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Patrick Mutahi and Brian Kimari

Summary

Electoral violence has become synonymous with Kenya's elections. This acquired deadly proportions during the 2007 elections. However, it was also during this time that social media and digital technology were first used for political reasons, including for campaigning and polling. Social media and digital technology had mixed uses where they were not only used to propagate hate speech and mobilise for violence, but also to identify and map out violence hotspots. Since then, they have increasingly become an indispensable tool in Kenya's politics and governance, used by political leaders to spread information, campaign and mobilise. However, the widespread reach of social media has also been a major challenge to security, peace and peacebuilding since it has been used to incite hatred and violence. This paper identifies the specific threats that social media and digital technology pose and opportunities they present for violence prevention. Ultimately, the paper seeks to present the opportunities that exist for partnerships between state and non-state actors to effectively prevent political and electoral violence.

Keywords: Kenya, elections, violence, peace, social media, digital technology.

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Acronyms

BAKE	Bloggers Association of Kenya
CA	Communications Authority of Kenya
CIPEV	Commission of Inquiry into Post-Election Violence
CORD	Coalition for Reforms and Democracy
CSO	civil society organisation
DCI	Directorate of Criminal Investigations
DMCA	Digital Millennium Copyright Act
EU EOM	European Union Election Observer Mission
GoK	Government of Kenya
HRW	Human Rights Watch
ICC	International Criminal Court
ICG	International Crisis Group
IEBC	Independent Electoral and Boundaries Commission
IHRB	Institute of Human Rights and Business
IPOA	Independent Police Oversight Authority
KANU	Kenya African National Union
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission of Human Rights
MCA	Member of County Assembly
NARC	National Rainbow Coalition
NCEC	National Convention Executive Council
NCIC	National Cohesion and Integration Commission
NPS	National Police Service
NSC	National Steering Committee on Peace Building and Conflict Management
ODPP	Office of the Director of Public Prosecutions
OECD	Organisation for Economic Co-operation and Development
ORPP	Office of the Registrar of Political Parties

Summary

Social media has increasingly become an indispensable tool in Kenya's political spaces. Its wide reach has rendered it an asset to political leaders who use it to spread information, to campaign, and to mobilise supporters during election cycles. However, the use of social media has presented a dilemma for conflict prevention and peacebuilding. It was used to incite hatred and violence during the 2007 elections where hateful and incendiary messages were circulated through popular social media platforms, leading to calls for regulation to stem the spread of hate speech. The same trend is being recorded as the country prepares for 2017 elections. On the other hand, it is also used to provide counter-messaging and promote peace messages.

Social media and digital technologies as used by Kenyan citizens and leaders, thus poses a threat to stability but also presents opportunities for peacebuilding. This study seeks to identify some of the opportunities and limitations of social media and other digital platforms on the political landscape, especially how they are used to mobilise, monitor, respond to and prevent violence, as well as their usage in peacebuilding.

Undoubtedly, the 2007 presidential elections saw the dissemination of hateful and divisive language through the media. However, these elections were particularly unique from those before, owing to the use of new media forms in addition to the traditional media. This included the popular use of phone technology through SMS text messages sent *en masse* and the use of internet technology, especially email, blogs, and social networking platforms. Numerous reports indicated the role played by new media in inflaming and spreading hate speech leading up to the violence (Bayne 2008; European Union 2008; KNCHR 2008; Njoroge *et al.* 2011).

On the other hand, peace actors used the same platforms to call and campaign for peace, a feat that was replicated during the 2013 elections. Television broadcasters went on social media such as Twitter and Facebook to spread positive messages and encourage viewers to remain calm and patient as the election results were announced. It was during this election that social media also became a visible component of campaigning as candidates seized on its potential to mobilise supporters. In 2017, political actors across the spectrum have utilised social media platforms to mobilise supporters and even hired people to manage their social media accounts. The same peace messaging deployed in 2013 has been replicated five years later, using the social media, SMS text messages and various internet platforms.

Social media presents an opportunity to report and document election-related violence. Online monitoring through crowd-sourcing enables the identification of appropriate technologies and tools to track and analyse structural tensions, social divides and friction points. Using SMS, Kenyans have been able to report, map and document violent incidents on a mass scale, providing information which journalists could not ordinarily access using traditional means. Facebook has allowed users to share experiences and witness accounts of elections, while other sites have permitted the uploading and sharing of videos showing violence and thus enabling the mapping of violence and generating public attention which would facilitate prevention efforts as well as responses by government and other actors.

It is important to note that social media does not actually *cause* the violence but is simply a tool to inflame and exploit existing divisions. Digital technology and social media platforms are employed to not only provoke emotions, but also spread false information or so-called 'fake news'. Despite existing laws on hate speech and the existence of the National

Cohesion and Integration Commission (NCIC),¹ there have been few convictions. Another challenge has been the lack of necessary tools and skills to monitor and detect online activity which makes it difficult for government and non-state actors to respond to activity that may lead to or propel violence. This is especially problematic due to an abundance of platforms on which information is shared faster than before and to a wider audience. To politicians, these tools have nevertheless enabled them reach audiences at a lower cost compared to that required for on-the-ground mobilisation.

However, the online space remains a marketplace of ideas, which contributes to development and requires protection from unnecessary interference and irresponsible users especially through self-regulation and moderation by site managers and users. This will guarantee users their rights to freedom of expression. The protection of these rights and freedoms, however, also requires the limitation of hate speech because hateful comments hijack legitimate public debate.

The paper concludes with the following recommendations:

- State and non-state actors need to enhance coordination and linkages in initiatives using technology and social media to curb electoral violence, including closely working with stakeholders' peace forums at the county and community levels;
- Policymakers should consider other measures including self-regulation and co-regulation that may complement the limited existing legislative and judicial mechanisms for regulating online activity that could lead to incitement and violence;
- Internet service providers, telephone companies and the state should carry out public information and education campaigns as part of interventions to curb online hatred. Education can increase the responsibility of individual users and thereby promote a culture of intolerance towards online hate. When people are informed, they can report abuse and also name and shame violators;
- Any efforts by the government to deal with online hate crimes should be guided by the Constitution and should not be used as a license to violate other individual rights and freedoms especially;
- There is a need for continuous training of law enforcement officers so that they can investigate and prosecute, where necessary, hate crimes more effectively especially in a context of rapidly changing and spreading use of new technologies.

¹ The NCIC is a statutory body established under the National Cohesion and Integration Act (Act No.12 of 2008). It seeks to promote national unity in Kenya and facilitates processes and policies that encourage elimination of all forms of ethnic discrimination irrespective of background, social circle, race and ideological belief(s).

1 Introduction

The outbreak of widespread violence following Kenya's disputed 2007 elections thrust non-state actors into the limelight of the discourses on violence in Kenya. Though still organised and carried out in the same manner as previous cycles of electoral violence, in this round, social media and digital technologies were used for perpetrating violence (CIPEV 2008).

The report of the Commission of Inquiry into Post-Election Violence (CIPEV)² established that the 2007/08 violence was partly due to the spread of hate speech witnessed in the run up to the election (CIPEV 2008). According to the Kenya National Commission on Human Rights (KNCHR),

The entire electioneering period was characterised by hate speech and incitement to violence... One thing that is memorable about the 2007 elections is the role played by all manner of information from all manner of sources, unsolicited and solicited – SMS, blogs, emails, newsletter, leaflets, not to mention the newspapers, TV and radio sources. (KNCHR 2008)

Social media and digital technology have thus been a conduit, rather than a cause, of the violence. They have been used as tools to incite and organise the violence.

The growing significance of ethnic hatred and incitement through the internet and social media in Kenya is largely due to the rapid spread of mobile phone and internet usage in the country over the past 15 years. According to the Communications Authority of Kenya (CA), the estimated number of internet users currently stands at 40.5 million whereas mobile subscriptions stand at 39.1 million (CA 2017: 5, 23).³ Mobile and internet-based platforms that are widely used include WhatsApp, Facebook and Twitter among others. WhatsApp reportedly has 10 million users in Kenya, whereas according to Facebook, its users in Kenya add up to about 6.1 million (BAKE 2016). Twitter is one of the most widespread and commonly used social media tools in Kenya, with an estimated 2.2 million monthly active users (BAKE 2016). Other popular online platforms in Kenya include Instagram, and LinkedIn, with estimates of 3 million and 1.5 million users in Kenya respectively (BAKE 2016).

