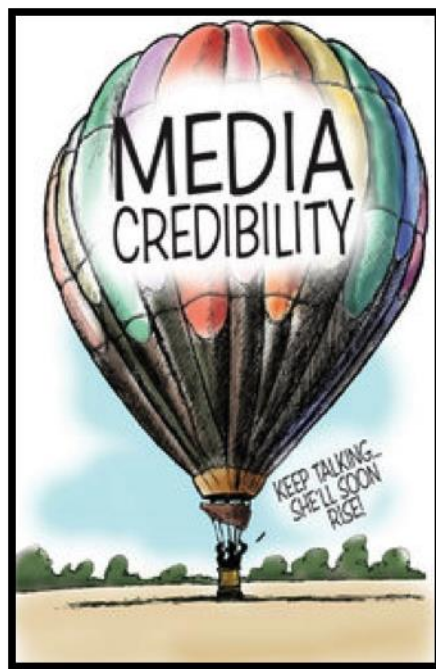# From Hate Speech to Self-Censorship: The Role of the Media in Kenya's 2007 & 2013 Elections

Cartoonist: Patrick Gathara. Featured in Michela Wrong, 'To Be Prudent Is To Be Partial,' New York Times, 14 March 2013

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INTRODUCTION

On December 30th, 2007, the Kenyan Electoral Commission declared incumbent President Mwai Kibaki the winner of a closely contested election. As he was being sworn in for his second term at State House in a rushed ceremony, many Kenyans went on to the streets. Crowds amassed not only in celebration, but also out of anger, which quickly took violent forms. Clashes between supporters of Kibaki and those of his opponent Raila Odinga engulfed five of Kenya's eight provinces. Homes, churches and shops were set ablaze and machete-wielding gangs carried out attacks on real and perceived political opponents. Infuriated by what many believed to be a fraudulent election result, Kenya's citizens turned against one another in the worst eruption of violence since the country gained independence in 1963. By the time the violence had subsided, over one thousand Kenyans had lost their lives, with a further six hundred thousand displaced.

The post-election violence of 2007/2008 left deep wounds in the Kenyan populace, sparking national soul-searching and demands for answers about the causes and perpetrators of the violence. One of the culprits identified by both Kenyans and the international community was the Kenyan media, seen as stimulating and exacerbating the violence with ethnically charged hate speech. Coverage of the violence carried story headlines such as 'Spreading the word of hate,' 'Kenyan media inciting ethnic hatred,' and 'Kenya: the role of media in hate crimes.' The blame placed on the vernacular media is epitomized by the current trial of Kalenjin-language broadcaster Joshua Arap Sang at the International Criminal Court (ICC), which commenced on 10 September, 2013 and is still ongoing at the time of writing. His trial represents the first time a journalist has been tried at the ICC, making it an

important precedent for determining the legal relationship between hate speech and violence.

While Sang's trial in and of itself represents a key litmus test of the boundary between 'free speech' and 'hate speech,' it is representative of a wider debate unfolding in Kenya today. In March 2013, Kenyans went to the polls again. Many, especially foreign onlookers, expected a repeat of the violence of 2007/2008. Once again, the election was controversial, with Raila Odinga challenging the results after losing to Uhuru Kenyatta. Yet the violence never came, and hate speech was almost entirely absent from the airwaves and newspapers. Issack Hassan, Chair of the Independent Electoral and Boundaries Commission (IEBC) responsible for running the election, praised the media for its 'modesty and professionalism' during the electoral process, signifying the dramatic contrast from 2007/2008. [1] Former United Nations Secretary General Kofi Annan also spoke highly of the Kenyan media, applauding them for 'promoting peace and exercising good judgment in their election coverage.'[2]

Others have been more critical. Journalists inside and outside of Kenya have lambasted the media for its allegedly anemic coverage of the election, especially for glossing over the controversies about the disputed results. Rather than playing its vital watchdog role, the critics argue that Kenya's media was 'supine' and 'mute,' tailoring its reporting to promote peace at all costs. [3] Once again, freedom of speech was the central issue in the Kenyan election, but with debates over self-censorship rather than hate speech.

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[1] 'Local media Gets High Praise from Kenya's Electoral Commission Chairperson and from Kofi Annan,' Internews, 11 March 2013, available: http://www.internews.org/our-stories/project-updates/local-media-gets-high-praise-kenya's-electoral-commission-chairperson-an?device=mobile
[2] *Ibid.*
[3] See: A Kenyatta is back in charge,' *The Economist*, 16 March 2013, available: http://www.economist.com/news/middle-east-and-africa/21573592-coalition-led-kikuyu-countrys-richest-and-biggest-ethnic-group-has; H.Makori, 'Elections 2013: How the media failed Kenya,' Pambazuka News, Issue 645, 9 March 2013, available: http://www.pambazuka.org/en/category/features/88874

This paper examines the media's oscillation from engaging in hate speech in 2007/2008 to adopting a 'peace narrative' in 2013, a swing from sensationalism to silence. Both cases illustrate the powerful impact of the media on politics, and the political consequences of negligent media practice. As a result of the profound impact of the media in both of these elections, a vigorous national conversation has ensued on the nature and role of the media in Kenyan society, sparking both debate and reform. The debates are redrawing the contours of acceptable and desirable media practice in Kenya, but there are still many challenges that stand in the way of ensuring widespread critical media coverage. Defining the parameters of hate speech and finding a balance where reporting is accurate without being inflammatory remain key areas for improvement. Ultimately, the Kenyan media must stop swinging between extremes, since neither hate speech nor self-censorship will allow them to play their vital role in fortifying democracy in Kenya.

