THE SENTINEL PROJECT
FOR GENOCIDE PREVENTION

THE RISK OF GENOCIDE IN KENYA

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THE SENTINEL PROJECT FOR GENOCIDE PREVENTION IS A NON-PROFIT ORGANIZATION DEVOTED TO EFFECTIVE EARLY WARNING OF GENOCIDE AND THE IMPLEMENTATION OF PREVENTIVE MEASURES BEFORE LIVES ARE LOST.

WE WILL ACHIEVE THIS THROUGH THE CREATIVE USE OF TECHNOLOGY AND COOPERATION WITH THREATENED GROUPS.

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1.0 EXECUTIVE SUMMARY

The Sentinel Project for Genocide Prevention has conducted a comprehensive assessment of the risk of genocide in Kenya and found that risk to be high. Analysis of various aspects of Kenyan society, including political, social, cultural, and economic characteristics, indicates that many factors which have been identified as potential precursors to genocide are present in Kenya. This does not indicate that genocide is inevitable in Kenya, only that there is sufficient risk to warrant the monitoring of events there and the implementation of preventive measures aimed at reducing that risk.

Perhaps the most significant contributing factors to Kenya's high risk of genocide are the strained and rivalry-prone social and cultural relationships between tribes, and the recent violent conflict in the aftermath of the December 2007 national elections. The country's history is one of ethnic and political division, polarization and competition, which has largely contributed to a political and social order that promotes ethnocentrism and inter-tribal antagonism. This has led to violence in the past, as it did in late 2007 and early 2008 when the disputed election results led to mass violence between groups of political supporters, divided largely along ethnic lines, which killed as many as 1,500 and displaced hundreds of thousands.

The political and institutional responses to that violence may serve to mitigate Kenya's risk of genocide. In 2008 the two primary presidential contenders, President Mwai Kibaki and Raila Odinga, agreed to share power in a coalition government. The agreement limited presidential authority primarily through the creation of a prime minister, a position that Odinga assumed while Kibaki remained president. In 2010 Kenya voted in favour of a new constitution that further decentralises power, both through the creation of a Senate as the second chamber of the legislature, and through the establishment of local counties and governors to whom some of the president's executive powers were shifted. These developments seem to put Kenya on a positive trajectory toward democracy, limited government, and greater political representation and participation. But concerns remain about the government's commitment to the reforms, the extent of their effects on Kenyan society and whether these changes may actually serve to exacerbate existing inter-tribal tensions.

The social and political divisions in Kenya are further complicated by the country's economic situation. Poverty is rampant, unemployment is high, and economic inequality is significant and tends to correspond to ethnic divisions, leading to widespread competition for limited jobs and resources that inspires resentment amongst those who are unhappy with the outcome. Kenya's bleak economic outlook contributes to a high risk of genocide particularly when seen in light of its young population. More than 40 percent of the country's residents are below the age of 15, and three-quarters of the population falls between the ages of 15 and 29 years. When prospects for future employment, education or high social stature are so meagre, young people are more easily recruited into militias and gangs that offer prosperity, security, and a sense of purpose, often in the form of violent or criminal acts against a scapegoat group, like a rival tribe. This sort of recruitment becomes more and more likely when young people comprise such a large proportion of the country's population.

The next national election is quickly approaching in December 2012, and it will be a

test for those reforms made in the aftermath of the post-election violence of 2007-08. There are reports that tribal militias are engaged in an arms race in preparation for the elections, whether out of feelings of injustice, a sense of revenge, or anticipated self-defense and a mistrust of or lack of faith in state security forces. For these and other reasons the 2012 elections have potential to explode into mass violence on a scale much greater than that in 2007-08, and given the presence and combination of other structural indicators and risk factors, such violence may escalate into genocide.

This risk assessment represents the first step in the genocide early warning, risk reduction, and prevention process. The Sentinel Project's next steps will include the following:

- Establishment of partnerships with civil society organisations working in Kenya to facilitate information sharing;

- Monitoring of ongoing events to identify genocidal processes that may be taking place;

- Assessments of whether any prominent Kenyan organisations - either state or non-state - or individuals harbour genocidal intent;

- Assessments of vulnerability to determine which - if any - ethnic groups in Kenya are the most likely to be targeted for genocide;

- Release of periodic threat assessments summarizing the information relevant to the above points; and

- Development and articulation of recommended preventive measures to

be implemented by civil society and policy makers.

2.0 INTRODUCTION

Most countries in sub-Saharan Africa are home to diverse ethnic groups living together within borders that were arbitrarily drawn during the colonial period. Since the period of decolonization, many of these places have been the scenes of significant inter-ethnic conflict which has led to political instability, civil wars, and mass atrocities including genocide. For several decades following its independence, the Republic of Kenya stood somewhat apart from this norm and was widely regarded as one of the most stable countries in an otherwise volatile region. This reputation began to change following the beginning of a transition to multi-party democracy in the early 1990s. The new power contests presented by elections provided a political outlet for the long-simmering ethnic rivalries which now threaten to periodically escalate into inter-ethnic violence. This tension contributes to what has been assessed as a high risk of genocide in Kenya.

Between the time of its independence from Britain in 1963 and the present, political power in Kenya has only been held by three different presidents including the incumbent, Mwai Kibaki. This continuity of rule, combined with the authoritarian nature of each regime, has been widely cited as the reason for the rarity of massive ethnic violence in the country. However, elections and open political competition have since led to violence whenever a presidential election is held. Part of the reason for this periodic violence is that Kenyan elections have particularly high stakes since the ethnic group from which the president originates generally tends to be more favoured and prosperous while other groups are neglected. Thus, those without power are eager to obtain it and those who have power are keen to retain it.

Without a doubt, the post-election violence of December 2007 and early 2008 was the defining political event of recent Kenyan history. Questions about the fairness of the electoral process and the legitimacy of its results brought large numbers of people out to the streets for what were initially peaceful protests. The police responded by brutally enforcing a government ban on public gatherings in order to quell these demonstrations, which ultimately resulted in the deaths of several hundred civilians and contributed to further inter-ethnic violence. The ensuing clashes were incited by leaders from different political parties and ethnic groups, as well as some figures in the media. The violence lasted for two months and killed well over one thousand people as well as displacing several hundred thousand more, many of whom have still not been able to return to their homes.

When the violence finally ceased, largely thanks to external mediation, a coalition government was formed to share power between rival political parties, which were divided broadly along ethnic lines. Several reforms have been implemented since that time, including a peaceful referendum adopting a new constitution in August 2010. In theory, the coalition government and widespread reforms introduced a number of checks and balances to restrict executive power and provide oversight of the Kenyan security forces in an effort to establish overall stability and respect for human rights. That apparent stability, however, may be just a veneer covering over what remains a fragile and divided society just waiting for the right trigger to once again explode into violence.

It should be noted that the situation in Kenya is very complex and involves a wide range of state, non-state, and individual actors with different motivations, intentions, and capabilities, all of whom are influenced in unique ways by the risk factors examined here. Aside from the nuances of any specific situation-of-concern, the process of risk assessment and early warning is itself a complex task which is constantly in development. Thus, making accurate predictions about the future is difficult no matter how systematic the approach taken to it. While it is not possible to make predictions about the future with absolute certainty, a sound and constantly improving methodology makes it possible to determine what is likely. One of the underlying principles of conducting risk assessment and early warning is that underestimating risk and ignoring a potential genocide may carry a very high human cost and that it is therefore best to err on the side of caution while still striving for a balanced assessment.

This report focuses on the structural characteristics that make Kenyan society particularly prone to violence and presents an assessment of them in the context of risk factors which influence the likelihood of genocide taking place in the country. This largely qualitative process has resulted in a comprehensive risk profile that will be a point of departure for further monitoring of the situation in Kenya and guide the development of preventive measures that will reduce the risk of genocide.

3.0 RISK FACTORS

The risk factors used to produce this assessment represent a total of thirty structural conditions which have been identified as increasing the risk of genocide when present in a country. The list was produced by surveying the relevant literature on predicting genocide (for descriptions of each factor, see Appendix I - Risk Factor List). Many of these factors are closely interrelated and can be broadly grouped together into five categories: Political - Institutional; Political - Regime & Ideology; Economic; Sociocultural; and Conflict & Upheaval. Each factor has been assessed individually based on the best information available from indices and reports produced by other organisations. It should be noted that the goal here is to present a comprehensive risk profile and not to calculate a precise "risk score." While much of the information used in this report is quantitative in nature, the assessments conducted for each individual factor and the overall level of risk are qualitative.

3.1 POLITICAL – INSTITUTIONAL

Overall, Kenyan political institutions seem to be moving in the direction of greater democracy, accountability, and stability. These gradual developments appear to decrease the risk of state-sponsored genocide but do not eliminate the possibility of political conflicts and intergroup violence resulting in atrocities, both of which could occur with the unofficial sponsorship of political figures or security forces. Kenya retains some characteristics of an authoritarian regime but is gradually establishing more democratic institutions, though these are far from robust. Although the country has long enjoyed a reputation as one of the more stable countries in the region, it still suffers from corruption, centralised state power, and a limited respect for civil liberties. Thus, there remains the potential for political disputes to be resolved through violence.

Similar to Kenya's democratic institutions, its state security agencies present something of a mixed picture. On the one hand, there continues to be concern over shortfalls in the rule of law and accountability for police forces, while some measures have been taken to increase independent oversight and restrain executive control of the police. Persisting concerns focus on corruption, excessive use of force, and extrajudicial killings. The prime example of the latter two issues is the 2007-08 post-election violence in which the police are estimated to have killed hundreds of protesters. The government has taken measures in response to these events but, unless enforced, the police will continue to be a threat. The Kenyan armed forces, on the other hand, do not seem to increase the risk of mass violence. While it has a mandate to aid in maintaining public order and has been accused of some abuses, the military is generally well-regarded and does not account for a large amount of government expenditure.

Another potentially negative factor in this category is Kenya's degree of isolation from the international community. While the country is gradually becoming increasingly globalised, it still has a relatively low rank in terms of integration with the world economy. Kenya is also a signatory to many international human rights and legal agreements but often fails to comply with its obligations and sometimes even openly defies these institutions. Together, these conditions restrict the number of options held by the international community to sanction the

Kenyan government in the event of mass atrocities.

A further factor which can be cautiously interpreted to reduce the risk of genocide in Kenya is the relatively infrequent changes of political leadership experienced there. Kenya has only had three different presidents since its independence in 1963 and, while this fact is at odds with the need for greater democracy in the country, the lack of volatile "revolving door" changes in leadership has been one of the main reasons for the country's long reputation for stability. The delicate transition to democracy makes this a sensitive time for Kenya as ethnocentric political rivals are able to openly compete for power, a situation which can easily spark instability and violence.

3.1.1 Low Degree of Democracy

After a decades-long struggle to improve its democratic processes, Kenya is now generally regarded to be one of the more stable democracies in Sub-Saharan Africa. However, that image continues to be tarnished by a history of corrupt electoral processes, extrajudicial killings, centralisation of state power, and the impoverishment of nearly half of Kenya's population.[1]

Kenya can be categorised as a "hybrid-regime" - a country which has acquired some of the characteristic institutions and procedures normally associated with democracies but which has also retained some authoritarian or traditional features, or lost some elements of democracy and acquired some authoritarian ones.[2] The Economist Intelligence Unit's Democracy Index scored Kenya 4.79 and 4.71 (out of 10) in 2008 and 2010, respectively. This slight decrease can most likely be attributed to the aftermath of 2007-08 elections, which saw

extreme civil discord amongst the citizens of Kenya.[3]

Similarly, the 2011 Freedom House Report rated Kenya as being "partly free," a status which is accorded to those countries with limited respect for political rights and civil liberties.[4] Kenya's civil liberties rating improved as a result of the reduced threat of ethnic and political violence demonstrated by the peaceful constitutional referendum held in August 2010.[5]

The Kenyan government seems to be signalling its intention to transition to a true democracy following the introduction of its new constitution.[6] Previously, the president had wide-ranging powers under the Preservation of Public Security Act 1967 to limit or suspend certain civil rights (freedom of movement, expression, association, and assembly) in the interests of public security.[7] However, this power of derogation no longer exists under the new constitution. While Kenya is at least nominally moving towards a more democratic form of government, the new institutions are fragile and unproven. Positive gains have been made but there remains a large gap between policy and the implementation of these reforms. Recent events in particular seem to show the government's disregard for the new Constitution and the rule of law, which jeopardises Kenya's democratic trajectory. This means that there is still a strong potential for political disputes to result in violence and harsh government responses to opposition.

