

Taming the demon of Kenya's Election violence

A strategy for the National Cohesion and Integration Commission (NCIC)

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Introduction

In early 2008, over half a million Kenyans were displaced and a further 1,300 lost their lives during two months of intense violence that occurred after the announcement of presidential and parliamentary election results. The incumbent, Mwai Kibaki, was declared the winner, and disputes arising after this announcement led to fighting, killing and the destruction of property initiated by supporters of opposition leader, Raila Odinga, who felt that they had been denied a victory.

The year 2008 became Kenya's *annus horribilis* – violence by Kenyans against Kenyans was broadcast to the world. But 2008 was also Kenya's *annus mirabilis*¹ – the year that marked a new beginning shaped by the Kenya National Dialogue and Reconciliation (KNDR) framework.² The KNDR arose out of the mediation process mandated by the African Union and was chaired by Kofi Annan as head of the Panel of Eminent African Personalities. The framework

aims to prevent a recurrence of ethnic violence, and to manage the transition period between its adoption in 2008 and Kenya's next round of elections, planned for 2012.

This policy brief explains the purpose and mandate of the National Cohesion and Integration Commission (NCIC), the only permanent body created by the KNDR, and delves into some of the causes underlying Kenya's election violence. The brief then strives to inform future strategies of the Kenyan government and the NCIC by outlining a series of recommendations that aim to prevent an escalation of ethnic conflict in Kenya in the lead up to the 2012 elections.

The KNDR and the NCIC

The NCIC was created to address the post-election crisis and the underlying issues that caused the crisis. It is mandated "*to facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of the different ethnic and racial communities of Kenya, and to advise the Government on all aspects thereof.*"³

Operationalised in 2009, the NCIC identified four key milestones that have the potential to trigger further violence. These include:

1. the referendum on the Constitution held in August 2010,
2. the ongoing resettlement of internally displaced people,
3. the proceedings of the International Criminal Court (ICC) with regard to the charges levelled against several high-ranking Kenyan politicians, and
4. ethnic mobilisation that may occur ahead of the 2012 elections.

Linked to these milestones, appropriate mechanisms for monitoring early warning signs and indicators were developed, along with suitable tools for intervention, some of which were successfully applied during the 2010 referendum. The referendum was violence free which was a huge achievement. Compared to the 2007 elections, during which more than 1000 hate-speech text messages were circulated to more than five million people, only minimal incidents of hate speech were reported during the 2010 referendum. The NCIC achieved this formidable feat by taking three members of Parliament to court on hate-speech and incitement charges – the first hate-speech cases to be prosecuted in Kenya – and by working with the National Steering Committee on Peace Building and Conflict Management, Peace Net (a network of NGOs), the United Nations Development Programme, and the Kenyan police in a partnership named the Uwiano Platform for Peace.⁴

Kenya's new Constitution, approved by 67 per cent⁵ of the population during the 2010 referendum, largely speaks to the spirit of the KNDR and provides a permanent framework for the implementation of reforms. Thus laws aimed at giving effect to the provisions of the new Constitution, and addressing long-term structural issues, are currently being drafted. A Commission for the Implementation of the Constitution has been established; among other things, its functions are to monitor, facilitate, and oversee the development of the legislation and administrative procedures required to implement the Constitution.

The KNDR does not stand alone – civil society played a vigorous role in the run-up to the drafting of the KNDR framework, and continues to be active in holding government accountable, in driving community peace-building initiatives and in helping to generate an internal demand for truth and justice as a precondition for sustainable peace. Civil society also exerts pressure on the parties to the KNDR and its so-called Agenda 4 Commissions to implement the various agenda items.⁶ However, impunity for past and current human rights violations continues to prevail.

Election related conflict in Kenya

Conflict is often described as cyclical, with recurring phases of escalation and de-escalation.⁷ In this regard, specific patterns have emerged in Kenya's election-related conflicts, and much can be learned from studying the escalation of violence in past election contexts. For instance, in the months leading up to previous elections, it has been common for ethnic leaders to mobilise "collective discontent"⁸ and catalyse this into action taken by organised groups. Violent actors are easily recruited from ethnic militia and unemployed youth.