THE 2007/2008 ELECTION CRISIS: WHEN HATE SPEECH BECOMES DANGEROUS

The 2007-2008 election crisis represented the worst outbreak of violence in Kenya's history as an independent nation. Mwai Kibaki, the incumbent president, won a controversial election with significant electoral malpractices, including delayed results, discrepancies between the number of votes and the number of voters, and refusal to let observers from bodies such as the European Union monitor the vote count. [4] That Kibaki was declared victorious despite such gross irregularities triggered large-scale violence. His supporters, largely from the Kikuyu ethnic group, faced off against Odinga's supporters,

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[4] Nic Cheeseman, 'The Kenyan Elections of 2007: An Introduction,' *Journal of Eastern African Studies* 2:2 (2008): 176.

mainly of Luo and Kalenjin backgrounds. This was not the first time Kenya had suffered from election-related violence – indeed, violence claimed the lives of thousands in the 1992 and 1997 elections alone – but it was by far on the greatest scale to date.[5]

As Kenyans searched for answers to their national crisis, the media - particularly the local vernacular radio stations – were singled out as key culprits. In a country with over forty languages, such stations are a vital source of information. As linguistics researcher James Orao writes, for the 'less formally educated part of the population' the official languages of English and Kiswahili are 'very remote from their immediate needs and daily living.'[6] Much of the mainstream media is in these languages, making it difficult for many in Kenya to participate in public discourse and debate. Radio offers the best media outlet for this group, as it is inexpensive, does not require literacy and provides relevant material for local audiences. Vernacular radio stations have increased significantly since 2000, when Kameme FM broke the state monopoly on local language broadcasting. [7] There has been a major expansion of these radio stations, many of them commercial and others as community non-for-profit organizations. With this growth, the radio has become the 'single most important mode of communication between the government and the public' in Kenya today. [8]

The importance of vernacular media for the Kenyan populace was apparent in 2007-2008. Many Kenyans accessed their election information from such stations, making them key platforms for the dissemination of political news. Though a popular source of knowledge, these stations had many shortcomings. Often, journalists' only credentials were

[5] Nic Cheeseman, 'From the Cold War to M-Pesa: events that have shaped Kenya's history,' Democracy in Africa, 6 June 2013, available: http://democracyinafrica.org/from-the-cold-war-to-m-pesa-events-that-have-shaped-kenyas-history/
[6] J. Orao, 'The Kenyan indigenous languages and the mass media: Challenges and opportunities,' Stellenbosch Papers in Linguistics PLUS (2009): 78.
[7] Keith Somerville, 'Violence, hate speech and inflammatory broadcasting in Kenya: The problems of definition and identification,' *Ecquid Novi: African Journalism Studies* 32:1 (2011): 322.
[8] S.E. Mohochi, 'Language Choice for development: the case of Swahili in Kenya,' *Journal of African Cultural Studies* 16:1 (2003): 86.

fluency in the local language. Some had close ties to political parties, with their broadcasts clearly favouring one candidate over the other. The broadcasters were also usually of an ethnically homogenous makeup, and thus potential conduits for stimulating ethnic tensions.

It is widely accepted that a number of vernacular radio stations allowed and used hate speech targeting their political and ethnic opponents during the 2007 election and its aftermath. The Waki Commission, an international commission appointed by the Kenyan Government to inquire into the post-election violence, singled out these stations as having a 'negative' and 'inflammatory' role. [9] The Kenyan Human Rights Commission (KHRC) charged the vernacular radio stations with 'spinning information to support candidates and parties who are of the same tribe as their audience, while openly castigating those who are not of the same tribes.' [10] Muthoni Wanyeki of the KHRC was horrified by the role of the vernacular media, remarking that 'the reports we have got through our own media monitoring processes are just appalling in terms of what was allowed to be said, in terms of the prejudices spread, ethnic stereotypes made and the fear created.' [11] In her view, the media was 'definitely complicit' in creating conditions for violence. [12] The United Nations sponsored IRIN news station argued that 'inflammatory statements and songs broadcast on vernacular radio stations…all contributed to post election violence.' [13]

One of the worst sources of such hate speech were the live talk shows, where stations had little control over who or what appeared on air. As Mitch Odero of the Media Council of Kenya described, 'a politician suddenly comes of out nowhere calling on the