3.1.2 State Security Agencies Operating with Few Constraints

Rule of law is undoubtedly one of the most fundamental principles to be observed when securing democracy. The lack of enforcement of the rule of law continues to be a concern in

Kenya, which was recently ranked 154 out of 178 countries in the 2010 Transparency International Corruption Perceptions Index and assessed as having weak anti-corruption and governance mechanisms by the 2009 Global Integrity Index.[8] Kenya has a history of law enforcement agencies exceeding their legal powers, with the police force known to be one of the most corrupt in the world.[9]

The Kenyan police forces have also shown themselves to be violence-prone, as in December 2007 when the government banned all public and peaceful demonstrations following its announcement of electoral victory. Not only was this measure inconsistent with rights afforded under Kenyan and international law,[10] but the heavy-handed police enforcement of the protest ban resulted in hundreds of deaths, many of them involving the use of excessive force.

At the time of these incidents, the Kenyan Constitution conferred upon the president the power to appoint the commissioner of police.[11] This unfettered power of appointment meant that the president did not have to undergo a rigorous and objective vetting process for each appointment. Such a lack of real democratic checks and balances increases the risk of abuse of power in office. As it turned out, the police were used by President Mwai Kibaki's government as an instrument of power against its political rivals and as a means to further its political agenda.

Kenya is currently undergoing massive reforms of its political and legal landscape with particular emphasis placed on improving police accountability. Under the new constitution, the National Police Service is headed by an inspector-general appointed by the president with the approval of Parliament.[12] The Waki Commission, established by the government to investigate the post-election violence, recommended a comprehensive overhaul of Kenya's corrupt and abusive police force. Recommendations included the creation of an independent police oversight authority to enhance police accountability and mechanisms for reporting complaints against the police.[13] Kibaki and Prime Minister Raila Odinga also agreed to set up a tribunal to prosecute those responsible for the post-election violence.

With the recent passage of the new constitution in August 2010 and the formation of the Independent Policing Oversight Authority, the government has taken two very important steps towards achieving accountable policing in Kenya. However, it remains to be seen whether or not these measures will make any significant difference and bring an end to the culture of impunity that pervades among Kenyan security forces. Unless vigorously enforced, such reforms are essentially superficial and it remains likely that the police will react harshly to any future public protest. The implementation of police accountability reforms will be crucial to assessing any future risk of genocide.

3.1.3 Isolation from the International Community

According to the KOF Swiss Economic Institute's 2011 Globalisation Index, which attempts to measure a country's degree of integration with the rest of the world economy, Kenya ranked 131 out of 186 countries. The index calculates scores on a 0-100 scale, with the higher number indicating greater integration. Kenya received an overall score of 47.69, comprised of an economic globalisation score of 40.08, social globalisation score of 29.55 and political globalisation score of 85.25.

Recent data indicates a gradual trend towards greater international integration.

Kenya is also a founding member of the World Trade Organisation (WTO) and, despite its recent political instability, has done remarkably well in building the structures necessary for the implementation of WTO agreements and participation in all major WTO trade talks.[14] Kenya is also a party to many treaties of international criminal, human rights, humanitarian and refugee law, including the 1998 Rome Statute of the International Criminal Court (ICC) ("the Rome Statute"), which it ratified on 15 March 2005.

However, Kenya has not always complied with its obligations to international legal institutions. In August 2010, its government faced global condemnation for not executing the arrest warrant against Sudanese President Omar Hassan al-Bashir, who has been indicted by the ICC on charges of genocide and war crimes in Darfur.[15] On 22 December 2010, the Kenyan Parliament passed a motion seeking to withdraw Kenya from the Rome Statute[16] after the ICC announced its intention to prosecute six prominent government officials for their roles in crimes against humanity allegedly committed during the post-election violence of 2007-08.[17] In February 2011, Kenya applied to the UN Security Council requesting a twelve month deferral of the cases.[18] Kenya may also be a negative influence on its neighbours in this regard since the African Union, of which Kenya is a member, is contemplating withdrawing from the Rome Statute if the deferral is not granted.[19]

Kenya's withdrawal from the Rome Statute would severely undermine the credibility of its commitment to the fight against impunity and damage its standing with the international community. Despite its increasing degree of economic linkage with the rest of the world, Kenya's low level of globalisation and overt hostility to international legal institutions increase the risk of genocide by decreasing the number of meaningful sanctions which can be imposed upon it.

3.1.4 High Level of Military Expenditure

The Armed Forces Act 1968 allows for the Kenyan military to aid the civil authority but limits this aid to the maintenance of order. However, this act also provides that other duties may be assigned by the Minister of Defense after consultation with the Defense Council. Kenya's military also participates regularly in international peacekeeping operations and generally enjoys a favourable reputation. In the aftermath of the political violence which enveloped the country in 2007-08, the Waki Commission commended its readiness and adjudged it to have "performed its duty well, a position that appeared to be shared with many commentators."[20]

However, Kenya's military, like many other institutions in the country, also suffers from allegations of corruption[21] and human rights abuses, such as in the case of the Mount Elgon conflict, where it was accused of gross human rights violations in its war against insurgents.[22]

According to the latest data released by the Swedish International Peace Research Institute, Kenya's military expenditure has risen 25 percent over the last decade from $US474 million in 2001 to $US594 million in 2010. Military expenditure also consumes a steadily larger share of the country's gross domestic product (GDP), growing from 1.3 per cent in 2000 to 2 per cent in 2009.[23]

It appears at this time that the level of military spending in Kenya does not increase the risk of genocide. This metric can often be used as a measure for how much priority is placed on security and how much influence that is enjoyed by the military. Despite recent spending increases, the Kenyan military does not receive a particularly large portion of the GDP. Together with legal restraints on its domestic duties, this modest spending indicates a relatively low level of influence for the Kenyan military, which is unlikely to dominate decision making on responses to internal disturbances. This does not, however, remove the possibility that the military will be employed in response to either real or perceived internal threats if those threats are deemed to be sufficiently serious.

3.1.5 Frequent Changes in Political Leadership

A correlation has been observed between frequent leadership changes and an increased likelihood of mass killing.[24] Frequent changes in leadership are thought to increase the likelihood of mass killing and genocide because threatened elites with unconsolidated power may resort to securing themselves through these measures. This condition is not present in Kenya, where a history of repressive government policy inhibiting true democratic participation has prevented natural political change at the executive level. Kenya has also avoided the sudden and volatile changes in leadership which often increase the risk of political instability and create conditions conducive to conflict.

For almost forty years after political independence was first declared from Britain, Kenya was dominated by a single political party - the Kenya African National Union (KANU) -

the leader of which, Jomo Kenyatta, was elected the country's first president. Ethnic violence later prompted the government to outlaw all other parties from participating in the electoral process with the country becoming a *de jure* one-party state via a constitutional amendment in 1982.[25]

The government (led by Kenyatta's successor, Daniel Toroititch arap Moi) instituted increasingly repressive policies throughout the 1980s despite domestic and global condemnation. During this time the government committed widespread human rights abuses, including arresting and torturing political dissidents who were also subjected to unfair trials. Electoral victories were tainted by violence and accusations of electoral fraud and corruption.[26] In 1991, Moi agreed to reform the one-party political system. These reforms would put an end to the KANU monopoly on political power and attempted to address Kenya's poor human rights record.

The National Rainbow Coalition (NARC) candidate Mwai Kibaki achieved a landslide victory during the 30 December 2002 election, thereby bringing an end to decades of single-party rule by the KANU.[27] In 2005, disagreements over the constitutional referendum led to the dissolution of the NARC and government defectors joining with KANU to form a new opposition coalition, the Orange Democratic Movement (ODM).[28] Kibaki, now leader of the newly-formed Party of National Unity, defeated Raila Odinga of the ODM in the 2007 election which was once again marred by allegations of fraud and violence and resulted in as many as 1,500 civilian deaths.[29]

UN-sponsored talks led to Kibaki and Odinga agreeing to a historic power-sharing deal in 2008 which saw the instalment of Odinga as Prime Minister and Kibaki as President.

However, in August 2010, Kenya adopted a new constitution which will remove the post of prime minister following the next presidential election in 2012.

While Kenya has seen few such leadership changes, with only three different presidents holding office since independence, this does not necessarily indicate complete stability. Political conflict remains a major threat to Kenya's recovery while key political figures President Kibaki and Prime Minister Odinga continue to compete for power. Such competition may lead to further large-scale violence given the right trigger event, as seen following the 2007 election. Moreover, stability itself may not deter large-scale violence if it comes at the expense of political power, access and agency. An authoritarian regime may achieve stability through oppressive rule, and if groups do not see the political process as a mechanism that offers them a legitimate means of achieving power and representation, they may take violent recourse, either against the state or against groups perceived to be favoured by the state.

3.2 POLITICAL – REGIME & IDEOLOGY

Kenya's recent institutional reforms have indicated a positive trajectory toward democracy, limited government, and peace but entrenched norms of political corruption and ethnocentrism threaten to derail the fragile progress made since the post-election violence of 2007-08.

The first major step towards providing checks on the power of the president was a power-sharing deal brokered by former UN Secretary General Kofi Annan in 2008 as an attempt to quell the violence that erupted after the disputed election of December 2007. The agreement preserved Mwai Kibaki's presidency and established a substantial check on executive power through the creation of the position of a prime minister charged with executing governmental policy and which would be filled by Kibaki's primary electoral challenger, Raila Odinga. By its nature, the coalition government serves to moderate Kenyan national policy by including competing political perspectives and by making the execution of that policy more deliberative and more easily challenged, both by the prime minister and the legislature.

The power-sharing deal also required that a new constitution be drafted and put to popular vote. The ensuing draft included a bill of rights recognising certain freedoms for all Kenyan citizens, including freedom of expression and the free practice of religion, which had previously lacked such clear codification in Kenyan law. It also made executive power more diffuse by establishing the Senate as a second chamber of Parliament with the ability to act as a check on presidential authority, creating 47 counties with local governors and shifting some presidential powers to them.[30] The campaign leading up to the constitutional referendum did see some acts of violence and hate speech, leading many to fear widespread violence on the day of vote itself, but the event was largely peaceful. Kenyans approved the new constitution by a strong margin, with nearly 70% of voters casting their ballot in favour of the measure.

These institutional reforms are improvements but may not adequately address some of the social and political factors that put some Kenyan communities at a high risk of violent attack or genocide. Doubts remain about whether the reforms will penetrate Kenyan society down to the local level. For example, some reforms have yet to be implemented,

leading to concerns about the government's commitment to the changes provided in the new charter (see section 3.1.1 Low Degree of Democracy). Moreover, ethnic and social divisions in Kenya are regularly exploited by local and national politicians for personal and political gain, further polarising the population and increasing the risk of recourse to violence between groups. There are credible fears that, despite the good intentions behind them, the constitutional reforms could lead to greater ethnic rivalry and discrimination (see section 3.2.1 Exclusive Group-based Rule).

With an eye toward the next national elections in December 2012, there are concerns that many of the ideological factors that contributed to an atmosphere conducive to violence in 2007-08 remain intact. Indeed, there are reports that militias representing rival tribes are stockpiling firearms and other weapons with the election in mind, either to seek revenge, out of a sense of injustice, or in anticipatory self-defense, thus creating an inter-tribal arms race (see section 3.2.5 Orientation towards Force to Seize and Maintain Power). If the national government is perceived to be unwilling or unable to protect civilians, or if state security forces themselves are seen as a threat to particular groups, the arms build-up could escalate, greatly increasing the risk of violence, possibly on a scale much greater than that of 2007-08.

3.2.1 Exclusive Group-Based Rule

Political rule based exclusively on ethnicity or other group characteristics increases the risk of genocide because regimes that draw their support from a single group will often discriminate against other groups, thus fomenting popular resentment and threatening regime security. That threat, real or perceived,

can increase the likelihood of a violent government backlash undertaken in self-defense.

