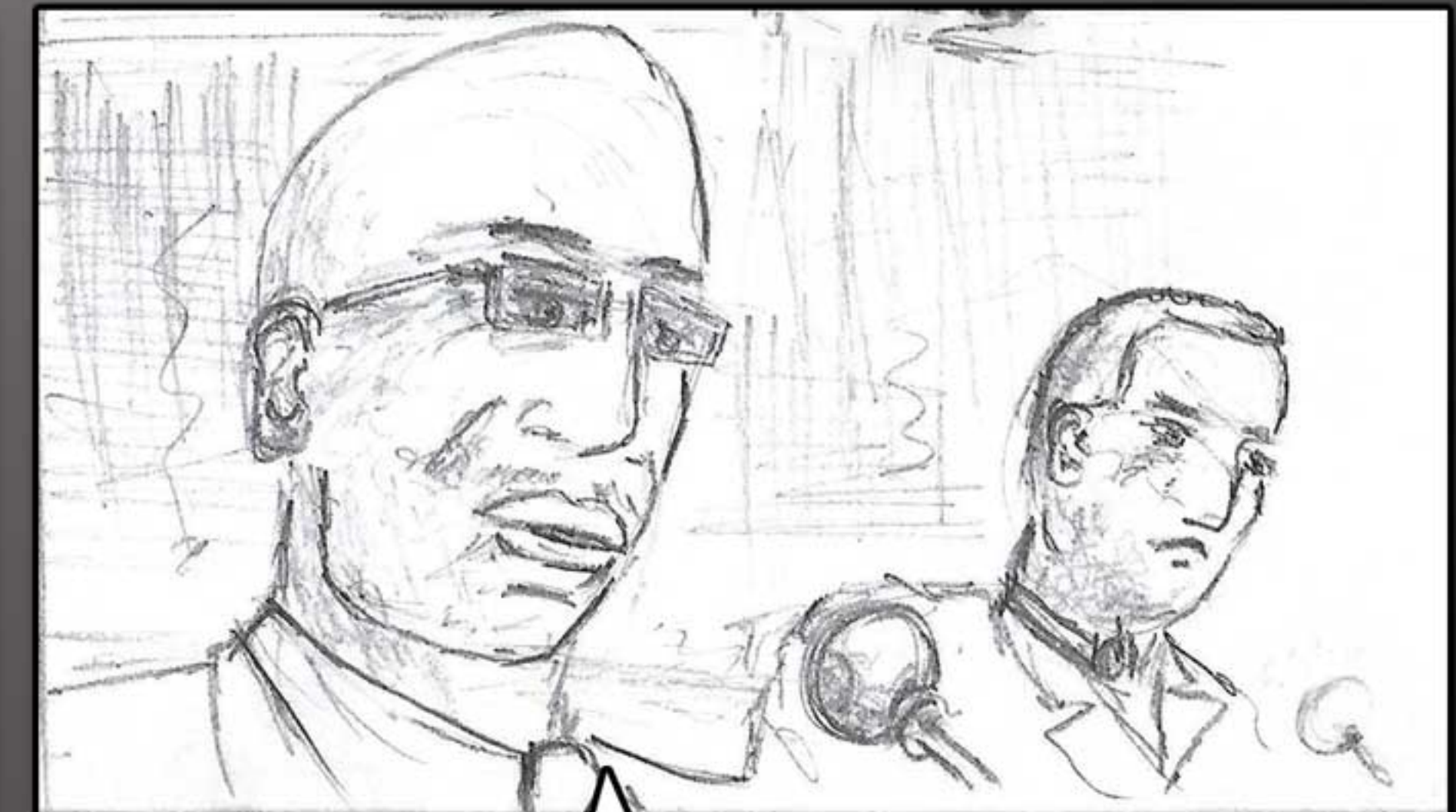
FAILURE OF PARLIAMENT TO SET UP LOCAL TRIBUNAL



MP 1:

'WE SET UP A COMMISSION TO INVESTIGATE THE P.E.V. THEY HAVE DONE SO AND SUBMITTED THEIR FINDINGS IN THIS REPORT. I THEREFORE MOVE THAT THIS HOUSE SET UP A SPECIAL TRIBUNAL TO PROSECUTE THOSE RESPONSIBLE FOR THE P.E.V.'

MPS **DEBATING** WHETHER TO SET UP A SPECIAL TRIBUNAL TO PROSECUTE THOSE RESPONSIBLE FOR THE 2007-2008 PEV...