Digital technology as used in this paper represents technology that relies on the use of microprocessors; this includes computers and applications that are dependent on computers such as the internet, as well as other devices such as video cameras, and mobile devices such as phones and personal-digital assistants (PDAs) (Pullen *et al.* 2009). The focus of this paper shall largely be on mobile technology and mobile-based applications.

Social media, on the other hand, refers to modern forms of online media that facilitate participation, encourage contributions and feedback, openness in conversation and facilitates the sharing of information (iCrossing 2017).⁴ Social media encompasses a range

² This was an international commission of inquiry established by the Government of Kenya in February 2008 to investigate the clashes in Kenya following the disputed Kenyan presidential election of 2007. Its specific mandate was to investigate the facts and circumstances surrounding the violence, the conduct of state security agencies in their handling of it, and to make recommendations concerning these and other matters.

³ These figures reflect the estimated number of active users and subscriptions within 90 days from January to March 2017. According to CA, they use the International Telecommunication Union recommended formula for estimating the number of internet users in the country (CA 2017: 24).

⁴ We note, however, the contestation and lack of universally recognised definition of social media. While there tends to be general consensus on what tools may be considered social media, i.e. popular platforms like Facebook and Twitter, there is no agreement on what defines these tools as social media. It is however beyond the scope of this paper to dwell on these contestations. For further discussions on definitions, see O'Reilly (2005), Mandiberg (2012), Boyd and Ellison (2008), Xiang and Gretzel (2010), Kaplan and Haenlin (2010), Effing *et al.* (2011), Howard and Parks (2012),

of information and communication technologies used for sharing information and opinions, often through the creation of explicit connection with other people or groups (Toivo 2012). This includes interactive websites that use 'Web 2.0 techniques'; blogs that allow reporting and commenting; social networking services (SNS) such as Facebook; microblogging services such as Twitter allowing instant publication of short messages; and photo and video sharing services such as Instagram that allow users to publish material they have produced (Davies 2014). This means that social media allows not only for the generation of content by its users but also for its dissemination in a peer-to-peer manner, thus allowing participation on the networking site where other users can discuss shared content (Comninos 2013: 7).

Increase in internet and mobile penetration has correspondingly led to the growth of social media and use of digital technologies which has had an influence on Kenya's electoral and political violence landscapes and this is worth exploring.

Firstly, they have provided alternative avenues for politicians to campaign and mobilise their supporters, reaching most of them at little cost, compared to on-the-ground mobilisation. As Borah observes, social media has become a visible component of political campaigning owing to the recognition by political leaders of the potential that social media has to mobilise supporters (Borah 2014: 201). In a context of political devolution, social media and smartphones 'have "liberated" and emancipated mediated communication from the centre (state and institutions) and given more agency to ordinary individuals insofar as political debate and action is concerned.' (Omanga 2017) Individuals can easily inspire and coordinate collective action outside of a formal hierarchy at low costs if they have the right social networking tools and have an active audience (Bott *et al.* 2014: 109). The same advantages can and have been used for destabilisation purposes, as this paper explores. More than before, it is easy and quick to incite and mobilise for violence, whilst spreading inflammatory and hateful speech⁵ to a much wider audience through mobile, online and digital technologies (Benesch 2014; iHub 2013). In the 2007 and 2013 elections, social media and mobile technology were observed as conduits for spreading polarising content usually along ethnic lines (iHub 2013).

Secondly, the organising, mobilising, and financing, both for and against violence now relies on the use of digital and social media platforms. Social media and digital technologies offer many different platforms where the same message can be shared across different platforms at the same time – Facebook, Twitter, blogs or Instagram. While this is a good thing for peace messaging, it can also be used to rapidly organise for violence purposes.

Thirdly, the use of social media and digital technology to organise and mobilise violence presents a challenge for security management. While developments in digital technology such as online tracking may enhance the capacity of authorities to prevent violence, it is difficult for state and non-state actors to monitor and detect online activity that leads to or propels violence if they should lack the necessary tools and technical know-how. Technology keeps changing and becomes harder to penetrate, for example due to encryption. Privacy concerns also make it difficult for the authorities to intercept conversations without authorisation.

This paper examines how mobile phones, social media, crowdsourcing, crisis mapping, blogging, and big data analytics have been used to mobilise, counter, document and forecast political and electoral violence in Kenya. It identifies the specific threats that social media poses to peace and stability as well as the opportunities offered for peacebuilding in Kenya. It starts with tracing the growth of social media and digital technologies in Kenya,

Carr and Hayes (2015), Scott and Jacka (2011), Zhoe *et al.* (2008), Benkler (2006), and Wunsch-Vincent and Vickery (2007).

⁵ 'Speech' here refers to expression in all forms, including writings, images, and videos among others.

then a discussion on the history of political and electoral violence in Kenya before delving into how social media has been used to support and deter violence especially in 2007 and 2013 elections. The final section outlines the challenges of regulating online hate speech and mobilisation for violence and proposes alternative policy options.

2 Internet, mobile penetration and social media in Kenya

The beginnings of Kenya's digital transformation can be traced to the early years of the NARC government under former President Mwai Kibaki. The NARC coalition was elected on a reformist platform of reviving the economy. The administration made key critical decisions that served to further liberalise the economy, chief among them the information and telecommunications industry. This liberalisation had an impact on the organising, mobilising, financing and deterring of political and electoral violence in Kenya. In 1998, the Kenya Communications Act (1998) was enacted splitting the Kenya Postal and Telecommunications Company (KPTC) into separate entities namely the Telkom Kenya, the Postal Corporation of Kenya and the Communications Commission of Kenya (CCK) which later became the Communication Authority of Kenya (CA) (Souter and Kerrets 2012). The National Communications Secretariat was formed as a policy advisory body. The new arrangement provided Telkom Kenya with exclusive rights over internet connectivity, refined and reconstructed policymaking roles, established ICT market industry regulation, dispute resolution and operation of services among multiple players (Souter and Kerrets 2012).

A year after these legal and policy changes, in 1999 Safaricom became the first operator to be awarded a mobile license. Subsequently Vodafone Group PLC acquired a 40 per cent stake and took over management of the company. Kencell Communications⁶ in partnership with Vivendi of France was awarded a GSM license in February 2000, becoming the second GSM operator and the first private firm to be awarded the license (Equity 2014). In April 2014, CA further licensed three mobile virtual network operators, Finserve Africa Limited, Zioncell Kenya Limited and Mobile Pay Limited to compete in the Kenyan ICT market (CA 2014; Safaricom 2014). According to the State of Internet Freedom Report 2016, Safaricom has a 65.6 per cent share of its mobile service market, followed by Airtel (17.5 per cent) and Telkom Kenya (Orange) (12.5 per cent) (CIPESA 2016).

In November 2006, the Kenyan government decided to partner with the Emirates Telecommunication Establishment (Etisalat) to build TEAMS (the East African Marine System) as its own fibre optic cable. Kenya was initially connected through EASSY, the East African Submarine Cable System, but the government grew frustrated with its ownership and perceptions that South Africa wanted to control the cable. Kenya is now served by TEAMS and Sea Sub-marine Communication Limited (SEACOM), who provide up to 700,000 and 1,250,000 Mbps of broadband respectively resulting in increased bandwidth and internet usage (CA 2016: 25).

This paradigm shift, and the liberalisation reforms in the telecommunication industry resulted in the greater affordability of services, tariff rebalancing for fixed operators, and increased usage of internet and social media tools (Export Processing Zone Authority 2005). Competition within certain market segments led to price reduction for products and services making it affordable for general consumers.

⁶ Changed to Celtel in 2004, then Zain in 2008 and Airtel in 2010.

The estimated number of internet users has grown to 40.5 million users reflecting an internet penetration of 89.4 per cent (CA 2017:24). The CA also reports that mobile penetration now stands at 86.2 per cent with 39.1 million mobile subscribers and mobile money subscriptions standing at 27.5 million (CA 2017: 5). In addition, mobile data subscribers stood at 21.5 million representing 99 per cent of the total of 25.7 million subscriptions, which can be attributed to the affordable costs of smartphones as well as mobile data bundles (CA 2017: 23; CA 2016: 21).

