Kenya Case Study
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Abstract

In February 2008, following widespread violence after a disputed presidential election, Kenya officially joined the ranks of countries seeking to transition from authoritarianism or oppression to democracy. Although the debate as to whether Kenya needed to reckon with past human rights violations had been ongoing for a number of years, spearheaded by civil society, it was the post-election violence which took Kenya to the brink of civil war that sufficiently concentrated the minds of Kenyans in general and the political elite in particular to agree to a raft of agreements in the name of the Kenya National Dialogue and Reconciliation Process, which formed the framework for Kenya’s transitional justice agenda.

This paper will critically examine the role played by Kenyan civil society in laying the ground for Kenya’s transitional justice agenda long before the disputed election, as well as in advocating for peace with truth and justice while the violence raged, and thereby pushing the political elite to reach a just settlement. It will also examine civil society’s role in monitoring the implementation of the National Accord and the various transitional justice mechanisms it outlined.

In brief outline, the paper will cover the following:

- Kenya in historical perspective: The 2007/8 violence was sparked off by a disputed presidential election, but this was just the match that ignited a pile of fuel Kenya had been storing up for the inferno—a history of past injustices, inequality, human rights violations, grand corruption and impunity dating back to independence and before. The paper will briefly discuss this background and civil society efforts to push for a more just and accountable social and political order, including recent efforts at setting up a truth commission to address these injustices, which laid the foundation for Kenya’s transitional justice process prior to the disputed election. Particular focus will be given to the 2004 report of the Makau Mutua Task Force on the Establishment of a Truth Justice and Reconciliation Commission and early civil society efforts to have a credible truth commission established.

- Civil society’s role in advocating for post-election justice during the violence: The paper will focus on the role of Kenyan civil society, under the auspices of Kenyans for Peace, Truth and Justice (KPTJ), a coalition of over 30 civil society organizations that came together shortly after the election to advocate for truth about the election, which was so widely flawed that a subsequent commission of inquiry said it was impossible to tell who had won. The paper will briefly highlight the important role that civil society played in helping the mediators come up with a credible transitional justice framework that eventually led to the end of the violence.

- Civil society’s role in consolidating the peace: The paper will examine the role of civil society in the implementation of the National Accord, with specific reference to its advocacy for transitional justice mechanisms that meet international best practice. It will also examine the contribution civil society made by critiquing the Truth, Justice and Reconciliation Commission Bill as it was making its way

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through parliament; its advocacy for security sector reform; its advocacy for the formation of a special tribunal; in the tribunal’s absence, its supportive role in ensuring the prosecutor of the International Criminal Court had all the necessary information to enable the court to intervene in Kenya; its advocacy for constitutional reform; and its advocacy for the resettlement of internally displaced persons.

While a general approach will be adopted, the author will give special reference to the role of KPTJ, the Kenya National Commission on Human Rights and the Multisectoral Taskforce on the TJRC, all of which he has been directly involved with. The paper will shed light on general approaches, coalition building, challenges, key successes and learning points during every step of civil society’s contribution to Kenya’s transitional justice agenda.

Background of Kenyan Conflict

On 27 December 2007, Kenya held its most closely contested general election since independence from the British in 1963. The two main contenders, President Mwai Kibaki and his erstwhile ally-turned-bitter-political-foe, Raila Odinga, fought a vicious campaign. Despite Odinga commanding an early lead that seemed unassailable and his party winning a majority of seats in parliament, when the result was announced it gave Kibaki a narrow victory and he was hurriedly sworn in for a second term. Odinga’s Orange Democratic Movement rejected the outcome and refused to petition the courts, which were packed with Kibaki appointees. This led to a stand-off and widespread violence around the country.

Although by far the worst electoral violence to hit Kenya since independence, the post-election violence was only an extreme form of the electoral violence that Kenyans have come to expect with every electoral cycle since the reintroduction of multi-party politics in 1992. It marked a new, deadlier chapter of the political violence that dates back to colonial-era land grievances.¹ The 2002 election, which ended Daniel Arap Moi’s repressive 24-year rule and the dominance of the Kenya African National Union (KANU) party in Kenyan politics since independence, was won by a coalition of parties led by Mwai Kibaki with the support of Raila Odinga.