[9] M. Kandagor, *A Philosophical Analysis of the Power of Language and its Role in National*
[10] Somerville, 'Violence,' 93.
[11] 'The Kenyan 2007 elections and their aftermath: The role of media and communication,' BBC Policy Briefing, April 2008, 4, available:
http://downloads.bbc.co.uk/worldservice/trust/pdf/kenya_policy_briefing_08.pdf
[12] *Ibid.*
[13] 'Kenya: Spreading the word of hate,' IRIN News, 22 January 2008, available:
http://www.irinnews.org/printreport.aspx?reportid=76346

people to stand and fight for this cause and sometimes literally calls on the youth to rise up and fight.'[14] Often, the rhetoric was veiled in local idioms. 'There were no clear messages that we should kill or burn these people or chase these people away,' stated Caesar Handa of the Strategic Public Relations Research Ltd, who was in charge of media monitoring for the United Nations Development Programme during the election. [15] Instead, those calling in spoke in 'coded language.' [16] This was evident on Kass FM, a Kalenjin station that used and allowed 'strongly derogatory terminology,' with calls for the 'people of the milk' (the Kalenjin) to 'cut the grass' and get rid of the 'weeds' (the Kikuyu). [17] IRIN has identified a number of other stations that broadcast hate speech, including Inooro, Lake Victoria FM and Kameme.[18]

Although it is clear that some elements of the Kenyan media, particularly the vernacular radio stations, played a negative role in the aftermath of the 2007/2008 election, the scope and centrality of that role is still contested. However, bodies such as the Waki Commission have put forward enough evidence to cause Kenyans to seriously reexamine the relationship between the media and politics. As the country sought to move on from the horror of 2007/2008, the media became a crucial arena in the quest for peace.

TACKLING HATE SPEECH POST 2007/2008

In the aftermath of the 2007/2008 post-election violence, a national reckoning ensued in Kenya, with a search for answers about why the violence occurred and a need for measures to ensure that such a tragedy would not be repeated in the next election. The

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[14] 'The Kenyan 2007 elections,' 4.
[15] *Ibid.*
[16] *Ibid.*
[17] Somerville, 'Radio,' 235.
[18] Somerville, 'Violence,' 94.

government undertook large-scale measures to stimulate healing and buttress national unity. These included the Truth, Justice and Reconciliation Commission which investigated human rights abuses from 1963-2012, and the National Cohesion and Integration Commission (NCIC) anchored by the desire to 'facilitate and promote a Kenyan society whose values are harmonious and non discriminatory for peaceful co-existence and integration.' [19]

In post-2008 Kenya, hate speech has become a central focus of these reconciliation and unity efforts. Although greater awareness of the negative consequences of hate speech is evident in Kenya, debates over its definition and impact abound. This is perhaps most apparent in the legal sphere. More robust efforts have been made to prosecute hate speech, an issue that is addressed in the National Cohesion and Integration Act, passed by the Kenyan parliament in 2008 to outlaw discrimination on ethnic grounds. [20] Section 13 and 62 of the act seek to better define hate speech and set out a framework for holding those who commit hate speech acts liable. Section 62 reads:

> Any person who utters words intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group or community on the basis of ethnicity or race, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or both. [21]

With this framework in place, the NCIC has charged six Kenyans with hate speech crimes.[22] Three Kikuyu musicians were charged in 2012 for lyrics that allegedly incite

[19] 'Commission Mandate,' National Cohesion and Integration Commission, available: http://www.cohesion.or.ke

[20] http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Acts/NationalCohesionandIntegrationAct_No12of2008.pdf

[21] M. Lwanga, 'Freedom of expression and harmful speech, The Kenyan situation,' Article 19, 27 September 2012, available: http://www.article19.org/join-the-debate.php/82/view/

[22] J. Kaberia, 'Kenya: Too Little Action on Hate Speech?' Institute for War & Peace Reporting, 11 July 2013, available: http://iwpr.net/report-news/kenya-too-little-action-hate-speech

violence against the Luo ethnic group. [23] While the musicians' calls to 'kill' someone who takes you to the Hague (referring to the ICC trial) is seen as 'insulting and threatening' by some, their lawyer argues that it is wrong to apply a 'criminal interpretation to artistic works.'[24]Although this and several other cases have been launched, there is much criticism of the NCIC, including its broad definition of hate speech, the lack of inclusion of other types of discrimination on grounds such as religion or gender, and the low number of cases launched relative to the degree of ongoing hate speech in Kenya.

