



“R2P in Practice”: Ethnic Violence, Elections and Atrocity Prevention in Kenya

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GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT

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Cover Photo:

Voters queue to cast their votes on 4 March 2013 in Nakuru, Kenya.
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Executive Summary

On the last Monday of 2007 dozens of ethnic Kikuyu families crowded into the Assemblies of God church in the village of Kiambaa seeking sanctuary from the violence engulfing their country. A disputed election and simmering resentment over decades of ethnic favouritism by the political elite had transformed Kenya from a perceived paragon of stability in East Africa into a killing zone. Just days after allegedly fraudulent election results had been released in late December more than 250 people were already dead, many killed by mobs armed with machetes and knives. The 400 people crowding into the Kiambaa church were terrified they might be next.

On Tuesday, in broad daylight, a crowd of ethnic Kalenjins, Luhya and Luos surrounded the church, blocked the exits and set the building on fire. Most of the Kikuyu families inside were able to fight their way out and flee. However, at least thirty-five people were killed including a number of women and children who were burned alive. As the international media came to document the horror at Kiambaa, an elderly professor spoke for many Kenyans when he said that the scene at the church, “reminds me of Rwanda.”

Unlike Rwanda in 1994, Kenya did not descend into genocide, but the ethnic violence lasted weeks and claimed 1,133 lives. Hundreds of thousands of Kenyans were displaced or injured. The fact that the bloodletting was eventually halted was due in no small part to the efforts of international mediators, including former UN Secretary-General Kofi Annan. Weeks of negotiations led to a power-sharing government and the promise of deep reforms to the entire

political structure of Kenyan society. When the resulting agreement was publicly presented in February 2008, it was hailed by some commentators as the first example of “R2P in practice.”

This occasional paper by the Global Centre for the Responsibility to Protect examines the causes of widespread ethnic violence in Kenya during 2007-2008 and explores why the country was able to avoid similar violence during the March 2013 election. In particular the author, Abdullahi Boru Halakhe, focuses on the range of reforms implemented, often with international assistance, by the Kenyan government between 2008 and 2013. The report assesses the effectiveness of these preventive measures in protecting ordinary Kenyans from a recurrence of the sort of mass atrocity crimes, like the church burning at Kiambaa, which so shocked Kenyans and the world.

The report argues, however, that Kenya’s reform process is inchoate. In particular, there has been no accountability for those suspected of being most responsible for orchestrating mass atrocity crimes following the 2007 election. While a highly contentious process of trying the current President, Uhuru Kenyatta, and Vice President, William Ruto, at the International Criminal Court is underway, justice continues to be denied to the victims of the post-election violence. This paper seeks to explain how and why particular preventive efforts succeeded in Kenya in 2013 and what that means for the future of the Responsibility to Protect.



INTRODUCTION

On 4 March 2013 Kenyans voted in their first election since widespread violence following the December 2007 presidential election shocked the world. The peaceful 2013 election contrasted sharply with the violence that erupted in 2007, when within hours of the announcement of the results protests turned violent and mass atrocities were committed. In less than two months 1,133 Kenyans were killed and over 600,000 driven from their homes while more than 110,000 private properties were destroyed in fighting that occurred mainly between ethnic Kikuyus, Luos and Kalenjins in the Rift Valley, Mombasa and urban informal settlements. The perpetrators included individuals, militias and police with victims often targeted on the basis of an assumed connection between their ethnicity and support for a particular presidential candidate.

The crimes perpetrated during the deadly violence following the 2007 election rose to the level of crimes against humanity according to the International Criminal Court (ICC). The Kenyan government, along with every other United Nations (UN) member state, committed to protect populations from these crimes at the 2005 UN World Summit when affirming its support for the Responsibility to Protect (R2P). In keeping with R2P, international actors responded swiftly to the violence in Kenya. This response, including a 41 day-African Union (AU)-led mediation process that was supported by the UN, Kenya's neighbors, key donors and civil society, is widely cited as the first successful example of R2P in practice.

The AU mediation process, led by former UN Secretary-General Kofi Annan, revealed that the very institutions charged with managing the 2007 elections, adjudicating disputes and providing security, contributed to a potentially violent environment. Weak governmental institutions that were susceptible to interference, coupled with a culture of impunity for past electoral violence and incitement, created conditions under which widespread mass atrocities could occur.

In the years between the 2007 and 2013 elections, the Kenyan government, with the assistance of international donors, took steps to address institutional deficits and uphold its responsibility to protect, though this goal was never publically stated. Many of the measures undertaken by the government were a direct outcome of Annan's mediation and were mandated by the 2010 Constitution. Long-term preventive

efforts were focused on reforming institutions within the security sector, judiciary and electoral commission, as well as tackling accountability and the prevalence of hate speech.

Despite instituting preventive measures over the course of several years, as the country moved towards the 2013 elections there remained gaps in the implementation of key reforms. Reforms to the security sector stalled and prosecutions for crimes committed during the 2007 post-election violence were slow and sporadic. Furthermore, certain risk factors were almost entirely ignored, such as the need for genuine land reform to tackle grievances over inequity in land ownership and access. This, coupled with rising inter-communal violence that killed 480 people in Tana River, Moyale, Turkana, Samburu and other counties during 2012, raised the specter of a possible recurrence of widespread bloodshed during the 2013 elections.

Responding to some of these risks, the government intensified its preventive efforts. This included issuing warnings reminding the population about the legal consequences of hate speech, increasing peace messaging and deploying troops to potential conflict flashpoints. Kenyan civil society also played a critical role in reducing the likelihood of violence. They helped foster tolerance and monitored warning signs of violence and also used other conflict resolution mechanisms where needed. The media also played an important role in calling for calm during the voting and tabulation of results.

Proximate preventive efforts taken in the run-up to the 2013 elections by the government and civil society, along with key long-term reforms, especially to the judiciary, helped mitigate many of the risks. In addition, the political alliance of William Ruto and Uhuru Kenyatta on a shared electoral ticket, the Jubilee Coalition, dramatically decreased the threat of violence. Their coalition brought together two of Kenya's largest ethnic voting blocs, the Kalenjins and Kikuyus, who were also the two political constituencies that had most often perpetrated violence against each other during previous election periods. While this merger helped reduce the risk in regions previously prone to electoral violence, such as the Rift Valley, during the run-up to the 2013 election politically-motivated inter-communal violence broke out in other areas. A political contest along ethnic lines remained, with Kalenjins and Kikuyus now pitted against Raila Odinga's Luo-dominated movement.¹

This paper explores Kenya’s history of electoral violence, including mass atrocities, and examines the measures taken to prevent a recurrence during 2013. In particular, it explores the role of the security sector, media and judiciary, as well as issues of accountability and incitement, in creating an enabling environment for violence. It also addresses the range of preventive measures that were undertaken, in keeping with R2P, to address these vulnerabilities.

The challenge ahead for Kenya is for the government to sustain these efforts. Today, politics remains divided along ethnic lines and many of the underlying factors that contributed to both electoral and inter-communal violence remain. It is incumbent upon the new government and international partners to work together to advance much-needed reforms to the security sector, tackle outstanding issues around land reform, address the lack of domestic accountability for past crimes and break the symbiosis between electioneering and ethnic rivalry. Failure to address these issues may result in Kenya finding itself facing electoral violence again during the planned 2018 general election.