Shortly after coming to power, Kibaki is alleged to have dishonored a power-sharing MoU with Raila, thereby setting the ruling coalition on a slippery slope of suspicion and mistrust which stalled the reform agenda that the new government had promised, including zero tolerance for corruption, a commitment to set up a truth, justice and reconciliation commission and the promise to deliver a new constitution within the first 100 days. A referendum on a new constitution was finally held in 2005 but it split the government down the middle, leading Kibaki to fire half his cabinet, led by Odinga, who had campaigned against the draft constitution which Kibaki favored and which was rejected at the referendum. Raila and his supporters, who had successfully campaigned against a draft constitution they saw as betraying the original dream and aiming to entrench Kibaki in power, formed an opposition party, the Orange Democratic Movement (ODM), and started campaigning for the 2007 elections.

Due to Kenya’s electoral system, the 2007 election became a do-or-die competition among regions and ethnic groups for state resources. On election day, although voting itself went relatively smoothly, confusion and irregularities marred the tallying of the vote. The announcement of the election results sparked the most destructive and widespread violence ever experienced in Kenya, characterized by

sexual violence, arson, maiming, looting and killing that caused the deaths of 1,133 people, displacement of more than 350,000 people and the burning and destruction of property.2

This violence led to the intervention of the international community led by the African Union, which put together a Panel of Eminent African Personalities chaired by former United Nations Secretary-General Kofi Annan. The negotiations between the two protagonists, which were christened the Kenya National Dialogue and Reconciliation Process, produced terms for a Grand Coalition government incorporating Kibaki's Party of National Unity (PNU) and Odinga's ODM. The “National Accord” led to the cessation of most of the violence and called for the establishment of several commissions of inquiry to investigate and address issues of justice, accountability, governance and the rule of law. These bodies included an Independent Review of the Elections Commission (IREC) and a Commission of Inquiry on Post-election Violence (CIPEV), mandated to investigate the facts and circumstances surrounding the post-election violence and the conduct of state security agencies in handling the violence, and to make recommendations on these matters (the report of CIPEV is commonly referred to as the “Waki Report,” after appellate court Judge Philip Waki, who chaired the commission). They also agreed to establish a Truth, Justice and Reconciliation Commission (TJRC) designed to establish an accurate and complete historical record of past gross human rights violations.3

Among IREC’s recommendations were the disbandment of the Electoral Commission of Kenya and its replacement with an Interim Independent Election Commission and a complete overhaul of the country’s voter register through a fresh registration exercise that would clean up and update the register. It also recommended the formation of an Interim Independent Boundaries Commission to review electoral boundaries to reverse the persistent gerrymandering that had occurred in previous decades.4

The Waki Commission recommended the creation of a Special Tribunal for Kenya with Kenyan and international judges to sit in Kenya to try perpetrators of the violence. It gave specific timelines during which the tribunal should be created and operationalized, failing which it recommended to Kofi Annan that he hand over an envelope containing the secret list of alleged perpetrators to the International Criminal Court (ICC) prosecutor.5 Despite three separate attempts, the government failed to form the tribunal, causing the ICC to intervene. On 31 March 2010, the ICC Pre-Trial Chamber II authorized the prosecutor, who had used his proprio motu powers for the first time to refer the Kenyan case to the ICC, to open investigations into the Kenya situation.6 The Waki Commission also recommended security sector reforms, especially focusing on the police. The government appointed a taskforce that recommended far-reaching police reforms and subsequently appointed a police reforms implementation committee whose work is ongoing.

Kenya’s transitional justice mechanisms therefore comprise prosecutions through a special tribunal, if it ever comes to be, and the ICC; a truth, justice and reconciliation commission, which has the mandate to investigate human rights violations and recommend reparations; and institutional reforms,

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including constitutional reform, electoral, judicial and security sector reforms. All these mechanisms are in various stages of implementation.