Along with the NCIC cases, the trial of Joshua Arap Sang at the International Criminal Court is a crucial event in Kenya's continuing debates over hate speech. Sang is the only defendant who is not a politician, with the others including current president Uhuru Kenyatta and vice-president William Ruto. Sang has been charged with murder, deportation or forcible transfer of a population, and persecution.[25] He and Ruto, both from the Kalenjin ethnic group and both supporters of Raila Odinga in the last election, are accused of being key orchestrators of operations to punish Kibaki's supporters in the Rift Valley. Sang allegedly contributed to this plan by allowing his talk show 'Lene Emet' to be used by the network of Odinga supporters carrying out the attacks, including advertising its meetings.[26] He is also alleged to have played a direct part in inciting violence through circulating messages that explicitly called for the expulsion of the Kikuyus from what was claimed to be Kalenjin land, as well as spreading rumours about the murder of Kalenjins to escalate the violence. The trial of Sang and Ruto commenced on September 10th, 2013. On the opening

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[23] 'Kenyan musicians charged with hate speech,' BBC News Africa, 4 July 2012, available: http://www.bbc.co.uk/news/world-africa-18712858
[24] *Ibid.*
[25] Situation in the Republic of Kenya: The Prosecutor vs. William Samoei Ruto and Joshua Arap Sang, Case no. ICC-01/09-01/11,' International Criminal Court, available: http://www.icc-cpi.int/iccdocs/PIDS/publications/RutoKosgeySangEng.pdf
[26] *Ibid.*

day, ICC prosecutor Fatou Bensouda called Sang the 'voice of hate messages in the Rift Valley,' known to 'broadcast anti-Kikuyu rhetoric, spread the word of Mr. Ruto's rallies, and even helped to coordinate the actual attacks through coded messages.'[27]

While Bensouda insists that Sang 'contributed to the violence', this case represents an important test of the ICC's ability to prove the causal link between hate speech and violence.[28] Such a link was held to have been proven in the case of Radio et Télévisions Milles Collines (RTLM) in the International Criminal Tribunal for Rwanda, where broadcasters were found guilty of crimes against humanity, with two sentenced to life imprisonment.[29] Harvard political scientist David Yanagizawa-Drott has shed further light on the ways in which radio broadcasts directly contributed to violence.[30] Using data sets from over one thousand villages, he measured the impact of radio coverage on participation in violence. He found that in communities that had complete radio coverage, civilian violence increased by sixty-five percent and organized violence by seventy-seven percent. [31] In total, he estimates that RTLM was responsible for nine percent of genocidal deaths, equivalent to forty-five thousand Tutsis. [32]

The Rwanda case is illustrative of the phenomenon 'dangerous speech,' identified by political scientist Susan Benesch as speech that has a 'reasonable chance of catalyzing or

[27] P. Leftie, 'Ruto accused of using violence to seize power as defence puts up a spirited fight,' *Daily Nation,* 10 September 2013, available:
http://www.nation.co.ke/news/Ruto+accused+of+using+violence+to+seize+power/-/1056/1987598/-/x6d76sz/-/index.html
[28] *Ibid.*
[29] D. Yanagizawa-Drott, Propaganda and Conflict: Theory and Evidence from the Rwandan Genocide,' Harvard University, August 2012, available:
http://www.hks.harvard.edu/fs/dyanagi/Research/RwandaDYD.pdf
[30] *Ibid.*
[31] *Ibid.*
[32] *Ibid.*

amplifying violence by one group against another.'[33] To measure when 'hate speech' qualifies

as 'dangerous speech,' Benesch uses the following five variables: the level of a speaker's

influence, the grievances or fears of the audience, whether or not the speech act is

understood as a call to violence, the social and historical context, and the way in which the

speech is disseminated. [34] Her model provides a useful framework for discerning when

speech is directly responsible for inciting violence.

In many respects, Sang's case fits Benesch's 'dangerous speech' model. He had

considerable clout with the Kalenjin community in Kenya and the diaspora. His audiences

had numerous grievances, ranging from historical issues over land to the perception that

Odinga, their favoured presidential candidate, had been cheated out of victory. Sang has

been linked to statements that suggest a call to violence, such as 'the war has begun.' [35]From

a socio-historical point of view, the Kenyan environment was ripe for conflict, with

considerable violence in every election since the onset of multi-party politics in 1992 and

longstanding disputes between the Kikuyu and Kalenjin ethnic groups, mainly over land.

Furthermore, the mode of dissemination – vernacular radio – is extremely influential

amongst ordinary Kenyans, making it a powerful medium with the potential to incite

violence.

Despite fulfilling many of Benesch's requirements for dangerous speech, Sang's case

is more complex than that of RTLM. Although the comparisons to Rwanda are not entirely

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[33] S. Benesch, 'Dangerous Speech: A Proposal to Prevent Group Violence,' World Policy Institute, 12 January 2012, 2, available:
http://www.worldpolicy.org/sites/default/files/Dangerous%20Speech%20Guidelines%20Benesch%20Januar y%202012.pdf
[34] *Ibid.*
[35] R.Corey-Boulet, 'Kenyan Trial Asks, Can Journalism Be a War Crime,' *The Atlantic*, 16 May, 2011, available: http://www.theatlantic.com/international/archive/2011/05/kenyan-trial-asks-can-journalism-be-a-war-crime/238692/.