While Kenyan political factions have always been ethnically-based and those in power tend to favour their own groups, the people of Kenya have taken positive steps in recent years to reduce corruption and encourage political representation that better reflects Kenyan society at large. As a response to the 2007 post-election violence, a peace agreement was brokered and a coalition government established in early 2008.[31] The deal, mediated by former UN Secretary General Kofi Annan, appeased rival political and ethnic groups by creating the office of prime minister and establishing a series of checks and balances both within the executive branch and between the executive and legislative branches. Raila Odinga, many of whose supporters violently disputed the official election results which found President Mwai Kibaki to be the winner, assumed the post of prime minister.

In 2010, Kenyans overwhelmingly approved a new constitution in a referendum that saw no major incidents of violence. The constitution provides more governing power to local authorities, applies limits to previously-unchecked presidential power, and guarantees freedom of expression and other human rights to Kenyan citizens.[32]

There are some concerns that the constitution will further exacerbate ethnic divisions between tribes. For example, some worry that governors of local counties will be elected by the ethnic majority in that district, making the political map more closely reflect majority ethnic demographic divisions and effectively turning the country into a collection of states governed by leaders from rival ethnic groups.[33] Whether this concern will manifest during local,

parliamentary and presidential elections remains to be seen, but there does exist the possibility that the same document that creates a more politically and ethnically diverse national government also creates more homogenous local governments, while shifting some powers away from the president and onto county governors. This could lead to exclusive group-based rule on a local scale, which increases the risk of systematic discrimination on a county-by-county basis and could further inflame existing inter-ethnic rivalry, resentment, or hatred.

3.2.2 Severe Government Discrimination or Active Repression against Communal Groups

Regimes that have a history of discrimination and repression are far more likely to engage in mass killing. In the case of Kenya, the situation appears to be moving away from ongoing discriminatory practices and toward a more inclusive political system. However, despite given this positive trend, socioeconomic disparities between groups remains a source of tension and resentment (see section 3.3.4 Socioeconomic Deprivation Combined with Group-Based Inequality), and a history of shifting power dynamics indicates that the level of importance that Kenyans place upon presidential elections is not without justification. The outcome of a Kenyan presidential election appears to have a particularly strong impact on which groups have access to political influence, and as such the Kenyan people consider the stakes to be very high.

The Ethnic Power Relations dataset is a collection of measurements of the relative political power held by different ethnic groups in a given country.[34] Levels of power are broken down by category: Absolute Power (Monopoly, Dominant); Power Sharing Regimes (Senior Partner, Junior Partner); and Exclusion from Central Power (Regional Autonomy, Powerless, Discriminated). The most recent edition of the dataset examines Kenya's power relations from 1963 through 2005, and clear patterns emerge from these measurements. In Kenya, shifts in power relations occur almost exclusively in the period immediately following a change in president. Indeed, this and other data indicate that the level of power a group enjoys in Kenya is highly dependent upon who the country's leader is. (See section 3.4.2 Legacy of Intergroup Hatred or Grievance)

For three of Kenya's ethnic groups - the Kalenjin, Kikuyu, and Luo - which were highly involved in the violence in 2008, power dynamics had shifted significantly after President Kenyatta's death in 1978 and after President Moi's retirement in 2002, but remained virtually constant during the entirety of a given president's rule. The power relations between the groups are often described in terms of "partnerships." Under Kenyatta, the Kalenjin were considered junior partners, then senior partners under Moi and junior partners again under President Kibaki. The Kikuyu were powerful senior partners under Kenyatta, but then suffered a long period of discrimination during Moi's presidency before having their senior partner status restored under Kibaki. The Luo, in a pattern similar to that of the Kikuyu, were junior partners under Kenyatta, suffered discrimination under Moi and were again junior partners under Kibaki.

The rotating set of power relationships often builds resentment amongst those who find their group in an inferior position. This resentment sometimes turns into violence. For example, during the violence of 2007 and 2008, the Kikuyu were seen as strong supporters of

President Kibaki and were often attacked by Luo and Kalenjin militias and youth gangs who supported Raila Odinga and the opposition ODM. Kikuyu militias retaliated with violence against Luo and Kalenjin.[35]

While levels of active discrimination and repression may appear low, there seems to be a common expectation among Kenyans that this could change with a new president. The new constitution and coalition government have the potential to mitigate the extent of a power shift, and could change the perception of the wider Kenyan population that such shifts are imminent, but whether these changes will have that effect is currently unknown. Even if the stated changes do reduce the amount of discrimination in Kenya, this will be a gradual process and significant resentment is likely to remain for the near future, as is the resulting danger of inter-ethnic violence involving mass atrocities.(See section 3.4.2 Legacy of Intergroup Hatred or Grievance)

3.2.3 Ruling Group Deems Outgroup(s) to be Dangerous

If a dominant ruling group perceives another group to be a threat, this may increase the risk of violent attacks. Given Kenya's ethnically diverse society and its recent steps toward decentralising some political power and creating a more inclusive government, there is not currently a single ruling group or a specific "outgroup." Power distribution among Kenyan society is far from egalitarian but neither is there any one group that monopolises or even dominates Kenyan politics above all others (see section 3.4.1 Existence of Distinctive Groups Separated by Social Divisions).

Further, elements of the new constitution and power sharing agreement significantly reduce

the ease with which a high-level government leader could enact a policy of violence against a group perceived to be a threat. For example, if Kibaki were to see the Luo tribe as a threat to regime security, it would be more difficult for him to carry out attacks since the policy would have to be enforced by the prime minister, who is himself Luo. The new government rules serve to slow down the political process by making it more deliberative, and serve to make the government more likely to rule moderately by affording significant shares of power to people with opposing political ideas.

While this risk factor is primarily focused on assessing ruling groups and other groups whom they perceive as threats, it is worth noting that both groups that engaged in violence and those who were victims in 2007 and 2008 may see rival groups as threats. Even as the national government is becoming more pluralistic, if individual groups perceive a threat they may arm themselves or attack others in their own defense (see section 3.2.5 Orientation towards Force and Coercion to Seize and Maintain Power, and section 3.4.1 Existence of distinctive groups separated by social divisions).

3.2.4 Charismatic Leadership that Generates Mass Followership

Charismatic leadership is a particularly strong genocidal risk factor when leaders appeal to such intangibles as national pride or communal group consciousness, such as ethnic or religious identity. This risk factor was present in the lead-up to the 2007 elections when, for example, national radio broadcaster Joshua arap Sang allegedly used his station and radio show to organise and coordinate attacks against PNU supporters in Kenya's Rift Valley.[36] Though not a leader in the political sense, Sang's radio station, KassFM, is broadcast in the Kalenjin

language and reaches an estimated 4.5 million daily listeners.[37] Material presented to the Pre-Trial Chamber of the ICC provided reasonable grounds to believe that Sang had broadcast false news reports of alleged Kalenjin killings to incite retaliatory violence, that he advertised group meetings, and that he used coded language to indicate when and where attacks should occur. In April 2011 the Pre-Trial Chamber II found that Sang's involvement in the violence was non-essential and so he would not be tried as a co-perpetrator, but would be tried for the crimes of murder, forcible transfer of population, and persecution.

There are now similar examples of charismatic political leaders with large followings promoting hate speech as Kenya approaches the 2012 elections. Another of the so-called "Ocampo Six" - the six Kenyans charged by the ICC's prosecutor, Luis Moreno Ocampo, for bearing the most responsibility for instigating violence after the 2007 elections - is Uhuru Kenyatta. Kenyatta is a Kikuyu and currently the Deputy Prime Minister and Minister for Finance as well as being considered a front-runner for president in 2012. Kenyatta and others, including former Higher Education Minister William Ruto, also one of the Ocampo Six, have been organising and attending large public prayer meetings, some of which have been criticised as thinly-veiled political rallies used to incite ethnic rivalry and which have provoked calls for restrained speech by Kofi Annan. Observers worry that the rallies could further polarise tribal groups by drumming up tensions and preying upon existing fears and prejudices.[38] The presence of charismatic leaders - such as Kenyatta - who inspire the loyalty of many followers increases the risk of genocide because they generate large numbers of people willing to commit violence and atrocities against rival groups if so directed.

3.2.5 Orientation towards Force and Coercion to Seize and Maintain Power

Because of the power-sharing nature of the current Kenyan government, which was designed as a democratic coalition representing the interests of various demographic and civil society groups, attributing a single ideology or strategy of governance to the regime as a whole is difficult and unlikely to be accurate. While the president remains the most powerful actor on the national political stage, his power is far less absolute than it was even two years ago.

While the national government has become more heterogeneous, there are some elements in both Kenyan government and civil society that reflect an orientation toward force to seize and maintain power. The violence in the aftermath of the 2007 elections is a clear indicator that there are leaders and groups who believe that violence on a massive scale can be justified when the political process fails to deliver a result that they believe to be fair and accurate. Indeed there is a very real risk that violence on a similarly massive scale could be perpetrated around the national elections in 2012.

In May 2010, the Centre for Human Rights and Democracy (CHRD), a Kenyan human rights group, reported that rival tribes were engaged in an arms race in preparation for the 2012 elections.[39] The Kikuyu and Kalenjin tribes were reportedly building up weapons caches - including AK-47s, pistols, and other firearms - out of a sense of injustice, desire for revenge, and lack of protection afforded by the state thought to require self-defense. Reports also suggest that some high-ranking state security officials were actively involved in firearm acquisition. CHRD said that while Kikuyus and

Kalenjins were driving the arms race other tribes such as the Luhyas, Luos, and Kisiis were also joining in because "no one wants to be caught unawares."[40] Many of the attacks during 2007-2008 targeted civilians from specific ethnic groups.[41] If these groups continue to view rival tribes as a threat, the risk of ethnic violence and genocide will greatly increase as the 2012 elections approach (see section 3.2.3 Ruling Group Deems Outgroup to be Dangerous).

3.2.6 Installation of a Newly-Created Regime

The presence of a new regime can increase the risk of genocide, particularly when that regime is revolutionary in nature, and especially when minority groups are associated with the former regime, either in reality or in perception. This is a factor that works in favour of peace in Kenya. The new regime, comprised of a coalition of opposing political parties sharing power, is more moderate than the one it replaced. The changes did not reflect an overthrow of personnel but rather a restructuring of institutions intended to guide policy toward compromise and to decentralise power and decision-making authority.

The 2008 mediation between rival factions and the development and ratification of the constitution in 2010 were very positive responses to the post-election violence of 2007-08. Both measures provide for political representation and processes that encourage greater participation from all ethnic and political groups in Kenya, add checks and balances both inside the executive branch and between the executive and legislative branches, and redistribute some power down to the local county level and away from the national executive. These developments serve to reduce the risk of genocide by forcing national policy to become more politically centrist and inclusive, and by reducing the national government's ability to swiftly organise attacks on a massive scale.

Concerns remain that some Kenyan groups do not see the power-sharing agreement and new constitution as treating them fairly or giving them sufficient representation in government. For example, some see the position of prime minister, currently occupied by ODM candidate and opposition leader Raila Odinga, as a largely symbolic and mostly toothless position.[42] For the purposes of this risk factor this does not increase the likelihood of genocide, but if the new governing structure is perceived to be institutionally discriminatory by a group or groups, it could foment resentment and anger and make violent retaliation more likely.

3.2.7 Commitment to a Harmful Ideology

The most common and dangerous ideology in Kenya is the promotion of a pervasive antagonism that serves to polarise the country's tribes. Political and tribal leaders have a tendency to use divisive rhetoric to attack rival leaders and groups. Even when criticisms are levelled against the personal characteristics of an individual, they are often perceived to be attacks on that person's tribe as a whole.

The prominent Kenyan human rights activist, writer, and former Member of Parliament Koigi wa Wamwere has written extensively about what he calls "negative ethnicity," an ideological deference to ethnocentrism that he says has infected Kenya's "politics, government ministries, education institutions, private sector, and public sense of justice."[43] (See section 3.4.5 Ethnic Nationalism)This type of politics were exemplified in the KassFM radio broadcasts of

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2006 and 2007 and in the more recent "prayer meetings" led by the prominent politicians accused of orchestrating the violence after the 2007 elections (see section 3.2.4 Charismatic Leadership that Generates Mass Followership), both of which have included language - possibly hate speech - that has served to exacerbate already-existing ethnic tensions.

