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Prevention and management of election-related violence in Kenya Awareness campaigns and freedom of speech

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Résumé

Plus de 20 ans après le retour du multipartisme, le Kenya n'a pas encore trouvé les moyens de mettre un terme à la violence électorale. En effet, la violence politique reste l'un des modes d'action privilégiés par les politiciens et candidats, particulièrement durant la période de préparation des élections. Appels à la haine et discours intolérants, repris également par des acteurs religieux ou des leaders d'opinion, ont, jusqu'à présent, largement contribué à l'escalade de la violence dans le pays. Compte tenu de la gravité de la crise postélectorale de 2007/08 (plus d'un millier de morts et près de 600 000 déplacés), les élections générales du 4 mars 2013 devaient servir de test majeur quant à la capacité du Kenya à reconstruire un cadre pacifié pour la compétition politique. Aussi, la capacité de prévenir et de gérer les discours de haine et d'intolérance politique dans la perspective desdites élections devenait alors une question clef du processus électoral.

Abstract

More than twenty years after the reintroduction of multiparty system, Kenya has not yet found the means to bring electoral violence to an end. Indeed, political violence remains one of the preferred courses of action by competitors, especially in the election preparation period. Hate speech and inflammatory messages, often declared not only by politicians but also by other actors (religious and opinion leaders, for instance) have largely contributed to the escalation of violence in the country. Given the seriousness of the violence that followed Kenya's 2007-2008 general election, with more than a thousand citizens killed and 600,000 displaced, the general elections on 4 March 2013 would appear an important test of the country's ability to rebuild a peaceful electoral framework. Thus, under a context where a fresh electoral dispute is highly likely in 2013, the capacity to prevent and to manage hate speech takes stage as a central question.

Introduction

Electoral violence has been a general characteristic of elections in Kenya since the return of multipartyism (General Elections in 1992, 1997, 2002, 2007 and the constitutional referendum of 2010).

This characteristic has, however, varied according to the elections:

1. Intensity of the violence: the 2002 General Elections and the referendum of 2010 were held under peaceful conditions, in contrast to the elections of 2007 which were marked by a serious post-electoral crisis.
2. Geography of the violence: some regions are almost systematically affected by electoral violence, such as the Rift Valley or the north-east of the country. The elections held in 2007 experienced a higher level of violence in some parts of the towns (Nairobi, Eldoret, Kisumu, and Mombasa) and extended to several regions.
3. “Timing” of electoral violence: Kenya is structurally confronted with concentrated violence in the year before elections as was the case in the advent to the March 2013 elections (violence in the Tana River Delta region in August-September 2012¹), often competing with high tensions during the party primaries. The voting days were generally calm but violence erupted after the announcement of results in the winter of 2007-2008.

More than twenty years after the reintroduction of multiparty system, Kenya has not yet found the means to bring electoral violence to an end. Indeed, political violence remains one of the preferred courses of action by competitors, especially in the election preparation period.

Thus, the 2007 elections were marked by violence of such an unexpected intensity that it took observers by surprise. In the aftermath, the violence which swept the country for several weeks had a far-reaching impact on the Kenyan social, economic and political fabric: more than 1,200 people were killed and some 300,000 displaced from their homes; \$ 1,5 billion damages were also noticed.² The lack of both reliability and impartiality of the modalities of election organisation (electoral boundaries, registration on voter

1. KPTJ, *Field Report. Tana Delta*, October 2012.

2. Mwai Kibaki officially won the presidential elections with 46,4% against Raila Odinga, leader of the Orange Democratic Movement (ODM), with 44,1%. ODM refused to accept the results of the presidential elections as did many people in different regions of the country.

rolls, compilation process, transmission and, notably, verification of results) largely contributed to the unleashing of violence.³ These failures, however, do not independently explain the intensity and the ethnic dimension that the clashes took. The latter reflects reasons that are more profound and more complex, and which have a historical, social and economic trait in Kenya.⁴

Whereas the causes of the 2007–2008 post-election crisis are complex, aggravating factors also contributed to the rise of violence, particularly the highlighting of “differences” between ethno-regional communities. This emphasis recurs in Kenyan elections, as the political battle structure ever since Independence has gone along local and ethnic lines. Political parties and their leaders often compete in calling for community votes.⁵ During the 2007–2008 elections, under the context of disputed results, a line was crossed with open stigmatisation of some communities, which translated into the propagation of hate speech.