WhatsApp has become the 'preferred' channel for communication with an estimation of over 10 million users in Kenya (BAKE 2016: 3). More often, content shared on WhatsApp finds its way on Twitter and Facebook. The ability to send pictures and videos makes WhatsApp more attractive than short text messages (SMS), especially for the urban population. Nevertheless, SMS still remains the most widely preferred messaging system, with a larger outreach since one does not need to have a smartphone or bundles to use it. During the 2007 post-election violence, SMS became the preferred medium of mobilising for violence purposes, mapping hotspots, coordinating response mechanisms, and sharing information after the media blackout (CIPEV 2008). Actors have also been able to turn SMS into an online platform so that users can chat, blog and discuss vital topics using SMS-delivered web postings (Makinen and Kuira 2008).

With the increase in mobile penetration came innovation. Safaricom Ltd pioneered the concept of mobile money and payments, dubbed *M-pesa*, which was quickly picked up by its consumers and competitors alike. Central Bank of Kenya statistics indicate that as of February 2017 mobile money transactions were valued at KSh 279,386bn (CBK 2017). With a deeply ingrained culture of giving and supporting, this has become a better option for collecting funds through mobile money, and serving as a transparent and cheap method for remitting cash for specific cases. *M-Changa* is one unique example of a platform used for fundraising (Miguel 2013). In terms of crisis and emergency response, these platforms have been used to collect funds from the Kenyan population geared towards humanitarian efforts. Other developments include *M-shwari*, which allows Safaricom users to access loans through *M-pesa*, and *M-Akiba* which allows citizens to invest by purchasing government bonds over the phone at very low prices.

Growth and development of social media in Kenya thus was concomitant with an increase in availability and speed of the internet, as well as the increase in ownership of smartphones in both urban and rural centres over the last decade (Kamwaria *et al.* 2015: 117). With digital technology then came multiple sources of information. In a relatively short time, bloggers have achieved an unprecedented fame and status as platforms for sourcing and sharing information.⁷ They are one of the most reliable alternative sources of news for most Kenyans compared to mainstream media because they provide access to more diverse views than mainstream media. Blogs publish emotional, detailed and raw accounts of reactions that challenge mainstream media narratives. Some blogs aim at promoting peace and justice; others have been a source of biased information, tribal prejudices and different forms of hate speech.

The informal coalition of Kenya's Twitter population, commonly known as 'Kenyans on Twitter' (#KOT) has been instrumental in influencing online public participation in policymaking processes (BAKE 2016). KOT has on many occasions engaged in fierce critique, pointing out and pushing policymakers to take actions on vital issues (Oyelowo and Moitui 2015). Diamond (2010) has coined the term 'Liberation Technology' to describe the

⁷ Prominent blogs discussing national governance issues include Gathara.blogspot.co.ke, Wandianjoya.com, kahawatungu.com, Owaahh.com, info.mzalendo.com, brainstorm.co.ke, kanalispeaks.wordpress.com and maunduville.blogspot.co.ke. Other bloggers such as lifeinmombasa.com, county-yangu.com/default, kakamega411.com, loitokitok.com and laikipiaruralvoices.blogspot.co.ke, among others, have content that focuses on specific counties.

role ICT and social media play in affording the common people a united voice against oppression in authoritarian regimes and thereby securing their own liberty (Diamond 2010). Diamond notes that ‘Liberation Technology’ is able to enable citizens like #KOT to ‘report news, expose wrongdoing, express opinions, mobilize protest, monitor elections, scrutinize government, deepen participation, and expand the horizons of freedom’ (Diamond 2010: 70).

Since the onset of multiparty politics in 1992, Kenya’s elections have been synonymous with violence. This acquired deadly proportions during the 2007 elections with technology and social media being used to fuel the conflict as well as drive peace messages. It was during this time that social media was first used to not only propagate hate speech and mobilise for violence, but also identify and map out hotspots. Since then, social media has increasingly become an indispensable tool in the Kenyan political and governance architecture. In order to fully understand how social media and digital technology have become embedded in political conflict and peacebuilding during electoral periods over the years, the below section looks at Kenya’s experience with political and electoral violence since 1992.

3 Background of political and electoral violence in Kenya

3.1 1992–2002 elections

The 1992 poll is important to the nation’s history since it was the first round of competitive elections following the repeal of section 2A, changing the country from a single-party to a multiparty state and essentially redefining Kenyan politics and elections. The resulting increased political competition coupled with the underlying political and socioeconomic grievances and ethnic mobilisation of voters during the elections, contributed to increased probability of violence (Wairuri 2017: 1).

The 1992 pre-election violence first broke out at Meteitei farm in Tinderet in Nandi District in the Rift Valley Province when Kalenjin ‘warriors’ attacked Luos living in the area under the pretence of a land dispute. However, the attack quickly assumed a larger ethnic and political dimension when victims reported that their attackers had vowed to drive non-Kalenjins and opponents of Kenya African National Union (KANU) from the Rift Valley Province (GoK 1992; HRW 1993). Sponsored by highly placed Kalenjin and Maasai politicians in the Moi Government, attackers targeted the Luo, Kikuyu, Luhya and Gusii tribes in Rift Valley Province who were considered ‘outsiders’ to the region and opposition supporters (GoK 1992; HRW 1993). It is estimated that 1,500 Kenyans died and at least 300,000 others were displaced between 1991 and 1993 in different parts of Western, Nyanza and Rift Valley Provinces (KHRC 2001).

Violence once again broke out in the build-up and aftermath of the 1997 general election. Clashes involving the Kisii, Luo and Maasai along the borders of Gucha, Trans Mara, Migori and Kisii Districts in late 1997 left villages charred and thousands of people displaced. Masked as cases of rampant cattle rustling, these clashes belied a new political calculus to displace communities that were thought to be sympathetic to the opposition. The violence left more than 1,500 people dead and at least 300,000 displaced, some of whom remained displaced into 1999 (Kagwanja 2001). The victims were mostly non-Kalenjins, including Kikuyu, Luo, Kisii and Luhya.

The same year, other violence unfolded in Likoni, Mombasa. Between 200 and 500 Digo militants ambushed and burnt down the Likoni police station killing six police officers,

escaping with 30–50 guns and 3,000–5,000 rounds of live ammunition (HRW 2002; Mazrui 2001). According to Human Rights Watch, the Kenyan government was behind the recruitment, organising, training and arming of the Digo warriors. Armed with bows and arrows, these warriors were thought to have been trained in the Kaya Bombo forest. They attacked residents from other parts of Kenya who were thought to support the opposition. An estimated 100 people were killed and 100,000 displaced (Mazrui 2001).

At the same time, within Nairobi and major urban towns, politicians across the political divide organised and sponsored gangs and militias with the aim of altering the political and electoral environment. The most prominent, enjoying political patronage and backing was the KANU-linked *Jeshi la Mzee* which was deployed to break up the National Convention Executive Council (NCEC) change the constitution movement rallies mostly in Nairobi and Mombasa (Kagwanja 2004; Mwagiru *et al.* 2002).⁸ So successful was *Jeshi la Mzee* that it became a generic term for a plethora of private militias organised by the political elite including those from the opposition. Some of these groups included *Jeshi la Embakasi*, *Jeshi la Mbela* and *Jeshi la King'ole* but they did not acquire the kind of high-level operations that were associated with *Jeshi la Mzee*.

The 2002 general election was hailed as the most democratic and peaceful in Kenya's short history of multiparty politics. Yet, the political party primaries were intensely contested and saw the widespread use of violence, intimidation and threats. The violence had roots in a culture of contemporary political violence that was shaped over the previous two election cycles. Anticipating the potential of violence to mar the 2002 elections, the Police Commissioner in March 2002 outlawed nearly two dozen vigilante groups and private armies. However, the ban was not enforced neither did the groups cease to exist or operate. Enforcement of the ban also failed because there was no political will to break the illegal groups, since they were important for both political mobilisation and suppression of voters using violence. Past elections testified to the fact that violence 'worked' and hence the means seemed to justify the end (Mutahi 2005). Further, these groups operated in the shadows, coming together when called upon but otherwise had a very light footprint and were difficult to trace or break apart.