Political and Social Environment

The National Dialogue and Reconciliation Process undertaken by the two main protagonists in the 2007 election under the mediation of Kofi Annan had four agenda items: 1) cessation of violence and restoration of fundamental human rights; 2) dealing with the humanitarian crisis; 3) power sharing; and 4) dealing with long-term issues, including constitutional and institutional reforms, land reforms, poverty and inequality, youth unemployment, national cohesion, transparency and accountability.7 However, after the political elite agreed on the terms of power sharing and formed a grand coalition government under Agenda Item 3 of the National Accord, they started dragging their feet on the task of accountability and implementation of Agenda Item 4, which sought to address the more critical long-term issues. The transitional justice agenda has therefore been hampered largely by a lack of political will. The political and social environment that forms the backdrop against which Kenya is attempting to implement transitional justice comprises of the following realities:

Lack of a Transitional Moment

Although the 2008 post-election violence was a traumatic period for Kenya, the country has not gone through a “transitional moment” in the same way that South Africa did or societies coming out of civil conflict do when a peace agreement is signed. There was no regime change in Kenya. Even at the best of times, at any rate since the reintroduction of multi-party politics, Kenya’s politicians have perfected the art of recycling themselves and the same players who have dominated the political landscape since independence continue to do so with a few comings and goings. Many of those perceived by the public to have been perpetrators of post-election violence occupy powerful positions in cabinet and parliament and have every interest in blocking serious transitional justice and accountability measures. This is best exemplified by the fact that the political class has managed thrice to block efforts to form a special tribunal, leading the ICC to open an investigation in Kenya.

Constitutional Reforms and Lack of Sequencing

Kenya has had a constitutional reform process that has been ongoing since 1990. Indeed one of the key aims of Agenda Item 4 was to complete the constitutional reform process that had been confined to the doldrums after Kenyans rejected a draft in a referendum in 2005. Although the recent referendum held on August 4 resulted in the adoption of a new constitution, this was by no means an obvious outcome. For this reason, Kenya’s transitional justice agenda was a case of placing the cart before the horse, as it sought to place other mechanisms before putting in place a constitutional framework to support key institutional reforms. There is an absence of a coherent transitional justice policy to anchor the various mechanisms, which has made the implementation of Agenda Item 4 reforms haphazard and disjointed, with no discernible sequencing and occasional confusion between different mechanisms. For example, when the cabinet failed to reach consensus on the formation of a special tribunal, it declared that rather than form a tribunal, the government would use the truth commission to address post-election violence, notwithstanding that the TJRC did not have a prosecutorial mandate.

7 For detailed periodic analyses and review of progress of Agenda Items 1-4 of the National Accord, please see quarterly reports by South Consulting Project at http://www.dialoguekenya.org/mreport.aspx.
Insecurity and the Challenge of Witness Protection

Although the widespread violence that was experienced after the 2007 elections was brought under control and the country stabilized somewhat after the signing of the national accord, the state of insecurity in the country persisted as there was no effort made to disband all illegal militia as had been recommended under Agenda Item 1 of the National Dialogue. The police also continued to carry out extra-judicial executions with impunity around the country.\(^8\) The institutions that are especially in need of reform, such as the police, seemingly do not understand the language of reform. This has made it difficult to address impunity and fight accountability. Moreover, until very recently, Kenya had no autonomous witness protection mechanism. This has forced civil society to shoulder the burden of protecting witnesses and preserving evidence in anticipation of criminal prosecutions for post-election violence, a task that it has neither the skill nor the capacity to undertake. A Witness Protection Agency is now in existence but not operational.

Ethnic Mobilization

Ethnic mobilization continues to be an obstacle to transitional justice, especially the fight against impunity. Politicians who suspect they may be called to answer for their complicity in the post-election violence frequently whip up ethnic emotions intended to persuade their followers that it is their communities, rather than them as individuals, who are being targeted. The politics of ethnic mobilization need to be addressed if impunity is to be dealt with in Kenya’s body politic.

Succession Politics

The incumbent president, Kibaki, is serving his final term and is constitutionally barred from running again in 2012. This means that Kenya is implementing a transitional justice agenda while at the same time navigating complex succession politics. In a country where voting patterns follow ethnic boundaries, politicians have prioritized alliance building to capture power over accountability and the rule of law, thereby slowing down implementation of the transitional justice agenda.

Lack of Public Awareness

Kenya’s population is largely ignorant of the intricacies of international justice processes. This lack of awareness in part contributed to the failure to form a special tribunal, as many citizens expected that failure to form one would automatically lead to all the perpetrators of post-election violence being prosecuted by the ICC in The Hague, which they thought was a better option since there was so little faith in domestic mechanisms.