Hate speech and inflammatory messages, often declared not only by politicians but also by other actors (religious and opinion leaders, for instance) have largely contributed to the escalation of violence. Apart from the mainstream media (political rallies, vernacular radio stations, leaflets, newspapers), mobile phone texting services and social media have permitted the rapid spread of such speech at country level.⁶

These hate speech will be the core of this field-work analysis:

- ◆ They bear witness to the volatility of every electoral process, that it can rapidly contribute to its shattering, and what would have been the essential quality of the election;
- ◆ They also allow us to understand the characteristics of leadership: during the 2007 voting, national and local opinion leaders exploited community membership’s feelings and violence as a preferred means of

3. About Kenya 2007 elections’ crisis, see: International Crisis Group, *Kenya in crisis*, Africa Report n°137, 21 February, 2008; “The General Elections in Kenya, 2007”, *Les Cahiers de l’Afrique de l’Est*, n°38, 2008.

4. About a detailed political history of Kenya, see: BOURMAUD, D., *Histoire politique du Kenya. État et pouvoir local*, Credu-Karthala, Paris, 1988.

5. The country is mainly divided into five “ethnic” groups that constitute about two-third of the population: the Kikuyu (21%), the Luhya (14%), the Kalenjin (13%), the Kamba (10%), and the Luo (10%).

6. An Independent Review Commission, headed by Judge Kriegler and set up in March 2008, held an inquiry into the facts and incidents of the 2007 elections. Its conclusions’ report, made public in September 2008, faulted the media for their role in the violence.

disputing results to the detriment of other forms of action (for example, election petitions).

As a result, fears of renewed violence weighed heavily on 4 March 2013 elections with the stigma of the post-electoral crisis of 2007 still present. Whereas the crisis may have led to major changes in Kenya (specifically the constitutional reform of 2010⁷), several issues are still pending:

- ◆ The re-location of the many internally displaced people (IDPs) has not been accomplished yet, especially in Rift Valley and Nyanza provinces.
- ◆ Furthermore, the issue of 2007 post-election violence perpetrators remains pending. The trial for crimes against humanity instigated by the International Criminal Court (ICC) at The Hague against some Kenyan personalities is still in process.⁸ This issue is all the more acute in that it concerns one of the principal competitors in the 2013 Presidential Election, U. Kenyatta⁹, and his running mate, William Ruto, the most prominent Kalenjin leader.
- ◆ Structural problems (youth unemployment, land redistribution, access to state resources) still exist¹⁰.

Thus, under a context where a fresh electoral dispute is highly likely in 2013¹¹, the

7. In the aftermath of the 2007 crisis, a national dialogue and reconciliation process was launched. It aimed at determining the necessary reforms to address the causes of conflicts in Kenya. The promulgation of the Constitution in August 2010 was one of the most important outcomes of this process. Key elements of the new Constitution include notably: devolution of power to new counties and the creation of an upper house of Parliament (Senate) to oversee county-level affairs; the establishment of a Supreme Court, which has been clad with the jurisdiction to determine the validity of presidential election; a new electoral and boundaries commission.

8. Six key figures were initially concerned: U. Kenyatta, W. Ruto, J. Arap Sang, F. Muthama, H. Kosgey and M. Hussein Ali.

9. According to the 9 March 2013 results, U. Kenyatta is the new President. Nevertheless, petitions against these results are still on-going.

10. About Kenya challenges, see: Saferworld, *People's peacemaking perspectives on Kenya's post-2008 political crisis*, March, 2012.

11. Indeed, electoral dispute was highly probable. First, the race for presidency was likely to be extremely close, specifically with the new two-round runoff procedure. The two main competitors bidding for Presidency were U. Kenyatta, a Kikuyu (son of the former President Jomo Kenyatta) and Prime Minister, Raila Odinga, a Luo. Second, the Independent Electoral and Boundaries Commission (IEBC) was facing huge challenges, especially voter registration and the improvement of votes compilation's process, both highly criticized during the 2007 elections. Fur-

capacity to prevent and to manage hate speech takes stage as a central question. Therefore, how does one prevent or manage inflammatory and hate speech, which are trigger elements of electoral violence?