Permissive conditions for these recruitments exist at many levels; structural factors and underlying causes fuel divisions along socio-economic, ethnic, racial, religious, cultural and political lines. Some recruits "graduate" into militia groups after having joined self-defence vigilante movements in response to crime – itself an indictment on the role and success of the security forces in protecting citizens. Legacies from the past also play a role. For example, Kenya's northern and upper Eastern regions have long been defined by neglect and discrimination at the hands of successive authorities, first by the colonial British regime in Nairobi and then, after independence in 1963, by the first Kenyan government. This has led to recurring violent conflicts over issues such as cattle rustling and access to water and pasture. Although these issues are not directly related to the holding of elections, the politicisation of these tensions has been a hallmark of party manifestos in these regions, often delivered shortly before national elections. In other cases, violence has occurred in response to attempts at demographic transformation (in effect, forced displacements) orchestrated by various political players to make certain areas "voter friendly". Inter-ethnic conflicts are characterised by attacks on "other" communities assumed to have voted differently.⁹

The government that came into power in 2002 initiated a number of reforms that indicated its commitment to the building of an inclusive society throughout Kenya. Indeed, after the 2002 elections, Kenyans were lauded for making a peaceful transition away from a regime that had been marred by massive human rights violations, including the politically instigated ethnic clashes that had marred the 1992, 1997 and 2002 elections. The period following the 2008 violence offered an opportune moment for a disarmament and demobilisation processes that could have paved the way for reintegrating these ethnic militias. Unfortunately, this did not happen. However, the underlying permissive conditions for election violence have been the target of long-term prevention initiatives by the KNDR's Agenda 4 Commissions. Important lessons drawn from independent assessments of the 2007/08 violence such as the *KNDR Monitoring Project Review Report*, emphasise the need for social cohesion as a foundation for sustainable peace, and to ensure peaceful elections in 2012.¹⁰ This has wide-ranging implications for the period leading up to the 2012 elections:

- Additional energy and resources need to be devoted to preventing violence.
- The main stakeholders, such as the electoral infrastructure, civil society, international actors and political parties, must define a conflict prevention strategy.
- The level of preparedness of government, the NCIC and humanitarian organisations must be assessed. Early warning mechanisms must be linked to rapid response and action capacities, while ensuring concurrent and ongoing efforts at roundtable diplomacy and permanent field missions.

During the lead up to the elections, it will also be important to examine how the NCIC can include more partners in trust-building initiatives between ethnic communities to create a shared vision of violence-free elections. Divisive issues between ethnic communities require interventions to contain conflict and insecurity, similar to the methods used in the recent referendum process. There are various possible scenarios for post- 2012 Kenya. The worst-case would be a recurrence of violence across the country. Strategies must be developed to protect vulnerable groups and individuals.

Civic education is often seen as a key method of mitigating electoral discord, and the NCIC is working in partnership with the civic education component of UNDP Kenya to develop a practical

guide on the cohesion and integration benefits of the new Constitution. However, empirical evidence on the efficacy of mass education remains inconclusive,¹¹ and civic and voter education activities seem to have done little to avert the crisis in Kenya in 2007 and early 2008. Perhaps the NCIC and the Independent Electoral and Boundaries Commission should focus more on civic engagement, rather than education, as a conflict prevention strategy.

Factors influencing the road ahead

As shown, Kenya has sufficient underlying causes to create the conditions necessary for conflict to develop. These preconditions need a trigger and/or proximate causes to escalate into violent conflict.¹² Proximate causes can generally be defined as rapid and unexpected changes in any of the underlying causes. The milestones identified earlier (ethnic mobilisation around the elections, the issue of internally displaced people, and the perceived effects of the International Criminal Court's investigations and prosecutions) could easily trigger an escalation of violent conflict.

The 2012 elections

In the run-up to the 2012 elections, preventive interventions will be of the utmost importance, and must address a number of important structural, economic, and cultural factors. Each factor requires different policy responses. Conflict analysis and mapping is crucial. Identifying what communities have in common could diffuse hostility. For example, "peace bases" could be built at points of convergence such as schools, water points, hospitals and markets. Furthermore, the extent to which underlying structural causes have been addressed must be considered, including recurring patterns that lead to conflict.

In relation to specific leaders, precise criminal and political consequences must be incurred by anyone who promotes policies, words or actions that deliberately fuel conflict. This kind of trigger is relatively easily recognised, and preventive diplomacy should focus on these to deliver effective, punctual interventions.