ELECTORAL VIOLENCE IN KENYA

Violence during electoral periods in Kenya has killed at least 4,433 people and displaced over 1.8 million since the introduction of the multi-party system in 1991.² Electoral violence developed as a result of a combination of factors, including politicization of ethnicity, corruption, non-adherence to the rule of law, a centralized and highly personalized form of governance, inequitable development and a “winner-takes-all” form of politics perceived as benefiting one ethnic constituency to the detriment of all others. Only the 2002 and 2013 elections have not been seriously marred by violence.

This electoral violence originates in the attempts by government officials to hold onto power following the shift to multi-party elections. Under pressure from its citizens as well as international partners, the government of Kenya reluctantly agreed to multi-party elections in 1991.³ Numerous government officials undermined the efficacy of the new system by inciting conflict and manipulating public perceptions in order to retain office. This was due, in part, to the presidency having the power to appoint senior officials in the judiciary, security sector and treasury and tolerating little oversight from other governmental institutions.

Kenya is a diverse state with over forty ethnic groups; the Kikuyu represent the largest group, comprising twenty-two percent of the population.⁴ Historically, once someone from a particular ethnic group ascended to the presidency, it was viewed as their ethnic group’s “turn to eat” at the expense of the rest.⁵ As a result, the public’s perception of the presidential contest was reduced to a competition for total control of governmental power, resources and largesse.

Violence in advance of the 1992 election reflected the deadly consequences of such a perspective and set the stage for subsequent ballots. Politicians used grievances over land to mobilize support and reduced the complex problem of land tenure into a simplistic and dangerous ethnic dichotomy.⁶ Those residing in their community’s traditional regions were labeled as indigenous while those who purchased land elsewhere, notably the Kikuyu, whose traditional lands are in central Kenya, were regarded as “up-country outsiders.”⁷ Since 1991 non-indigenous communities, primarily in the Rift Valley and Coast provinces, have been targeted during electoral periods.

At independence in 1963, land recovered from the departing British colonialists never reverted to the original owners. Rather it was distributed based on a policy advocated by Kenya’s first president, Jomo Kenyatta, a Kikuyu and father of current President Uhuru Kenyatta, referred to as “willing buyer, willing seller.”⁸ This gave primacy to private ownership, an arrangement that was meant to protect the settlers who chose to remain in Kenya after independence. Kenyatta, as with President Daniel arap Moi, a Kalenjin, after him, used land grants in order to secure political support from members of his own ethnic group. Many who benefited, particularly by acquiring land in the Coast province, were wealthy Kikuyus.⁹

In the run-up to the 1992 election violence erupted in the Rift Valley, the home of then President Moi.¹⁰ Many Kalenjin perceived Kenyans that did not support his party, the Kenya African National Union (KANU), as posing a grave threat to their ethnic community. They, along with the Maasai, threatened to wage war against those that they deemed outsiders, specifically targeting members of the Kikuyu who had bought land and moved into the region.¹¹ Members of the Kisii and Luhya ethnic groups were also attacked in the Rift Valley while similar violence occurred in other areas dominated by KANU, such as Mombasa.¹²

Ethnic protagonists have also abused Kenya’s voting rules in order to influence the outcome of elections. Because Kenyans must cast a ballot in the location where they had registered to vote, one strategy has been to incite violence to displace “outsiders” who, based on their ethnicity, are perceived to support certain candidates.¹³ The use of dispersal as a perverse form of campaigning is captured in 1997 leaflets that said, “*Majimbo juu, pwani Kwa Mijikenda*,” (long live federalism, the Coast is for the Mijikenda).¹⁴ Circulation of these leaflets preceded targeted ethnic attacks, with the central message to those who were not members of the Mijikenda ethnic group being to leave of your own volition, or we will evict you.

To help carry-out eviction strategies and attack opponents, politicians, including government officials, turned to youth gangs and militias, who set up roadblocks in order to identify, kill or terrorize individuals from “non-indigenous” communities. High youth unemployment, especially in urban informal settlements, provided a fertile environment for recruitment. This created a climate where youth gangs became the primary perpetrators of ethnic violence during Kenyan elections.¹⁵

The manipulation of grievances over land ownership, access and utility remain central drivers of conflict in Kenya today. This is in part because of the limited availability of arable land and a tenure system that is inconsistent with the country’s rising population and the demands of modern agriculture. For example, in September 2012 disputes between the Orma and Pokomo communities over land and water use in the Tana River delta resulted in the death of over 100 people. Dhadho Godhana, the Assistant Livestock Minister, was arrested for inciting inter-communal violence, but the charges were later dropped.¹⁶

The electoral violence that began in 1991 and continued sporadically until 1994, left an estimated 1,500 Kenyans dead and 300,000 internally displaced.¹⁷ Subsequently, ethnic violence during electoral periods, particularly in the diverse Rift Valley, Mombasa and informal urban settlements, became a fixture of Kenya’s multi-party political system. As the 2007 election approached these dynamics were well established. Indeed, tensions were higher than usual because for the first time there was a strong opposition candidate challenging a sitting president.

THE 2007 ELECTIONS

Violence and instability during the 2007 elections were, in part, a consequence of the political outcome of the relatively peaceful 2002 elections. In 2002, after 24 years in power, President Moi and KANU were defeated by the National Rainbow Coalition, a merger of the National Alliance of Kenya, led by Mwai Kibaki, a Kikuyu, and the Liberal Democratic Party (LDP), led by Raila Odinga, a Luo.

The National Rainbow Coalition merged two ethnic constituencies that had often been at odds. But the coalition lasted only a few months after the election and Kibaki’s assumption of the presidency. Promised constitutional reforms that would have established a power-sharing arrangement, including the creation of the position of prime minister, never transpired. Odinga and his supporters broke away, creating a formidable opposition.¹⁸ After the government held a referendum on the constitution, which Odinga helped defeat, in 2005 President Kibaki removed all of the LDP ministers from his government.¹⁹ As a result, the LDP then merged with KANU to form the Orange Democratic Movement (ODM). This cast the powerful Kikuyu, supporters of Kibaki and his Party of National Unity (PNU), against the formidable Kalenjin and Luo, represented by Odinga and the ODM, and set the stage for the 2007 elections.²⁰

Ethnicity was a feature of the 2007 campaign from the outset. The ODM cast the PNU as representing the inequitable status quo and suggesting that the Kikuyu had benefited disproportionately from Kibaki’s rule while Kenya’s forty-one other ethnic groups had been marginalized. The ODM’s anti-Kikuyu messaging resonated in areas with a history of serious land disputes that were prone to electoral violence - the Rift Valley, the Coast and certain urban informal settlements, especially in Nairobi. While the ODM won considerable support as a result, a consequence was that they contributed to rising ethnic tensions between Kalenjins and Kikuyus in those areas.²¹

The Commission of Inquiry into the 2007 post-election violence documented in the Waki Report that the “*Majimbo* debate elicited a strong anti-Kikuyu sentiment which directly contributed to their being targeted for expulsion in both regions.”²² Youth gangs affiliated with political parties were mobilized to carry-out attacks. It is also worth noting that while the Kikuyu elite had benefited from Kenyatta’s

patronage and acquired land in both regions, it was poor Kikuyus who bore the brunt of the attacks.²³

The warning signs of impending violence, including the proliferation of hate speech, went unheeded by the government.²⁴ The day of the election, 27 December 2007, was peaceful. However, delays in the announcement of results contributed to a dramatic rise in tensions. The opposition saw delays and ambiguous statements by officials from the Electoral Commission as a sign of possible election rigging. The race had been close, with polls between 27 and 28 December indicating that Odinga maintained a lead of almost one million votes.²⁵ The first results to be announced on 29 December were from the ODM’s strongholds and put Odinga clearly in the lead. Yet over the course of the day his lead decreased even though votes from regions where Kibaki was dominant had not been reported. On 30 December the Chairman of the Electoral Commission, after confusion over whether all of the votes had been counted, announced Kibaki the winner. Kibaki was hastily sworn-in as president that evening.

