

**Lessons Learned and Forgotten: The International Community and  
Electoral Conflict Management in Kenya**

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The link between elections and violence in Kenya is quite different from most other countries examined in this book. In most cases, from Afghanistan to the Democratic Republic of Congo and Sudan, post-conflict elections are an integral part of a peace process that is meant to end conflict and usher in an era of stability. Benjamin Reilly's chapter in this volume, among others, lays out the logic of this sequencing, including some of the pitfalls of this "democratic peace" paradigm: Ideally, violent conflict is replaced by non-violent electoral competition in a process that enjoys sufficient legitimacy and "buy in" that the losing side will not return to arms, but rather assume the role of "loyal" opposition and try once again to win the vote in the next elections.

In Kenya, the phenomenon of election violence irrupted onto the political scene in the early 1990s. In this case, however, the causal arrow is practically reversed: rather than channelling violence through peaceful means, electoral competition actually seems to foment violence, before elections and immediately afterwards. The cycles of violence occur so closely in line with the election cycle that one is well justified to call it electoral violence. There has in fact been no large-scale conflict in Kenya that has not been directly related to elections, nor has conflict even constituted an actual civil war, unlike the events in most of its neighbours and further afield in Africa and elsewhere. As a result, Kenya cannot usefully be labelled a post-conflict country or follow the peace-and-democracy paradigm.

This chapter seeks to analyze the role of external actors in preventing violence from erupting in Kenya and seeking a peaceful solution to bring it to an end. It argues that Western countries and their representatives in Kenya have a very poor record of conflict management, with the exception of their contributions to the crafting of the National Accord of February 2008, which ended the most recent and most serious bout of election-related violence. This stood in stark contrast with their paltry efforts to end the violence in 1991-92 and 1997-98, or even acknowledge that it consisted overwhelmingly of state-induced attacks on presumed opposition supporters. International actors were much more willing to intervene when, as was the case in early 2008, the government was not alone in committing massive abuses and the conflict paralyzed the country. Had Western donors acted more effectively when faced with the violence of the 1990s, learned from it and kept the lessons in mind, and had they better understood and thus not grown complacent after the relative peace of the electoral competition in 2002 and 2005, they would have been in a much better position to prevent the violence of 2007-08 and, failing that, help negotiate a better long-term solution than the current power-sharing agreement.

The chapter examines in turn the international community's involvement in violence mitigation and lessons learned (or not) during four time periods: 1) the two violent elections of the 1990s; 2) the two peaceful polls of the 2000s; 3) the 2007 elections and ensuing crisis; and 4) the period from that began in 2008 with the formation of a Government of National Unity. It concludes on the prospects for renewed violence in Kenya and the significance for electoral management more generally, in order to identify try to replicate good practices, while understanding and trying to avoid bad ones, to the extent possible.

## **The two violent elections of the 1990s**

### *The return to multipartyism and the 1992 elections*

The general elections held in December 1992 and December 1997 were both preceded and succeeded by a significant number of violent attacks. Kenya's post-independence political violence began in October 1991 in Kenya's Rift Valley Province, while the country was still a one-party state, ruled since independence by the Kenya African National Union (KANU). It started in Nandi District and spread to others across the Southern Rift Valley and neighbouring districts in Western and Nyanza provinces. Members of the Kalenjin ethnic grouping, some Maasai and others considered "indigenous" to the area, who generally supported KANU, killed or violently drove away from their homes and land members of "non-indigenous" ethnic groups, especially Kikuyu, often destroying their dwellings, livestock and other possessions in the process. By early 1993, the violence had killed over 1,500 people and displaced at least 300,000 (Human Rights Watch 1993: 1, 90).