a 'straw man,' Kass FM played nowhere near the central role in organizing genocide that RTLM did.[36] There have been challenges with evidence, as few transcripts of Kass's radio programme at the time of the election are available, as well as issues over blame, as most of the inflammatory language stemmed from guest speakers rather than broadcasters themselves.[37] Sang defends his innocence, maintaining that Kass did not broadcast hate speech but rather used language that his people would understand. He has also drawn on the principle of free speech to defend himself, arguing that his trial could have a negative influence on press freedom in Kenya. 'If they take me to The Hague and I know that I was doing my job professionally,' he commented, 'then what are they telling journalists?' [38] Other journalists are watching closely as his trial unfolds, curious to see what impact it will have on the Kenyan media. Journalist Rasna Warah remarked that it will 'set a precedent on how far the media can or cannot go.' [39]

'SILENCE, PEACE IN PROGRESS': THE 2013 ELECTION

The spring of 2013 was a time of great tension, with Kenyans and foreign observers alike waiting anxiously as the first election since the violence of 2007/2008 approached. Uhuru Kenyatta and his running mate Ruto – an alliance of former opponents both charged with orchestrating violence in the last election - faced Raila Odinga and Kalonzo Musoyka. Along with predicting the outcome, analysts discussed the possibilities of renewed violence. Kenyans were inundated with messages calling for peace from all corners, from civil society

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[36] Somerville, 'Violence,' 83.
[37] See Somerville, 'Violence,' 95 and 'Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance,' Human Rights Watch, March 2008, page 36, available: http://www.hrw.org/reports/2008/kenya0308/kenya0308web.pdf
[38] Quoted in Stockland, Peter. 'Journalism, War Crimes and the Common Good.' *Cardus* 3 June 2013, available: http://www.cardus.ca/comment/article/2835/journalism-war-crimes-and-the-common-good/
[39] Interview with Rasna Warah, 29 August, 2013

activists lining the streets holding signs calling for peace, to Facebook campaigns such as

'Operation STOP Ethnicity and Hate Speech.' [40] The collective push for peace was

remarkably effective, and has been touted as a model for preventing similar violence

elsewhere.[41] The headline of the *Daily Nation,* one of Kenya's leading newspapers, was

emblematic of the push for peace. It read 'NEVER AGAIN,' and was followed by the

ominous warning: 'if we bungle today's election or go back to killing each other, not only will

the world give up on us as a civilized nation but Kenyans too could lose faith in their own

country.' [42] Peace was framed as an existential need, vital for Kenya to remain a nation.

On election day, such calls were heeded. Despite myriad irregularities in the election

peace prevailed. It continued as Raila Odinga contested the election results in court,

challenging Kenyatta's victory. Although the court acknowledged problems with 'data and

information-capture during the registration process,' they declared such issues had not

affected the viability of the results. On March 30th, Odinga accepted the court's verdict, and

Kenyatta was confirmed as Kenya's fourth president. Many Kenyans celebrated in relief,

grateful to have avoided another wave of election violence.

For some Kenyans, however, the election was not seen as an occasion for

celebration. Although the peaceful outcome was victory in itself, the controversy around the

results – and how quickly this controversy was dismissed – was a source of grave concern.

Once again, the media's role was at the center of the discussion. At issue this time was the

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[40] See Clar Ni Chonghaile, 'Kenya tunes in as Uhuru Kenyatta and Raila Odinga promise peaceful elections,' *The Guardian*, 11 February 2013, available: http://www.theguardian.com/world/2013/feb/11/kenya-elections-presidential-debate; and Mary Wairimu, 'Young Kenyans campaign for peace on social media,' *UPI,* 9 April 2013, available: http://www.upi.com/Top_News/World-News/2013/04/09/Young-Kenyans-campaign-for-peace-on-social-media/PC-2321365537001/
[41] Susan Benesch, 'The Kenyan Elections: Peace Happened,' *Huffington Post* 21 March 2013, available: http://www.huffingtonpost.com/susan-benesch/kenya-elections_b_2921096.html
[42] *Ibid.*

media's failure to report election controversies, rather than its role in inciting violence. Sensationalism had subsided, but silence had taken its place.

Keenly aware of its negative image after the 2007/2008 election violence, the Kenyan media had made a concerted effort to promote 'peace journalism' in the lead up to the 2013 vote. Local and international organizations launched efforts to attempt to shift the media culture from one supportive of hate speech to one promoting peace. For example, PeaceNet Kenya conducted conflict-sensitive reporting training, with particular emphasis on coverage during elections. [43] Prior to the election, media houses circulated guidelines to their staff on how to avoid sensationalist reporting.[44]

Wary of any potential for inciting violence, the media erred on the side of extreme caution in their coverage. In addition to the peace journalism training efforts, a number of measures meant to minimize the inflammatory potential of the press were put in place during the election. Media executives entered into a 'gentleman's agreement' not to provide live coverage for announcements or press conferences by political parties in an effort to avoid 'anything that might whip up ethnic tensions.' [45] In contrast to previous elections, media houses were not present at exit polls, generally considered a crucial venue for early flagging of voting irregularities. They also agreed not to report results from the polling and constituency levels directly, instead replying only on the official results announced by the IEBC. [46]