3.2 2007 elections

Kenya's 2007/08 post-election violence demonstrated the effects that social media and digital technology can have in propelling violence. Immediately after the final 2007 Presidential vote count was announced, violence broke out in at least five of the country's eight provinces.⁹ According to the Khadiagala (2008: 4–5), three forms of violence mutated and intensified as the conflict evolved. The first form was disorganised, spontaneous protests at the announcement of the result across the country. The second form was organized militia activity, starting in the Rift Valley and gradually spreading to Central Province. In the Rift Valley, militia activity carried out mainly by the Kalenjin ethnic group against the Kikuyu and other affiliated communities such as the Kisii and Kamba took the form of deaths, destruction of property, and displacement of people. In response, revenge attacks by the *Mungiki*, a pre-dominantly Kikuyu illegal armed group were carried out in Naivasha and Nairobi's slums. The third form of violence was the excessive use of force by the government's security forces in attempts to contain the initial spontaneous protests, largely in Nyanza Province. Over 1,500 people were killed and 600,000 displaced (CIPEV

⁸ Frustrated by the lack of free political space despite Section 2(a) being repealed, the churches and human rights NGOs began a campaign on the need to overhaul the Constitution. The constitutional campaign coalesced around the National Convention Assembly (NCA) and its executive, the National Convention Executive Council (NCEC), which was able to garner substantial support from the public.

⁹ Provinces were abolished by the 2010 Constitution.

2008). The violence stopped after the Kenya National Dialogue and Reconciliation team¹⁰ under the mediation of Kofi Annan signed an agreement on ending the violence. The agreement called for the demobilisation and disarmament of militias responsible for the ethnic attacks.

As documented by many organisations, social media and digital technology were used to spread hateful and divisive language (Comminos 2013; Fox-Penner 2012; Benesch 2014; Bayne 2008; EU 2008; KNCHR 2008). The Waki Report on the 2007/08 post-election violence found that traditional and social media played a significant role in the inflammation of the violence both during and after the elections (CIPEV 2008). The KNCHR was more blunt in its report, saying,

one thing that will remain memorable about the 2007 elections is the role played by all manner of information from all manner of sources, unsolicited and solicited – SMS, blogs, emails, newsletter, leaflets, not to mention the newspapers, TV and radio sources. (KNCHR 2008: 29)

Mainstream media sources were also heavily criticised with some feeling that they did not maintain a level of professionalism at a time where the broadcasts ought to have been more sensitive (Abdi and Deane 2008). Vernacular radio stations were also accused of incitement owing to biases to certain political leaders, which at times turned to hate directed towards the political rivals and ethnic communities (Rambaud 2008: 74; Gustafsson 2016). What essentially was being circulated through social media found its way to the mainstream media, further fuelling violence.

However, as discussed in subsequent sections, when the violence escalated, social media was also used for countering hate speech and peace messaging. Popular tweets calling for peace were re-tweeted and people shared Facebook messages to counter the incitement and hatred. The mainstream media subsequently picked up and used these messages and broadcasted them calling for peace.

3.3 2013 elections

The 2013 elections are particularly important since they marked the first elections after the promulgation of the 2010 Constitution. The Constitution transformed the electoral system and process in Kenya, principally through the devolved system of governance which created 47 counties and introduced elections for six offices – President, Governors, Senators, MPs, Members of County Assembly (MCAs), and women’s representatives. The newly established offices naturally led to increased political competition, which was also devolved to local levels owing to opportunities in the county governments.

Social media and digital technologies were also used at unprecedented levels during these elections. Aspirants for both national and county political seats took to popular sites such as Facebook and Twitter to mobilise support while on the campaign trail (Ndela 2016: 464–65; Smith 2012). The parties used the new media to communicate with their supporters as well as party organising (Odinga 2013). In 2013, during the live televised debate held before the elections, Kenyans were given an opportunity through Twitter, SMS and Facebook to question the presidential aspirants. They were an important source of information on political

¹⁰ The team comprised members of the Panel of Eminent African Personalities headed by former UN Secretary-General Kofi Annan tasked by Africa Union to lead the mediation between PNU and ODM. Other panel members were former Tanzania President Benjamin Mkapa and former Mozambique first lady Graca Machel. Each party – Government/PNU and ODM – had two representatives each in the team. On 28 February 2008, the parties signed ‘An Agreement on Principles of Partnership of the Coalition Government,’ otherwise known as the National Accord, and agreed to adjust the constitution to provide for power sharing. They also committed to implement an ambitious four-point agenda. See www.dialoguekenya.org.

developments, especially during the tallying process (EU EOM 2013: 23). Political parties have continued relying heavily on social media to deliver news.

The atmosphere around these elections was particularly tense following the 2007/08 post-election violence, for which both the then Jubilee presidential candidate and his running mate were facing crimes against humanity charges at the ICC at that time. Tensions then continued when the Independent Electoral and Boundaries Commission (IEBC) announced that a petition process challenging the presidential results had been initiated after the declaration of Uhuru Kenyatta as president, with a narrow percentage above the 50 per cent + 1 threshold.¹¹ Despite the tension, the election period was largely peaceful. Few and isolated incidences of violence and situations of unrest were, however, recorded on the election day, i.e. in Mombasa, Marsabit and Wajir, and following the announcement of the results of the presidential petition, i.e. in areas in Kisumu and Nairobi (EU EOM 2013: 26). It can thus be concluded that the violence occurred more at the sub-national level rather than at the national level.

A number of factors contributed to a predominantly peaceful election, at the national level including massive national peace messaging driven by state and non-state actors. Social media was largely used by state and non-state actors to send peace messages. As we shall see later, this digital peace messaging had its own effect. The state also mapped and deployed security forces to potential hotspots to help avert unrest with 99,000 police officers having been reportedly deployed on the election day. Further, the cases of Uhuru Kenyatta, William Ruto and Joshua Sang at the ICC also deterred politicians from organising or engaging in violence for fear of prosecution (EU EOM 2013: 5–6; ISS Paper No 237). Another important factor may be the reformed judiciary. IPSOS polls showed that a large percentage of the population had trust in the judiciary. Though challenging the credibility of the elections, Coalition for Reforms and Democracy (CORD) presidential candidate, Raila Odinga commented, 'It has happened again just like in 2007 but this time we have an independent judiciary' (EU EOM 2013: 33). The tension may also have been eased owing to the speedy conclusion of the presidential election petition, the decision having been rendered by the Supreme Court within 14 days as required by the Constitution.

3.4 Towards the 2017 elections

The 2017 political party nominations were fraught with irregularities including bribery, use of violence, intimidation and harassment; destruction of voting material, lack of coordination at the tallying centres and targeted attacks meted against minority and marginalized groups such as women aspirants (KNCHR 2017). The Kenya National Commission on Human Rights (KNCHR) reported instances of violence in all of the 33 counties monitored, manifested in different forms including assault on aspirants and their supporters, agents and voters, rivalry during rallies, attempted rape, alleged abductions, intimidation, and use of firearms to threaten aspirants (KNCHR 2017: 5).

The chaos and violence can perhaps be attributed to the increased competition for elected office in 2017 owing to devolution. 2017 has seen the highest number of candidates with 15,082 candidates being cleared to contest including 3,752 independent candidates (Cheporir 2017). Transfer of resources to counties has seen stiff contestation for seats of governor and MCA (South and CHRIPS 2017), contestation which has resulted in violent outcomes for example in Meru, Kisumu, Migori, Nairobi, and Uasin Gishu. Campaigns at county level have had an ethnic and even clan-based dimension, this is likely to flare up unresolved local tensions (Reliefweb 2017).

¹¹ According to article 138(4) of the Constitution, a candidate shall be declared elected as president if the candidate receives (a) more than half of all the votes cast in the election; and (b) at least 25 per cent of the votes cast in each of more than half of the counties.

It is clear that social media and digital technology are a key aspect in the 2017 elections. To start with, digital technology will be used in the management of the electoral process, specifically in identification and transmission processes by the IEBC. This in itself poses a threat since failure in technology, as was seen in the party primaries, may trigger electoral violence. The internet was also a major avenue for political campaigns by all the parties and aspirants, who have not only set up websites, but also employed bloggers and social media managers to manage their accounts and constantly put out their campaign messages and counter those of their rivals. Jubilee party has contracted the services of global data mining company, Cambridge Analytica, in the run-up to the August presidential election (Keter 2017). The company is known for trawling Facebook and buying up commercial consumer datasets to identify 'persuadable' voters whom it then bombards with social media posts and adverts.