Superficially, this could appear to be "ethnic clashes" or "land clashes", as they were usually known. However, the timing and modalities of the attacks suggest that they were cases of systematic state-induced violence to resist democratization and ensure continued KANU rule. Senior KANU and government officials incited, financed and planned the attacks, including providing training, logistical support and financial incentives, while state security officials made no effort to stop the attacks or arrest the perpetrators—in fact, some police officers actually participated in them (NCKK 1992; Kiliku Commission 1993; Human Rights Watch 1993: 28-30). Though the attacks expressed a certain degree of underlying ethnic resentment rooted in historic inequalities (see Susanne Mueller, this volume), no such large-scale conflict had ever taken place before in Kenya. Because the ethnic loyalties overlapped quite closely with support or opposition to continued KANU rule, the violence had the effect of ridding KANU-dominated zones of presumed political opponents (who became effectively disenfranchised), intimidating and punishing those that remained, and freeing up resources (mainly abandoned land) to reward supporters.

During this period, domestic groups were increasingly pressuring the government for an end to single-party rule. In December 1991, soon after Western donor countries suspended foreign aid, President Daniel arap Moi reluctantly announced that the constitution would be amended to restore multipartyism. Perversely, this concession caused the level of violence to rise, as KANU would have to compete electorally, using violence and other illegal measures to ensure that it remained in power.

The December 1992 elections were held in this context of violence and massive displacement of presumed opposition supporters. KANU used an array of measures to ensure that Moi was returned to the presidency and that KANU retained a majority in parliament, including voter registration irregularities, gerrymandering, preventing opposition candidates from filing their papers, vote-buying, ballot-box stuffing and fraud in the tallying of results (Brown 2001: 726-28; Grignon and Maupeu, 1998; Throup and Hornsby 1998). One Kenya scholar called it a "C-minus" election, clearly deficient albeit sufficient to pass (Barkan 1993: 92). The fact that the opposition was fragmented made Moi and KANU's victory easier. It also deflected from criticisms that Moi had stolen the elections. Still, there is reason to believe that that KANU would have taken more extreme measures had a united opposition been more of a threat, as Moi was unprepared to hand over power (Brown 2001: 730). In any case, donors

accepted the results, resumed development assistance and rescheduled Kenya's debt (Human Rights Watch 1995).

The international community reacted with horror to the atrocities, but interpreted it through the lens of ethnic rather than political conflict. Donor officials, in their home countries and in Kenya, publicly deplored the atrocities and called on all sides to cease immediately—ignoring the fact that not only was the violence entirely one-sided, barring a few small revenge attacks, but that the state and the ruling party officials were behind it. Privately, many were fully aware of its political nature. In fact, some of their public documents reflected this knowledge. For instance, the U.S. Department of State's report on Kenya's human rights practices for 1993 cites "credible allegations of the involvement of government officials in instigating the clashes" and recognizes that "[s]ubstantial evidence exists of the complicity of high ranking government officials in financing, arming, and then shielding the attackers from prosecution" and that independent reports strongly suggest that "the Government bears primary responsibility for the destruction and loss of lives" (United States 1994: 1, 15, 35).

Nonetheless, donors did not want to act consequentially and risk antagonizing the government by getting directly involved. Instead of setting up their own programs, at least eight bilateral donors pooled their funds through the United Nations Development Programme (UNDP), which worked closely with the government. As a result, assistance for the displaced was channelled through the same government that continued to abuse their rights and displace more Kenyans. While supposedly providing care for the displaced, resettling them and promoting reconciliation, the government restricted access to the areas in order to prevent opposition politicians, local and international NGOs, and donor officials from being able to report on the nature and extent of the violence and the identity of the instigators and perpetrators. In 1995, when the situation became too intolerable to continue, the UNDP terminated the project (Nowrojee 1997). It was left to NGOs, especially church groups, to provide assistance to the victims, often with donor funding, which soon ran dry. Once the displaced were resettled elsewhere, their "ethnic cleansing" from their former place of residence became permanent.