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[43] C. Ndinda, 'Mombasa journalists participate in conflict sensitivity and peace journalism,' Peace and Development Network Trust, available: http://www.peacenetkenya.or.ke/index.php?option=com_content&view=article&id=224:mombasa-journalists-participate-in-conflict-sensitivity-and-peace-journalism&catid=3:newsflash
[44] R.Warah, 'Did the Kenyan Media Do Justice to the 2013 Election Coverage,' *Sahan Journal* 26 August, 2013, available: http://sahanjournal.com/kenyan-media-election-coverage/#.UlppoUKkI0u
[45] M.Wrong, 'To Be Prudent Is to Be Partial,' *Latitude, New York Times,* 14 March 2013, available: http://latitude.blogs.nytimes.com/2013/03/14/erring-on-the-side-of-caution-kenyas-media-undercovered-the-election/?_r=0
[46] Interview with Muthoni Wanyeki, 30 August 2013.

The prioritization of peace resulted in press coverage that downplayed potentially controversial election stories. Incidents such as the confiscation of identity cards by gun-wielding gangs in Mathare and the death of thirteen people in Mombasa as a result of violent attacks by secessionists were underreported due to fears of sparking panic and further violence.[47] When the IEBC revealed that there had been many technical glitches during the election, such as the failure of the biometric voter identification kits and a 'bug' that multiplied the number of rejected votes by eight, few queries were launched by the media. [48] As Odinga began questioning the viability of the results, asking for the ballot counting to be stopped and for an audit to be launched, the media 'were still cheerfully assuring listeners that everything was on track.'[49]

Some observers have argued that such an approach was justified by the aim and outcome of a peaceful election. Journalism professor Joe Kadhi insists that the media did not evade controversial events, but rather deliberately downplayed these 'sensitive stories.' This approach, he argues, was a 'welcome exhibition of professional commitment to vital ethical principles that are internationally supported today by all studies of conflict sensitive journalism.' [50] Linguistic scholar Professor Kimani Njogu excused the Kenyan media for forfeiting its 'watchdog role,' arguing that such a role is 'context-dependent.' [51] While he acknowledged that there are moments in which that role is 'extremely urgent and critical,' there are also 'moments, especially in states that are in transition like Kenya, when that watchdog function is momentarily suspended for some other collective good,' such as, in his

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[47] 'Election 2013: How media failed Kenya,' *East Africa Press,* 11 June 2013, available: http://www.eastafricapress.net/index.php?option=com_content&view=article&id=865%3Aelection-2013-how-media-failed-kenya&catid=137%3Aet-may-2012-&Itemid=248&lang=en
[48] G.Gatehouse, 'Kenya election: "Tech hub" hopes take polling day blow,' BBC News, 8 march 2013, available: http://www.bbc.co.uk/news/world-africa-21712715
[49] Wrong, 'To Be Prudent'
[50] J. Kadhi, ' Journalism vs Patriotism in Highly Competitive Poll,' *Media Observer*, page 12, available: http://www.internewskenya.org/files/media_observer.pdf
[51] East Africa Press, 'Election 2013'

opinion, the 2013 election. [52] In an impassioned defense of the Kenyan media's coverage of

the election, journalist Anne Kiguta argued that the media's self-censorship provided

'evidence that the media in Kenya has finally come of age,' able to discern which stories and

styles of reporting were conducive to a peaceful election process. [53]

Such defenses, however, are rendered rather hollow for those who view the media's

watchdog function as fundamental rather than negotiable. While defenders of the media

argue that critical reporting can be sacrificed for the collective good, critics contend that the

two are not mutually exclusive. 'The "public interest" should not unnecessarily fetter

freedom of expression' argued lawyer Ben Sinhanya. [54] 'Freedom of expression and the

ability to disseminate ideas and receive information is crucial for constitutional government,

the rule of law, human rights, democracy, sustainable development and electoral justice,' he

stated.'[55] Furthermore, analytical and critical media coverage does not automatically generate

violence. For Wanyeki, 'critical reporting' is 'different than using the media to consciously

and deliberately incite Kenyans to harmful/violent action(s) at the expense of other

Kenyans.'[56] For the Kenyan media to 'come of age' as Kiguta claims it has, it will have to

learn to foster critical debate without inciting violence. As Nicholas Benequista of the

London School of Economics writes:

> Kenyan media cannot forever remain a polite space where differences are swept
> under the rug to be replaced by a consensually agreed (rather than imposed) agenda
> of nationalistic propaganda. The good stories, the positive angles, should be included,
> no doubt, and people need to be reassured in times of crisis. The real challenge to
> forming a national narrative, however, is how to include conflict, injustice, suffering,

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[52] *Ibid.*

[53] A. Kiguta, 'Journalists could not be judge and the jury in last polls,' Media Observer, page 31, available:
http://www.internewskenya.org/files/media_observer.pdf