Already, ethnic-identity-based politics has begun to shape the political parties' 2012 election campaigns, with leaders calling for ethnic communities to come together.¹³ Leaders typically use these ethnic calls when they feel threatened, as the calls aim to mobilise ethnic voting blocs. This is clearly a potential trigger for violence, with some communities, especially minority communities, feeling excluded and marginalised. Where a history of conflict exists between minority and other communities, the effects of these calls are exacerbated, and it is far easier to incite further violence in such situations.

Resettling displaced people

The hundreds of thousands of internally displaced people who fled their homes in 2008 in search of safety requires decisive and prompt action in order to contain the potential for violence. Initially, the Kenya Red Cross and United Nations High Commission for Refugees set up camps to provide emergency assistance and shelter, but these were closed in 2009. However, in the absence of meaningful reconciliation with those who displaced them, some people have been unable to return home, for fear of renewed attacks. Others have returned home, but still feel threatened by those who displaced them and live in fear.¹⁴ Whether they have returned home or not, many affected individuals still lack sufficient resources to rebuild their lives and are waiting for the government to provide them with the necessary assistance. The tensions inherent in this situation must be urgently addressed through resettlement and reconciliation programmes that enable people to return to the land that they were displaced from, and ensure that they can remain there safely.

The International Criminal Court process

An escalation in negative ethnic mobilising typically occurs when one group is faced with aggression, or when one side perceives another as the cause of loss or unfulfilled aspirations. Immediately prior to the start of the formal ICC proceedings, intensive anti-ICC lobbying and mobilisation took place. This resulted in the NCIC, religious leaders and the President jointly cautioning leaders and addressing popular discontent.¹⁵ Despite this, the high-ranking politicians currently on trial at the ICC for crimes against humanity have received psychosocial support (and, in some cases, money to offset their court expenses) from the ethnic communities they originate from. As a result, inter-ethnic relations have been politicised, translating into discontent particularly aimed at those ethnic communities that are “not represented” among those facing charges at the ICC.

As polarisation between ethnic groups increases, the likelihood of ethnic communities attempting to violently pre-empt aggression from others escalates. An escalation of violence must be prevented at all costs. In the resolution of conflicts, and the process of reconciliation and peacemaking, it is crucial to consult all parties in the conflict. There are crosscutting issues and communication links between all Kenyan communities that provide room for negotiations between leaders. This is what the KNDR process offered during and after the post-election violence in Kenya; achieving the cessation of hostilities in the country and ensuring that statutory protected methods of dealing with long-term issues were put in place. The implementation of the decisions taken during the KNDR process is ongoing, and it remains important to monitor the work of the mechanisms it created to ensure that Kenya remains a stable and peaceful country. Even with the significant gains brought about by the KNDR process, the level of consultation with those affected by the post-election violence was marginal. For maximum progress towards reconciliation, it is crucial for the Agenda 4 Commissions of the KNDR to adopt a pro-people approach, and to be as inclusive as possible. This policy brief, therefore, raises the following recommendations for consideration in efforts towards achieving social cohesion in Kenya.

Recommendations

The recommendations are aimed at preventing an escalation of violence into a pre-conflict phase, and are framed within the political, socio-economic, and ideological context within which justice and reconciliation could be sustainably developed.

For government

- Ensure that lead actors in Government define specific conflict-prevention goals and factor the promotion of conflict-prevention and protection objectives into policies and legislation.
- Diffuse tensions within ethnic communities, uphold the rule of law, and respect the independence of the ICC by co-operating with the court where required.
- While the ICC process is ongoing, take decisive steps to bring to account perpetrators of post-election violence crimes. This would serve as a deterrent to the perpetration of future such crimes, while at the same time responding to the grievances of victims of these crimes.
- Enforce the Witness Protection Act, and protect the dignity and rights of victims, victim communities, witnesses and intermediaries who have not yet come forward on post-election related violence for fear of stigmatisation.
- Disarm and demobilise militia groups, and provide tailored, individually focused and sustainable solutions for long-term reintegration linked to the provision of security for disarmed communities.
- In the absence of a proportional representation system, formalise political inclusion through power-sharing arrangements at the political centre, including convocational arrangements in which seats are distributed among ethnic communities and minority groups.