### *The 1997 elections*

The level of violence surrounding the 1997 elections did not reach the same level as five years earlier, but was still significant. The state security forces' repression of peaceful pre-election demonstrations in July-August 1997 caused some 60 or more civilian deaths. Other pre-election violence occurred mainly in Coast Province, primarily in the Likoni-Kwale area, a KANU-dominated zone. As in the Rift Valley five years earlier, armed bands of men attacked "non-indigenous" ethnicities, in this case from "upcountry". Some 70-100 people were killed and a further 100,000-200,000 were displaced (Grignon and Maupeu 1998: 15; Tostensen *et al.* 1998: 43-44). After the elections, members of opposition-supporting ethnicities were once again targeted in the Rift Valley as punishment for supporting the "wrong" side.

Having presumably learned from the poor quality of the 1992 elections and now foreseeing the risk of large-scale violence re-erupting, donors were much better organized and coordinated in 1997 than they were in 1992. More than a year before the December 1997 elections, they expanded their Democratic Development Group, which had a half-dozen members, to include 26 foreign missions, including non-donors such as Brazil, the Czech Republic and Hungary. In the run-up to the elections, the group issued joint communiqués. Though some private notes to the government were more strongly worded, the publicly released

ones were watered down to the members' lowest common denominator and thus did not clearly identify the government as the main source of political violence.<sup>1</sup>

In December 1997, President Moi was once re-elected in a grossly unlevel playing field and a poll marred by irregularities. Donors again expressed concern over some electoral practices, but—despite the greater coordination of donor observation missions—accepted the overall result. They deliberately suppressed evidence presented by their own joint Election Observation Centre that KANU had not legitimately obtained a majority in parliament (Brown 2001: 734). Within weeks, donors rescheduled \$560 million of Kenyan loans (Ajulu 1998: 285), signaling that it was back to business as usual between the Moi regime and donor countries. Domestic observer reports were more critical, but released a few weeks later and widely ignored (Institute for Education in Democracy 1997: 186).

The joint Election Observation Centre's report made no mention of the election violence on the Coast and probably disenfranchisement of over 100,000 presumed opposition supporters (Election Observation Centre 1998). The election observation report funded by the United States Agency for International Development (USAID) fared only a little better: It mentioned the violence against "immigrant communities" that may have changed the outcome of the election in Likoni constituency, but blamed both KANU and the opposition for the violence (Geist 1998: *ii*, *v*, 18). The subsequent State Department report to Congress was more willing to identify perpetrators, stating that "indications that the violence had political roots, with local KANU political leaders reportedly involved in the planning" (United States 1998: 5).

### *Lessons to be learned*

In sum, donor responses to electoral abuses in 1992 and 1997 were very weak. Though their internal reports recognized the great extent to which the elections were not free and fair, they were deemed good enough. In 1997, the greater coordination efforts of the donor observer missions suggest some learning about the importance of working together and producing consolidated reports. However, with the "diplomatic massaging" of the publicly released reports mentioned above, donors showed a lack of commitment to revealing the true extent of the abuses they had identified. As a result, they provided extra legitimacy to an authoritarian regime that had failed to hold free-and-fair democratic elections.

Equally if not more egregious was the donors' refusal to address, let alone acknowledge publicly, the role high-level government and KANU officials played in organizing and financing the large-scale political violence that marred both polls. Though the identities of the officials were widely known, these officials—and the regime—enjoyed complete impunity for the atrocities they caused. Donors signalled that they were "watching closely" and many expected that the additional scrutiny would prevent future misdeeds.<sup>2</sup> Unfortunately, they fatally overestimated the influence of international attention. The lack of action against the high-level perpetrators in the early 1990s created no disincentive for them to deploy similar tactics in 1997-98 and, more dramatically, in 2007-08. Here, the learning process was on the perpetrators' side: Their sense that they would not be punished in any way was confirmed. Donors, however, did adopt some additional measures should be taken for the next election to decrease the probability

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<sup>1</sup> Author's interviews with Western diplomats and aid officials, Nairobi, May 1998 and April-May 2001 (for further information, see Brown 2003).