Developing an Advocacy Agenda and Strategies

This paper focuses on the work of Kenyans for Peace, Truth and Justice, a coalition of over 30 organizations that played a leading role in galvanizing civil society and mobilizing critical voices within the country and internationally to actively campaign for full accountability for events that occurred following the disputed presidential elections. The coalition has been a critical player, directly and through its members, in ensuring implementation of the National Accord, which constitutes the agreed

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\(^8\) UN Special Rapporteur on Extra-judicial Executions Philip Alston issued a scathing report on extra-judicial killings by the police in Kenya after his visit a year after the election. See “Statement of the UN Special Rapporteur” at [http://www.unhchr.ch/huricane/huricane.nsf/0/EAFBE45849510C0EC125756800534815?opendocument](http://www.unhchr.ch/huricane/huricane.nsf/0/EAFBE45849510C0EC125756800534815?opendocument)
framework of Kenya’s transitional justice agenda. The paper also focuses on the work of the Multi-Sectoral Taskforce on the TJRC and its successor, the Transitional Justice Network, which were formed to advocate for effective truth seeking in Kenya.⁹

Under its key mandate regarding accountability for the post-election violence, KPTJ has played a leading role both nationally and internationally and provided partners with insights on appropriate interventions to heighten pressure on the government for reforms. KPTJ analyzed and monitored the implementation of the recommendations of IREC and CIPEV, as well as the proposed terms of reference, objectives and mechanisms of the TJRC. Following KPTJ’s annual strategic retreat in 2009, it was deemed important for KPTJ to zero in only on those issues that fall within its mandate: the truth regarding the 2007 elections and accountability for the violence. Furthermore, it was agreed by members that KPTJ should adopt a strictly research-based advocacy strategy. Since then, KPTJ has commissioned two research projects, a statistical analysis of the 2007 elections and an economic analysis of Rift Valley Province, the key locus of the post-election violence. An advantage of KPTJ is that it is a coalition and as such many of the member organizations have been able to continue advocacy on specific issues such as the TJRC and accountability for post-election violence.

Description of Lobbying Activities

**Lobbying for an Effective TJRC**

In 2003, following the defeat of KANU, which had ruled Kenya for 39 years, the new government set up a taskforce to find out if a truth, justice and reconciliation commission was necessary for Kenya and, if so, to make recommendations on the type of truth commission that ought to be established. Civil society played a key role both from within and without in this process. In particular, the Kenya Human Rights Commission seconded staff to the taskforce while some key civil society leaders served as commissioners.¹⁰

Despite it finding that over 90% of the Kenyans it spoke to were in favour of establishing a truth commission and recommending that one be established no later than June 2004, the taskforce’s recommendations were never implemented. However, the then new Kenya National Commission on Human Rights took up the quest for truth-seeking in Kenya and set up its own taskforce, which comprised civil society organizations and the Commission itself, to continue advocacy for a truth commission and to continue supporting victims’ groups, including IDPs, torture survivors and families of victims of political assassination, to keep the agenda for truth-seeking alive.

It has been opined that by failing to implement the Makau Mutua Task Force recommendations, Kenya missed an opportunity to put in place a proper transitional process in early 2003, at the end of the presidency of Daniel Arap Moi.¹¹ It is probably the realisation that by failing to effectively deal with the past, Kenya had allowed grievances to fester and explode into the post-election violence that led the negotiators of the National Accord to reach an early agreement on the formation of a truth, justice and

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⁹ There is an overlap between KPTJ and MSTF/TJN as most of the members of the MSTF/TJN are also members of KPTJ.
reconciliation commission. Shortly thereafter, the government published a Truth, Justice and Reconciliation Commission Bill. Noting that there had not been much consultation in the drafting of the bill and having identified several key flaws, civil society formed a Multisectoral Taskforce on the TJRC (MSTF), an umbrella body of civil society organizations (including community-based organizations, women’s organizations, youth groups, faith-based groups and networks of survivors of human rights violations) and the Kenya National Commission on Human Rights. Its mission was to push for a people-centered, effective and credible Truth, Justice and Reconciliation Commission for Kenya and to advance transitional justice.

MSTF’s first task was to review various government drafts of the TJRC Bill and make suggestions for revision. It held several public forums as well as meetings with Ministry of Justice officials and the Parliamentary Committee on Justice and Legal Affairs. Although it did not have the entire bill reopened for debate, MSTF managed to have it amended to introduce key changes to the hitherto broad amnesty provisions and exceptions for crimes against humanity, war crimes and genocide. It also managed to push for victims to have a say when an application for amnesty was being considered.