Similar to 2007 and 2013, posts laced with hatred and intimidation are being circulated on social media and SMS platforms. Some people have taken pictures of leaflets circulating in different areas and circulated them on WhatsApp, thereby continuing to rapidly spread hate and inciting messages both online and offline. On the other hand, the peace messages have also been circulated to counter the hate messages.

There have also been attempts by government to curb hate speech in social media. The government has identified 176 social media accounts involved in propagating hate speech and warned administrators will be held liable if they do not moderate and control the content and discussions generated on their platforms. Further, 31 cases are under prosecution across the country on hate speech charges (The Star 2017).

The Ministry of Interior and Coordination of National Government has reported that it is crowdsourcing to monitor hate speech and incitement to violence in the country before, during, and after the elections (Mwere and Moseki 2017). The NCIC and CA also published guidelines in June 2017 (NCIC and CA 2017), which among other things require that political messages shall not contain inciting threatening, or discriminatory languages that may expose an individual or group to violence, hatred, and discrimination on the basis of ethnicity, tribe, race, colour, religion, gender, disability, or otherwise. The guidelines additionally place an onus on 'content authors to authenticate, validate the source and truthfulness of their content prior to publishing'. Administrators of social media platforms are also required to moderate and control the content and discussions generated on their platform whereas Mobile Network Operators are empowered to refuse transmission of political messages over their network, with reasons, once it determines that it does not comply with the guidelines (NCIC and CA 2017). The guidelines have, however, been met with criticism by journalists who warn that the guidelines could constrict the Kenyan press from reporting and commenting freely on political events (Mwere and Moseki 2017).

The IEBC has also launched the Election Security Arrangement Programme (ESAP), seeking to undertake election security coordination and assist in managing security aspects of the 2017 General Elections. Its partners include the National Police Service (NPS); Office of the Director of Public Prosecutions (ODPP); United Nations Development Programme (UNDP); Uwiano Secretariat; National Steering Committee on Peace Building and Conflict Management (NSC); Independent Police Oversight Authority (IPOA); and the Office of the Registrar of Political Parties (ORPP) (IEBC 2017). The IEBC also has in place an Electoral Risk Management Tool. This is an early warning information tool used to identify risk factors and map them in electoral risk maps. The electoral risk maps that are generated are shared with relevant stakeholders depending on the risk for instance, if it is hate speech then this information is shared with NCIC while if it is criminal activity then the police are involved. In running this tool, the IEBC relies on information from different sources including the media;

IEBC staff and data collected, security agencies, citizens, and existing early warning systems such as Uwiano, Hello Kenya, and Sauti Mashinani.¹²

4 The growing impact of social media on the political and electoral landscape

Digital technology and social media have provided state and non-state actors alike with platforms to monitor and map out violence hotspots, information that could be used for rapid response purposes. This therefore presents a mixed bag of opportunities for policymakers since social media can be used for both promotion and prevention of violence. This section explores three themes that are significant in the Kenya context: social media as a conveyer of threats and mobiliser for electoral violence; as a mobiliser against electoral violence and hate speech; and as a documenter and forecaster of electoral violence.

4.1 Conveyer of threats and mobiliser for electoral violence

Political leaders have taken to social media to spread propaganda (Kamwaria *et al.* 2015: 118) as well as carry out ethnic mobilisation of voters, sometimes spewing hate speech and incitement.¹³ In some places, these hateful remarks are based on clan considerations. According to the CIPEV Report, the increased spread of hateful remarks through different media, including social media, had an influence in the occurrence of the post-election violence in 2007/08 (CIPEV 2008).

Shortly after Kibaki was proclaimed the winner on 30 December 2007, the Kenyan internal security minister John Michuki announced a ban on live broadcasts. Given the news blackout, text messages became the primary means by which people could update each other on the electoral outcome and its fallout. This was double edged: while the SMS platform was used to rally support, especially by victims of the violence, it was also used to spread hate speech and incite people. Some citizens used the SMS platform to stir emotions regarding the alleged stealing of votes and inciting people to attack other communities perceived to be allied with Kibaki and the PNU (Odinga 2013). Hate speech through social media was on a very large scale thus contributing to tension and a hostile atmosphere (iHub 2013). The popular community forum, *Mashada*, was shut down by its owner in January 2008 since he could not control the torrent of hateful and violent speech pouring onto the site (Hersman 2008; Benesch 2014: 3).

With mobile phone penetration on the rise, competition has increased between networks who in turn offer their subscribers favourable deals on calls, SMS, and internet bundles among others. It has also led to the development of several mobile-based applications for communication. WhatsApp has become one of the most popular platforms in Kenya owing to its relative affordability and ability to share different media through it. Moreover, it allows for group messages to be sent privately between members. A key informant working in the ICT sector expressed sentiments that WhatsApp poses a risk of increased hate speech and incitement to violence since it is more private and thus people have less fear of what they post.¹⁴ It is only members of the WhatsApp groups who get the content, and the nature of most of these groups is that they are formed by peers or people with close relations. Hence,

¹² Remarks by IEBC representative during Workshop on 'Monitoring Violence in Kenya's Elections: Exploring Media and Digital Reporting Systems for Early Warning, Response and Analysis', held at Strathmore Business School, Nairobi, 4 July 2017.

¹³ Interview with a key informant working in the ICT sector, 5 May 2017.

¹⁴ Interview with a key informant, 5 May 2017.

harmful content shared on the WhatsApp group is rarely reported to authorities and the least the members do is reprimand the content generator. However, the chances of the post being shared on other groups and other social media platforms is high due to the fact that people belong to many WhatsApp groups and may share the messages on these groups. This increases the ability of mobile phone technology to be used for violence mobilisation since it enables sharing of content to a wide audience and facilitates real time coordination at an operational level (Pierskalla and Hollenback 2013: 210).

To an extent, the migration of ethnic hatred and incitement to the internet and social media in Kenya is a testament to the effectiveness of measures taken to regulate hate speech. Under section 13 and 62 of the National Cohesion and Integration Act (2008), hate speech is considered a criminal offence. It stipulates that a person who uses speech that includes words, programs and images seen as, 'threatening, abusive or insulting or involves the use of threatening or abusive language commits an offence if such a person intends to stir up ethnic hatred'. The NCIC has actively pursued hate speech suspects, summoning politicians allegedly engaged in ethnic incitement. This has suppressed ethnic incitement in public political discourse, such as in the speeches of politicians and aspirants, and in official campaign material. However, digital and social media provide new ways to spread inflammatory political messages. Unfortunately, the NCIC have not managed to successfully bring to prosecution any person on hate speech largely due to the lack of competence, political will, technology and the ability to tame online hate speech (Kaberia and Musau 2013).

4.2 Mobiliser against electoral violence and hate speech

During the 2007/08 post-election violence, social media played a significant role in promoting peace and safeguarding against the spread of hate speech. This was for example, in the use of re-tweets which allowed users to record the importance they attached to an item of news. Popular tweets promoting peace therefore spread very quickly (Enjolras *et al.* 2012: 10). In addition to re-tweets, hashtags also played a role in online conversations and the communities that had been formed online, which also bolstered the position of traditional media online. Counter speech, defined as crowd-sourced response to extremism or hateful content (Bartlett and Krasodomski-Jones 2015), was also popular following the 2013 elections especially by media personalities, and companies. Television broadcasters used established platforms such as Twitter and Facebook to spread positive messages and encourage viewers to remain calm and patient (Benesch 2014: 9). Messages promoting peace were also circulated through SMS messages.

Companies also encouraged the spread of peaceful messages online. For instance, Crown Paint through 'Uniting Colours of Kenya' offered cash and airtime rewards to people who sent online peace messages including photos, poems and stories to each other and to the company (Benesch 2014: 10). The campaign was launched in Kibera, one of the most affected areas during the post-election violence in 2007–08. Safaricom partnered with a non-government organisation Sisi Ni Amani to promote peace through text messages, as well. It donated 50 million free text messages aimed at countering dangerous speech that was being used to spread violence.