For the NCIC

- Strengthen access to top leadership, including the Kenyan President and Prime Minister as well as the Panel of Eminent African Personalities and local parliamentarians, and create platforms that allow frequent engagement with, and contributions to, peace-building processes.
- Ensure the continuous flow of information and advice to government on issues that threaten peaceful co-existence.¹⁶
- Provide a policy-planning tool and guidelines on conflict prevention that can be mainstreamed across all government departments. As such, conflict prevention is mainstreamed across all areas of public policy.¹⁷
- Draft a memorandum to invite the Cabinet to approve a conflict-prevention strategy, and direct all Ministries and Government departments to take appropriate and necessary action towards its implementation.
- Strengthen and update links with international mediation support groups and “groups of friends”¹⁸ to ensure widespread support for the KNDR.
- Strengthen conflict-prevention partnerships with the private sector.¹⁹
- In partnership with media houses, run conflict-awareness and prevention campaigns in the national print and broadcast media.
- Co-ordinate conflict prevention and management meetings for law enforcement agencies; this should include creating a standing high-level platform that brings together the Chief Justice, the Commissioner of Prisons, the Independent Electoral and Boundaries Commission, and the Kenya Police. This should extend to Provincial and District level.
- Strengthen the role of elders as agents of peace – the implementation of international conflict prevention standards, modelled on western approaches, presupposes the existence of functioning traditional-justice mechanisms; as such, traditional elders should be linked to national peace processes and institutions.
- Recognise and promote the importance of collective involvement in policy dialogue on critical issues around sustainable peace, security and development, promoted through community-level peace agreements, social contracts and policy frameworks.
- Bring more women to the peace table, and ensure that women are well represented during negotiations; involving women is likely to add a broader and more long-term perspective, plus a focus on critical priorities and needs, and may thus contribute to stronger and more enduring peace agreements and social contracts.
- Review government policies and draft legislation to ensure that specific conflict-prevention goals are defined.
- Strengthen co-operation between structures, and particularly between the Government and civil society, by way of training specialists in multi-track diplomacy²⁰ and the consultative validation of conflict-prevention agendas.
- Foster and publicise intra-ethnic dialogues across the counties to give Kenyans opportunities and forums in which to engage with each other. Officials from national institutions charged with enhancing peace and security should attend such events.
- Ensure the implementation of the recommendations contained in the ethnic audit conducted during 2011, which suggest that individuals from all ethnic communities in Kenya have equal access to civil service jobs.²¹
- Conduct scenario analyses on the likely impact of the ICC’s actions on the rapidly approaching 2012 elections, and assess support for a broad-based societal coalition against violence ahead of the elections. From the findings, prepare a blueprint for conflict prevention to inform international activities aimed at supporting peaceful and democratic elections in 2012.

For civil society

- Initiate community dialogue sessions throughout Kenya, aimed at assessing the immediate needs of communities in forging a way forward towards reconciliation and cohesion.
- Conduct analysis and engage with the Truth, Justice and Reconciliation Commission to develop a reconciliation policy that includes consultations with victims and aims to develop well conceived and inclusive reparations programmes.
- Conduct conflict mapping, and identify and implement context-specific intervention strategies.

For the United Nations

- Acting through the relevant offices in Kenya, and in line with the *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*,²² support domestic reforms, help build the capacity of national justice-sector institutions, and facilitate national consultations on justice reform and transitional justice.