<sup>2</sup> Author's interview with Bryan E. Burton, Counsellor, Canadian High Commission, Nairobi, April 27, 2001. At the time, Burton was the chair of the bilateral missions' Democratic Development Group.

of mass violence recurring around the 2002 elections—which in fact it did not, a phenomenon that warrants examination.

## **Two peaceful polls in 2002 and 2005**

After the significant violence of accompanying the 1992 and 1997 elections, the lack of any similar degree of violence associated with the 2002 elections and the 2005 constitutional referendum is a phenomenon that requires explanation.

### *The 2002 elections*

Kenya's December 2002 elections were momentous in many ways, most significantly for the fact that, for the first time in Kenyan history, KANU was voted out of office. Moi was constitutionally barred from running again and chose as his party's candidate Uhuru Kenyatta, who was the son of Kenya's first post-independence ruler, but a political novice. Numerous KANU stalwarts, many of whom expected to succeed Moi at the head of KANU, defected in frustration to the opposition alliance, the National Rainbow Coalition (NARC), and backed its leader Mwai Kibaki as presidential candidate.

Though the elections fell short of being free and fair, NARC's lead was far too large to be easily erased, including because donors had once again mounted a strong joint electoral observation team. Opposition leader Kibaki was elected with over 62% of the popular vote, compared to only 31% for Uhuru Kenyatta (Electoral Commission of Kenya 2003). Once Kibaki assumed office, Kenya completed its transition to democracy, at least according to formal definitions, a monumental milestone.

To the great relief of Kenyans and international observers, comparatively little political violence accompanied the 2002 elections. The donor community was happy to claim credit, not only for the dissuasive effect of its conflict monitoring network, but also for the support it had provided for civic education over the previous decade. Kenyan NGOs and church groups, who had carried out nation-wide civic education campaigns, were also quick to cite their own efforts as the main causal factor in conflict prevention.

Such interpretations, however, were naïve, self-serving or a combination of the two. If Kenyans did not attack each other this time because they had been sensitized to the fact that such violence is wrong, that would imply that they did not know that the mass atrocities in the 1990s were egregious behaviour. This line of reasoning also ignores the fact that political leaders formed militias and gangs in the 1990s with the express purpose of carrying out the attacks and that financial incentives, rather than voter immaturity or ethnic enmity, played a convincing explanatory role.

Instead, the lack of widespread violence in 2002 can be explained by a combination of numerous factors. First, due to the last-minute high-level defections from KANU to NARC, much of the machinery of past violence also passed to the opposition. Second, the political configuration did not follow clear ethnic lines, especially since the two main presidential contenders were both Kikuyu. Unlike to the two previous elections, there was no clear political logic to who would attack whom and where: ethnoregional groups that had generally been on opposite sides in 1997 became allies in 2002. Third, NARC's two-to-one lead in the polls was too decisive for organized violence to have an impact (Brown 2004: 332-33). Realizing this, and

knowing that a Kibaki presidency would not be much of a threat to KANU politicians' interests, KANU officials' efforts to rig the poll and intimidate voters were only "spasmodic [and] half-hearted" (Throup 2003: 1). Fourth, political leaders from various ethno-regional groups had committed to sharing power within a NARC government, thereby eliminating the winner-takes-all scenario that encourages a no-holds-barred battle for power (Kamungi 2009: 353).

### *The 2005 referendum*

The referendum held in 2005 on a proposed new constitution could also have been a flashpoint for ethnicized political violence. The plebiscite, however, was not accompanied by any significant conflict. Though this is not the place to explain the intricacies of the constitutional reform process, one very important fact overshadows all others when considering the relative absence of violence: the low stakes in the referendum. The government, which presented the new draft for popular approval, had unilaterally amended the version to be voted on to make it more favourable to the incumbents. Those opposed to it felt that it did not go far enough in reducing the power of the president. When the proposal was defeated (58% to 42%), the status quo actually favoured the government more than the new constitution would have. The "no" campaign thus won a political and moral victory, but the status quo prevailed (Whitaker and Giersch 2009: 13).