As with other risk factors, the hybrid nature of the Kenyan government makes it difficult to ascribe to it singular ideological characteristics, but elements within the government have used antagonistic rhetoric - or that perceived to be antagonistic - to support their policies or, more recently, their anticipated presidential candidacies. For example, in February 2011 Prime Minister Odinga, a Luo, had a public dispute with Deputy Prime Minister Kenyatta, who is a Kikuyu, and former Higher Education Minister Ruto, who is a Kalenjin, when Kenyatta made a comment considered disrespectful to the prime minister. Odinga responded with remarks that were understood to imply that Kenyatta and Ruto were drunkards and land-grabbing thieves,[44] which could be interpreted as a characterisation of the Kikuyu and Kalenjin communities in general.

Wamwere has also expressed concerns that the new constitution will exacerbate existing tribal tensions and entrenched ideas of negative ethnicity by placing more power in the hands of local tribal leaders (see section 3.2.1 Exclusive Group-Based Rule). The risk of intergroup violence and possibly genocide will increase if the current tendency towards language that promotes antagonistic thinking continues, particularly surrounding trigger events such as the upcoming 2012 election.

3.2.8 Low Degree of Freedom of Speech

In their most recent reports on press freedom and media censorship, both Freedom House and Reporters Sans Frontières (RSF, Reporters Without Borders) indicate that the Kenyan media climate has improved in recent years but remains restrictive. Freedom House, in its latest report, scored Kenya a 57 out of a possible 90, with a lower score indicating a higher degree of freedom, thus earning the state an assessment of "Partly Free." Any score higher than 60 is considered "Not Free." The current Kenyan score is a slight improvement from the scores for 2008 and 2009, both of which were 60. One of the main concerns for Freedom House is that the government routinely restricts the constitutionally-protected individual right of free expression[45] through the broad interpretation of laws that criminalise press offenses. Additionally, while extrajudicial attacks on members of the press were rare by regional standards, "a number of journalists were killed, harassed, beaten, or arrested by security forces in 2009."[46] No additional information is available for the time since then.

RSF's Press Freedom Index 2010 scores Kenya at 19.00, ranking it 70th of 178 countries and territories surveyed and commenting only that Kenya "has recovered a respectable position" after the difficult years following the 2007-08 post-election violence.[47]

While press freedom is usually used to gauge the broader freedom of speech in a society, there are other examples of expression being stifled in Kenya. In 2010 there were reports of peaceful protesters being attacked by police forces using tear gas and batons. In at least one case a man was killed during a peaceful protest while he was defending a woman who was being

beaten by police.[48] As of this writing, it is unclear whether the officer responsible has been charged or otherwise penalised, or whether the incident has been investigated by Kenyan authorities.

Internet and mobile phone use is relatively unfettered in Kenya. Freedom House's *Freedom on the Net 2011* report assessed the country to be "Partly Free" with regard to the electronic exchange of information. While a poor telecommunications infrastructure severely limits internet access outside of Nairobi and Mombasa, the government is taking active steps to expand access by setting up digital villages, similar to cybercafés, in rural areas. The report finds that the government does not practice any form of institutionalised censorship with regard to the internet, and that surveillance of internet activity by government agents is not a serious concern, with the notable exception of increased monitoring during and in the aftermath of the 2007-08 violence.[49]

Kenya appears to have a moderate-to-low degree of freedom of speech, which increases the risk of genocide by discouraging human rights advocates, potential victims, and bystanders alike from speaking out as abuses escalate. If people are not able to feel secure in protesting then it is unlikely that there will be significant opposition to any attempts by government officials or other leaders to incite violence. This means that those promoting messages of hatred and possibly even genocide will have greater freedom in the public arena. A lack of peaceful means to protest perceived injustice also increases the risk of recourse to violence by those who feel persecuted or otherwise excluded from the political process.

3.3 ECONOMIC

Economic factors rule much of day-to-day life for most people and strongly influence how both governments and individuals perceive and interact with the world. Naturally, this gives economics an important role in understanding the risk of genocide in any given country. Unfortunately, the economic conditions in Kenya significantly increase the risk of intergroup conflict which could escalate into genocide. The Kenyan state itself, while impoverished, is in an economic position that gives it significant independence and freedom from sanctions and financially-based external pressures. This is because Kenya has a relatively low reliance on official development assistance combined with limited reliance on external debt and a relatively insular economy.

In terms of the long-term economic status of the Kenyan population, the majority of people experience low quality-of-life which lays the groundwork for social upheaval as desperation increases. Income levels have increased significantly in recent years but income inequality is drastic and non-income indicators of development all show significant declines over the past two decades. Of particular concern is an extremely high unemployment rate which leaves large numbers of unoccupied, disenchanted youth available for recruitment into ethnic militias and criminal gangs. Countries which are already facing low levels of development are even more likely to experience genocide when they suffer from sudden, harsh economic shocks. This is certainly the case in Kenya, where much of the decline in development has taken place within the last two decades and has been further exacerbated by the violence of 2007-08, from which the economy has still not fully recovered.

Perhaps the most significant factor increasing the risk of genocide in Kenya is the fact that although the vast majority of the population experiences economic hardship, there is significant variation according to ethnic group. Some groups, such as the Kikuyu, are generally wealthier than their neighbours, while others, such as the Kalenjin and Luo, generally live in areas that fall below the national average. Such inequality contributes significantly to intergroup resentment and rivalries which can be exploited by leaders to incite violence and genocide.

3.3.1 Economic Status of the Regime

Economic status is often an indicator of how much freedom that a regime has to act on its own wishes. High-status regimes generally have lower levels of international economic interdependence and so can act more freely with less fear of sanctions. Conversely, low-status regimes enjoy less freedom due to greater external dependence. Kenya's current economic standing has improved over the last decade but primary indicators show that the country still has a long way to go before shedding its low-income status. In 2009, per capita gross national income (GNI) was measured at $760 (USD). According to the World Bank, this figure is nearly double the 2002 per capita GNI of $390, showing remarkable growth during the middle of the last decade, but the 2009 figure placed Kenya's relative ranking at a low 181 out of 213 countries surveyed.[50]

Given its poor economic standing, it is not surprising that Kenya is still somewhat dependent on external assistance. In 2009, net official development assistance (ODA) represented just 6.1 percent of GNI. While in relative terms this figure would place Kenya far from the top amongst recipient states, it does

represent a significant increase over the 2008 figure of 4.5 percent. Additionally, the figure represents an increase as a percentage of the central government's expense, increasing from 21 percent in 2008 to 28 percent in 2009.[51]

Kenya's external debt is a different matter because, while the figure represented 19 percent of total GNI in 2009, total debt service was just 1 percent of GNI in the same year. Interest payments represented 11 percent of total revenue in 2008, a significant, though not quite debilitating number.[52] In fact, a "Debt Sustainability Analysis" conducted by the IMF and World Bank in January 2011 concluded that Kenya faces a low risk of external debt distress given its limited reliance on external borrowing.[53] This rosy picture suggests that Kenya is relatively insulated against external threats to its revenue streams in the form of punitive measures against its received foreign aid. Put simply, the international community has little pressure to bear on the Kenyan economy should a crisis develop.

Without significant mineral endowment, Kenya's most important natural resource has been its agricultural land. Covering 271,000 square kilometres and 47.6 percent of its territory, Kenya's tenable land has continued to play an important role in the country's economic fortunes to this day.[54] Agricultural production represented 23 percent of total GDP in 2009, and employed approximately three-quarters of Kenya's total labour force, largely on smaller, subsistence farms.[55] These are staggering numbers given the characteristics of the current global economy.

Kenya's dependency on agricultural production also has two very important implications. First, Kenya has made its economy especially sensitive to natural disasters and man-made disturbances, such as the ethnic conflicts that followed the

December 2007 election. The work stoppages brought on by the violence and mass displacement of a significant portion of Kenya's rural labour force in the first months of 2008 was the primary cause of the stagnant growth for the rest of the year - a downturn from which the Kenyan economy is only beginning to recover.[56]

Secondly, the significance of agriculture to the economic well-being of Kenya has increased competition between the country's diverse ethnic constituencies for control of this undeniably valuable resource. With few positions available within Kenya's nascent mining, manufacturing, and service industries, control over the land has sparked fierce confrontations between tribes, particularly during the redistributions of estates that often follow elections. The limited availability of alternative forms of work and the growing scarcity of land engender, if not encourage, violent confrontation between ethnic groups.

As highlighted above, while Kenya is a low-income country it also has a relatively low dependence on foreign aid and has a very manageable debt load. Together with its non-diversified and relatively insular economy, this lack of external economic dependency means that little pressure can be brought to bear on the Kenyan government to prevent future communal violence. Without effective economic sanctions available, the international community has fewer options to influence the Kenyan government should it commit or be complicit in violence up to and including genocide. (See section 3.1.3, Isolation from International Community)

3.3.2 Long-Term Difficult Life Conditions

Low quality-of-life and poor economic development often increase desperation amongst populations to the point where intergroup violence comes to be seen as a means of improving the situation or expressing frustrations. This violent social upheaval can, under certain circumstances, lead to genocide.

Kenya's pervasive income inequality is a significant barrier to increasing its citizens' quality-of-life. Although per-capita GNI doubled in the last decade, average citizens still suffer from a poor standard of living. Thirty-nine percent of the population lives on $2 (USD) a day or less.[57] Income inequality is rampant; according to the World Bank, as of 2006 the lowest 20 percent of income earners in Kenya receive 4.7 percent of the country's total income, while the top 20 percent of earners take in 53 percent of income.[58]

Kenya does not fare well in aggregate indicators either. In 2010, the Human Development Index (HDI), the United Nations Development Programme's composite statistic which measures health, education, and income, placed Kenya in the "low human development" category with a ranking of 128 out of 169 countries.[59] These figures speak volumes about the difficult life conditions within Kenya.

Massive unemployment is a daunting problem for many Kenyans. The Kenyan government does not publish reliable figures, but in 2008, it was estimated that the unemployment rate was approximately 40 percent.[60] This high unemployment rate appears to have exacerbated social tensions and created a large class of idle workers susceptible to recruitment by Kenya's large underworld community.

In addition to this precarious economic situation, the United Nations High Commissioner for Refugees has identified approximately 404,000 refugees and asylum seekers in Kenya. Most of these refugees have fled from the violence caused by 20 years of civil war in Somalia, with smaller numbers from Sudan and Ethiopia. This has caused tremendous hardship, especially in Kenya's North-Eastern Province where the UNHCR notes that many refugee-hosting communities have been living under worse conditions than the refugees in camps. There is intense, sometimes violent competition for the scarce resources available, causing increased hardship for the host party and animosity between the groups. Additionally, many of the refugees seek to escape poor conditions in the camps by searching for better opportunities in urban centers. Unfortunately, unemployment is already rampant in the cities, and the influx of more job seekers only adds to Kenya's economic strife.[61]

These conditions are of concern because most instances of genocide since the Second World War have occurred in countries suffering from seemingly endless poverty. Continuous underdevelopment can increase the risk of genocide when a particular group becomes, either in reality or perception, identified as the cause for the misfortunes of another group or even the entire country. In the case of Kenya, communal identities become entrenched as economic hardship persists, thus increasing the risk of collective violence up to and including genocide. This is particularly true if combined with visible economic differences between different groups (see section 3.3.4 Socioeconomic Deprivation Combined with Group-Based Inequality).

3.3.3 Sudden and Severe Economic Hardship

Countries with low levels of economic development become even more likely to see intergroup violence and possibly even genocide when they suffer sudden, sharp decreases in productivity. Despite the positive indication that per capita GNI has doubled over the last decade, there have been troubling signs that suggest Kenyan quality-of-life has actually decreased over the past twenty years. According to the World Bank, the proportion of the population living below the national poverty line has increased from 40 percent in 1994 to 46.6 percent in 2006, the most recent survey year.[62] Health indicators have also seen a noticeable decline in the past twenty years. Life expectancy decreased to 54 years in 2008 from 60 years in 1990, while infant mortality increased to 81 per 1,000 live births in 2008 from 68 in 1990.[63] Despite the recent growth in real income, the fragility of the Kenyan economy appears to have persisted, showing a marked decline in non-income-dependent statistics.