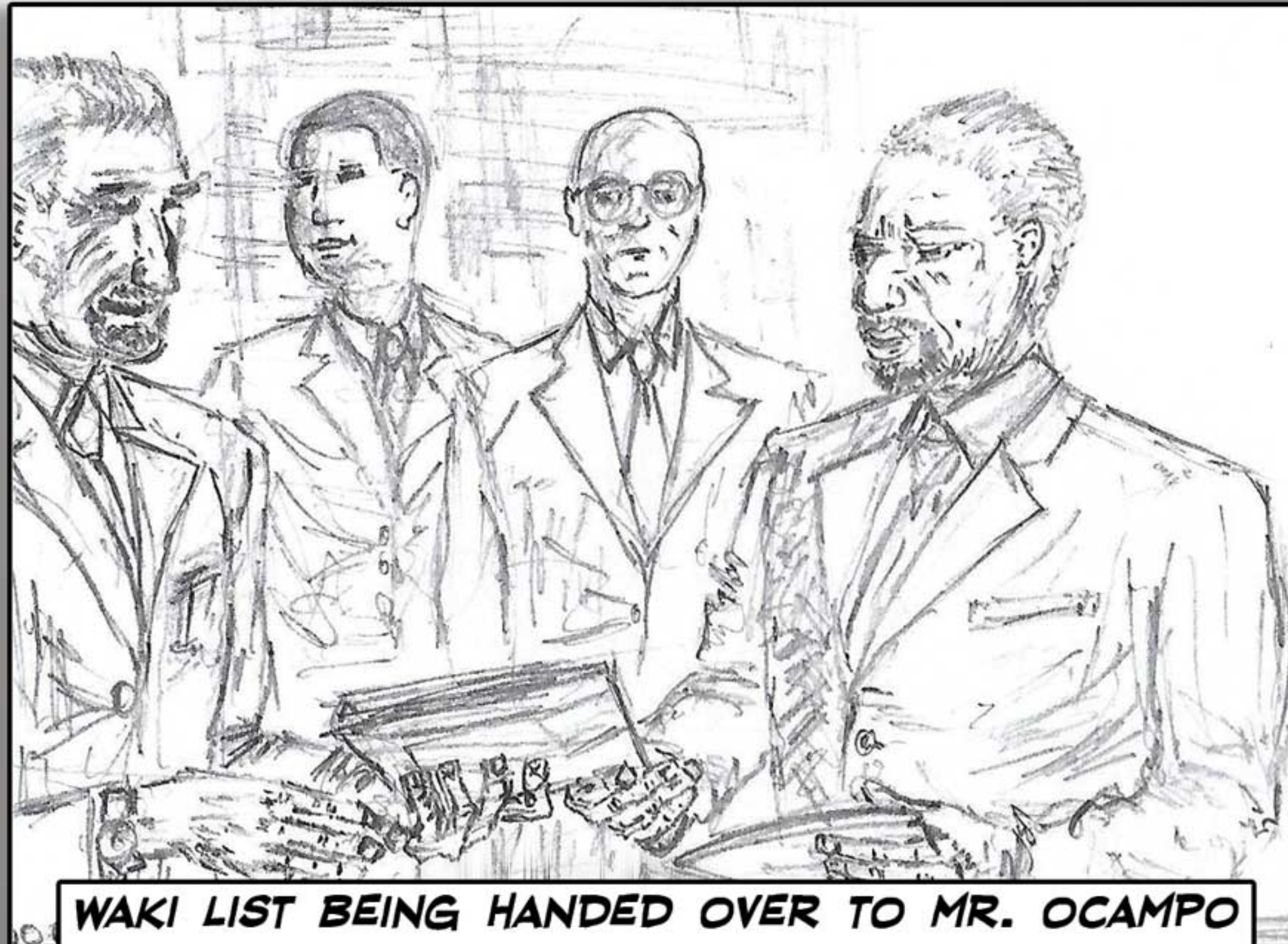


MP 2:

SETTING UP A TRIBUNAL IN OUR COUNTRY WILL NOT BE EFFECTIVE. THIS IS BECAUSE PEOPLE WILL QUESTION THE NEUTRALITY OF THE JUDGES.

LET'S NOT BE VAGUE, LET'S GO TO THE HAGUE (APPLAUDING IN THE HOUSE)

- IN A BID TO BRING TO JUSTICE THOSE AFFECTED BY THE VIOLENCE, THE MATTER WENT BEFORE **PARLIAMENT** AND **MAJORITY OF MPS** VOTED AGAINST A BILL THAT WAS PROPOSING THE FORMATION OF A **SPECIAL TRIBUNAL** IN KENYA TO TRY THOSE WHO BEAR THE GREATEST RESPONSIBILITY.
- IN THE MONTH OF JULY 2009, **KOFI ANNAN** HANDED THE ENVELOPE TO **LUIS MORENO OCAMPO**, THE ICC PROSECUTOR, AND **SIX KENYANS** WERE NAMED TO HAVE BORNE THE GREATEST RESPONSIVITY FOR THE CRIMES COMMITED DURING THE VIOLENCE.



"THE FOLLOWING INDIVIDUALS"

SCENE 5

THE ICC

APART FROM WAMBUI,
OTHER WITNESSES ALSO
DISAPPEARED.
OTHERS STILL
RECANDED THEIR
EVIDENCE AT THE ICC



YOUR EXCELLENCIES, I
WOULD LIKE TO CALL WITNESS
'P-0535' TO THE STAND



A WITNESS RECANING EVIDENCE



ONE OF THE LAWYERS...