Unlike in the 2002 elections, one could identify ethno-regional blocks that generally supported one or the other position in the referendum. The Luo and Kalenjin, for instance, mainly voted no, while the Kikuyu overwhelmingly voted yes. Had the stakes been higher, this could have translated into inter-ethnic violence. The power barons on both sides who could have mobilized their fighters did not feel the need to do so, for the reasons explained above.

### *Drawing the wrong lessons*

The 2002 and 2005 polls were surprisingly peaceful and lulled Kenyans and donor officials into a false sense of security. Rather than identify the real reasons there had been no large-scale attacks like those that took place in the 1990s, which warned of the probability of re-escalation in the future—for instance, Brown (2003: 92; 2004: 337)—they prematurely concluded that political violence was no longer a problem in Kenya, even though those responsible for past violence remained in power and had not been held accountable and the logic of election violence could easily return under a different ethno-political configuration. Besides drawing the wrong conclusions, they forgot some key lessons from 1992 and 1997, which prescribed close donor coordination and vigilance as an admittedly imperfect method of preventing violent conflict from re-emerging in conjunction with future elections. As a result, not only did they fail to take measures that might prevent or at least mitigate the violence that emerged immediately after the December 2007 elections, they also were caught completely unprepared for dealing with it.

### **The 2007 elections and ensuing crisis**

The causes, both proximate and underlying, of the latest bout of electoral violence, as well as the forms it took, have been amply examined elsewhere (*Journal of Contemporary African Studies* 2009; *Journal of Eastern African Studies* 2008; Lafargue 2008; *Politique Africaine* 2008). This

section seeks instead to analyze the international community's failure to predict it and its actual response.<sup>3</sup>

### *The failure to predict*

As mentioned above, there were good reasons to expect that electoral violence could recur in Kenya. The structural factors that buttressed inter-ethnic hostility had in no way been reduced since the 1990s. The authoritarian state apparatus and mode of governance remained essentially unchanged, despite democratization, and the legacy of Moi's rule aggravated the root causes of conflict (Branch and Cheeseman 2009). Numerous instigators of past violence were still active politically. The ethnically based militias that the latter had used in the 1990s were still at their disposal. The winner-take-all nature of the profoundly neopatrimonial system promoted intense rivalry over very high stakes.

Because of the rotation of Western diplomatic and aid staff, donor officials in post in Nairobi in 2007 had no direct knowledge of the violence of the 1990s. Few, if any, had even witnessed the 2002 elections. International staff members thus had no personal memory of the lessons of past conflagrations. Even those who had been there the longest would have experienced only the relatively peaceful 2002 elections and 2005 referendum. With jobs focusing on the present, they had few professional incentives to study the events of the previous decade.

Nonetheless, there were warning signs during the 2007 campaign that serious violence could emerge. Donors ignored the 600 or so deaths that occurred in the final months leading to the vote, most of which were the result of the police's extrajudicial killing of suspected members of Mungiki, a Kikuyu religious group cum protection racket cum political militia (Cheeseman 2008: 170). They also missed this rise of hate speech on Kikuyu- and Kalenjin-language radio stations, each of which attracted listeners almost exclusively from that specific linguistic and thus ethnic group (KNCHR 2008: 61, 70, 184). Also, the campaign atmosphere was very tense and the polls suggested a close presidential race between Raila Odinga of the Orange Democratic Movement (ODM) and the incumbent Mwai Kibaki of the Party of National Unity (PNU), both of which drew largely on specific ethno-regional groups. No matter who was declared the winner, there would be extreme discontent and a high risk of violence, both spontaneous and planned.

The most significant warning sign of electoral malfeasance occurred a few months before the election, when Kibaki's replaced 19 of the 22 members of the officially independent Electoral Commission of Kenya without consulting the opposition, whereas according to a 1997 agreement (though never enshrined in law) he was supposed to let the opposition name a proportional number of commissioners.<sup>4</sup> Donors did not make any significant protests over this politicization of the electoral commission in favour of the incumbent. Instead, they continued to fund the commission and repeat that it would be the final arbiter of the results, which—if credible—would discourage and delegitimize violence, even if it could not prevent it. This made it harder for donors to reject the results announced under duress by the chair of the electoral commission, even after their observers were not allowed to observe the final count and donor officials tried unsuccessfully to convince him not to announce the results before they could be verified.