In terms of more immediate causes of economic hardship, Kenya possesses a large number of internally displaced persons (IDPs) who fled the two months of post-election violence in 2007-08. According to the Internal Displacement Monitoring Centre, approximately 250,000 internal refugees remain, placing a heavy burden on already impoverished regions of the country.[64] The meagre efforts of the Kenyan government as well as humanitarian and international organisations have so far failed to address the adverse conditions that these quarter-of-a-million IDPs find themselves in three years after the cessation of violence.

Given the stresses caused by the refugee crisis in 2007-08, Kenya's GDP per capita actually shrank in 2008 and showed only a mild improvement in 2009. According to the World Bank, total GDP growth decreased from seven percent growth in 2007 to 1.6 percent in 2008 and 2.6 percent in 2009.[65] The failure to recover from the turmoil surrounding the 2007 election has brought a sudden economic hardship on the Kenyan people. This hardship could precipitate an even more deadly confrontation in the near future if not satisfactorily addressed.

3.3.4 Socioeconomic Deprivation Combined with Group-Based Inequality

Of the economic risk factors related to genocide, inequality along group lines is highly significant since it is the most directly linked to intergroup grievances. In the case of Kenya, while the economic hardships faced by most citizens are substantial, certain segments of Kenyan society appear to be particularly hard-pressed. Composed of 40 distinct ethnic communities, Kenya is highly diverse with no one group forming a majority of the population though nine communities do represent 88 percent of the country's 39 million inhabitants. The Kikuyu are the largest group in Kenya, representing 21 percent of the total population, while the Maasai are the least numerous at 2 percent.[66]

Despite Kenya's multi-ethnic makeup most communities live in predominantly homogeneous enclaves, resulting in considerable socioeconomic disparity between groups. Although Kenya's provincial borders do not create precise lines of ethnic division, the demographics of each province displays the degree to which each group is cloistered. For example, 95 percent of all Kalenjin and 97 percent of Maasai live in Rift Valley Province, while 80 percent of Luhya live in Western Province and 87 percent of Luo in Nyanza Province. Eastern Province is home to 87 percent of Kamba and 97 percent of all Meru, and, not surprisingly given the refugee crisis in neighbouring Somalia, North-Eastern Province contains 96 percent of Kenya's Somali population. The Kikuyu are largely divided between the volatile Rift Valley, along with Central Province and Nairobi.[67]

Given these demographics, one can see that socioeconomic disparities between provinces have created group-based inequalities. According to the United Nations Human Development Report's Multidimensional Poverty Index (MPI), a composite statistic taking into account ten separate indicators aside from income, Kenya as a whole ranks not far below India. However, when MPI is viewed at the provincial level a strong disparity can be seen. For example, the predominantly Kikuyu-inhabited Central Province's MPI is more than a third better than the national average, while Nairobi's MPI falls in line with "developed" countries such as China and Brazil. The rest of Kenya's provinces do not fare so well. In descending order, Western, Coast, Rift Valley, and Nyanza provinces all fall below the national average MPI. While North-Eastern Province, home to a predominantly refugee community, fares worse than Niger, the poorest country in the Human Development Report's sample.[68]

Visible signs of socioeconomic disparity that correspond to the ethnic makeup of Kenya encourage resentment and hostility between distinct groups when people perceive members of other groups to live more prosperous lives. The inequality among Kenya's various communal groups can account for the continual

resentment and competition for scarce resources and government assistance between the diverse segments of Kenyan society. The failure to alleviate this inequality may prove even more damaging than prolonged poverty overall, since resentment among aggrieved communities is even stronger when they see their deprivation as being worse than that of other ethnic groups. This unequal economic situation also provides material for leaders and media outlets seeking to turn their followers against other groups and incite hatred and violence. As long as Kenya has a high degree of ethnic inequality, this factor will continue to raise the risk of intergroup violence up to and including genocide.

3.4 SOCIOCULTURAL

Kenya is home to a large number of diverse ethnic groups which were brought together by the arbitrary borders drawn during the British colonial era. Much of the inter-ethnic competition that characterises present-day Kenya can be traced back to that time and any understanding of the risk of genocide in Kenya also requires an understanding of Kenyan history. The forced migration and unequal economic policies that were implemented during the colonial period sowed the seeds of rivalry which have grown into contemporary conflict. These social divisions have translated into a political landscape in which party allegiance is divided along ethnic lines and rivalries are often portrayed as a struggle for survival in which whatever group has the upper hand will redistribute all resources to itself.

One of the challenges of assessing genocidal risk in Kenya is that no one group is clearly an outgroup. In a sense, the ubiquitous nature of ethnic nationalism and the mutual cultural devaluation between different groups has made

each one a victim of prior persecution at one time or another, though to varying degrees. The strongest factor in this category is certainly that concerning intergroup hatred, which clearly has a long history in Kenya. Since independence, much of this hatred has been exacerbated by the pendulum-like nature of politics in which one group comes to power and reorders the balance of power in its own favour, only to have the balance reordered again when a president from a different group comes to power. While leadership changes are infrequent in Kenya, those which have occurred have left deep memories which are used to legitimise a range of hostile actions by the extreme elements in each ethnic group.

Demographic issues further compound the intergroup hostility in Kenya since the country is also home to a rapidly growing and extremely youthful population. Combined with high unemployment, this has left a lot of unoccupied youth in an environment which does not offer them a bright future. Thus, these young people - who also happen to be of fighting age - are susceptible to recruitment by ethnic militias which will confirm their suspicions that other groups are to blame for their poor economic situation. This view of other ethnic groups as blocking economic development is another particularly dangerous factor, especially when the group being blamed is characterised as being not only an obstacle but also as being parasitic. Such resentments are easily manipulated by leaders and media promoting violence.

3.4.1 Existence of Distinctive Groups Separated by Social Divisions

The existence of communal groups distinguished by social divisions increases the risk of genocide by encouraging individuals to think as part of a collectivity and view outsiders

to the group as adversaries, inferior, or both. As a legacy of its time as a British colony, Kenya possesses a very diverse population. The colonial boundaries of the modern Kenyan state brought together over 40 distinct ethnic and linguistic groups into one arbitrary territorial unit, dividing previously homogenous communities and creating large diaspora communities in neighbouring states. In addition, within Kenya inter-ethnic competition grew as Kenya's diverse tribes competed for colonial resources – a cleavage that was nurtured by the country's British rulers to reduce the costs associated with their indirect rule.[69] Forced migration, as well as economic and social policies that favoured some groups over others entrenched and politically enforced the ethnic identities of Kenya's people during the country's long colonial period, the consequences of which reverberate to this day.[70]

In the most obvious sense, the social divisions created by Kenya's colonial legacy can be seen in its contentious political life. Since becoming independent in 1963, Kenya's political realm has been dominated by mono-ethnic parties and soft multi-ethnic alliances bent on championing the claims of the group or groups they represent to the exclusion of all others. Thus, Kenya has seen a cyclical pattern of each new regime "correcting" the unequal distribution of political, economic, and social resources beyond the proportionate need of their respective communities, creating new grievances and perpetuating the cycle. The return to multi-party elections in 1991 brought the prospect of a return to broad cross-ethnic coalitions given Kenya's disparate ethnic makeup - in which the largest ethnic group, the Kikuyu, represent just over one-fifth of the total population - however, the coalitions formed are born of convenience rather than convention and prove to be "internally fragile and short-lived."[71]

Given that the polarising legacy of colonialism reverberates nearly half a century after Kenyan independence, it is easy to see that ethnicity and ethnic competition will continue to provide a stronger rallying cry for political activity than party structures or broad-based concern for Kenya's well-being as a nation.[72] Under such circumstances, where political life is divided along clear ethnic lines, political, social, and economic competition will continue to assume the appearance of a life or death struggle, thus increasing the likelihood of widespread communal violence during contentious political contests, as we saw in early 2008. When violence becomes viewed as a legitimate tool for the political and economic aggrandisement of a particular group, differences between the various tribal elements of Kenyan society become even more pronounced and group identity becomes further solidified, creating the risk for collective violence on an even greater scale. This is particularly true as people act strictly in accordance with what they are convinced is in the interest of their ethnic group, thus making them particularly susceptible to leaders and media outlets inciting hatred and violence (see section 3.2.4 Charismatic Leadership that Generates Mass Followership).

3.4.2 Legacy of Intergroup Hatred or Grievance

Established intergroup rivalries and animosity increase the risk of genocide by preparing people to view members of rival groups as threatening and therefore legitimate targets for violence. In Kenya, most grievances can be understood by examining the history of ethno-political rivalries since before independence. Kenya has a strong legacy of intergroup rivalry stemming from its experience as a British colony and land rights represent the primary

arena for this competition. In the early twentieth century, the British colonial government evicted large swaths of communities (Maasai, Samburu, and Turkana) from the Rift Valley to create the so-called "White Highlands." Kikuyu labourers from neighbouring Central Province were then brought in en-masse to work the land for the white landowners. These same labourers would later form the backbone of the Mau Mau uprising against the British in 1952, an insurgency that ended in a military defeat but a strategic victory as Kenya achieved its independence a decade later. The armed uprising was carried out primarily by Kikuyu fighters, a fact that the tribe has not forgotten.[73] To this day, the Kikuyu justify their predominance on the Kenyan political scene through the legitimacy of having taken up "the national cause" and fought for Kenyan independence. This perceived notion of legitimacy and entitlement has been a source of great polarisation between Kenya's ethnic communities.

Following independence, Kenya's first president, Jomo Kenyatta, a Kikuyu, established a favourable land-buying scheme that allowed former Kikuyu labourers to purchase the land they tilled from their colonial masters excluding those ethnic groups that had been dispossessed in the wake of white settlement.[74] Not satisfied with establishing the economic preponderance of his co-nationals, Kenyatta also consolidated Kikuyu control over Kenya's political institutions, thus turning on his allies within the Luo who had supported his ascension to the presidency in 1963. By the end of the decade, all of Kenyatta's major rivals were either in prison or had fallen victim to political murder.[75] On the whole, under Kenyatta, the Kikuyu received a disproportionate share of political power and the access to land and resources that came with

it, allowing them to reinforce their disproportionately advantageous position, and creating a lasting grievance among Kenya's other ethnic communities.

Daniel arap Moi, a Kalenjin, became president upon Kenyatta's death in August 1978 and sought to redress the balance of power favouring the Kikuyu by rolling back their perceived advantage over Kenya's other ethnic communities. However, Moi's efforts did not stem from a notion of equality among the tribes but rather an attempt to seize a disproportionate share of political, economic, and social power for Kalenjins. In order to achieve this goal, Moi created a one-party state and terrorised his opponents. Free from political interference, Moi established an alliance between the Kalenjin and Maasai to evict non-indigenous groups from the fertile Rift Valley Province, primarily targeting the Kikuyu, Luo, Luyha, and Kisii, in descending order.[76]

Moi's aggrandisement of Kalenjin and Maasai elites led to the establishment of a multi-ethnic political alliance between the Kikuyu, Luo, Kamba, and Luhya, under Mwai Kibaki, a Kikuyu, which succeeded in removing his soft dictatorship from power in the 2002 elections. That those elections were the most peaceful since the re-establishment of multi-party elections in 1991 perhaps indicates the degree to which the Kenyan people as a whole had become disaffected by Moi's heavy-handed rule.

This multi-ethnic alliance was, however, short-lived. The alliance itself was composed of four mono-ethnic political parties, one corresponding to each of the participating ethnic communities, which did not dissolve despite their appearance on a unified ticket. Having achieved its narrow goal of defeating Moi, the alliance quickly fractured as Kibaki

began to show a strong bias for his supporters in Central Province, particularly the Kikuyu.[77]

In response to Kibaki's perceived favouritism towards the Kikuyu, a new opposition alliance was developed by his former allies. Centered on the leadership of Raila Odinga, a Luo, and his deputy William Ruto, a Kalenjin, the Orange Democratic Movement (ODM) challenged Kibaki and Uhuru Kenyatta (Jomo's son) in the December 2007 elections. The primary plank in ODM platform focused on establishing constitutional reform to limit the power of the central government and therefore prevent future instances of Kikuyu misrule through "majimboism." While majimboism was nominally a system of federalism designed to increase the power of the provinces in relation to the executive branch of government, to Kibaki supporters it meant something altogether different. Kikuyus viewed "majimboism" as a code word for the planned expulsion of their tribe from Rift Valley to their "ancestral home" in Central Province.[78] This perceived threat of impending expulsion in the event of an ODM victory, as well as the Luo and Kalenjin view that their legitimate concerns could only be addressed through the defeat of the Kikuyu-dominated Kibaki government, created an environment characterised by a siege mentality and a desire to win at all costs. Not surprisingly, the 2007 election proved incredibly contentious and became marred by allegations of massive voter fraud and intergroup violence as each side attempted to assert control over the outcome in the months that followed.