Immediately after Kibaki was sworn-in on 30 December the ODM held a press conference alleging electoral fraud.²⁶ The then Minister for Justice and Constitutional Affairs, Martha Karua, suggested that ODM contest the outcome in the courts. Believing that they would not get a fair trial in a system that lacked judicial independence, the ODM leadership called upon their supporters to engage in mass action to force the government to annul the election results. The resulting protests, which had clear ethnic undertones, resulted in groups looting stores, destroying homes and killing other Kenyans.²⁷ The police responded by firing live ammunition and, in some cases, committing extra-judicial killings.²⁸ In the Rift Valley, Mombasa and various urban informal settlements, victims, especially Kikuyus, were often targeted on the basis of their ethnicity.

The violence at first seemed spontaneous, but it soon became apparent that much of it was organized and targeted specific ethnic groups. Killings perpetrated by militias became commonplace. These groups, which were usually formed along ethnic lines and comprised of disenfranchised youth, set-up checkpoints along highways to target perceived ethnic enemies. In a particularly infamous attack, mobs of people burned more than thirty people to death as they sought safety in a church at Kiambaa, near Eldoret in the Rift Valley.

In the context of a disputed election the government was unable and unwilling to take the necessary steps to protect its population. The scale of the violence was unprecedented, but given the country’s history of election violence some level of turmoil should have been anticipated and preventive action taken. The AU’s African Peer Review Mechanism issued a warning of possible unrest in 2006. However, a culture of impunity, whereby perpetrators of past violence were not held accountable for their acts, sent a signal that there would be no consequences for crimes committed during the 2007 election.

In the months leading up to the election, hate speech, including by leading political figures, was rampant as was the sending of SMS text messages inciting ethnic conflict. The government failed to address these warning signs or confront their underlying causes. Furthermore, once violence broke out, the state’s ability to take protective action was impeded by debilitating institutional weaknesses.

In committing to uphold R2P at the 2005 UN World Summit the Kenyan government accepted its responsibility to protect all Kenyans from genocide, war crimes, crimes against humanity and ethnic cleansing. The government therefore had a responsibility to ensure that no government official incited or facilitated the commission of atrocity crimes. Moreover, it was obligated to suppress hate speech, deter individuals from inciting, aiding or perpetrating crimes, arrest and prosecute perpetrators and ensure that the police and the military observed international human rights standards when responding to violence.

Horrified by the violence and the Kenyan government’s failure to protect civilians, regional and international actors responded swiftly. A swarm of mediators descended upon Kenya. One day after Kibaki’s swearing-in on 30 December the Chairman of the AU, President John Kufour of Ghana, met with Odinga and Kibaki, but failed to establish a mediation process. Nobel Peace Laureate Archbishop Desmond Tutu arrived on 2 January, followed by United States Assistant Secretary of State for African Affairs, Jendayi Frazier, on 4 January.²⁹ Four former heads of state - Tanzania’s Benjamin Mkapa, Mozambique’s Joachim Chissano, Botswana’s Katumile Masire and Zambia’s Kenneth Kaunda - arrived on 8 January.³⁰ Kibaki rebuffed each attempt at mediation.

As violence continued, on 9 January President Kufour returned to Kenya at President Kibaki’s invitation. Kufour authorized a panel of “Eminent African Personalities” to

mediate between the two presidential candidates. The panel consisted of former UN Secretary-General Kofi Annan, former Tanzanian President Mkapa and former first lady of Mozambique Graça Machel. On 10 January Odinga and Kibaki agreed to participate in a "Kenya National Dialogue and Reconciliation" (KNDR) process, led by the panel.

By entering into these negotiations, starting on 22 January, the parties agreed to address four agenda items in four weeks, namely: (1) taking immediate action to stop the violence and restore fundamental rights and liberties, (2) addressing the humanitarian crisis and promoting reconciliation, healing and restoration of calm, (3) overcoming the political crisis, and (4) addressing long-term issues and the root causes of the conflict, including constitutional, legal and institutional reforms.

As violence subsided, on 28 February a coalition government was formed with Kibaki serving as President and Odinga as Prime Minister. The negotiations also set in motion a process of examining the institutional deficits that had contributed to the violence. Three commissions were established to identify contributing factors and develop policy recommendations to address them: (1) the Independent Review Commission on the 2007 Elections (IREC), also known as the Kriegler Commission, which was mandated to review the electoral process, (2) the Commission of Inquiry into Post-Election Violence (CIPEV), also known as the Waki Commission, which was mandated to analyze the factors that contributed to the electoral violence and (3) the National Task Force on Police Reform, which was mandated to review the conduct of the police. The conclusions of the three commissions formed the basis for many of the reforms initiated by the government to prevent a recurrence of the 2007 violence.

INSTITUTIONAL DEFICITS, REFORMS AND RESULTS

Since 2008 the Kenyan government, with the support of the international community, has implemented important political, judicial and electoral reforms and enacted legislation to prohibit hate speech. Many of these reforms reflect recommendations from the various commissions established following the KNDR process that were subsequently mandated in the 2010 Constitution.

The KNDR process linked constitutional reform to preventing a recurrence of electoral violence and mass atrocities. In doing

so it helped compel actors to overcome political impediments and undertake serious constitutional reform to counter corruption, abuse of power and non-adherence to the rule of law. A successful 2010 referendum saw Kibaki and Odinga unite behind adoption of a reformed constitution. The new constitution entered into force on 27 August 2010.

The 2010 Constitution reduced the power of the President and helped to create more independence for key institutions, including the judiciary and police. It laid the foundation for a governance structure that has moved Kenya away from a centralized and highly personalized form of governance that had previously contributed to inequitable development and a form of politics that was perceived as benefiting particular ethnic groups. Prohibiting hate speech, strengthening the judiciary and reforming the security sector addressed many of the drivers of violence in Kenya and should therefore be seen as preventive efforts undertaken by the government to uphold its responsibility to protect.

Yet, these reforms are only the first step in a longer process of preventive engagement that the Kenyan government, with the support of the international community, will need to take to avoid future mass atrocities. These reforms represent the minimum called for in the 2010 Constitution. If Kenya is to hold peaceful elections in 2018 and also effectively halt inter-communal violence outside of the electoral cycle, the government and its international partners must reinforce these efforts with a deeper commitment to addressing the root causes of ethnic and political conflict.