[54] B. Sinhanya, 'The path Kenyan media must travel to secure electoral justice,' *Media Observer,* April-May 2013,
page 19 , available: http://www.internewskenya.org/files/media_observer.pdf

[55] *Ibid.*

[56] Interview with Muthoni Wanyeki, 30 August 2013.

and inequality – how to promote mutual understanding on the themes that divide us.[57]

While the Kenyan media of years previous would have 'gone for the jugular' in the wake of election controversies, Wrong characterized the 2013 version as a 'zombie army' with reporters 'going glaze-eyed through the motions.'[58] Journalist Christine Bukania similarly criticized the media for forgetting 'their dedication to bring the full uncensored truth to the Kenyan people,' thus neglecting their crucial 'watchdog function.' [59]Although aware of election irregularities, the media's 'reluctance to pursue these events, to enrich their reports with investigative depth, and well-rounded analysis' was the most disturbing. [60] Political cartoonist and blogger Patrick Gathara criticized the 'compact' that developed between the media and the Kenyan people, meant to ensure that 'Kenya would have a peaceful and credible poll no matter what.' [61] Any 'uncomfortable moments' that might challenge that goal were 'photo-shopped out of the familial picture,' leaving bland reporting that promoted peace over truth.[62] As one Twitter user claimed, the media was gripped by a 'peace lobotomy,' following the formula: 'Disconnect brain, don't ask questions, don't criticize. Just nod quietly.' [63]The costs of such a strategy were high. As academic Godwin Munurga writes, 'we have turned the old notice declaring 'Silence, Meeting in Progress' into

[57] N. Benequista, 'The Kenyan elections and the media: complex illusions,' POLIS, London School of Economics and Political Science, available: http://blogs.lse.ac.uk/polis/2013/03/11/kenyan-elections-and-the-media-complex-illusions-guest-blog/

[58] Wrong, 'To Be Prudent,'

[59] C. Bukania, 'Self-censorship by the Kenyan media in the 2103 elections,' The Media Observatory, available: http://www.journalism.co.za/index.php/research-papers/5438-self-censorship-by-the-kenyan-media-in-the-2013-elections.html

[60] *Ibid.*

[61] P.Gathara, 'The Monsters Under the House,' *Gathara's World,* 10 March 2013, available: http://gathara.blogspot.co.uk/2013/03/the-monsters-under-house.html

[62] Gathara, 'Monsters'

[63] *Ibid.*

'Silence, Peace in Progress….we have traded peace for justice and absurdly convinced ourselves that the two cannot co-exist.' [64]

The 2013 election not only had negative implications for the integrity of the journalism profession in Kenyan, but it also potentially impacted the trajectory and viability of the electoral process. By glossing over election controversies and towing the line of the IEBC, the media may have helped facilitate Kenyatta's victory. Prudency in the name of peace was tantamount to partiality, favouring whichever candidate took the initial lead and marring the public's awareness of irregularities. [65] When reports flowed in that Kenyatta was ahead of Odinga, the media continued to disseminate that narrative, rather than focusing on Odinga's concerns about the legitimacy of the election. At a 'critical threshold,' argues Sinhanya, as the high number of spoilt votes became apparent, the Kenyan media 'stopped adding up their statistics and began featuring the official IEBC results.'[66] While in a studio during this process, Sinhanya was told by members of the media outlet: 'no critical comments. We have moved on to outcomes and feedback. We have a moral obligation.'[67] This quick jump from a contested election to 'outcomes and feedback' was hastened by the lack of critical media reporting, buttressing not only the peace process but also Kenyatta's victory.

Beyond the political realm, the media's approach to the Kenyan election also illuminated the deep fear that permeated the Kenyan populace. Their self-censorship, Wrong argued, 'reveals a society terrified by its own capacity for violence.'[68] The election became 'something to be endured,' a precarious process that could at any moment lapse into

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[64] G. Murunga, 'We have traded peace for justice and lied to ourselves the two can't co-exist,' *Daily Nation*, 5 April 2013, available: http://www.nation.co.ke/oped/Opinion/-/440808/1740496/-/k3l3ouz/-/index.html
[65] *Ibid.*
[66] B. Sinhanya, 'The path Kenyan media' page 18-19.
[67] *Ibid*, 19.
[68] Wrong, 'To Be Prudent,'

violence.[69] The nature of this peace was thus tainted, as it was haunted by the 'perpetual

shadow of self-annihilating silence.' [70] That the media was willing to sacrifice critical

reporting in its desperation to ensure peace indicates just how precarious such peace was in

the eyes of many Kenyans.