Kenyan ethnic relations have swung like a pendulum with each ethnic group, upon assuming power, responding to the abuses of power by the preceding administration with policies that propagate the pervasive inequality, fear, and suspicion felt by each ethnic community. The memories that such action creates provide legitimacy to the extreme elements within each community who argue that pre-emptive action ranging from voter fraud to intimidation and violence are justifiable tools of self-defense in the face of endemic hostility. This seemingly endless cycle can be exploited by leaders who exacerbate the traditionally polarised atmosphere of Kenyan life, thus increasing the likelihood of collective violence and genocide each time the process is renewed. (See section 3.2.2 Severe Government Discrimination or Active Repression against Communal Groups)

3.4.3 Cultural Devaluation of the Outgroup(s)

Given the cyclical pattern of persecution and revenge among Kenya's diverse ethnic communities, it would be difficult to identify one particular outgroup that has been devalued more than any other. Rather, the contributions of each tribe have been called into question by their ethnic rivals at various times, primarily as a means of creating a legitimising myth or justifying arguments for plans for future persecution. Thus, ethnic nationalism expressed by all parties appears to be the primary culprit of the festering hatred that led to unprecedented violence in early 2008, and deserves closer attention than the injustices experienced by any one group (see section 3.4.6 Ethnic Nationalism).

3.4.4 Prior Persecution of the Outgroup(s)

Since independence, Kenya has seen a cyclical pattern in the persecution of its tribal communities. As multiethnic political alliances tend to be short-term and incredibly unstable,

replaced immediately at the end of their usefulness by chauvinistic mono-ethnic parties, Kenya has seen every tribe persecuted at one time or another. Furthermore, given the currently polarised atmosphere stemming from the unprecedented violence of early 2008 and the reluctant inter-ethnic alliance it precipitated, it is difficult to pinpoint where in the cycle of persecution and revenge Kenya is currently situated. As a result, it is not possible to identify any one ethnic community as an outgroup in Kenya. Instead, it is necessary to consider a longer view of the history of Kenya in order to understand the legacy of grievances felt by all sides in this multi-tribal powder keg. (See section 3.4.2 Legacy of Intergroup Hatred or Grievance)

3.4.5 Ethnic Nationalism

Strongly ethnocentric communal identities generally tend to strengthen divisions between groups, thus exacerbating existing rivalries and increasing the risk of violence up to and including genocide (see section 3.4.1 Existence of Distinctive Groups Separated by Social Divisions). Most of the cultural fault lines in Kenya can be seen at the local level and ethnic tensions are perhaps at their highest within the Rift Valley. There, the "historic" population of the province view the more recently-arrived Kikuyu as "outsiders." The Kikuyu, brought to the Rift Valley from Central Province as part of an influx of labourers for expropriated farms run by white settlers during the colonial period, are seen as an alien element amongst the "native" communities.[79] This gap was solidified by the patronage of Jomo Kenyatta's post-colonial government, which perpetuated the demographic alteration of the province on a seemingly permanent basis through favourable land deals for his Kikuyu co-nationals. Non-

Kikuyu tribes in the Rift Valley therefore denigrate Kikuyu "settlers," encouraging their return to their "ancestral home" in Central Province through non-cooperation, intimidation, and sometimes violence.

The Kikuyu are also considered guilty of devaluing Kenya's other ethnic communities, a judgement acknowledged by the Kikuyu themselves. Due to their disproportionate share in the anti-colonial armed conflicts that took place from the beginning of British rule to independence in the early 1960s, the Kikuyu view themselves as having a special role within independent Kenya, a role that some Kikuyu characterise as being "indispensable" to the welfare of the state.[80] While a strong sense of pride in their accomplishments is surely justified, this sense of entitlement devalues the contributions of Kenya's remaining 47 tribes in building modern Kenya, thus creating the impression that non-Kikuyu have no right to exercise political power and are better kept at the margins of Kenyan society. In addition, the Kikuyu's alleged enthusiasm in promoting this position aggravates non-Kikuyu groups even further, increasing the tension considerably.

The coexistence of xenophobia on the one hand and a strongly held legitimising myth on the other is a dangerous cocktail of cultural devaluation within multi-ethnic Kenya. These circumstances highlight the existence of a prolonged hostility bordering on hatred, which can be easily exploited by opportunistic forces as happened during elections throughout the 1990s and more recently during the unprecedented post-election violence on 2007-08. This cultural environment has perpetuated the denial of equality at the local and national levels and left the country susceptible to communal violence on a mass scale.

3.4.6 Outgroup(s) Viewed as an Obstacle to Economic Progress

In any society - especially those suffering from significant economic stresses - the common perception of a group as an obstacle to greater prosperity for the majority significantly increases the risk of genocide. Within Kenya there are strong views about the cause of the country's systemic poverty. While there are many explanations for this widespread misery, one especially dangerous interpretation has an ethnic component: namely that the Kikuyu are the source of Kenya's endemic poverty. This view is particularly strong in the Rift Valley where the influx of Kikuyu tribesman during the British colonial period altered the demographic makeup of the province and granted this "alien" group the opportunity to work land expropriated from the "native" population. The disparity between the Kikuyu and their neighbours was then further solidified by the generous land grants tendered by the Kikuyu-dominated post-colonial government of Jomo Kenyatta (see section 3.4.6 Ethnic Nationalism), entrenching Kikuyu dominance of the Rift Valley economy and, many believe, the country in general. As a result, non-Kikuyu tribes look upon the Kikuyu as parasitic "outsiders" with an economically advantageous position due solely to their long-standing and disproportionate grasp upon the reigns of Kenya's political and economic institutions.

The Kikuyu are well aware of how they are perceived by the rest of Kenya's 47 tribes, often taking pride in their reputation and returning the enmity. Referring to themselves as "the Jews of Kenya" due to their poor stature and perceived entrepreneurial skill, the Kikuyu view themselves as Kenya's best economic managers. As evidence of this view, Kikuyu leaders cite the stunning economic growth in Kikuyu-dominated

Central Province over the past decade, which stands in stark contrast to the endemic poverty faced by the rest of the country.[81] This "evidence" of successful economic management has merely reinforced Kikuyu claims to deserving disproportionate power in Kenya, while cementing the perception by non-Kikuyu tribes that the system is stacked against them.

The perception that particular ethnic communities are responsible for the unequal distribution of wealth and possibly the poor economic standing of Kenya as a whole has created a very dangerous environment. Under such conditions, simmering ethnic resentment can be easily manipulated by self-interested elites in order to incite violent ethnic hatred as seen in 2007-08. The persistence of these conditions today increases the likelihood that elements of the population will participate in the destruction of their perceived barrier to a better life.

3.4.7 Population Growth and Youth Bulge

Demographic stresses are a significant risk factor for genocide, particularly in struggling economies with young populations. Such conditions often result in large numbers of unemployed, disillusioned youth who are prone to being swept up in unrest and present ideal recruitment targets for extremist groups and militias which might perpetrate atrocities. According to the World Bank, as of 2009, 43 percent of the Kenyan population was under the age of 15. The age bracket ranging from 15 to 29 years alone accounts for three-quarters of Kenyans.[82] This "youth bulge" is representative of Kenya's astounding population growth throughout the twentieth century; in just 80 years, Kenya's population has increased dramatically from 2.9 million in 1928 to 39

million in 2010.[83] While this growth rate has slowed in recent years, it is still tied for the twenty-second highest rate in the world at 2.6 percent annually.[84] The result is that Kenya has a median age of 18 years, a number half that of most developed countries.[85]

Compounding the population problem is Kenya's failure to provide a bright economic future for its overwhelmingly large youth population. This is particularly evident when considering the number of unemployed youths in Kenya. While the Kenyan government does not provide any statistics related to youth unemployment, some estimates placed the number at 65 percent in 2010, among the highest levels in the world.[86]

While a "youth bulge" is symptomatic of the systemic poverty within a "developing" country such as Kenya it also creates problems of its own. The combination of a "youth bulge" and poor economic performance can create massive instability within a country. Competition for scarce employment, education, and positions within the prevailing social order can frustrate the ambitions of Kenya's youth and dampen their ambition for peaceful opportunities. The appeal of extremist governmental and non-governmental groups that promise financial and social support to disenfranchised youth grows under such circumstances. These organisations legitimise themselves by offering greater security and a sense of purpose in the form of criminal and violent acts against a scapegoat group, usually a rival tribe or ethnic group. As many of these unemployed youths fall within fighting age, they become easy targets for recruitment for violent crime, rebellion, and genocide.[87] Kenya's difficulties with youth vigilantes led the government to ostensibly ban eighteen different organisations in 2002 with little effect. The Mungiki, a quasi-religious criminal organisation that recruits from the

Kikuyu youth, and Kalenjin militias were widely blamed for the violence that claimed over 1,000 lives and created more than half a million IDPs.[88] Even more disconcerting is that youth militias are alleged to operate under the wilful ignorance if not direct orders of senior political and state security leaders. As long as these organisations are permitted to operate with impunity they will continue to find support amongst Kenyan youth. Thus, they represent a significant threat to the peacefulness of Kenyan political life and increase the risk of further communal violence or even genocide.

3.5 CONFLICT & UPHEAVAL

A history of violent political disputes and drastic changes to the governing structure weakens the cohesion of a society and predisposes it to further instability while also increasing the risk of genocide. The Kenyan relationship to these risk factors is somewhat mixed. On the positive side, there has not been any recent history of political upheaval in the form of a coup or revolution but changes to the power structure have been imposed through a power-sharing agreement which provides a veneer of stability but has actually left the country vulnerable to renewed conflict. This may have been somewhat mitigated by recent popularly-approved constitutional changes but there appears to be a perception that tension still run high. Such tensions, as is so often the case in Kenya, have their roots in the unequal distribution of resources, power, and rights which politicians have exploited to garner support within their own ethnic groups.

For most of Kenyan history since independence, inter-ethnic conflicts have been nonviolent but the transition to multi-party democracy in the early 1990s changed that, with the worst episodes taking place in 2007-08. Similarly,

there has been no known case of genocide taking place in Kenya, though there have been some politically-motivated accusations along those lines. While there was a legacy of brutality during the British colonial period, especially during the Mau Mau uprising, and significant violence in the past two decades, none of the perpetrators of violence in these incidents demonstrated the necessary intent required to commit genocide. The latter example, however, may have come closer to what is commonly referred to as ethnic cleansing. While not genocide, such large-scale violent expulsions within recent years may have a similar effect in terms of increasing genocidal risk.

On a positive note, Kenya is not currently the site of civil war or significant insurgency. However, there are several well-armed non-state actors which variously act independently, on behalf of officials, or against the state. Some have also been engaged in combat by the Kenyan army, but only at a very low level of intensity. Kenya has also not seen much large-scale nonviolent protest against the government. The post-election violence of 2007-08 began primarily as non-violent protests but turned violent following an excessively forceful response by the government. Since that time, the only protests have been small-scale and focused on specific issues. Even the August 2010 constitutional referendum occurred without incident. Whatever its cause, this lack of protest may indirectly reduce the risk of genocide by giving security forces fewer opportunities to crack down on dissent and extremists fewer chances to incite violence.

3.5.1 Political Upheaval

Rapid and violent changes to the political structure of any country increases the risk of genocide by creating uncertainty and urgent competition for power. Kenya has a unique political arrangement consisting of a grand coalition between President Kibaki's PNU and Prime Minister Odinga's ODM, which was formed when former UN Secretary General Kofi Annan brokered a power-sharing deal to help end the 2007-08 post-election violence. This change to the power structure has brought an appearance of stability to Kenya but the coalition is highly factionalised, with internal competition between its main figures. Though this change to the power structure was not as dramatic as that seen during a coup or revolution, the situation leaves Kenya highly vulnerable to renewed conflict. The 2010 Failed States Index, an annual ranking system measuring a country's vulnerability to collapse or conflict, has assessed Kenya as a "critical" failed state and the 13th most unstable country out of 177 countries.