The Media and Hate Speech

During the 2007 election, hate speech played a crucial role in inciting deadly violence. As the Permanent Secretary of the Ministry of Information and Communications, Bitange Ndemo, argued, "according to intelligence reports, the political violence that engulfed various parts of the country in 2007 and early 2008 was largely a result of the use of irresponsible and inflammatory language in the run up to and immediate aftermath of the elections."³¹

Local radio stations and other vernacular media bore particular responsibility for inciting violence through broadcasts that included the playing of ethnic war songs. One such station was the Kalenjin radio station, KASS-FM. The Waki Commission found that, "a few days [before] the election KASS-FM announced that there would be rigging

and in some of their open forums encouraged people to use the radio to incite people.³² Many people spoke on KASS-FM to announce that Kikuyu would be expelled from Rift Valley. One of KASS-FM’s journalists, Joshua Sang, is currently facing crimes against humanity charges before the ICC.³³

All forms of media were implicated in creating an environment where violence was likely by irresponsibly raising tensions between contending ethnic groups. In addition to incitement in the print and broadcast media, SMS text messages urging violence were widely circulated. One such SMS read, “no more innocent Kikuyu blood will be shed. We will slaughter them right here in the capital city. For justice, compile a list of Luos you know.”³⁴

Faced with a torrent of SMS hate messages, Kenya’s telecommunications companies banded together to send SMS messages of peace.³⁵ On 30 December the government also imposed a month-long ban on live media broadcasts.³⁶

In the aftermath of the violence, the Waki and Kriegler Commissions both called for reforms of the media’s regulatory framework as a means of curbing future hate speech. In keeping with agenda item 4 of the National Dialogue and Reconciliation Agreement, in February 2008 the Kenyan parliament passed the National Cohesion and Integration Act. The Act established laws on ethnic and religious discrimination and created penalties for hate speech.³⁷ To monitor compliance with the Act, in September 2009 the government established the National Cohesion and Integration Commission (NCIC) with a mandate to, “facilitate and promote equality of opportunity, good relations, harmony and peaceful coexistence between persons of different ethnic and racial backgrounds.”³⁸

The NCIC played a critical role in ensuring that hate speech would not play a similar role during the 2013 election. It did so by developing guidelines for journalists and media outlets on responsible journalism, conducting awareness training regarding hate speech, warning that perpetrators would be held accountable should they violate the Act, investigating and hearing complaints regarding hate speech and initiating prosecutions. This, coupled with other programs of the NCIC, prohibited public intolerance between ethnic protagonists.

In addition, the 2010 Constitution stipulates that freedom of expression does not allow for hate speech and strengthens the

prohibition on ethnic incitement. Guidelines were established to minimize the risk that political actors, particularly senior government officials, would use incendiary language during the 2013 election period. For example, the Political Parties Act includes a code of conduct that forbids ethnic incitement, vilification or incitement to cause harm.³⁹

To tackle the problem of SMS messaging being used to incite or organize violence, the government partnered with mobile service providers to monitor SMS messages and block offensive material.⁴⁰ The ability to monitor SMS was facilitated by the Communications Commission of Kenya requiring all mobile phone users to register their SIM cards between June 2010 and November 2012.⁴¹ Politicians were required to submit their SMS messages for vetting two days before they were to be released and all mass SMS messages had to be released between 8:00 A.M. and 6:00 P.M. in Swahili or English, not in local vernacular languages.⁴² Recognizing that by 2013 hate speech had migrated online to social platforms like Twitter, Facebook and internet message boards, the NCIC also developed guidelines for social media use and closely monitored various platforms.

These steps helped inhibit hate speech and constrain its dissemination. There were occasional reports during the 2013 elections of inflammatory speech at local political rallies, on vernacular radio stations and by musicians, but it was on a much lower scale than in 2007.⁴³ The most common venue for hate speech was online, where bloggers and individuals on Facebook and Twitter used “derogatory metaphors” to incite conflict between supporters of Odinga and Kenyatta.⁴⁴

A critical component of the success in curtailing hate speech was the actual enforcement of the prohibition. The NCIC worked with the electoral commission and police to swiftly investigate reports of hate speech and issued warnings. For example, in the run-up to the 2013 election the NCIC’s Chairman, Mzalendo Kibunjia, told the media that forty-eight politicians, including cabinet ministers, had been served with cessation notices warning them about their speech.⁴⁵ Similarly, the arraigning in court of senior politicians and some bloggers for violations of the 2008 Cohesion Act also sent an important signal.⁴⁶ Potential inciters saw that, unlike previous elections, they may be held legally accountable for their words and deeds.

The success of the government's effort was enhanced by civil society and the donor community. For example, Umati, established by the Nairobi-based Ushahidi online early warning organization, was created in September 2012 to monitor hate speech online and find strategies for countering it.⁴⁷ Through its partner organization, *Nipe Ukweli* (give me truth), outreach was done to counter incitement messages. Individual Kenyans also played an active role in reducing the impact of potentially dangerous social media. For example, following the death of Muslim cleric Sheikh Aboud Rogo in Mombassa prior to the election, various alarmist tweets declared that a Christian church was being burned. A concerned civilian took a photo of the actual church allegedly under threat, proving that it was unharmed, and tweeted "stop the lies!"⁴⁸

In addition to a reduction in hate speech, the media fared better in its coverage of voting and the announcement of results in 2013 than it had in 2007. The Kriegler Commission found that in 2007 certain media outlets showed a discernible preference for particular candidates.⁴⁹ This took on great importance at the moment where election results were released and were being disputed. Some media outlets increased voter expectations and helped trigger violence by releasing figures indicating that Kibaki was closing on Odinga's lead before the release of official results. By contrast, in 2013 major media outlets interspersed their reporting with messages of peace and, when delays in the releasing of results emerged, constantly called for calm.⁵⁰

Some have argued that if in the 2007 elections the media was deemed too partisan, in 2013 it was seen as passive, failing to ask difficult questions, especially when Odinga raised concerns regarding irregularities in ballot-counting.⁵¹ Interviews with journalists after the elections revealed that some felt there was "no good forensic analysis of what happened during the election" and that they "were hoodwinked by the peace message."⁵² This passivity was part of a "peace at any cost" mentality that inhibited the media from asking critical questions lest they were seen as jeopardizing national security.

The Police

At the core of R2P is the commitment to prevent mass atrocity crimes. As part of this commitment, the government has a responsibility to ensure that the police have the capacity to respond to developing threats, observe international human

rights standards and do not facilitate the commission of rights violations.

In 2007, the Kenyan government failed to uphold these responsibilities. The Waki Commission reported that some police refused to intervene to protect victims of ethnic attacks, resorted to disproportionate force when they did disperse crowds and sometimes carried out extra-judicial killings. The police reportedly killed one third of the victims who died in the post-election violence.⁵³ A lack of coordination and poor training, combined with divisions within the police command structure, further contributed to the violence.

This is not the first time that the police in Kenya have been implicated in election-related violence. The police also have a history of being used by senior government officials to intimidate opponents. Until the passage of the 2010 Constitution the Office of the President appointed senior police officials and was able to rely upon them to protect its interests rather than the well-being of the broader Kenyan public.⁵⁴

As a result, many Kenyans view the police as corrupt, ineffective and unable to protect them.⁵⁵ The belief that the government was unable to ensure the safety and security of ordinary Kenyans, particularly those residing outside of large urban centers, previously contributed to a rise in individuals arming themselves during electoral periods.