Notes

- 1 *Annus horribilis* is a Latin expression meaning “horrible year”. Conversely, *annus mirabilis* means “miraculous year”. The latter refers to a year in which an unusual number of remarkable things occur.
- 2 There are four items on the KNDR’s Annotated Agenda:
 1. immediate action to stop violence and restore fundamental rights and liberties;
 2. immediate measures to address the humanitarian crisis, promote reconciliation, healing and restoration;
 3. measures to overcome the current political crisis; and
 4. long-term issues and solutions.Further information is available at <http://www.dialoguekenya.org/agreements.aspx>.
- 3 More information about the NCIC and its mandate is available at www.cohesion.or.ke.
- 4 *Uwiano* is Kiswahili for cohesion.
- 5 M Diallo. 2010. “New Kenyan Constitution Ratified”, *Voice of America*, 6 August 2010. Available at <http://www.voanews.com/english/news/africa/Kenyas-New-Constitution-Ratified-100158209.html>.
- 6 The Agenda 4 Commissions take their name from item 4 on the KNDR’s Annotated Agenda (mentioned in note 2), which deals with long-term issues. The commissions include the Commission of Experts on Constitutional Review, the Independent Election Commission, the Truth, Justice and Reconciliation Commission, the National Cohesion and Integration Commission, the Independent Boundaries Review Commission, the Interim Independent Constitutional Dispute Resolution Court. For more information see, Kofi Annan Foundation, *The Kenya National Dialogue and Reconciliation: One Year Later*. Geneva, 2009. Available at http://kofiannanfoundation.org/sites/default/files/KA_KenyaReport%20Final.pdf.
- 7 D.O. Itoje, “Conflict Management: A Tool for Global Peace”, paper presented to the XXVIII Conference on Social Capital and Social Transformation in the Age of Globalization, 11–14 June 2004, Greece.
- 8 The term “collective discontent” is derived from a case study of the politicisation of the Mau Mau rebellion in Kenya between 1952 and 1956 by Claude Emerson Welsh Jr, published in *Anatomy of Rebellion*, SUNY Press, 1980. The phrase finds meaning in contemporary Kenya where opposing sides in an election, whether trying to secure victory or determined to remain in power, consider options other than the silent act of voting. The group that loses becomes discontented and may attempt theatrical statements of political preference such as organised exhibitions of collective violence. See M. Haas, *Polity and Society: Philosophical Underpinnings of Social Science Paradigms*, New York, Praeger, 1992.
- 9 K. Kanyinga & D.Okello, *Tensions and Reversals in Democratic Transitions – The Kenya 2007 General Elections*. Nairobi: Society for International Development and Institute for Development Studies, University of Nairobi, 2010.
- 10 *Kenya National Dialogue and Reconciliation (KNDR) Monitoring Project Review Report*, South Consulting, 2011. Available at <http://www.dialoguekenya.org/docs/June2011ReviewReport.pdf>. (South Consulting was designated by the Panel of Eminent African Personalities to undertake independent monitoring and evaluation of the KNDR.)
- 11 See R.A Morrow & C.A. Torres, *Social Theory and Education: A Critique of Theories of Social and Cultural Reproduction*. New York: SUNY Press, 1995.
- 12 P.Q. Yang, *Ethnic Studies: Issues and Approaches*, New York: State University of New York, 2000.
- 13 See, for example, Aggrey Mutambo, “Tribal Groupings put on Notice”, *All Africa.com*, 8 February 2011, Available at <http://allafrica.com/stories/201102090130.html>
- 14 “Speedy reform needed to deal with past injustices and prevent future displacement”, Internal Displacement Monitoring Centre Paper, 10 June 2010. Available at [http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/4CBEC555A558F577C125773E00395B4B/\\$file/Kenya_Overview_June10.pdf](http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/4CBEC555A558F577C125773E00395B4B/$file/Kenya_Overview_June10.pdf)
- 15 The NCIC issued cessation notices to the following leaders: Hon. Raila Odinga, Hon. Uhuru Kenyatta and Hon. William Ruto.
- 16 Current such engagements include: briefs with the President and Prime Minister of Kenya based on the state of cohesion; Parliamentary meetings; meetings with the Secretary to the Cabinet and all Permanent Secretaries for in-depth discussions on specific areas such as education policies, ethnic auditing etc.; and ad-hoc meetings to discuss issues that arise, such as the refusal by certain communities to accept internally displaced people.
- 17 For example, the Ministry of Agriculture has considerable reach on the ground in Kenya as it provides extension services to more than ten million farmers and agro-pastoralists.
- 18 “Groups of friends” as used here refers to formal and informal international coalitions that support mediation processes; examples include the Friends of the Guatemalan Peace Process, the International Contact Group on Somalia, and Kenyans for Truth and Justice.
- 19 At the time of writing, the NCIC had partnerships with, for example, the Kenya Bankers Association, the Association of Kenyan Manufacturers, the Kenya Hoteliers Association, the Kenya Tourism Board and the Association of Kenya Insurers.
- 20 For more information on multi-track diplomacy see http://imtd.server295.com/?page_id=119
- 21 Ethnic audit of state agencies launched [Online]. 2011. Available from at <http://allafrica.com/stories/201109051107.html> (29 October 2011)
- 22 The report is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement>.

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The Institute for Justice and Reconciliation (IJR) was launched in 2000 in the aftermath of South Africa's Truth and Reconciliation Commission with an aim of ensuring that lessons learnt from South Africa's transition from apartheid to democracy be taken into account in the interests of national reconciliation. IJR works with partner organisations across Africa to promote reconciliation and socio-economic justice in countries emerging from conflict or undergoing democratic transition. IJR is based in Cape Town, South Africa. For more information, visit <http://www.ijr.org.za>, and for comments or inquiries contact info@ijr.org.za.

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