While several positive steps have been taken, including the passage of legislation to give effect to the coalition and new constitution, significant challenges to stability in Kenya remain. These include the settlement of long-term grievances involving land disputes, constitutional disputes, and a pervasive culture of impunity. Any progress to date has been slow and derailed by infighting. Odinga and Kibaki have each accused the other of perpetrating genocide upon members of the others' ethnic group.[89]

In 2010, tensions between the two over which leader held which powers led to another intervention by Annan, who called on the two to meet and resolves their differences. Diplomatic cables released by WikiLeaks dated February 2010 reveal that, at the time, there was a growing perception among the Kenyan people that the tensions either amounted, or would soon amount, to a serious crisis.[90] As a result, there is a real concern that the next

elections to be held in 2012 could spark an escalation in conflict, particularly if political tensions and power plays between Odinga and Kibaki continue.

3.5.2 Conflicts over Status, Power, and Rights

Disputes (including non-violent conflicts) over key issues relating to the relative standing of different groups in both society and government are frequently a cause of violence and increase the risk of genocide. The most serious conflicts in Kenya have their origins in disputes over the distribution of resources between Kenya's ethnic groups and it is these tensions which have been mobilised by opportunistic politicians, both in the past and present, for their own electoral advantage (see sections 3.4.4 Legacy of Intergroup Hatred or Grievance, and 3.4.7 Outgroup(s) Viewed as an Obstacle to Economic Progress).

Following the failure to implement the reforms promised by the independence movement before the end of British colonial rule, the ruling elite retreated to the safety of their own ethnic groups, which became their political bases. Ruling elites sought to consolidate their political influence by actively promoting ethnic ideology through the skewed distribution of development resources to the detriment of other ethnic groups. Consequently, a mentality was created among the poorer and middle classes that they would only benefit from national resources if one of their own became president or was close to the presidency. Thus, the Kikuyu benefited politically and economically from the time of Kenyan independence until Kenyatta's death in 1978. His political successor, Moi, was also able to maintain power by providing his Kalenjin group

with the same disproportionate political and economic advantages.[91]

This systematic political exclusion and resulting impoverishment has created a pattern of resentment towards the ethnic group which is privileged at any given time - usually the group from which the president hails, as evidenced by the crisis in 2007-08. The new constitution does go some way to addressing the root causes of these inequalities by reducing presidential powers, decentralising the government, and creating a fairer system to manage public land. However, these reforms are new and even if they are effective it will be many years before different ethnic groups stop viewing each other as competitors for status and political power. In the meantime, such conflicts can still be exacerbated into violence, thus increasing the risk of genocide.

3.5.3 History of Conflict

Conflicts between communal groups increase the risk of genocide by preparing individuals to view other groups as adversaries and also habituates them to addressing such rivalries through violence. Recent conflicts are generally more influential but even those which occurred in the distant past can form a significant part of the collective memory. Fortunately, Kenya was relatively peaceful and stable from the time of its independence in 1963 until the early 1990s. This absence of violent conflict was partially due to tight government control of Kenya's economic and political systems, which left limited space for competition and conflict. However, the 1992, 1997, and 2007 elections all saw major episodes of violence targeted along ethnic lines. The attacks were either largely ignored or exacerbated by the security forces and went unpunished by the judicial system. To understand the structural causes of these

conflicts, it is necessary to examine the historical context in which they have occurred.

In the decades leading up to independence in 1963, Kenyans (particularly the Kikuyu, who had constituted much of the agricultural labour force and whose land had been primarily inhabited by the British) developed a deep-seated resentment of British settlers. By 1952, this feeling of resentment had manifested itself in the form of the Kikuyu-led Mau Mau uprising which sought to expel all European influence.[92] The rebellion led to a state of emergency lasting from 1952 to 1960 and ultimately, resulted in the loss of thousands of lives.

The question of Kikuyu dominance was always at the forefront of independence negotiations between the other Kenyan ethnic groups. Once Jomo Kenyatta began to give his own Kikuyu group preferential treatment at the expense of others, it became increasingly evident that the political reforms which were expected after independence would not occur. With the distribution of resources, especially land, occurring along ethnic lines, the Kikuyu effectively became Kenya's political and economic elite.[93]

Thus when power was finally ceded by the colonial administration to the Kenyans in 1963, some of the key characteristics of the recent political conflicts were already in place: a centralised state with a powerful executive, political conflict around unequal distribution of resources, and a history of violent confrontation between the state and the oppressed. Non-Kikuyu groups which had previously resented British dominance now continued to feel marginalised under Kikuyu dominance. The recent pattern of election-related violence since the early 1990s has renewed the history of conflict which may be exploited by leaders and the media in order to incite further violence and mass atrocities, potentially including genocide.

3.5.4 History of Genocide

Similar to a history of conflict (see section 3.5.3 History of Conflict), past experience of genocide increase the risk of further genocide in a given country by incorporating a sense of victimhood into the collective identity of some groups while others may be habituated to using atrocities to resolve conflicts. Either case can be exploited by leaders to incite further genocide either as a means of self-defense or seeking justice for the former victims or as an acceptable strategy for the former perpetrators. Fortunately, under the definition of genocide established by the UN Convention on the Prevention and Punishment of the Crime of Genocide, it would be difficult to argue that Kenya has suffered violence that could be classified as genocide. While British colonial rule in Kenya was often characterised by brutality, displacement, and deprivation, the authorities did not appear to endorse a policy of genocide. Even at the height of the Mau Mau uprising, the violence, ethnic cleansing, and human rights violations institutionalised in the form of indiscriminate detention in British "screening camps" remained at a relatively low intensity that was inconsistent with a deliberate policy of genocide.[94]

Communal violence and ethnic cleansing were largely absent from post-colonial Kenya until the re-establishment of multi-party elections in 1991, though the intent behind the violence and mass atrocities at that time does not appear to have been genocidal. The scale of the violence that followed the allegedly rigged December 2007 elections was particularly worrisome as ethnic militias killed more than 1,000 people and displaced over 600,000. While the rival

candidates, President Mwai Kibaki and his primary challenger Raila Odinga, exchanged accusations that each were conducting acts of genocide, outside observers were less certain.[95] Dr. Francis Deng, the UN Special Adviser for the Prevention of Genocide, refused to characterise the violence as genocide, while a US envoy to the country felt that the situation was closer to premeditated ethnic cleansing than a deliberate attempt at mass murder.[96]

Although the distinction between a policy of genocide and ethnic cleansing may not be completely clear (largely due to the lack of a legal definition for the latter), the international community appears to have been correct in their assessment of the violence that racked Kenya in early 2008. Large-scale communal violence can only be meet the definition of the UN Genocide Convention if the intent of the policy being carried out is to destroy, in whole or in part, a particular group, while the methods used to achieve that policy must also correspond to that goal. The use of force to carry out the displacement of various ethnic groups in Kenya, though disturbing, does not appear meet the threshold of intent and therefore cannot be considered genocide.

The absence of a history of genocide in Kenya does not mean that future occurrences are impossible. The perpetration of communal violence and large-scale ethnic cleansing including atrocities following the December 2007 elections increases Kenya's risk of genocide, even if past violence cannot be characterised as such. The ethnic cleansing of 2007-08 could help those intending to commit genocide build support by reminding their followers of their recent victimisation. Such references increase the resonance of arguments suggesting the elimination of rival ethnic groups based on the perceived need for pre-emptive self-defense.

3.5.5 Ongoing Insurgency or Civil War

Armed conflicts commonly provide the context for many mass atrocities and genocides. This is especially true during intrastate conflicts such as civil wars or insurgencies, which lower inhibitions against killing, obscure the distinction between combatants and civilians, and increase suspicion of internal enemies. Such conflicts also often involve the use by either side of militias or paramilitary forces, which are generally more prone to committing atrocities than regular military forces. While Kenya is not currently in a state of civil war or threatened by an insurgency, there are a number of powerful, well-armed actors operating beyond the authority of the state, either in its interest or in opposition to it. Many of these organisations are criminal gangs that prey upon the large numbers of unemployed and despondent youth congregating in urban centers like Nairobi. These gangs concern themselves primarily with petty crime and extortion; however, they have also played a prominent role in Kenya's recurrent political and ethnic conflicts over the last twenty years. It should be noted that while this risk factor is primarily focused on combat between the state and non-state actors challenging it, the situation in Kenya is dominated by non-state groups fighting each other, though some may be acting as unofficial proxies for government leaders or, conversely, opposing the government.

The government of Daniel arap Moi set a dangerous precedent following the resumption of multi-party elections in 1991. In order to secure popular support, senior members of Moi's government encouraged criminal organisations to kill and threaten members of the Kikuyu in Rift Valley, resulting in the deaths of some 1,500 and the displacement of 300,000

by 1993.[97] The fact that these crimes were conducted with complete impunity established the legitimacy of these criminal organisations and gave them a distinct ethnic flavour.

Furthermore, the tacit approval of criminal violence by certain organisations increased the feeling of insecurity among groups targeted by Moi's allies. Partially in response to this fear, members of the Kikuyu formed what has become the leading criminal organisation in the country, the Mungiki. Nominally an anti-Western cultural and spiritual organisation that sought to promote Kikuyu traditions, the Mungiki quickly grew to become Kenya's largest gang, with an estimated 500,000 "oathed members" at its height, focused on robbery and extortion.[98] Notorious for their brutality, the Mungiki have been waging turf wars with Nairobi gangs such as the Luo-dominated Taliban and the Kisii's Sumba Sumba throughout the last decade.[99] Gangs and paramilitary groups have also prospered in rural Kenya. For example, the Sabaot Land Defense Force (SLDF), a Kalenjin force operating around Mount Elgon in western Kenya has posed a significant threat to non-Kalenjins since its formation in 2005.[100]

While not necessarily intending on independence or revolution, these groups pose a serious threat to Kenya's stability. It has been alleged that during the 2007-08 violence political leaders, businessmen, and community elders were able to call upon these armed organisations and through bribery or appeal to ethnic solidarity, convince them to perpetrate a significant portion of the violence against their perceived ethnic and political rivals.[101] This violence was not conducted with complete impunity since a 2009 police crackdown saw the arrest of thousands of Mungiki and other criminal elements, but concerns about a lasting informal relationship between ethnic gangs and

prominent political leaders persist.[102] As long as this relationship persists, the illegal elements in Kenyan society will remain ready as an armed force prepared to be employed by political leaders during campaigns for ethnic dominance. Additionally, the continued activity of these mono-ethnic criminal organisations will only reinforce the existing sense of mutual fear and resentment between Kenya's disparate ethnic communities. The presence of large, well-armed, non-state organisations, as well as an increasing sense of insecurity amongst different groups could precipitate communal violence on a large scale.

3.5.6 Large-Scale, Nonviolent, Anti-Government Protest

Mass anti-government demonstrations have been correlated to a higher likelihood of genocide, even when these demonstrations are peaceful. The reason for this may be that such overt challenges to authority prompt ruling elites to see their power base eroding and respond harshly in a way that may eventually escalate into genocide. In the case of Kenya, the alleged electoral fraud of December 2007 provoked such large-scale, anti-government protests. These demonstrations developed swiftly, even before the announcement of the results on December 30 since delays and irregularities quickly turned into rumours of premeditated vote rigging by incumbent president Mwai Kibaki. Kibaki quickly sought to quell the rising tide of popular discontent by banning public gatherings and authorising the use of excessive force by police, resulting in the killing and wounding of dozens of protestors with live ammunition.[103] The resulting breakdown of law and order throughout the country allowed opportunistic allies of Kibaki and his challenger Raila Odinga to foment ethnic

violence on a massive scale, resulting in the deaths of more than 1,000 Kenyans and the displacement of more than 600,000.

External mediators were able to quell the violence through a February 28 power-sharing agreement between Kibaki and Odinga that created a unity government with Kibaki as president and Odinga as second in command in the newly-created role of prime minister.[104] Several delays caused by concerns about the allocation of portfolios resulted in the unity cabinet not being sworn in until April 18, however, most of the violence had wound-down shortly after agreeing in principal on the need for a coalition government in late February.