MSTF also embarked on an advocacy campaign to create awareness of the plan to form a truth commission, enunciate best practices, develop a model operational framework for a TJRC and mobilize victims and prepare them to participate in the process. It organized various activities, including technical workshops and public forums, to identify and highlight concerns regarding the proposed commission and to develop a model operational framework for a TJRC.

Despite the best efforts of civil society, the TJRC law that parliament passed was flawed in several key respects. It still provided for amnesty, though in a more circumscribed manner, and the provisions for reparations were scanty. A particularly great weakness was the tight timelines given for the appointment of commissioners. A selection panel made up of representatives of civil society, the religious sector, trade unions and professional bodies had 41 days within which to convene, advertise, receive applications, conduct interviews and write a report to parliament on a long list of candidates to be considered for appointment. The panel had no representation from victim groups. It had no time for proper consultation with stakeholders or background checks on the candidates it recommended for appointment.

Shortly after the commission was appointed in August 2009, it became embroiled in a controversy over the chairperson, Amb. Bethuel Kiplagat, who had served as a senior civil servant in the Moi regime that ruled Kenya for 24 repressive years and who was alleged to have been personally complicit in some of the human rights abuses that the commission was mandated to investigate. Civil society mounted a campaign for the chairman to resign his position because of potential conflict of interest. A group of victims went to court, seeking to have Kiplagat stopped from chairing the TJRC. When Kiplagat refused to resign, civil society mobilized a group of 10 former truth commissioners from around the world, led by Archbishop Desmond Tutu, to sign onto a statement calling on Kiplagat to resign. The chairman refused to budge. Civil society also organized victims to walk out of public


outreach meetings that the commission attempted to hold, forcing it to retreat and go back to the drawing board.\(^\text{15}\)

Eventually, the pressure of the civil society campaign against Kiplagat caused all the other commissioners to publicly disown him and petition the chief justice to appoint a tribunal to investigate the allegations against him.\(^\text{16}\) A few days later, TJRC Vice Chair Betty Murungi, a respected human rights lawyer, resigned from the commission.\(^\text{17}\) After the chief justice failed to act on the petition of the TJRC commissioners, civil society in May 2010 petitioned the TJRC itself with a complaint against Kiplagat asking the commission to investigate him—a petition that seems to have been ignored.\(^\text{18}\)

Due to the controversy surrounding its chairperson and his refusal to resign despite overwhelming pressure, the public and many victims’ groups would appear to have lost confidence in the TJRC.\(^\text{19}\) The TJRC itself has achieved precious little in the one year of its existence and is running out of time, as it has a two-year mandate that will soon expire. Most civil society organizations have been forced to disengage rather than support a process that is unlikely to deliver truth and justice and have embarked on exploring alternative truth-seeking processes.

Meanwhile, KPTJ conducted effective international advocacy to raise awareness and mobilize support for positive change. During the crisis in 2008, it carried out missions to London to reach the government of the United Kingdom and to Washington, DC, to lobby the US State Department, as well as the Foreign Affairs/Relations Committees of both Congress and the Senate. It also went to Addis Ababa to lobby the African Union’s Peace and Security Council, to Brussels to engage the European Commission and to Geneva and New York to engage the United Nations Human Rights Council and its specialized mechanisms, as well as the Departments of Electoral Assistance and Political Affairs and individual permanent representatives to the UN’s Security Council.

KPTJ exerted pressure on the African Union and the international community to urge the establishment of a special tribunal for lower- and mid-level perpetrators and the referral of the Kenyan situation to the International Criminal Court for those responsible for all forms of violence during the political crisis. KPTJ members also engaged in peaceful public protests and demonstrations to push for reforms.

KPTJ appeared frequently in the local and international media, published op-ed pieces and opened discussions with the Kenya Editors’ Guild and the international community, among others, to discuss the TJRC Bill, the mediation process and the constitutional review process. KPTJ carried out successful media training workshops with community opinion leaders from various parts of Kenya and convened a series of strategizing meetings as well as outreach activities around the country.

\(^\text{15}\) “Public walk out of TJRC meeting,” *Daily Nation*, 30 January 2010, [http://www.nation.co.ke/News/-/1056/852648/-/vpwp1h/-/index.html](http://www.nation.co.ke/News/-/1056/852648/-/vpwp1h/-/index.html).