Reforms undertaken after the 2007 violence sought to build public trust in the police by facilitating their independence from the executive and establishing civilian oversight mechanisms. These reforms were called for under agenda item 4 of the KNDR process, which dictated that police reform was an essential means of strengthening the rule of law. In May 2009 the government established the National Task Force on Police Reforms to audit the conduct of the police during the post-election violence. In 2011 policy recommendations from the Task Force led to the passing of a series of laws that: (1) created the position of Inspector General of the Police (IGP), who was to have independence from the President and be appointed in a transparent process, (2) established the National Police Service Commission, a civilian oversight mechanism for the police and (3) merged the administration police and regular police in a combined force.⁵⁶

These reforms established the legal and institutional framework for a more independent police force that seeks

to serve the Kenyan state rather than ingratiate itself to politicians. The 2010 Constitution also allocated responsibility for the police to the Ministry of the Interior, helping to insulate the police from political interference and ensure that the President had no oversight regarding the IGP. However, many other promised police reforms have not been fully implemented. Some Kenyan critics claim that the reform process has been undermined by actors who benefit financially and politically from a corrupt system, as well as from senior police officials who are concerned that they may lose their posts because they lack the qualifications required under a new vetting system.⁵⁷

The government has done little to ensure that police officers have the adequate training or resources necessary to prevent mass atrocities. While under the new system police recruits receive fifteen months of training, instead of the six required previously, and also learn about human rights standards, there is little to suggest that this had an impact on the police forces’ readiness for the 2013 election.

In the run-up to the election there was considerable concern about police preparedness. Disputes between President Kibaki and Prime Minister Odinga delayed the appointment of the IGP until December 2012. This created uncertainty over what the police’s deployment strategy would be for the election and its ability to respond to multiple threats of violence.⁵⁸ As the election approached the Kenyan National Security and Intelligence Service identified 27 out of 47 electoral counties as having considerable potential to degenerate into electoral violence. That the government had undertaken such an analysis was a positive development, but the risk assessment raised serious concerns that policing would be stretched thin, especially in remote areas.⁵⁹

In addition, the police’s response to rising inter-communal violence did not bode well. Violence in the Tana River delta in August 2012 killed more than 100 people and displaced 34,417, but the police failed to adequately respond despite receiving early warning of impending attacks.⁶⁰ Once deployed, they were often unable to halt the violence. A lack of necessary resources, including vehicles and communications equipment, impaired their ability to protect civilians.⁶¹

During the election, there were 45,000 polling stations, each requiring two police officers to be present. To address this need, the government augmented its force of approximately

70,000 police with almost 30,000 additional officers drawn from the Kenya Wildlife Service and elsewhere. This helped send a message that there would be an adequate police presence and that they were prepared to halt any violence that might breakout. When ten police officers were killed in an attack in Mombasa on the eve of the election the IGP immediately deployed 400 additional police to the area. Members of the General Service Unit, an elite paramilitary unit, were also sent to reinforce police at other potential flashpoints, including informal settlements in Nairobi.

Whether the police would have exercised more restraint if protests and widespread violence had broken out is hard to say as they were not tested. Prior to the election there were accounts of police firing bullets in response to demonstrations, despite new laws that restricted the use of live ammunition without special dispensation.⁶²

What is clear is that efforts to professionalize the police, including through training on human rights, must be intensified. Despite this, there is little appetite within the police for further reform and some vested interests appear keen to maintain the status quo. In 2013 the Attorney-General proposed an amendment to two of the acts enacted in 2011. This would reverse some reforms and undermine efforts to tackle the culture of impunity for corruption and unlawful violence by police. Efforts by the government, with the support of the international community, to professionalize the police must be continued, not only to counter possible risks associated with the 2018 election, but to ensure that the government is able to uphold its responsibility to protect in relation to ongoing threats of inter-communal violence.

The Judiciary

A functioning judiciary that respects the rule of law, ensures accountability and serves as a mechanism for peaceful dispute resolution is a critical component of a state’s infrastructure for preventing mass atrocities and upholding R2P. In Kenya, prior to 2013, the judiciary failed to fulfill this role.

In 2007 the presidency controlled the appointment of senior judges, which helps explain why many Kenyans had little faith in the judiciary’s ability to serve as an impartial arbiter of justice. Abdullahi Ahmednassir, an Advocate of the High Court of Kenya and the representative of the Law Society of Kenya on the Judicial Service Commission, captured the

situation well in 2011, stating that "corruption and the ritual selling of Justice as an economic commodity to the highest bidder has, in the process, become a defining feature of the Kenyan judiciary."⁶³

As a result, when Odinga and the ODM disputed the outcome of the 2007 election, they did not turn to the courts. Instead, they encouraged their supporters to attend a mass rally on 3 January 2008 and take to the streets to voice their displeasure. According to the Kriegler Report, ODM leaders distrusted the judiciary because they did not believe that judges appointed by President Kibaki could be impartial towards Odinga.⁶⁴

While there had been numerous attempts at reform in the past, Kenya's political elite had previously blocked genuine attempts to create an independent judiciary. The destructive role that the courts played during the 2007 election created the necessary impetus to finally overcome these obstacles.

Though trust in the judiciary was never high, following the 2007 unrest, public confidence in the judicial system had declined from 55 percent in 2007 to 36 percent by 2008. By April 2009 public trust had further eroded, with only 27 percent of Kenyans expressing confidence in the judicial system.⁶⁵ This did not bode well for creating an environment whereby candidates and their supporters would, in future elections, see the courts as a legitimate forum for resolving election-related disputes.

As part of agenda item 4 of the KNDR process the Kenyan government took a number of steps to institute reform, including the establishment of the Task Force on Judicial Reforms in May 2009 to review proposed reforms and consider other measures to restore public confidence in the courts. The Task Force submitted its final report in July 2010, supporting the proposed new Constitution as well as the Judicial Services Bill and proposing specific measures to include in each.⁶⁶

The 2010 Constitution established new rules for vetting judicial appointees, reinforced the notion that the courts are mandated to uphold the Bill of Rights and established a Supreme Court. The Judicial Service Commission was re-constituted to help provide oversight of the judiciary, with an emphasis on making new judicial appointments, removing incompetent judges and responding to complaints about the judiciary. In 2011 an Office of the Ombudsman was created

to address grievances and by August 2013 it had already received 14,000 complaints.⁶⁷

These measures were taken in conjunction with reforms aimed at improving access to the courts and the responsiveness of the judicial system, including building the capacity of the courts to adjudicate cases in a timely manner. The appointment of Willy Mutunga, a highly regarded human rights activist who oversaw the Ford Foundation's support for projects on human rights and social justice in East Africa, as the Chief Justice of the Supreme Court, also helped strengthen public confidence in the judiciary.⁶⁸ A poll taken in 2012, which found that 84 percent of Kenyans now had confidence in the judiciary, indicates that these measures helped to dramatically improve public perceptions.⁶⁹

The public's faith in the judiciary was enhanced by its conduct in the run-up to the 2013 election. There was a debate amongst the political parties as to the date of the delayed 2013 elections and the High Court of Kenya was asked to provide guidance based on their interpretation of the Constitution.⁷⁰ Their decision that the election should be held during March 2013 was accepted by each of the parties, removed uncertainty regarding timing, which was contributing to rising tensions, and paved the way for the election.