While the mainstream media did its best to cover up the reasons for that fear, social

media was an arena in which hate speech was harder to silence. Interethnic tensions that

played out in violent forms during the 2007/2008 vote moved into cyberspace for the 2013

election. As one commentator in the *Daily Nation* wrote, 'This violence is not being fought

on bloody streets; it is warfare waged on the pristine, modern, middle-class avenues of

Twitter and Facebook.' [71] The Umati project, a civil society hate-speech monitoring initiative,

found that incidences of hate speech on Facebook and Twitter spiked in the months

immediately prior to the election. Using Benesch's indicators, it tracks the number and

nature of offensive statements on social media in Kenya. The number of statements under

the category of 'offensive speech' (meant to insult but not to give rise to harmful action) rose

from 122 in February 2013 to 405 in March. [72] Instances of 'dangerous speech' (those with

the highest potential to promote violence' rose from 197 in February to 321 in March. [73]

Such high levels of hate speech surprised the government, who had failed to adequately

target the social media platform. 'Mainstream media after 2007 was properly taken care of

[with efforts to stop hate speech],' argued Mark Irungu of Internews. 'We forgot about this

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[69] Gathara, 'Monsters,'

[70] *Ibid.*

[71] M. Gaitho, 'The demented postings on social media must stop before blood flows,' *Daily* Nation, 18 March 2013, available: http://www.nation.co.ke/blogs/-/446672/1723754/-/view/asBlogPost/-/i3l8cnz/-/index.htm

[72] E. Okutoyi, 'Kenya's online hate speech "spiked" before March elections,' *T Web Africa,* 15 April 2013, available: http://www.itwebafrica.com/ict-and-governance/256-kenya/230873-kenyas-online-hate-speech-spiked-before-march-elections

[73] *Ibid.*

other giant that was just chilling over there – the social media. Somehow we did not see the warning signs.'[74]

More must be done to define and understand hate speech in Kenya. As mentioned previously, Article 13 of the National Cohesion and Integration Act defines hate speech, but only in ethnic terms, neglecting areas such as religion, sexual orientation, gender or political affiliation. The 2010 Constitution indicates that hate speech is a violation of freedom of expression, but does not define hate speech. At a practical level, there are many disparate understandings of hate speech. As Wanyeki argues:

> Hate speech is misunderstood. It is equated with reporting on prejudicial or stereotypical utterances by politicians and the public--when such reporting can be done, critically, in a manner that points out the prejudice or stereotypes involved. It is also equated with (critically) reporting on the material/real grievances held by the public based on long-standing experiences and outcomes of systemic discrimination (in the Kenyan case, particularly on ethnic grounds). [75]

Additionally, further efforts are needed to tackle the socioeconomic issues that propel hate speech. Grace Githagia, PhD researcher at the Institute of Development, University of Nairobi argues, hate speech is a 'social challenge that cannot be handled with judicial measures.' [76]Hate speech is driven by real grievances, and for it to be addressed in a meaningful way, such grievances must also be addressed. 'Taking too short a view of hate speech and only focusing on the symptom will ignore the root causes which are in issues such as land [ownership], youth unemployment and impunity,' argued Wendy Crandall of the Umati Project.[77] 'If these larger issues are addressed, constructively discussed and adequately tackled, then I think over time, hate speech may decrease.'[78] Although this is a tall order,

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[74] J.Kaberia & N. Musau, 'Kenyan Authorities in the Dock Over Hate Speech,' *Reporting Kenya,* 3 May 2013, available: http://reportingkenya.net/reports/kenyan-authorities-in-the-dock-over-hate-speech/
[75] Interview with M. Wanyeki, 30 August 2013.
[76] Interview with Grace Githagia, 17 September 2013.
[77] J.Kaberia & N. Musau, 'Kenyan Authorities,'
[78] *Ibid.*

moving beyond the media and into the political, economic and social realms, it speaks to the media's utility as a window into society, and also to the ongoing challenges in the quest for Kenyan unity and peace.

CONCLUSION

During the last two elections, Kenyans have experienced the diverse yet powerful impact of the media on politics. The media has taken a path of extremes, first engaging in hate speech and promoting violence in 2007-2008 and then practicing self-censorship and silence in 2013. Both approaches shaped the contours of the election process in adverse ways. In 2007-2008, sensationalist reporting served as a catalyst for violence. To what extent this hate speech translated into 'dangerous speech' is an ongoing debate in Kenya, epitomized by the trial of Joshua Arap Sang. In 2013, the media's fear of once again promoting violence led to a strategy of self-censorship, which resulted in uncritical reporting that glossed over major electoral irregularities. While some celebrated the media's commitment to 'peace journalism,' others criticized its timid election coverage, viewed as detrimental to the values of truth and justice. The shallowness of such peace rhetoric was apparent outside the mainstream media, as platforms such as Twitter and Facebook were saturated with hate speech.

Rather than engaging in hate speech or sacrificing critical reporting due to fears of violence, the Kenyan media must find a middle path, one that discourages sensationalism while promoting objective, analytical reporting. While journalists' determination to play their

part in the peace process was laudable, peace and critical media coverage should not be mutually exclusive. More work needs to be done in Kenya to define the parameters of hate speech, dispel the notion that analytical reporting is tantamount to violence, and tackle the underlying issues that propel hate speech. A robust media is a key pillar of any democratic nation, and elections are time when such robustness is particularly vital. As Kenya moves forward into the next election, the media will need to find ways to allow peace and critical coverage to go hand in hand.