Since the crisis of 2008, the tools established have essentially been on the inventory of hate speech and the establishment of a punitive legal arsenal (**Part I**). At the approach of the 2013 elections, this judicial approach exposed its limitations (**Part II**). This observation shows that above all, the stake lies in preventing this type of speech; it requires a modification of the characteristics of leadership, both at national and local level. This development began to take shape during the 2013 election, and will likely prevent the emergence of a post-election crisis despite disputes by the losers (**Part III**).

Development of a legal arsenal aimed at an inventory and penalisation of hate speech

The 2007 crisis has resulted in a fully-fledged constitutional reform approved by the referendum in 2010, aimed at restoring national cohesion.

With regard to the management of hate speech, two points of reference take preference:

- ◆ First, the ban (of hate speech), which was not previously formalised in legal terms as well as the installation of possible criminal prosecution (1.1);
- ◆ During the electoral campaign of 2013, a strict restriction on communication media likely to spread hate speech (mobile phones, social media, radios and newspapers, notably) (1.2).

The ban and the penalisation of hate speech since 2008

Section 13 of the 2008 National Cohesion and Integration Act criminalizes the use of hate speech and bars the use of threatening, abusive or insulting words or behaviour in any medium if they are intended to spur ethnic hatred.¹² The Act also established the Kenya National Cohesion and Integration Commission (NCIC) to

thermore, 2013 elections were the most complex in Kenya history, because of an expanded number of electoral positions: in addition to electing a President, Kenyans have to directly elect 384 members of a new bicameral legislature, plus 47 governors and 47 county assemblies. See: BARKAN, Joel, *Electoral violence in Kenya*, Council on foreign relations, January, 2013.

12. "Ethnic hatred" is defined through the Act as "hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins".

promote ethnic harmony, and to "investigate complaints of ethnic or racial discrimination or any issue affecting ethnic and racial relations".¹³

This new legal course had been mobilised to:

- ◆ take legal action against those suspected of hate speech during the 2007 elections. Following its creation, the NCIC has recommended that the Director of Public Prosecution indict at least six politicians—two of them cabinet ministers—and three musicians for hate speech.
- ◆ act as soon as hate speech is detected, with a view to eradicating this behaviour through the 2013 ballot. Thus, two MPs were facing charges of hate speech committed during the 2010 referendum. A number of politicians and musicians have also appeared in court over the past year on charges of propagating "hate speech." For instance, in September 2012, a Nairobi MP and Assistant Minister for Water, Ferdinand Waititu, was arrested because of his remarks stating that all the members of the Maasai community should be chased away from Nairobi.

Restrictions on means of communication during the 2013 electoral campaign

In order to avoid a repeat of the nationwide violence following the previous elections, the Kenyan authorities are restricting campaign methods which use "hate speech" to whip up ethnic tensions. The NCIC has trained 290 police agents across Kenya, that is, one per constituency, on how to investigate and prosecute hate speech. Special attention is paid to social media networks and mobile phone operators' regulation, given the role they played in the 2007 post-electoral violence.

Text messages

Mobile phones, the primary medium used to spread violent messages in the 2007 election, are now subject to tight guidelines. The regulatory National Communications Commission of Kenya (NCCK) has drafted guidelines that place the responsibility of filtering out inflammatory text-messages on mobile phone service providers. It has also banned the use of any language other than Swahili and English—the country's two official languages—when sending out political text messages during the designated campaign pe-

riod. Concerning political parties' text messages, NCIC signed a Memorandum of Understanding (MoU) with the NCCK and the mobile phone operators about bulk SMS messages from political parties. As a result, politicians who wish to send bulk campaign text messages have to wait at least 48 hours before dispatch to enable their mobile service operators to vet the content and reject anything they believe could be inciting. In addition, mobile phone companies are now required to register all SIM cards and allocate unique internet protocol addresses to all the phones on their networks, to make it easier to track down culprits. Anyone found guilty of fanning hatred through text message faces a hefty fine of up to \$ 56,000 or three years in jail.