The court was also seen to be tackling corruption and holding influential Kenyans accountable for their actions, including from within the judiciary's own ranks. For example, at the recommendation of the Judicial Service Commission, the Deputy Chief Justice was suspended in January 2012 over allegations of misconduct.⁷¹

The courts also demonstrated a greater willingness to make rulings that would have been regarded as controversial in the past. This included passing judgment on the eligibility of presidential candidate Uhuru Kenyatta and his running mate William Ruto to participate in the 2013 elections. Challenges to their eligibility had been raised on the grounds that they did not, in light of their indictment by the ICC on charges of crimes against humanity, meet the integrity standards required of candidates by the new Constitution. Several civil society organizations petitioned Kenya's High Court to determine whether they should be disqualified as candidates. On 15 February the High Court ruled the two were eligible to run for office.⁷²

The rulings on the election date and regarding Kenyatta and Ruto’s eligibility enhanced respect for rule of law and the legitimacy of the court as an arbiter of conflict.

To help mitigate any tensions that might arise out of uncertainty over the outcome of the election and potentially contribute to violence, in May 2012 the Chief Justice also established a judiciary working committee mandated to develop and implement plans for managing election-related disputes.⁷³ The committee made recommendations on administrative arrangements that would help expedite the adjudication of cases. This included dictating that the Supreme Court would hear cases pertaining to the presidential election while lower courts would hear all other cases. The court mandated that presidential election cases be adjudicated within fourteen days and the Chief Justice cancelled annual leave for judicial officers between March and October 2013 so as to ensure that key staff were available if electoral disputes arose.⁷⁴

The role the judiciary played in 2013 was the opposite of 2007. After Kenyatta won the 2013 election, Odinga referred his dispute over the election results to the court rather than the streets. When filing his petition to the Supreme Court Odinga argued that, “we want to appeal to all Kenyans to respect the rule of law and the Constitution of which they are so proud.” He further urged his supporters to “let the Supreme Court determine whether the result announced by IEBC is a lawful one. We are confident the court will restore the faith of Kenyans in the democratic rule of law.” When the court rendered a decision that was not in his favor, Odinga said, “the court has now spoken ... its decision is final.”⁷⁵

Judicial reforms undertaken by the Kenyan government, with the support of the international community, were the most effective investment in preventing mass atrocities made in the period between the 2007 and 2013 elections. By strengthening the independence and impartiality of the highest courts in Kenya, the country established a viable peaceful dispute resolution mechanism and a new Supreme Court. No such credible institution existed in 2007.

JUSTICE AND ACCOUNTABILITY

While judicial reform played a significant role in mitigating the risk of a recurrence of electoral violence in 2013, those reforms have not translated into individuals being tried in

domestic courts for orchestrating or perpetrating crimes against humanity committed following the 2007 elections. A key component of upholding R2P is ensuring that those who aid, incite or perpetrate mass atrocities are held accountable for their actions. The Kenyan government has failed to fulfill this responsibility.

In 2007 the absence of prosecutions for previous electoral violence in Kenya sent a signal that there would be few, if any, consequences for politically or ethnically motivated crimes. The failure to confront impunity for past crimes has served as a catalyst for electoral violence in Kenya since the introduction of multi-party elections in 1991.

In the six years since 2007 there has been little attempt to prosecute those who allegedly bear the greatest responsibility for mass atrocity crimes perpetrated after the elections. The Director of Public Prosecutions said that his office would “review up to 5,000 cases with a view to prosecuting them ahead of the 2013 election.”⁷⁶ Yet, in 2011 the government announced that there had been only 94 convictions and Human Rights Watch reported in April 2013 that they were aware of only seven convictions for crimes perpetrated during the 2007 post-election violence.⁷⁷

The low number of successful prosecutions stems from a range of factors. In the immediate aftermath of the violence there was a rush to arrest alleged perpetrators with little attention to finding witnesses. As a result, many early cases resulted in acquittals. Poor evidence gathering further compromised the quality of material available for prosecutions. The impact of this has been devastating for those seeking justice. For example, in an infamous case, lack of evidence resulted in the acquittal of a policeman charged with killing two unarmed protesters even though the killings were filmed and broadcast on national television.⁷⁸ In addition, since the government and police were often implicated in the violence, they had an incentive to obstruct accountability efforts aimed at senior officials.

The Waki Commission called for the creation of a Special Tribunal to investigate those most responsible for crimes, including crimes against humanity, and, in an attempt to overcome political inertia, established a mandate and timeline for its creation. The Waki Commission also gave a list of key suspects to Kofi Annan and told the government that if the tribunal was not established swiftly, Annan would transfer

the list to the ICC.⁷⁹ In response, the Ministers for Justice and Constitutional Affairs, through a private motion, brought a bill to parliament to establish the tribunal.

Parliament demonstrated its unwillingness to address the culture of impunity when it failed to pass the bill to establish the Special Tribunal. The bill was defeated twice, despite efforts by President Kibaki and Prime Minister Odinga to secure support for its passage. Parliamentary supporters of William Ruto and Uhuru Kenyatta, both believed to be on the Annan list and planning to run in the 2013 presidential election, blocked the bills, possibly because they believed that the ICC process would be slower and would therefore not compromise their ability to run.⁸⁰

When it became apparent that Kenya would not establish a tribunal, in July 2009 Annan provided the ICC Chief Prosecutor with the suspects list. Highlighting the important role that accountability plays in preventing mass atrocities, he noted that, "the people of Kenya want to see concrete progress on impunity. Without such progress, the reconciliation between ethnic groups and the long-term stability of Kenya is in jeopardy."⁸¹ It was the failure of the Kenyan government to take the necessary steps to tackle impunity that triggered the involvement of the ICC.

In November 2009 the office of the ICC Chief Prosecutor used, for the first time, its *proprio motu* powers to initiate an investigation into the 2007 post-election violence in Kenya.⁸² On 15 December 2010 the ICC charged six Kenyans, including Kenyatta and Ruto, with crimes against humanity for their roles in the 2007 violence.⁸³ Though the charges against three of the individuals have since been dropped, Kenyatta and Ruto remain at the center of debates regarding justice for victims of the 2007 violence. The same political actors that blocked efforts to establish a domestic tribunal immediately began lobbying the AU and UN Security Council to get a deferral of the ICC case for at least one year. They argued that an ICC trial would jeopardize Kenya's stability in advance of the 2013 election.⁸⁴

Rather than compromise Kenya's stability, the ICC played a significant, although largely unheralded, deterrent role during the 2013 elections. Those senior political leaders facing charges, namely Kenyatta and Ruto, were all too aware that if they were to incite or aid in the commission of crimes they would potentially face additional ICC charges. Similarly, other potential perpetrators saw that if powerful Kenyans

like Kenyatta and Ruto could be charged at The Hague then surely they could be as well. The danger of being summoned by the NCIC or facing ICC charges also helped reduce the prevalence of hate speech, especially at large public rallies and within the media.

The ICC also played a role in prompting the merger of the two accused candidates, Ruto and Kenyatta. Their political union, bringing together supporters from the Kikuyu and Kalenjin community, played a significant role in reducing the risk of large scale ethnic violence, especially in the Rift Valley, where deadly clashes between the Kalenjin and Kikuyu communities had been a prominent feature of the 2007 post-election violence. It also meant that criticizing the ICC became a central element of their election campaign. Both candidates vilified the ICC as a tool of Western neo-colonialism.⁸⁵ Donor states, in particular the United Kingdom, were regularly criticized for their "colonialist" and "imperialist" behavior in demanding accountability for atrocities committed after the 2007 election.