KPTJ also sent written submissions both to the Pre-Trial Chamber II of the ICC and to the ICC prosecutor himself regarding the ICC investigation in Kenya. The submissions provided an in-depth background into the Kenyan situation, as well as other pertinent issues, such as the question of witness protection and cooperation from the Kenyan government. Furthermore, KPTJ convened an international experts’ meeting on the theme, “Legal Options for Justice.” The aim of the meeting was to explore the various justice options available to victims of post-election violence, including domestic, regional and international mechanisms. A follow-up meeting was recently held, and it is hoped that KPTJ and its members will use the outcome to seek funding to follow up on the various options that were discussed at length. KPTJ also convened a legal representation training meeting with a senior legal advisor from the ICC for members of the legal fraternity, in order to try and step up efforts for victims who will require legal representation at the ICC.

Evaluation of Activities and Ways of Improving Them

With regard to the TJRC, MSTF scored a number of successes which have been summarised above. However, the taskforce tended to be reactive rather than proactive and seemed always to be playing catch-up. Despite not having been meaningfully involved in drafting the TJRC Bill, civil society never succeeded in one of its key demands, that the TJRC Bill be comprehensively redrafted before being presented to parliament. In the event, the belated input of civil society only resulted in the bill’s fundamental flaws being glossed over rather than properly addressed. Civil society was also criticized for objecting to Kiplagat only after he had been appointed, despite the fact that a number of civil society organizations were represented on the selection panel that interviewed and recommended him. Although their belated response may be explained by the panel’s tight deadlines and lack of proper consultation, it is still the case that had the protracted campaign against him been started in earnest before his appointment, it would have been easier to block him from being appointed than it has proved to remove him, since he enjoys the security of tenure.

Civil society initially worked closely with victims’ groups, convening two victims’ conventions in Nairobi and several meetings around the country and helping to launch the National Network for Victims of Historical Injustices in Kenya. However, the engagement with victims was not sustained and some victims’ groups complained that when the TJRC became paralyzed over the controversy surrounding its chairperson and civil society concentrated its efforts on trying to force his resignation, almost to the exclusion of everything else, the strategy was not clearly communicated to victims, who were left confused as to whether to engage with the commission or not. Eventually a number of victims were offered jobs by the commission and became some of its vocal defenders.

22 An example of this is the amnesty provisions, which are confusing and have the potential to tie up the scarce time and resources of the commission and distract it from its core mandate.
Civil society fared better with regard to the search for accountability for the post-election violence. Led by KPTJ, it lobbied the government to form a special tribunal. When the government failed to do so, members of civil society drafted a bill and requested a backbencher to table it in parliament. Unfortunately, members of parliament frustrated debate on the bill by boycotting parliamentary sittings on four occasions whenever it came up for debate. Civil society also provided documentation on the gross human rights violations that occurred in the aftermath of the 2007 elections to the International Criminal Court and took a trip to the ICC to brief the prosecutor on Kenya as he weighed his options as to whether to commence an investigation. In the absence of a functioning witness protection program, civil society provided witness protection for high-risk potential witnesses by providing some of them with accommodation in safe houses in the country and helping relocate some outside the country.

The challenges that remain and that need to be addressed urgently include the fact that, at best, the ICC can only prosecute a handful of top-level perpetrators, leaving a huge impunity gap if no domestic judicial mechanisms are put in place to pursue mid- and lower-level perpetrators. Civil society therefore needs to revive the debate on and scale up advocacy for a special tribunal and other options for justice for victims of the violence. There is also huge expectation from the public about the ICC and a need for outreach to create awareness on its role and what it can and cannot accomplish. Finally, civil society needs to better coordinate its activities, to streamline its messages and to avoid duplication. This it is endeavoring to do through the Coalition on the ICC, formed in June under the auspices of KPTJ. The coalition meets monthly to share information and coordinate members’ activities.

There is still a lot of room for improvement with regards to advocacy around transitional justice mechanisms. Advocacy for the formation of a special tribunal needs to be revived and stepped up. The prevalent misinformation around the ICC needs to be countered through production of accessible IREC materials in Kiswahili and local languages, especially in the parts of the country most affected by the post-election violence. Better coordination would reduce the financial burden by avoiding duplication. There is a need for many more advocacy and outreach workshops of various kinds. Also, more needs to be done to highlight the plight of the people displaced by the post-election violence, many of whom still languish in camps three years after they were displaced. Much more needs to be invested in capacity building for Kenyan civil society by international organizations with a track record, such as the International Center for Transitional Justice and the Centre for the Study of Violence and Reconciliation, to improve the former’s understanding of transitional justice principles and best practices.