BENSOUDA: 'IN YOUR RWRITTEN STATEMENT, YOU STATE THAT YOU SAW A MOB BURNING THE KIAMBAA CHURCH IN ELDORET SOUTH.'



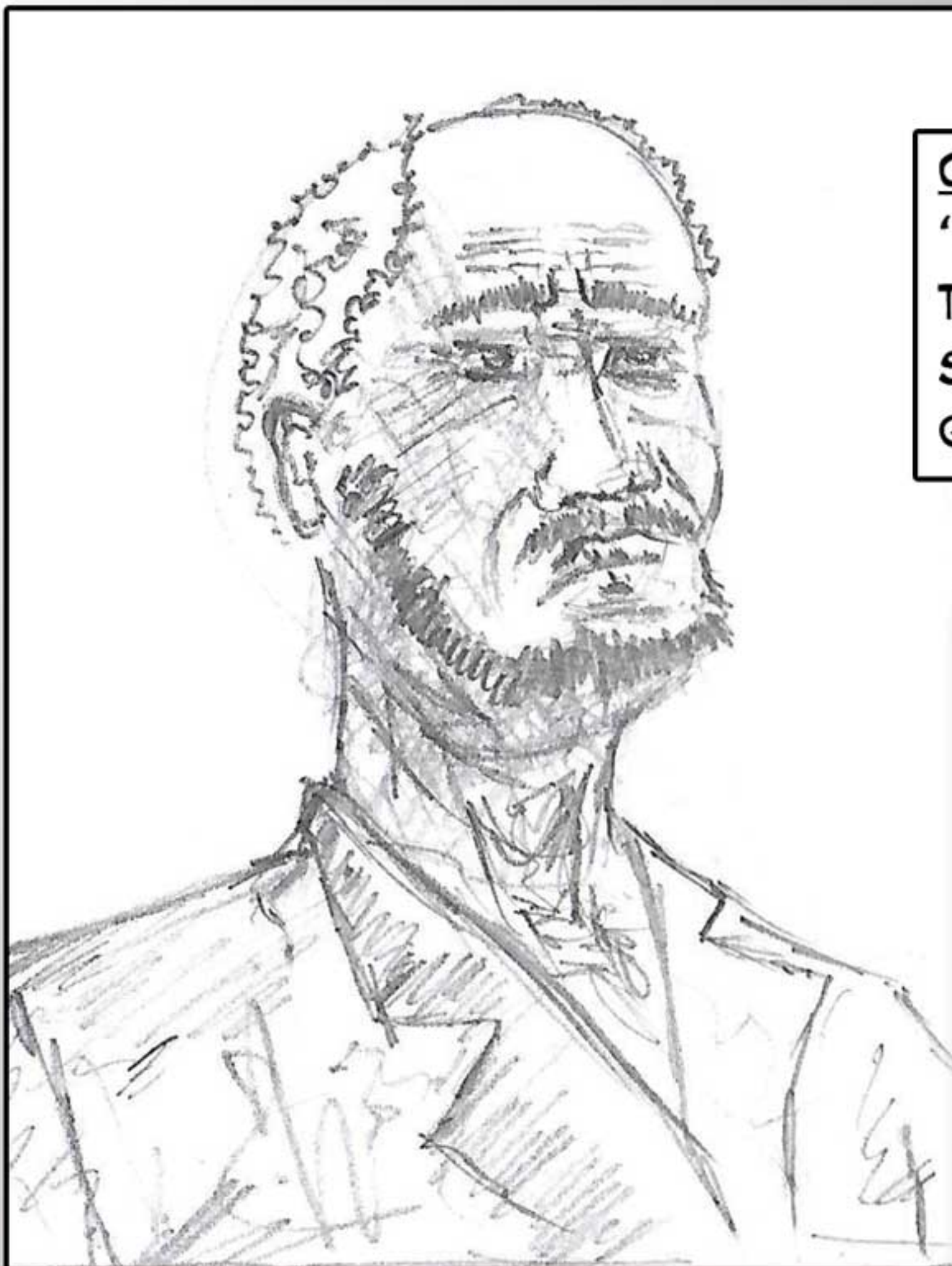
BENSOUDA: 'BUT YOUR WRITTEN STATEMENT...'



WITNESS: 'YES THAT IS WHAT WAS IN MY WRITTEN STATEMENT BUT I DID NOT SEE A MOB.'



WITNESS: (INTERRUPTING HER) 'I DID NOT SEE ANYTHING'



ONYANGO:
'EVENTUALLY THE CASES AGAINST
THE OCAMPO SIX WERE DROPPED..
SO NOW MY CHILDREN, THE
QUESTION **REMAINS...**'



"...WAS **JUSTICE SERVED?**
AND WILL THE VICTIMS HEAL?"



ONYANGO JUNIOR:
'THE QUESTION FOR ME REMAINS
WHETHER I WILL EVER SEE MAMA
DAUDI AGAIN.'

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