For survivors of the 2007 post-election violence and the families of those killed, there has been little justice. A Truth, Justice and Reconciliation Commission, established in 2008 to look into human rights violations committed between 1963 and 2008, sought three extensions and finally issued a report in May 2013. The Commission called for investigations, prosecutions and reparations for human rights violations perpetrated in the past. It is unclear what steps will be taken to act on its findings.

An International Crimes Act was adopted in December 2008 to allow for the punishment of genocide, crimes against humanity and war crimes and enable Kenya to cooperate with the ICC, but the Act would not apply retroactively. However, in December 2010, after the ICC announced the list of Kenyans being charged with crimes against humanity, politicians began to call for a repeal of the Act and in September 2013 parliament passed a motion aimed at authorizing its repeal.⁸⁶ A Witness Protection Act was adopted in 2010, but it is underfunded and often ineffective. Finally, in 2012 it was announced that an International Crimes Division would be established within the High Court, but by April 2013 it was still not operational. Focusing attention on the alleged neo-colonial malevolence of the ICC has provided a useful political distraction from the dire domestic accountability crisis.

THE 2013 ELECTIONS AND FUTURE CHALLENGES

Despite the reforms undertaken since 2007, which were largely influenced by the KNDR process and subsequently enshrined in the 2010 Constitution, as Kenya approached the 2013 election there was still a significant risk of violence and mass atrocities. There were more deaths in the period leading up to the 2013 election than in the period preceding the 2007 election.⁸⁷ Inter-communal violence killed over 480 people in 2012 while new conflict flashpoints and threats from actors such as al-Shabaab had also emerged. According to contingency plans developed by the UN and the Kenyan authorities, violence during the elections could have potentially affected up to 450,000 people.⁸⁸

Police reforms were piecemeal and it was questionable whether they would respond differently to outbreaks of violence in 2013 as compared to 2007. Limited efforts were undertaken to address underlying causes of conflict, including grievances over land, access to resources and high rates of youth unemployment. There had also been negligible efforts at holding those who incited and perpetrated violence in 2007 accountable.

By contrast, constitutional reforms instituted by the government in the period between 2007 and 2013 contributed to an increase in the public's faith in the judiciary. This dramatic improvement suggested that the court could play a role in dispute resolution by providing the public with an alternative to taking to the streets to dispense rudimentary justice. A drop in the prevalence of hate speech as a result of implementing media reforms, including prosecuting transgressors, similarly meant that a key contributor to violence in 2007 had been greatly diminished by 2013.

In the final run-up to the election considerable international donor attention was focused on strengthening the capacity of the Independent Electoral and Boundaries Commission (IEBC). The Kriegler Commission had found that a trigger for the 2007 violence was the perceived rigging of election results. For example, the 2007 voter lists reportedly had over one-million “ghost” voters on them.⁸⁹ Therefore, the government implemented reforms with the understanding that if the 2013 elections proceeded with fewer irregularities, the risks associated with moments of vulnerability in the electoral calendar would be greatly minimized.

Reforms to the electoral system also helped lessen the risk of widespread violence. The 2010 Constitution removed control over the appointment of senior electoral officials from the Office of the President and established oversight mechanisms to counter concerns over corruption. Reforms were also focused on managing Kenyans' perceptions of the election process. In the run-up to the election, the need for careful management of expectations was re-affirmed when in the aftermath of party primaries, riots in Kisumu over perceived favoritism towards Prime Minister Odinga's sister, Ruth Odhiambo Odinga, who was a candidate, resulted in the killing of an election worker.⁹⁰

Overall, the challenge facing the IEBC and government in 2013 was unprecedented. Adequate staffing needed to be provided for 45,000 polling stations and ballots needed to be gathered and counted in a transparent manner so that the outcome for the 1,882 contested local and national seats could be released in a timely fashion. The election was also Kenya's most complicated. Kenyans were voting in six simultaneous elections for candidates at the national and local level, including: president, national assembly, senate, women's/youth/disabled representatives, county governors and local county assemblies. There were concerns that voter education efforts had not been sufficient to explain the complicated process. Similarly, there were doubts about whether the technology being used for the first time, including a biometric voter registration system, would work.

To ensure a successful outcome and reduce the risk of the election process becoming a trigger for violence, political, technical and financial support to the IEBC was increased as the election approached. The elections cost over \$293 million to conduct and international donors contributed over \$100 million of this.⁹¹ The UN Development Programme's (UNDP) “elections basketfund,” which received contributions from the European Union, Netherlands, Norway, Finland, Denmark, Italy, United Kingdom, United States and others, facilitated the contribution of \$36 million. The fund supported efforts by the government to undertake credible, free and fair elections, including through training 240,000 polling officials.⁹² The United States, Kenya's largest donor, contributed over \$35 million to support electoral reform, civic education and election preparedness.⁹³

The media also played a crucial role during the voting and tabulation period by explaining the election process as it unfolded. The NCIC, international donors and local civil society spent considerable resources on conflict sensitive reporting and promoting the importance of responsible journalism. This helped contribute to a sense of calm, even as failures of the new technology resulted in delays in the release of the results. In a dramatic reversal of the situation in 2007, calm continued following the much-anticipated announcement of results and during the period when Odinga was challenging the results.

While ongoing work needs to be done to strengthen the IEBC, the 2013 election has left Kenyans more confident of the independence and credibility of their electoral system.

Although these reforms helped prevent a recurrence of violence and mass atrocities, they alone would not have been sufficient to obliterate the risk. To understand why preventive efforts worked one must look at the broader context in which the reforms were undertaken. A critical component of why peace prevailed in 2013 was that the Kenyan people themselves did not want to see their country descend again into the abyss. Throughout the country individuals and communities promoted the message of peace, regardless of the election outcome.

Many government-led initiatives, with financial and technical support from international partners, played an invaluable role in fostering this spirit. The NCIC, with assistance from UNDP, established "district peace committees," as part of the KNDR process, to help promote tolerance, create goodwill ambassadors, train peace monitors and educate the public regarding hate speech, conflict dispute resolution and voting.⁹⁴ The National Steering Committee on Peace Building and Conflict Management, an inter-agency mechanism comprised of government and civil society representatives, further supported the district peace committees in the creation of Peace Forums for three conflict-prone provinces: Rift Valley, Coast and Eastern.⁹⁵

In 2010 the National Steering Committee also helped facilitate the creation of the national Conflict Early Warning and Response Unit (CEWERU), which is designed to improve the government's capacity to respond in a timely and effective way to prevent imminent violence. In addition to working with district peace councils, CEWERU was aided by civil

society and the public who used the unit's "Amani Kenya @ 108" website to report on social media and SMS behavior.⁹⁶

Local non-governmental organization (NGO) efforts were also fostered by these projects. For example, PeaceNet, a coalition of grassroots organizations, launched the "Uwiano platform for peace."⁹⁷ The platform, which was supported by financial assistance from Sweden, the United Kingdom and UN Women, sought to improve early warning information sharing, sensitize the media to conflict reporting and strengthen local mediation capacities.⁹⁸