**Effect on Organization’s Development**

KPTJ was birthed as a spontaneous reaction by Kenyan civil society and individuals who saw their country tottering on the brink of civil war. It sought a coordinated response in providing evidence-based analysis and national and international advocacy for electoral truth and justice. In the early days of the crisis, KPTJ generated vital professional analysis of the electoral fraud and ensuing violence in

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27 ICTJ has so far held training workshop for civil society, the media and religious leaders, and participants have greatly appreciated the effort and look forward to more such capacity-building engagements.

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pursuit of truth. By its own evaluation, “KPTJ’s reasoned position statements were used by the United Nations, European Union, US State Department, Senate, and Congress, and the African Union; eventually bringing pressure to bear on PNU and ODM to sit at the table and to reach settlement. KPTJ also mobilized progressives within Kenya, the Kenyan Diaspora, and the Pan-African movement, to actively campaign for a just resolution to the crisis.”

With the signing of the accord, KPTJ started to play a key role in analyzing the reports of the two commissions formed to address the immediate crisis and monitoring implementation of the accord. But it seems that this progression to cover the new but related ground of truth, justice and institutional reform was not deliberate. Rather, KPTJ saw it as mission drift. In June 2009, it stated:

From being a single issue movement pursuing electoral truth and justice, KPTJ has shifted to such actions as mobilizing support for a new constitution, security and protection of human rights defenders, responding to the horrendous atrocities of the 2008 post election violence, monitoring of the mediation process and advocacy of implementation of the National Accord … Indeed, it is not unusual for organizations based in one sphere to temporarily cross the boundary into another. Owing to the shifting political environment, many of KPTJ’s more recent actions deviate from the initial purpose of KPTJ but nonetheless depict the pursuit of multifaceted agendas that straddle the boundary between electoral truth and justice and other broader issues of political reform that are necessary if Kenya is to say “never again.”

While it may be true that KPTJ felt that it was losing its initial focus, it seems inconceivable that it did not anticipate this progression or that it would seek to separate the issues of electoral fraud, which is just the spark that lit the fire, from the fuel, which is the lethal mix of historical injustices, institutional decay, impunity, poverty and inequality, youth unemployment and ethnic politics that lay the ground for the explosion that followed the flawed election and which the National Accord set out to address. Three years after the election, KPTJ seems to have settled on a middle ground between trying to be all things to all people and continuing advocacy around the reform process, the TJRC and the call for justice for victims of the post-election violence through prosecutions both by a special tribunal and by the ICC. As a coalition, it has realized its limitations and ceded parts of the transitional justice agenda to individual members, which are better able to pursue them. These include judicial and security sector reforms.

KPTJ’s work has won the respect of the international community, including diplomatic missions, which often consult it for ongoing analysis of the political situation and the reform process, as well as the Panel of Eminent African Personalities, which also regularly holds consultations with KPTJ for in-depth independent analysis of the Kenyan situation. KPTJ has also sent several missions to the African Union to lobby against attempts by a section of the coalition government to take advantage of the AU position against the ICC and to use the AU to undercut the ICC intervention in Kenya.

**Conclusion**

This paper has reviewed Kenya’s transitional justice process and critically examined the role played by Kenyan civil society in laying the ground for the country’s transitional justice agenda. It has pointed out that Kenyan civil society under the auspices of Kenyans for Peace, Truth and Justice made serious input in the search for a just solution to the post-election crisis. It has described how civil society developed its advocacy agenda and strategies and it has described specific lobbying activities. Finally,

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28 KPTJ internal document, June 2009.
29 KPTJ internal document, 5 June 2009.
it concluded with an analysis of the effects these efforts had on KPTJ’s development, demonstrating how the coalition evolved from being a single-issue movement advocating for truth and justice around the flawed 2007 election to being tempted to be all things to all people to finally settling on the middle ground, where the continued search for electoral truth is mixed with advocacy for justice for victims of the post-election violence—an important part of the transitional justice agenda.