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<sup>3</sup> This section draws significantly on previous work (Brown 2009), which analyzes these issues in greater detail.

<sup>4</sup> On four other "steps taken that paint a picture of a well orchestrated plan to ensure a pre-determined result", see Kiai (2008: 142).

### *Donors' reactions*

Most international observer teams, including those from the European Union, the East African Community and the International Republican Institute (an organization funded by the U.S. Congress), did not endorse Kibaki's re-election (International Crisis Group, 1998: 6). The U.S. State Department sent its congratulations to Kibaki at a press conference in Washington, DC, the only Western country to endorse his victory, which it soon disavowed. Donors as a whole agreed that urgent measures needed to be taken to end the violence, which escalated as soon as Kibaki was announced the winner. In the face of spreading violence, Western officials called for all sides to show restraint and for the political leaders to come to a compromise that would involve some form of power sharing.

Donors thus rejected any scenario involving a recount, a forensic analysis of the results or any other form of action that would help determine the legitimate winner according to the democratic rules in place. No Western government called on Kibaki to step down from the presidency, or at least step aside until results were verified, thus legitimizing his position. Instead, donors abandoned the principles of the will of the people and justice in favour of a politically expedient *ad hoc* compromise that eventually ended the political crisis and violent conflict.

Various Western ambassadors and officials on mission from African and Western countries endeavoured to bring the two sides to the negotiating table, but Kibaki and Odinga both felt that he was the legitimate winner and initially refused to consider relinquishing his claim to the presidency. The African Union appointed a Panel of Eminent African Personalities, headed by former UN Secretary General Kofi Annan, to take the lead in mediation, a move strongly supported by Western countries. The negotiations were difficult and protracted, and required multiple interventions by donors to move them forwards, including the threat of reduced levels of foreign aid, visa bans on top officials and targeted sanctions. Finally, at the end of February 2008, two months after the contested elections, Annan got Kibaki and Odinga to sign a National Accord based on power-sharing principles and the formation of a Government of National Unity, including the creation of the post of Prime Minister for Odinga. The violence ceased almost instantaneously, even if it took another six weeks and more donor cajoling for the politicians to agree on the composition of the cabinet.

### *Lessons to be learned*

Various lessons should be drawn from the experiences of 2007-08. First, donors should be very careful not to prematurely discard the possibility of election violence. To avoid this trap, donor officials need to be better versed in the recent political history of the countries where they are posted and not merely focused on the immediate. They need more time to study the country and should be kept in post longer to take advantage of their knowledge. Second, institutional support and capacity building is of fundamental import, but cannot only be carried out in a technocratic way. Donors' continued uncritical support to an increasingly partisan electoral commission proved to be one of the gravest mistakes of the election, as its breakdown was a central event in the political crisis. Third, if conflict does break out, close cooperation among donors and with other involved organizations is essential for mediation and conflict resolution. Kenya's National Accord would not have been possible if the various international actors worked at cross-purposes. Fourth, their continued involvement can be crucial. In Kenya, repeated pressure,

including the use of threats, was key to getting both sides, especially the incumbent not only to come to an agreement but also to implement it.

More effective than conflict resolution is conflict prevention. As Susanne Mueller argues in her chapter in this volume, there are no guarantees that international could have changed or can change domestic political actors' behaviour and attitudes and prevent election violence. Their efforts may not be sufficient, but they might be necessary. At a minimum, they can play some positive part. Donors placed very little emphasis on encouraging meaningful institutional change during Kibaki's first mandate or addressing the fundamental underpinnings of ethnic tensions, which reduced the government's imperative to take action. The Kenyan executive is extremely powerful vis-à-vis other branches of government and civil society, which makes aid donors an important provider of checks and balances and gives them a crucial role to play in holding the government accountable. It is difficult for the international community to act alone and force the government to undertake actions it does not wish to take, but it can be quite influential when it joins forces with domestic political actors for a well-defined goal (Brown 2007).