Many of these state and civil society efforts were undertaken with support from UNDP's Bureau for Crisis Prevention's "Consolidating the Peace Processes and Establishing Foundations for a Successful Political Transition in Kenya" project, which received funding from Norway, Sweden and the United Kingdom. The project aimed to strengthen the capacity of civil society and district peace councils to prevent violence during the 2013 elections, build the capacity of the NCIC, enhance the government's ability to control the proliferation of small arms and light weapons and promote the role of women and youth in local peacebuilding initiatives.⁹⁹

Considerable attention was also paid by civil society and donors to finding innovative ways to engage youth and dissuade them from perpetrating violence. The "*Tia Rwabe Zi*" (Say No to 200 Kenyan shillings) project worked with youths in informal settlements to discourage them from taking bribes to attack opponents during the election.¹⁰⁰ Similarly, the government launched the "*Kazi Kwa Vijana*" (Work for Youth) program, which reportedly helped 200,000 to 300,000 people, mostly youths, in Kenya find employment between 2009 and 2010.¹⁰¹ Another project, led by the UN in conjunction with the NCIC, Google Kenya, the Electoral Commission and Kenyan football leagues, involved a "Sports 4 Peaceful Elections Campaign" to reach out to youth online, urging them to adopt a "sportsmanship" approach to the elections.

There are many lessons that can be drawn from the 2013 election. The role of key individuals should not be understated. President Kibaki, under considerable pressure from the international community, oversaw the implementation of historic constitutional reforms, which mitigated the risk of a recurrence of violence. During the election campaign he did not endorse any candidate and routinely called for calm.

Odinga and Kenyatta, despite a heated campaign where questions of ethnic loyalty were very much at the fore, echoed messages of peace at key moments and urged their supporters to show restraint. In particular, Odinga’s decision to accept the election results did much to affirm the legitimacy of the Supreme Court. Faith in the judiciary rested on a number of reforms, but the fact that a respected former human rights activist, Willy Mutunga, was appointed Chief Justice was also significant.

Preventive efforts undertaken in Kenya are a successful example of R2P in practice and must be continued. There is an enduring risk of inter-communal violence in the run-up to the 2018 election. Ethnic politics still prevail and the timing of the next election may coincide with verdicts from the ICC cases. It is unclear what impact this might have on Kenyatta and Ruto’s supporters. It is also unclear whether their political merger will endure until 2018.

Although the culture of impunity prevailed in 2013, in so far as there has still been no high-level accountability for atrocity crimes committed in 2007, Kenyans did discern the hand of justice through the ICC indictment of prominent Kenyan politicians on charges of crimes against humanity. Those who were once deemed beyond the law were forced to engage with international mechanisms of justice, despite their attempts to denounce them. The newly-elected government’s opposition to the ICC will continue to complicate relations between Kenya and the international community. Although Kenyatta and Ruto have individually agreed to cooperate with the court, the government is leading efforts to halt the ICC proceedings against them.

In particular, AU members have been lobbied by the Kenyan government to abandon the Rome Statute. In May 2013 the government was successful in securing a communiqué from the AU that threatened a mass withdrawal from the court by African countries - a threat they are unlikely to follow through on. Meanwhile, UN Security Council members have been urged to invoke Article 16 of the Rome Statute, which allows for a delay in the proceedings for one year. The Council rejected this request in 2011 and on 15 November 2013 rejected it again. Only seven out of fifteen UN Security Council members, none of whom is a state’s party to the ICC, voted for a Rwandan resolution calling for deferral. In September 2013 the Kenyan parliament voted to withdraw from the Rome Statute and repealed the International Crimes

Act, which would allow for domestic prosecution of crimes against humanity, war crimes and genocide committed after 2009. This raises serious questions about the new government’s willingness to tackle the culture of impunity for mass atrocity crimes in Kenya.

The government’s attack on the ICC has also seen greater scrutiny placed upon Kenyan civil society. Perceived as generally supportive of the ICC and for accountability for atrocity crimes, civil society has been vilified as “evil society” by government officials and supporters of Kenyatta and Ruto.¹⁰² A new law that has been passed by parliament seeks to restrict the ability of NGOs to receive more than 15 percent of funding from foreign sources.¹⁰³ This will effectively limit the ability of numerous Kenyan NGOs to carry-out their work as many are dependent upon international donors.

Civil society played a critical role in putting pressure on the Kenyan government to ensure that the basic reforms called for in the new constitution were implemented. NGOs also carried out much-needed awareness raising and peacebuilding activities in the run-up to the 2013 election. Attempts to undermine their ability to operate will weaken efforts to uphold the government’s primary responsibility to protect.

The current climate also makes it more challenging for international donors, especially Western governments, to support preventive efforts. The implicit message in the assault on the ICC and civil society is that Western donor states are meddling in Kenya’s internal affairs. Rather than turn inwards, this should be a moment for Kenya to embrace external supporters. Institutional reforms remain nascent and require continued attention, as does addressing areas where reforms have been lacking, including furthering the work of the National Land Commission and further reducing high rates of youth unemployment. Kenyan civil society and donor states are essential partners for the Kenyan government, not its enemies, as it continues the process of upholding its responsibility to protect.

CONCLUSION

Kenya reveals how investment in non-coercive measures like strengthening the rule of law and tackling hate speech, can help prevent atrocities when reforms are undertaken early, with sufficient resources and international support. The efforts of the Kenyan government provide a powerful

counter-argument to those who assert that R2P is about the powerful meddling in the affairs of the weak. The reforms undertaken in Kenya between 2008 and 2013 were government-driven, supported by civil society and the broader Kenyan population.

While in far too many cases the attention of the world fades in the aftermath of atrocities, in the case of Kenya international support for prevention was sustained from 2007 until the 2013 election. This is shown not only in financial support that was provided to the Kenyan government to undertake wide-ranging reforms, but also in the regular visits to Kenya and messages conveyed by significant international political figures to the Kenyan people. In December 2012 Archbishop Desmond Tutu said, "we pray and hope that

your forthcoming General Elections will be held in a peaceful environment ... but while we put you on prayers, you must on your side commit yourselves to working hard on peaceful elections."¹⁰⁴ UN Secretary-General Ban Ki-moon spoke with former President Kibaki on 28 February 2013, expressing hope that the elections would be peaceful and credible, and urged all Kenyans to "reject inflammatory rhetoric and violence and respect the independence of the judiciary and electoral bodies."¹⁰⁵

It is imperative that the Kenyan government continue working with civil society and the international community to uphold their Responsibility to Protect, and ensure that 2013 was not an anomaly.

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Glossary of Abbreviations

AU	African Union
CEWERU	Conflict Early Warning and Response Unit
CIPEV	Commission of Inquiry into Post-Election Violence, “Waki Comission”
EU	European Union
ICC	International Criminal Court
IEBC	Independent Electoral and Boundaries Commission
IGP	Inspector General of the Police
IREC	Independent Review Commission on the 2007 Elections, “Kriegler Commission”
KANU	Kenya African National Union
KNDR	Kenya National Dialogue and Reconciliation
KNCHR	Kenya National Commission for Human Rights
LDP	Liberal Democratic Party
NCIC	National Cohesion and Integration Commission
NGO	Non-governmental Organization
ODM	Orange Democratic Movement
PNU	Party of National Unity
R2P	Responsibility to Protect
UN	United Nations
UNDP	United Nations Development Programme

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