In the lead-up to the 2013 elections, Safaricom released Guidelines for Political Mobile Advertising on Safaricom's Premium Rate Messaging Service. Under these guidelines, anyone intending to send bulk SMS of a political nature would first have to submit an application to Safaricom, which would vet the content to ensure they did not contain instances of incitement, ethnic hatred and hate speech (Mutinda 2012; IHRB 2013: 3). In addition, the Communications Authority released Guidelines for the Prevention of Transmission of Undesirable Bulk Content/Messages via Electronic Communications Networks which were to be applied by all mobile network operators in the country (CA 2012).

The guidelines mandated the network providers to pre-screen bulk messages containing political content before sending. To do so, service providers installed a firewall that could detect messages containing particular words such as 'kill,' which were automatically flagged for further scrutiny. Ostensibly, mobile phone service providers were blocking more than 300,000 text messages per day, which were suspected to contain hate speech (IHRB 2013; Mukindia 2013). However, this process of blocking or removing content and the mechanisms applied was not transparent and readily available for public scrutiny. The decisions of the mobile telephone companies were also not subject to review by public bodies to allow for democratic scrutiny and to ensure that citizens' rights to freedom of expression were not violated.¹⁵

Use of technology for peace campaigns had another side to it. Unaffordability as well as the uneven distribution of digital infrastructure in Kenya means that some people are unable to access the internet or mobile phone. Indeed, it has been seen that differences in disposable income are associated with commensurate differences in social media use (Bolton 2013).

Some have argued that the numerous online and SMS peace campaigns during the 2013 elections gave credence to assumptions or ideas that people had no legitimate reasons to engage in violence (Oddsdotir 2014: 5). The criticism of platforms like Uwiano, PEACETXT and others was that they had the effect of pacifying the violence rather than providing lasting solutions to the grievances that were considered to be factors causing the people to fight (CIPEV 2008). Critics have also commented that the media, including both mainstream and social media went so far in their pacification efforts in 2013 that they censored legitimate speech because it had the possibility of triggering conflict (O'Hare and Moss 2014; ICG 2013; Muriithi and Page 2013).

During and after the 2013 elections, the Kenyan mainstream media tended to self-censor, avoiding emotive issues such as land, voter tallying, and the confidence in the IEBC to conduct free and fair elections (Oddsdotir 2014: 6; O'Hare and Moss 2014; ICG 2013, Muriithi and Page 2013). The media reportedly developed strategies to prevent airing divisive messages from politicians by pre-recording and editing campaigns before broadcast. They also used the 'naming and shaming' technique (Bensech 2013) whereby they openly condemned utterances that were felt to constitute hate speech (Gustafsson 2016: 10).

This self-censorship was attributed to the criticism after the 2007 elections that media reports had been insensitive and, by having focused heavily on controversial topics, fuelled anger that triggered the violence (Abdi and Deane 2008). This criticism was largely aimed at smaller media groups that were more weakly regulated, such as vernacular radio stations, particularly those that had call-in shows allowing individuals to make statements which were divisive and inflammatory (Bensech 2013; Waki Commission 2008; Rambaud 2008: 74). Mainstream media nonetheless took this as collective criticism against all media and opted to lean on the side of caution in their coverage of the 2013 elections. Oddsdotir (2014) also attributes the media's self-censorship to criticism by the then Inspector General of Police, David Kimaiyo, just before the elections, that controversial topics should be avoided on the campaign trail because they are emotive and can trigger violence (Oddsdotir 2014: 6; The Star 2013). This self-censorship has been said to reveal a society frightened by its own capacity for violence (Wrong 2013; Gathara 2013).

Muriithi and Page (2013) expressed that the 2013 elections reflected a clash between the responsibility of the media to hold candidates accountable and their responsibility to promote peace. The effect was that the media provided little space for the public to voice any criticism or discontent, basically limiting the public capacity to hold their leaders accountable (Were 2013). However, social media provided an avenue for people to freely engage in discourse

¹⁵ Interview with a key informant, May 2017.

concerning election matters, discourse which seemed to be missing from mainstream media sources.

In 2017, the mood appears to have shifted slightly such that people on social media advocate not only for peace but for justice and credible elections. Particularly on Twitter, many users have advocated for credible elections, which they argue is tied to peaceful elections.

4.3 Documenter and forecaster of electoral violence

Digital technology and social media may also enable the development of effective early warning systems that serve to prevent violence. They allow for micro-level responses to conflict which enables stakeholders at the local level to prevent or evade conflict. This bottom-up approach is seen to be more effective than state-centric or top-down responses where the situation calls for integrated action (OECD 2009). The use of digital technology then responds to the need to create people-centric early warning mechanisms so as to effectively empower individuals and communities to respond to threats that face them.

Crowdsourcing, which refers to a model aimed at solving problems through the use of online communities (Brabham 2013), was widely employed during the 2007/08 post-election violence and in the run up to elections in 2017. Crowdsourcing encouraged citizens to report and document violent incidents occurring during the period of post-election violence using online platforms, including sharing of videos and photos. This enabled the actors to track and analyse structural tensions, social divides and flash points (iHub 2013: 6). It also created and provided ways for 'digital humanitarians' to volunteer and help (Caldwell 2013).

The Ushahidi platform was established in 2008 to document the post-election violence. It was then improved in 2013 to collect data on a mass scale which could be used for violence prevention (Comminos 2013: 11). Social media tools such as Facebook, Twitter and SMS-delivered web postings, acted as platforms to provide real-time data of what was happening in polling stations, and situations all over the country. Reports included individual experiences such as vote bribery, cases of violence and vote buying. Ushahidi was thus able to cover areas that journalists were unable to access (Ndela 2016: 467). Ushahidi has in 2017 partnered with civil society organisations, peace and youth networks. Most of these civil society actors are involved in advocacy activities and initiatives involving the use of messaging as a mechanism to spread peace messages.

Uchaguzi, an election monitoring tool powered by Ushahidi crowdsourced local information on electoral process from citizens (Yanning 2012). It has created a convergence point for all CSOs, monitors, and other networks to report incidents of incitement and mobilisation for violence, information which is shared with IEBC. Users send SMS to the Uchaguzi platform, messages are analysed and used for conflict early warning and response. They then verify and then relay the information to authorities for quick action. In areas with limited internet access, Uchaguzi has a toll-free number (201666) for reporting cases.¹⁶ This platform is already working well; for example, recently they were able to report to police a case of violence in Maucho, Molo, which had been posted on social media. After verifying and reporting, the GSU were able to respond and stop the violence within 15–30 minutes of the call.¹⁷ This shows effectiveness of social media monitoring when it is connected to the right actors and right response mechanisms designed.

Uwiano Platform for Peace has also been integral in documenting evidence of political and electoral violence since 2010. Features of the program initiated by PeaceNet Kenya among

¹⁶ Interview with a key informant, 5 May 2017.

¹⁷ *ibid.*

other stakeholders included online tools for tracking, reporting and retrieving evidence of 'dangerous speech' with potential of causing violence, incitement and other forms of violence instigation in text, images, voice, and video (Communication Initiative Network 2010). Using the platform, people were able to send messages of potential violence or violence-related situations through their toll-free SMS short code 6397 (Communication Initiative Network 2010). These alerts were received at the National Steering Committee (NSC) on Peacebuilding and Conflict Management or PeaceNet. Further, these messages were classified into several categories namely informative, threat, positive, hate speech, incitement to violence or coded message. For purposes of verification, team members involved would call senders of the messages as well as concerned authorities for emergency action or rapid response (Communication Initiative Network 2010).

The program worked with the assistance of a pool of monitors spread across the country with a particular focus on areas prone to violence. To effectively achieve its intended objectives, a media campaign was used to inform Kenyans on ways to report incidents of violence. Implementing partners would convene on a weekly basis and engage the media in briefing sessions on emerging trends from data collected and synthesised. Further, the regular meetings were aimed at consolidating reports and reviewing progress of the project whilst highlighting best practices (Communication Initiative Network 2010). The corrective measures involved summoning of perpetrators of incitement and dangerous hate speech. This was done publicly to send a message that those implicated in propagating hateful political communication would be prosecuted.

Facebook pages such as 'Elections Iwitness Kenya' and 'Kenya Elections 2013' were also established before the 2013 elections with the aim of allowing Facebook users to share experiences and witness accounts of elections conduct (Ndela 2016: 467). Various social media sites also permitted the uploading and sharing of videos showing violence and thus allowing mapping of the violence and generating public attention which would facilitate prevention efforts as well as responses to violence (Ndela 2016: 468). WhatsApp has also been instrumental in sharing videos, pictures and information during crisis and volatile situations in parts of the country.