Furthermore, individuals are encouraged to report hate speech to the police via text message.¹⁴ The National Police Service Commission (NPSC) unveiled a mobile application which enables the public to report hate speech, corruption, electoral offences as well as other cases such as gender-based violence and traffic offences.¹⁵

Social media

Messages on social networks also greatly contributed to the spread of violence in 2007-2008. Attention must be paid to these all the more as they have become a central source of real-time information (for instance, Google launched a 2013 Kenya elections YouTube channel).

The Kenyan government announced that would be monitoring users of social media and would take action against anyone found inciting violence or using hateful or ethnic language in the build-up to the 4 March General Election. It established a team to monitor hate speech on social media, FM stations and blogs ahead of the General Election.¹⁶ In addition, warning notices were sent at the beginning of 2013 to bloggers and social media users.¹⁷ The NCIC also deployed 105 anonymous monitors in the field so as to monitor hate speech.

14. BBC News, *Kenya cracks down on hate speech ahead of poll*, February 26, 2013.

15. <http://www.capitalfm.co.ke/news/2013/01/public-to-report-crimes-hate-speech-via-sms>

16. The East African Standard, *Team to monitor hate speech set up ahead of polls*, January 9, 2013.

17. Bitange Ndemo, Permanent Secretary at the Ministry of Information and Communication, has said that fines of up to KSh1 million (US\$ 11,000) and jail terms of up to three years would be levied on those found using abusive or threatening words on the likes of Facebook and Twitter. Humanipo, *Kenyan government warns social media users on hate speech*, January 9, 2013.

13. Section 25 of 2008 National Cohesion and Integration Act.

Limited law regulations' effects

To date, no proceedings have led to condemnation (2.1.). Furthermore, hate speech was still present in the 2013 electoral campaign, mostly through social media (2.2.).

No successful prosecution

Successful prosecution of hate speech can help prevent it, but success depends on getting watertight evidence. This is never easy due to differences in interpretation of what has been said. This matter runs through three cases currently before the courts. Cabinet minister Chirau Ali Mwakwere, who stands accused of inciting hatred against "Arab" settlers whom he said had taken land from indigenous coastal communities, claims his right of expression was being "grossly violated" by the case. And three Kikuyu musicians—whose songs praising presidential aspirant and ICC suspect Uhuru Kenyatta were termed by the Commission as "insulting" and "threatening" to the Luo community—say their prosecution amounts to a "*criminal interpretation of artistic works*."

Despite the high-profile names currently linked to hate speech, the country's legal system has a poor track record of holding powerful officials to account. Specifically, suspected hate-propagators have been acquitted after monitoring bodies failed to provide "compelling" evidence against them. Charges were dropped against the three politicians accused of using hate speech during the 2010 referendum on a new constitution. The situation was repeated with Waititu's alleged hate speech in September 2012. While visiting Kayole Estate in Nairobi's Eastlands area, F. Waititu, MP of Embakasi area (Nairobi) and Assistant minister for Water, had urged the area residents to flush out members of the Maasai community, whose men are employed as night watchmen, for killing a street boy who had stolen a chicken: "*We are saying we do not want to see members of the Maasai in Kayole from today (...) They must leave ... anybody can be employed as a watchman.*" Riots sparked off soon after.¹⁸ A few days later, he apologised and, in said in a statement sent to newsrooms that he was misquoted by members of the press in a wider plan to spoil his bid for the seat of Nairobi governor: "*I am sorry over anti-Maasai comments; political rivals have politicised the issue to spoil my bid.*" After Waititu's public apology, NCIC withdrew its complaint. The NCIC also proposed Waititu as a Peace Ambassador to promote peaceful campaigning and national cohesion.