### **The “Government of National Impunity”**

In the two years that followed the signature of the National Accord, tensions between the members of the Government of National Unity frequently emerged. Some were more symbolic, such as who had precedence according to protocol, the prime minister or the vice-president. Others were far more practical, including the prime minister's power to suspend a minister, notably one that he had appointed himself. NARC and ODM coexisted uneasily in the coalition, but they shared a common interest in preventing any form of accountability for the post-election violence. Cabinet ministers and members of parliament from both sides were implicated in grave human rights abuses, potentially including crimes against humanity (KNCHR 2008; Waki Commission 2008).

As a result, while paying lip service to a special tribunal, with significant international membership, to try the suspects, parliamentarians blocked on multiple occasions the attempts to pass enabling legislation. Likewise, though the government promises to cooperate with the International Criminal Court (ICC), should the latter decide to pursuing some of those who bear the greatest responsibility for the violence, it refuses to refer the matter to The Hague—despite being demonstrably unable or unwilling to try them domestically. Currently, international actors are the only ones who could hold perpetrators to account, even if only a handful of the worst offenders. In fact, were it not for the Commission of Inquiry into Post-Election Violence (known as the Waki Commission, created as a result of the National Accord) threatening to hand over evidence to the ICC (which it eventually did), it seems unlikely that the government would have made any steps at all to implement its recommendation of setting up a special tribunal. However, unless the ICC decides to take the unprecedented measure of pursuing a case of its own volition, which its statutes allow it to do and the prosecutor Luis Moreno-Ocampo has sought permission to do, absolutely no accountability will be achieved for the electoral violence of 2008, just as there has been complete impunity for the “ethnic clashes” of the 1990s.

In December 2008, interviews in Nairobi revealed many donors' strong commitment to the establishment of the special tribunal, which they believe would prevent violence from erupting anew in conjunction with the next general elections, due to be held in 2012; in fact,

some donors threatened to withhold aid if the recommendations of the Waki Commission were not implemented, which has not happened.<sup>5</sup> Further interviews in January 2010, however, revealed that donors no longer consider it essential.<sup>6</sup> This could be interpreted as pragmatism, since the international community cannot force the Kenyan government to pass legislation. (MPs are currently boycotting *en masse* any attempts to schedule debate on the legislation to create the special tribunal, which is effectively dead for lack of quorum.) However, it could also be that donors have moved the goalposts and are now more interested in constitutional reform and the establishment of a new electoral commission in time for the 2012 elections than issues of accountability and violence, or that they believe that institutional reform will be sufficient to prevent future conflict. The MP who introduced the special tribunal legislation as a private member's bill (after the government failed to do so again after its first failed attempt) has complained about the lack of donor support for his efforts.<sup>7</sup> Donors are waiting to see if the ICC issues any indictments, after which it will remain to be seen how effective they are in compelling the government to cooperate, including handing over suspects to The Hague.

### *Lessons to be learned*

The broad coalition that constituted NARC and supported Kibaki during his first mandate and the current Government of Nation Unity, created by the 2008 power-sharing agreement, both depend on cross-ethnic elite cooperation. In their desire to achieve maximum support, both governments welcomed into their fold politicians of all stripes, including several responsible for the violence of the 1990s and 2008. Such conditions favour the status quo and, given their dependence on regional powerbrokers who played a role in the violence, such governments are unlikely to muster the political will to prosecute alleged perpetrators. Though the post-2008 coalition government is deeply fractured, the political elites on both sides share a common interest in shielding their key members from accountability. Given the number of officials from KANU's single-party days who served in Kibaki's government, which defeated KANU in the 2002 elections, and who remain in government today, one can trace a strong continuity between not only the Moi's authoritarian state and today's formally democratic one, but also many of the main political players then and now. Though a formal democratic transition has taken place, it is in many ways not a significant one. Given the partial nature of the transition, domestic transitional justice mechanisms, such as the proposed special tribunal and the Truth, Justice and Reconciliation Commission created in 2008, are unlikely to hold high-level officials accountable—or prevent future political violence.