The Umati monitoring project was established in 2013 with the aim of scouring the internet for speech that could incite hatred and violence (referred to as dangerous speech). Umati, through iHub researchers who searched and monitored Kenyan blogs, Tweets, online newspaper comments, Facebook pages, and other sites, produced a database of such speech and classified it according to its capacity to provoke violence using the dangerous speech guidelines developed by Susan Bensech (Benesch 2013, 2014: 11; iHub 2013: 7). Reports from monitoring conducted in November 2012 demonstrate 28 per cent of the sample of 792 online statements as containing 'dangerous speech' (iHub 2013). In some of the statements speakers suggested that they faced threats from other groups. Further, Umati reported an increase in cases of 'dangerous speech' especially as the election drew closer. The period after the elections was characterised by an increase in inflammatory statements as Kenyans awaited a court ruling disputing the election results (iHub 2013: 7).

Umati used different applications, which gave it an advantage in monitoring the violence. Through Trendsmap, which gives a detailed view of current trends on Twitter with the help of Google Maps, Umati was able to depict the geographical location of each trend (iHub 2013: 7). Umati was also able to monitor the violence as it unfolded through the use of the application, Open Status Search tool, which allows one to do keyword searches of public conversations on Facebook (iHub 2013: 7).

In February 2008, the founder of a popular community forum, *Mashada*, put up a new website called 'I have no tribe' after having to shut down *Mashada* the month earlier owing to his inability to control the spread of hateful messages on the site. This site spread messages

of peace and encouraged unity among Kenyans. According to Benesch, the site 'was an experiment with *counter speech*, or speech intended to diminish hatred and violence, in the midst of an outbreak of both' (Benesch 2014: 6). Likewise, Umati team members and other experts started an initiative called '*Nipe Ukweli*' which was aimed at refuting false rumours online and invited Kenyans to reduce dangerous speech (Benesch 2014: 14).

Drawing from 2007 and 2013 experiences, state and non-state actors monitoring election violence have formed linkages, connecting key institutions like NCIC and police for faster sharing of information for action. In preparation for 2017 elections, the Sentinel Project and iHub Research have created *Una Hakika* ('Are you sure?'), a mobile phone-based information service that monitors the spread of rumours and acts to check and contain them. *Una Hakika* subscribers can report rumours they hear through text messages, voice calls, or by talking to one of nearly 200 trained volunteer community ambassadors present in 16 villages. Rumours relating to actual or impending violence are prioritized and reported to local authorities (Alliance for Building Peace 2017). In addition, to obtaining information from subscribers and community ambassadors, the *Una Hakika* team has also established relationships with community leaders, religious leaders, local authorities, and other NGOs operating in the area. These other actors are asked to help verify rumours if they relate to their expertise; for example, consulting the Red Cross on rumours relating to natural disasters (Alliance for Building Peace 2017).

In order to ensure investigation and prosecution of those suspected of hate speech and incitement to violence, the ODP has established a framework for inter-agency collaboration between its office, the Directorate of Criminal Investigations (DCI), IEBC and NCIC for effective detection, investigation and timely prosecution of election offences. The team of 105 officers will be served by a 24-hour secretariat to coordinate and facilitate the prosecution team (Standard 2017). These efforts show the realisation by state and non-state actors that social media can play an important role in early warning and response.

The main challenge however in using social media to forecast violence is ensuring the veracity and authenticity of the information gathered before it leads to violence. A key informant working on online elections monitoring explained,

The only thing to thwart is the fake results, it is just highly emotive. Conversations on results need to be very careful. We need to document result and crowdsource verified results from all over. We are running this with my campaign monitoring team to get monitors to tally in every polling centre. Spreading this verified information can then counter the fake results that will be posted and we can try to have those fake results pulled down quickly.¹⁸

The other concern is the capacity of police and NCIC to attend to all cases of incitement and mobilisation reported from the social media platforms in the lead up to elections. The sheer volume might make it difficult to respond in a systematic way.

While research and practice has shown that technologies and new media have the potential for informing conflict prevention and mitigation efforts, its success largely depends on how it is employed in the right context and channelled to the responsible agencies. If the wrong technology is used, then different data and results would be generated which would not be useful for conflict prevention and mitigation. Thus, the actors undertaking prevention initiatives should let the context inform what kind of technology is needed and what kind of approach will work best (Mancini and O'Reilly 2013: 1).

¹⁸ Interview with a key informant, 5 May 2017.

5 Regulating and responding to ‘digital violence’

Opinion is divided on what should be done with regard to hate speech and incitement to ethnic hatred on the internet and social media since it can lead to violence. Some have argued that Kenya should follow other African countries like Ethiopia, Cameroon, Uganda, Gambia, Democratic Republic of Congo, and Gabon, whose governments shut down internet access during elections when violence broke out or was merely expected.¹⁹ This however will not curb incitement and mobilisation to violence offline. It also might have the opposite effect of harming Kenya’s large mobile money economy and innovative businesses supported by it. More detrimental is that such efforts would be an affront to Freedom of Expression guaranteed in the Constitution.

Regulation of hate speech, incitement and online mobilisation to violence in Kenya is in its infancy in terms of law and policy. Attempts to regulate the internet and social media have in some instances opened the floodgates for state censorship of political speech and thought. In addition, the borderless nature of the internet makes any kind of regulation of internet content and websites through criminal law sanctions both unrealistic and ineffectual (Greenberg 2003: 1193). Legal action, though it may appear the most straightforward course of action in dealing with offenders, may not be the most effective weapon to counter online hate crimes (Perry and Olsson 2009: 196). For starters, litigation faces a number of jurisdictional challenges. Since ISPs need not be registered in the states where they operate, foreign judgments against them are not always enforced since domestic courts may and do often find that the foreign courts lack jurisdiction over the ISP despite the existence of offensive material on their site (*Yahoo v LICRA* 2004: 1120–23).²⁰ Hate sites are sometimes located in safe havens, legal jurisdictions that offer them near-absolute freedom from all restrictions, thus limiting the efforts of regulatory authorities to control content using legal tools at their disposal (Van Blarcum 2009; Banks 2011: 10).

In addition, to jurisdictional challenges, the lack of a concrete definition of hate speech also adds to the inadequacy of the law for this issue. Benesch highlights this, pointing out that it is difficult ‘to draw the line between speech, which should be sanctioned, and speech that must be tolerated in the name of freedom of expression, no matter how ugly it may be,’ (Benesch 2012: 11). While the courts have determined that certain utterances fall outside the ambit of freedom of speech and expression, they have not yet defined what constitutes hate speech with clarity. Dealing with hate speech in general and with incitement using digital tools in particular is new for Kenya’s law enforcement officers. The ODPP has lost all the cases to date that have been taken to Court (Kaberia and Musau 2013). The lack of convictions is partly owing to failure to amend the Evidence Act (2012) to allow admission of electronic evidence (Kiprono 2017). The lack of rules or guidelines for determining the authenticity of electronic evidence in court has also been a challenge. Members of parliament, Moses Kuria and Ferdinand Waititu were for instance acquitted in February 2017 following a ruling that the video evidence produced was not authentic to warrant their conviction (Daily Nation 2017). Kuria had, in a public rally, allegedly called for the assassination of opposition leader Raila Odinga, saying he was a threat to Kenya.

Moreover, litigation may not always deter offenders from posting online hate. As Banks puts it, ‘the periodic episodic prosecution of individual web users is unlikely to deter others from

¹⁹ Interview with a key informant, 10 May 2017.

²⁰ In this case, the US District Court of Appeal in New York held that the decision of the French Court finding liability on Yahoo! for containing Nazi memorabilia on their auction website could not be enforced as there was no basis for jurisdiction.

posting hate speech online' (Banks 2011). Application of criminal law against individual offenders can also be counterproductive. In some cases, criminal prosecution of offenders has resulted in the unintended consequences of spreading and publicising the hatred even further (Foxman and Wolf 2013). The trial of politicians and personalities for hate speech in Kenya has sometimes arguably made them highly popular and in some cases songs have even been composed in their support. For example, when eight politicians were arraigned in court and remanded for four days in June 2016 for alleged hate speech, they were treated as heroes and called 'Pangani 6' and 'Muthaiga 2' (Mathenge 2016).²¹ The cases of Muigai wa Njoroge, Kamande wa Kioi and John DeMathew, popular Kikuyu musicians, is also illustrative. When the musicians were charged with singing songs that border on hate speech against former Prime Minister Raila Odinga, many people started buying their music to listen to the prohibited music.