18. BBC News, *Kenya MP Ferdinand Waititu accused of hate speech*, September 25, 2012.

Hate speech during the 2013 electoral campaign

Despite modified legislation, hate speech remained consistent during the 2013 electoral campaign. While incidences of hate speech had reduced in the mainstream media, there was a real concern over its resurgence and incitement in social media,¹⁹ especially over the two-week period before and during the elections.²⁰

A hunt for alleged hate-propagators was launched though. For instance, the Committee on Media Monitoring has identified on February 25 accounts which it wants Facebook to expose so that those behind them are arrested and prosecuted.²¹ To date, four people are also set to be prosecuted for hate speech perpetrated on social media.²²

Nevertheless, no arrests have been made linked to online hate speech. The bodies in charge of hate speech investigation and prosecution have experienced difficulties in providing sufficient proof. There is also some form of restraint in not wanting to prosecute without irrefutable proof given the risk of politicisation of certain legal proceedings. Whenever prominent individuals are linked to incidents of hate speech, there is a tendency for their supporters to claim that the cases are inspired more by political affiliation than by specific acts. Hence, the authorities are often limited to giving warnings, at least when they can identify the originator of the message in question.

The stakes: working to prevent hate speech through means other than the law

In the short term, one of the emerging axes of intervention to prevent deterioration is the recourse to "peace speech." This was widespread during the electoral campaigning of 2013 (3.1.). In the mid-term, the stake rests on sensitisation of local leaders and citizens on the need to avoid recourse to this type of speech in favour of other means of discussion (3.2).

19. <http://elections.nation.co.ke/news/Tool-to-track-hate-messages-unveiled--/1631868/1680262/-/12a2cd3z/-/index.html> The NCIC is actively pursuing three bloggers of hate speech whose investigation files are almost complete". She added that experts were assisting the NCIC in tracking down perpetrators.

20. <http://www.the-star.co.ke/news/article-111925/media-monitoring-committee-warns-against-hate-speech>

21. <http://elections.nation.co.ke/news/Team-urges-Facebook-to-expose-hate-speech--/1631868/1699694/-/egxersz/-/index.html>

22. <http://www.nation.co.ke/News/politics/Four-face-prosecution-over-social-media-hate-campaign--/1064/1725628/-/gfrhul/-/index.html>

The spread of “peace speech” during the 2013 electoral campaign

The elections in Kenya in 2013 unfolded under a climate of calls for peace, with strong international pressure in favour of a peaceful poll.²³

While holding primary elections, usually marked by local violence, the major political alliances called for calm. The Coalition for Reforms and Democracy (CORD) led by Raila Odinga, for instance, warned that the Coalition was monitoring cases of violence or hate speech and would disqualify offending candidates.²⁴ Jubilee Coalition running mate William Ruto also gave assurances that the coalition was committed to peaceful elections and would disqualify candidates who engaged in violence. In his statement, he said, *"We have made it mandatory that all candidates must make it their business to ensure their supporters are peaceful. Any candidate who engages in violence will be disqualified"*.²⁵

Hence, all candidates cleared by the IEBC to compete in the elections were required to sign an electoral Code of Conduct. According to the latter, candidates would be held personally responsible for electoral malpractices, including violence and incitement to violence. In addition, presidential rivals Raila Odinga and Uhuru Kenyatta promised to concede defeat if they lost,²⁶ as did the six other candidates.²⁷ They all participated in a peace rally at Nairobi's Uhuru Park and committed themselves to peace, whatever the outcome of elections, holding hands before thousands of Kenyans who waved white handkerchiefs.²⁸

A media blitz of tolerance also flooded the airwaves. Some radio stations even organised peace road shows, such as a rally on February 15 in the coastal city of Mombasa by Luo-language

Ramogi FM. The Luo heartland is in the western Nyanza region, but they have a significant presence in the key urban centres. A presenter told listeners that they were in Mombasa *"to preach peace ahead of the elections."* As the polling day drew near, popular stations played songs praising the virtues of patriotism and ethnic tolerance. Kameme FM, one of the main Kikuyu-language stations, had been airing a song which asks God to *"hear our prayers and watch over our nation"* since Kenyans were *"rising against each other."* The Kalenjin-language Kass FM, meanwhile, broadcasted a song calling for *"love and cohesion."* The song urges the Kalenjin to *"love your neighbours"* and *"if they wrong you, forgive them."*²⁹