## **Conclusion**

Western donors have done little to manage and even less to prevent the political violence that has plagued Kenya to varying degrees since 1991, with the notable exception of their concerted

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<sup>5</sup> Author's interview with François Grignon, Africa Program Director, International Crisis Group, Nairobi, December 4, 2008; author's interview Bo Jensen, Danish Ambassador, Nairobi, December 8, 2008; author's interview with another Western embassy official, Nairobi, December 2008.

<sup>6</sup> Author's interview with a Western donor agency official, Nairobi, January 2010, conducted jointly with Chandra Lekha Sriram (University of East London).

<sup>7</sup> Author's interview with Gitobu Imanyara, Member of Parliament for Imenti Central, January 20, 2010, conducted jointly with Chandra Lekha Sriram (University of East London).

effort to end the political crisis that followed the hotly contested 2007 elections. Their main shortcoming in the 1990s was the lack of political will to confront and hold accountable the government over its deliberate use of political violence as part of a strategy to resist democratization and prevent electoral defeat. Though donors learned the importance of coordinated electoral observation, this did not prevent them from legitimizing elections that were patently short of free and fair, notably in 1997, including the suppression of politically sensitive evidence. Because of the relative peacefulness of the 2002 elections and 2005 constitutional referendum, donors forgot the dangers of election violence and were caught unprepared when it made a dramatic re-entry into the political scene after the 2007 elections. Now that the violence was no longer one-sided and only state-induced, donors joined forces and sustained pressure on both sides to reach an agreement and restore peace, working with domestic and regional actors, most notably the African Union's mediation team. Though it took two months, this eventually ended to violence through a power-sharing agreement. This political compromise, however, came at a price: With those responsible for the worse crimes sitting in parliament and in cabinet, the newly created Government of National Unity would take no effective measures to hold its own important members accountable. Since the government has failed to create a special tribunal to try suspects and donors have shifted their focus to institutional reform, the issue of accountability is left to a distant international actor, the ICC.

None of these actions has yet made political violence any less likely to re-emerge in the future. Reforming the procedural aspects of elections (redefining boundaries, appointed a truly independent electoral commission) and putting in place a new constitution will only be effective in the presence of the rule of law and strong disincentives against using violence as a political tool, both of which Kenya sorely lacks. In this regard, continued impunity constitutes a "worst practice". The international community risks becoming complacent, just as it was prior to the 2007 elections. Meanwhile, political militias continue to operate freely, tensions remain high and local communities arm themselves in preparation for renewed violence in 2012, if not sooner.

Though the Kenyan case does not fit the standard scenario for post-conflict democratization, since democratization and elections were the cause of violent conflict rather than the posited solution, certain generalizations hold for electoral conflict management elsewhere. To conclude that the international community should not encourage democratization in order to save lives is an overly simplistic and rather dangerous interpretation, which also plays into the hands to authoritarian leaders who want to retain their autocratic power. Rather, it points to the need to understand why and how various actors will deploy violent tactics to resist political liberalization and avoid losing elections—and what incentives, disincentives and other means can be put into place to try to mitigate, if not completely prevent, political violence. This involves using a conflict-sensitive lens when fielding observation missions and designing electoral systems and reforming political institutions more generally. Equally if not more important is the need to acquire a "thick" understanding of local political dynamics and *informal* political institutions, which often follow a neopatrimonial logic rather than a ration-legal one. Kenya's experiences warn against donor complacency and the dangers of continued impunity for grave violent crimes. If international actors want to fight election violence more effectively, they will need to be both smarter and bolder.

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