This is not to rule out the possibility of legal action against online offenders but to propose that litigation must not be treated as the only, or most effective solution for countering hate speech and incitement to violence.²² State and non-state actors should nonetheless put in place efforts to build the capacity of investigators and prosecutors to deal with cases concerning social media and digital technology. To facilitate effective prosecution, there should be co-operation between the relevant authorities such as the NCIC, NPS, and ODPP as well as non-state actors working on hate speech prevention and online monitoring. Legislators should also ensure clarity in laws related to offences occurring online including the National Cohesion and Integration Act, Evidence Act and the Penal Code and the judiciary trained specifically on these offences and publish rules on the admission of electronic evidence. This would be useful to ensure a legal mechanism, which, along with other mechanisms, would prove effective tools for regulation of online activity.

An effective regulatory approach would be one that combines legal action with other approaches. This paper proposes approaches that would be important to facilitate effective regulation. First, the state should embrace self-regulation mechanisms by internet service providers (ISPs) as this would be more practical and cost effective than using legal mechanisms (Seiber 1998; Walker and Akdeniz 1998). They have the right and responsibility to self-regulate what is channelled through their outlets where liability could arise for failure to remove material following notice of infringement (DMCA 2000: para g; *Stratton Oakmont, Inc. v. Prodigy Services Co* 1995: 3). In many cases, their intervention simply amounts to enforcement of their own Codes of Conduct and/or Terms of Service agreements. Most, if not all, online operators have elaborate terms of use which if enforced properly would prohibit hate speech and incitement to violence (Yahoo 2017: para 6; Facebook 2017: para 5; Twitter 2017: para 3). This is effective since ISPs will cooperate with the law to avoid liability and to avoid negative publicity which would arise if it was thought that they don't act responsibly (Wall 1999: 6). They respond by blocking or removing hateful content and barring users who repeatedly post such content online, once notified by users. The state should rely on these mechanisms, in addition to or, as an alternative to legal approaches.

Secondly, the state and non-state actors should encourage co-regulation by internet users. Internet users should be viewed as assets since they not only block users who offend them but can also report users and material thought to be offensive or illegal. Holding individuals responsible for what they post may deter many from using digital platforms to incite others. For example, in May 2014 Kenyans complained to Facebook regarding messages Gatundu South MP Moses Kuria posted on his account since they incited people to violence and

²¹ The Pangani 6 are Machakos Senator Johnstone Muthama and MPs Junet Mohamed (Suna East), Timothy Bosire (Kitutu Masaba), Moses Kuria (Gatundu South), Kimani Ngunjiri (Bahati), Ferdinand Waititu (Kabete), while Muthaiga 2 are woman representatives Aisha Jumwa (Kilifi) and Florence Mutua (Busia).

²² Interview with a key informant, 4 May 2017.

fanned ethnic hatred. His account was temporarily suspended.²³ Internet intermediaries should consider publishing some decisions about specific cases with explanations for the decisions made as a way of fostering dialogue on the issue. This would allow for learning and understanding of the pertinent issues as well as establishing useful precedents.

Thirdly, counter-speech should be promoted as an effective instrument of dealing with online hatred. All stakeholders including internet users should advocate against online hate, debunk false information with capacity to incite violence, and counter hateful messages posted online. The Umati Study on online hate speech in Kenya found that there was less hatred spread through Twitter than Facebook. They attributed this variation to the phenomenon they termed as 'KOT cuffing', whereby Kenyans on Twitter (KOT) called out anyone spreading hate on the platform (Ihub and Ushahidi 2013: 6). This should be encouraged by ISPs as well as state and non-state actors. The Bloggers Association of Kenya (BAKE) has encouraged such positive use of the social media platforms by giving awards to people with informative blogs on a variety of issues including those with credible information on political issues. Such efforts should be celebrated as they influence the creation of a culture where people care that messages on social media are credible.

Fourth, regulation by code or through technical means would be useful since it would allow users to make their own decisions on how to deal with unwanted and harmful content (EU Safer Internet Plus Plan 2005). This form of regulation can be achieved by employing software, such as firewalls, to filter out sites that are offensive or undesired (Banks 2011: 11). Rating systems can also be applied to vet content in web documents even before they are displayed by the computing device thereby allowing users to choose the content that can be accessed over their devices (Akdeniz 2006: 36). These methods should be used especially where the sites are registered in safe havens where there are no strict requirements for ISPs to remove offensive or illegal content, and where the ISPs consistently refuse to respond to legitimate user complaints asking for content to be taken down. However, filtering technology should not be adopted by states since this approach could unjustifiably restrict users' rights to freedom of expression thereby constituting a chilling effect on free speech (OpenNet Initiative 2009).

Finally, there should be increased efforts to educate and inform internet users. It ought to be understood that legal and other sanctions do not impress upon internet users the reasons why they should not engage in online hate or incite others to violence but merely punish them for doing so. It is important that people are made aware of online hate crime and the danger it poses. Public information and education campaigns are therefore an integral part of interventions to online hatred. Education increases the responsibility of individual users and promotes a culture of intolerance towards online hate speech (Bailey 2006: 56–59). State and non-state actors should thus engage in awareness campaigns for internet users and reach their audience through both traditional and new media platforms.

The success of any efforts to deal with online hatred, incitement and mobilisation to violence is therefore dependent on a collaborative approach that brings a wide array of stakeholders including citizens to craft solutions to be enforced. Any intervention must balance the need to safeguard freedom of expression with the need to curb the spread of 'digital violence' and therefore not unreasonably restrict the open nature of the Internet and digital technology. As a marketplace of ideas that contributes to development, the internet and social media platforms require protection from unnecessary interference and responsible users should be guaranteed their rights to privacy and freedom of expression. State and non-state actors should work with ISPs to streamline nationwide guidelines on criteria and procedures that should be applied to determine whether content is offensive, whilst setting clear processes

²³ Moses Kuria was later charged with incitement to violence, hate speech and fanning ethnic hatred but acquitted in April 2017 for lack of adequate evidence.

for such determinations to be made. Taking down of content must be in line with the constitutional requirement that a right or fundamental freedom²⁴ shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society.

6 Conclusion

The rapid growth and expansion of technology and the emergence of new digital platforms and communication forums has presented new challenges to prevent and combat online hate speech, incitement and mobilisation to violence during elections. This is largely because social media is a double-edged sword, a tool for opening up democracy and challenging authoritarian states, whilst calling for accountability and respect of the law. It can also be used to support authoritarian regimes in disseminating propaganda (Salanova 2012: 15–16). As Etling *et al.* (2010: 3) put it, 'Internet may be the only avenue left for citizens in authoritarian regimes to influence government, fight corruption or defend their rights'.

As this paper discusses, social media on the other hand can be used to rapidly spread propaganda, hate speech and incite people to violence (Ihub 2013; Benesch 2014). It facilitates the posting of unregulated content to a wide audience and puts no onus on the users to verify the content. Comninos (2013) argues that social media can be used to incite violence through the circulation of content that serves to offend or elicit a violent reaction from an audience group. As seen in the 2007 post-election violence, mobile communication may also facilitate organised violence since it enables coordination between those mobilising for or countering the violence. Thus, while social media and digital tools can amplify and facilitate violence, with improved communication and monitoring, cell phone technology also aids, in real time, the distribution of information to security forces and other responders on an operational level, helping them to effectively respond to the violence.

The effectiveness of national legislative and judicial efforts to combat online hate speech, incitement and mobilisation to violence remains limited, with little success. It is therefore important for Kenya's policymakers to consider other measures that may complement whatever limited legislative and judicial mechanisms exist. These include self-regulation, co-regulation, regulation through code and technical means, information, education and awareness campaigns. In all these efforts, however, it is important that the right balance is maintained between protecting freedom of expression, as spelt out in the Constitution, and combating hate speech, incitement and mobilisation to political violence.

²⁴ Freedom of Expression (Article 33) is classified as a fundamental freedom under part two of chapter four of the Constitution of Kenya (2010)

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