These appeals for calm continued after the announcement of the results of the first round, in which Uhuru Kenyatta was declared winner even as a suit has been filed by CORD before the Supreme Court of Justice to contest the results. To date, with the exception of the incidents at the Coast in which 20 people were killed on Election Day, no major violent incidents were noticed.³⁰

Pursuit of civic education

Beyond voter education³¹, civic education should also be developed. In preparation for the 2013 elections, several organisations provided civic education, although coordination was a major concern. These included Uraia Trust, established in 2011 as a successor to Kenya's National Civic Education Programme and the Kenya National Integrated Civic Education Programme (K-NICE), which is a partnership between non-state actors and the government intended to provide a long-term strategy for increasing citizen participation in the implementation of the constitution.

In addition, a number of television programmes, including IEBC Countdown and Cheche, were designed by the NCIC and civil society to improve interaction with the public through the

29. BBC News, Kenya cracks down on hate speech ahead of poll, February 26, 2013.

30. When the official results were declared on March 9, minor clashes occurred in Kisumu and Nairobi but were quickly contained.

31. Many voters education's programs were launched by the IEBC and the NCIC. Notably, the IEBC had a regular programme on TV to educate citizens to the electoral process. The issue was specifically important in 2013 as voters were required to make six choices at the same time in the balloting booth (with newly created positions such as County governor and County assembly representative). Yet, on April 2012, findings from the South Consulting survey showed that near a third of the respondents did not know the role of a Governor and near a half had no idea what the role of the county assembly representative is (South Consulting, *The Kenya national dialogue and reconciliation monitoring project. Review report*, May 2012, p. 36).

23. The USA President, Mr. Obama, stressed that the US does "support an election that is peaceful and reflects the will of the people." He urged the Kenyan people to "come together, instead of tearing apart. If you do, you can show the world that you are not just a member of a tribe or ethnic group, but citizens of a great and proud nation." <http://www.businessdailyafrica.com/Obama-calls-on-Kenyans-to-keep-peace/-/539546/1685538/-/n7b684z/-/index.html>

24. http://www.standardmedia.co.ke/?articleID=2000074488&story_title=Cord-to-disqualify-candidates-who-engage-in-violence

25. http://www.standardmedia.co.ke/?articleID=2000075675&story_title=Ruto-assures-EU-observers-of-peaceful-polls

26. <http://elections.nation.co.ke/news/Candidates-warned-to-play-by-the-rules/-/1631868/1680102/-/ks7p8p/-/index.html>

27. http://www.standardmedia.co.ke/?articleID=2000077131&story_title=Kenya-Presidential-candidates-face-off-in-debate

28. <http://elections.nation.co.ke/news/Joining-hands-for-peace/-/1631868/1703522/-/158gqes/-/index.html>

mass media. One of the private election awareness drives launched on 22 September 2012 was Uongozi, an initiative of Inuka and the Nation Media Group in partnership with the U.S. Agency for International Development (USAID), UK Department for International Development (DFID) and a number of other donors. It aims at encouraging Kenyans to engage in the democratic process positively by selecting 48 outstanding leaders for a reality show where their leadership skills would be tested.³² In addition, the Media Owners' Association sponsored on February 2013 the historic first live presidential debate covered by all the major media houses and outlets.

32. ICG, *Kenya's 2013 Elections*, Africa Report n°197, January 17, 2013.

This sensitisation process should also be conducted outside of election periods, especially through campaigns to promote national cohesion. In this regard, the NCIC conducted a nationwide study on the 'Use of Coded Language and Stereotypes' by various communities in Kenya and how they are perceived by the users and target groups.³³ This study was prompted by the realisation that individuals sometimes use stereotypes (ST) and coded language (CL) to invoke feelings of hate towards particular Kenyan ethnic communities which, in turn, raises the possibility of recurrence of ethnic conflicts. Indeed, it was confirmed that the use of coded language and stereotypes were widespread during the 2007 electioneering period.◊

33. NCIC, *The Use of Coded Language and Stereotypes among Kenyan Ethnic Communities*, 2011.

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