Since the establishment of the unity cabinet there have been no large-scale displays of discontent toward the government. Members of Kenyan civil society have protested at various points against the continuation of graft at the highest levels, and the slow pace of returning or re-settling IDPs but there have been no massive or sustained anti-government movements and little violence since the spring of 2008.[105] In fact, an August 2010 referendum on a constitutional amendment limiting the power of the presidency and establishing a senate as a check on the executive branch was held almost without incident despite containing certain controversial elements and being strongly opposed by William Ruto, a former Odinga ally accused of organising Kalenjin violence in the Rift Valley in 2007-08.[106]

It is difficult to determine whether the current appearance of democratic spirit and civic-mindedness will continue as the 2012 elections approach. The lack of mass demonstrations against the current unity government could just as easily stem from a fear of facing another violent crackdown as much as from the country

having changed its approach to civil discourse. At present, the absence of this risk factor would seem to not contribute to the risk of genocide in Kenya. However, protest activity may reoccur as the 2012 elections approach and warrants ongoing monitoring and reassessment closer to that time.

4.0   OVERALL ASSESSMENT

When considered individually, the thirty risk factors described in this report present a varying picture of the risk of genocide in Kenya. However, while some of the conditions in Kenya currently appear not to increase the genocidal risk level and a few others may even exert a slightly positive influence and mitigate against the occurrence of genocide, the majority of the risk factors present a picture of a dangerously divided and vulnerable society. When the risk factors are considered together as a whole, it becomes clear that Kenya is at a high risk of genocide and warrants monitoring as a situation-of-concern.

Kenya is split In terms of institutional political factors, as seen in its degree of democracy. On the one hand, it does not have a strong history of democratic experience and still lacks robust institutions and norms to ensure free and fair participation for all in government. On the other hand, several reforms have been made which are gradually moving the country towards democracy in which rights are respected and power is decentralized. However, these reforms are slow in taking effect and there are doubts about the true amount of commitment to them.

The weakness of Kenyan democratic institutions also compounds the danger posed by the lack of constraints placed on the corrupt and sometimes brutal security forces. This is another area where reforms have nominally been made but remain to be proven. The freedom enjoyed by the security forces definitely increases the risk of genocide since they can operate with impunity and have few incentives to resist sliding into greater brutality should challenges to the regime materialise. Kenya also finds itself to be moderately isolated from the international community due to its lack of economic integration and a degree of reluctance to participate in international legal institutions which sometimes transforms into outright hostility. This isolation restricts the number and effectiveness of possible sanctions that could be imposed on the Kenyan government in the event that it appeared to be on the path to genocide, thus making it difficult to discourage such a policy decision.

At present, the position and influence of the Kenyan armed forces do not appear to increase the risk of genocide since the military does not receive a disproportionately high level of funding and is well-respected both in Kenya and internationally. It is also reported to have performed well during the 2007-08 violence, despite reports of corruption and human rights abuses at other times. The issue of frequent changes in political leadership also does not appear to be of concern here since the Kenyan government has a history of stability and continuity, even if this has come at the expense of democracy.

The transition to democracy has produced a mixture of negative and neutral effects in terms of the regime in power and the ideologies at work on the Kenyan political scene. The current coalition government has the benefit of being more ethnically inclusive than previous regimes but, as with other reforms, it remains to be seen if these measures will be more than superficial. Fortunately, the diverse ethnic make-up of Kenya means that no single group has been identified as a particularly threatened outgroup, but there is a tendency for multiple groups to be antagonistic towards each other. The resulting mutual distrust is both a cause and an effect of the discriminatory policies of successive Kenyan presidents and raises the perceived stakes in any election, thus encouraging a cycle of conflict. Unfortunately,

such a power contest is likely to turn violent because there are some charismatic leaders and media figures in Kenya with the ability to influence a large followership and incite violence through the use of hate speech. Some of these leaders have shown themselves to be prepared for the use of force to gain or maintain power, as when the government ordered a violent crackdown on protests in 2007-08 and other leaders opposed to the government called upon ethnic militias to attack their perceived enemies.

In terms of civil society and moderate voices, the level of freedom of speech in Kenya is improving but those who speak out against the government or other powerful figures may still face danger. Taken together, these risk factors present a situation in which various hostile ethnic factions antagonise each other with little effective opposition from moderates and are able and willing to call upon armed militias to attack perceived enemies and competitors for power or, in the case of the government, use security forces to suppress protest with relative impunity.

Kenyan economic factors are amongst the most serious contributors to the high risk of genocide in the country. In connection with Kenyan isolation from the international community, the country also has a relatively low reliance on foreign aid and carries a minimal foreign debt load, which means that there are few financial consequences the international community can implement to discourage the Kenyan government should it adopt genocidal policies.

If genocide were to be perpetrated in Kenya, its planners would find elements of the population well-prepared to participate due to their economic circumstances. Kenyans are experiencing very difficult life conditions due to

severe and long-term decreasing trends in every development indicator except for income. When combined with recent shocks to the economy and ethnically-based inequality, this severe poverty has left many people in desperation and fosters hostility towards other groups which are seen to be more prosperous or at least suffering less. Such perceptions of relative deprivation strengthen divisions and strong resentment between groups, making people more receptive to leaders who promote hatred and incite violence as a means to redress inequalities.

Kenya's sociocultural characteristics also increase its risk of genocide. As an ethnically diverse country populated by numerous distinctive groups, Kenya is an extremely divided society. It is not merely the fact that these groups are culturally different that puts them at risk, but rather their history of inter-ethnic competition and grievances. Virtually every major Kenyan ethnic group has experienced discrimination or persecution at some point and the communal memories of these experiences deepen social divisions. Because of this recent history, it is not possible to identify a specific outgroup. Rather, the competing groups in the country are caught in a cycle of mutual hostility and abuse that is often rooted in a view of others at economic competitors or obstacles. This xenophobic hostility towards others is reinforced in most of the major Kenyan ethnic groups by a strong group pride akin to nationalism, which is itself supported in some cases by legitimising myths that justify the dominance of a particular group.

All of the sociocultural factors are even more likely to result in violence and possibly genocide thanks to the facilitating factor of a rapidly growing and very young population. The growing excess of unemployed youths is building up a large recruiting base for various

gangs and ethnic militias whose leaders persuade disaffected youth with promises of belonging, group support, and meaning as well as ideological explanations of how rival ethnic groups are responsible for their economic woes. Militias of this type often play a prominent role in the perpetration of genocide and they have already demonstrated their propensity for violence in Kenya so it is likely that they would also be utilised during an extermination campaign.

The Kenyan experience of conflict and upheaval has a mixed effect upon the risk of genocide. Fortunately, the country does not have a history of genocide, though some political leaders have accused others of attempted genocide. Kenya also does not have a long history of post-independence armed conflict due to the authoritarian regimes which maintained order. However, the inter-ethnic competition over power and status that dates back to the colonial period laid the foundation for the episodes of electoral violence since then. The 2007-08 violence and resulting coalition government was also the most recent example of political upheaval, though the ultimate changes to the power structure resulted from a negotiated settlement rather than a violent overthrow of the regime. The power-sharing coalition assembled at that time is now factionalised and may react unpredictably should another episode of ethnic violence occur. Any serious conflict, however, is likely to split the regime along political and ethnic lines. These recent experiences of violent conflict have likely left a strong impression on the collective memories of many Kenyan groups, instilling a fear of ethnic rivals and possibly also breaking down some of the inhibitions against killing, thus making some individuals more likely to accept the messages of genocidal leaders. The events of 2007-08 also appear to have been

the last major instance of nonviolent protest against the government, which may indicate a fear amongst civil society of another brutal crackdown, though the government may interpret this lack of protest as contentment with its reforms. It is difficult to assess how this lack of protest affects the risk of genocide without understanding more about the reason for it and how it is perceived by the regime.

Kenyan society is clearly very politically, socially, and culturally divided by its various competing ethnic groups. The presence of several violence-prone armed militias as well as state security forces with demonstrated records of brutality increases the likelihood of any unrest escalating into extreme violence very quickly. Furthermore, these non-state armed groups have large recruiting pools and support bases, and appear ready to act under the influence of charismatic leaders who espouse harmful ideologies based on widely held grievances. This situation is extremely dangerous and presents a high risk of genocide. It could quickly escalate to that point if the right trigger event were to occur. The upcoming presidential elections scheduled for December 2012 could be that trigger. With the relatively peaceful outcome of the August 2010 constitutional referendum standing as a notable exception, Kenya has a pattern of experiencing violence every time its citizens go to the polls. While Kenyan elections are usually a high-stakes event, this will be even more so the case in 2012 since the office of prime minister - one of the main checks on the power of the president created by the coalition government agreement - will cease to exist. Thus, the winner of the presidential election will gain significant power and any accusation of electoral fraud will almost definitely bring large numbers of people out to protest.

Such a scenario could escalate into genocide in several ways, but some likely courses of events

can be speculated based on past events. One possibility is that the political party which retains or comes into power may be presented with significant challenges from the population, whether peaceful or violent. This is likely to receive a harsh response from the security forces and possibly ethnic militias allied to the regime, which could escalate further and become genocidal if the threat is perceived to be strong enough. Another possibility is that disputed election results could result in violence by ethnic militias whose preferred candidates were not elected and who therefore seek to weaken or eliminate the power base of their political enemies through genocide.

As the 2012 elections draw near and monitoring efforts increase, new information may become available, in which case this assessment and its conclusions will be regularly revisited and revised in order to accurately reflect the landscape of Kenyan society. This continuous review will be done with the ultimate goal of not only better understanding the risk of genocide in Kenya but also devising the most effective preventive measures possible to reduce that risk.

5.0 APPENDIX 1 − RISK FACTOR LIST

Political - Institutional

1- Low Degree of Democracy

Compliance with democratic norms such as protecting rights and freedoms and ensuring citizen participation in government reduces the risk of genocide. Autocratic governments are more likely to use violence and coercion to quell internal opposition while established democracies tend to tolerate political participation, including violent protests.

- Harff, Barbara & T.R. Gurr. "Systematic Early Warning of Humanitarian Emergencies," Journal of Peace Research, 35(5): 551-579.

- Ausink, J.A. & P.H. Baker. "State Collapse and Ethnic Violence: Toward a Predictive Model," PARAMETERS - US Army War College Quarterly, 1996 (Spring): 19-31.

2 - State Security Agencies Operate with Few Constraints

Security forces that operate with some degree of independence from legal or regulatory oversight are much more likely to commit serious human rights violations. This increases the risk of genocide because they may react to threats by committing mass atrocities. The risk is even greater if the forces in question are committed to a harmful ideology or the personal dominance of a ruler or elite.

- Harff, Barbara & T.R. Gurr. "Systematic Early Warning of Humanitarian Emergencies."

- Ausink, J.A. & P.H. Baker. "State Collapse and Ethnic Violence: Toward a Predictive Model."

3 - Isolation from the International Community

Isolation from interaction with other states makes regimes less predictable in their actions. There are few avenues for sanction in this case, therefore such regimes lack incentive to conform to accepted norms because they perceive a lower cost for violations. This may increase the risk of genocide when such regimes are faced with internal challenges and feel they have more freedom to use violent repression.

- Baum, Steven K. The Psychology of Genocide: Perpetrators, Bystanders, and Rescuers. (Cambridge: Cambridge University Press, 2008).

- Ulfelder, Jay and Benjamin Valentino. "Assessing Risks of State-Sponsored Mass Killing." Political Instability Task Force, February 2008.

4 - High Level of Military Expenditure

Military spending levels relative to population size reveal how security is prioritized in a given state. It may also provide context to the perception of threats and indicate the level of influence wielded by the military. High levels of expenditure make the military more likely to be used as a first choice for addressing threats or resolving conflict.

- Querido, Chyanda. "State-Sponsored Mass Killing in African Wars - Greed or Grievance?" International Advances in Economic Research, 15:351-361 (2009).

5 - Frequent Changes in Political Leadership

There is a correlation between frequent leadership changes and an increased likelihood of mass killing. This link may be due to unstable elites with unconsolidated authority who will resort to mass killing in order to retain power if threatened, as where more entrenched regimes may not feel this is necessary. Regimes which have come to power through violence may also be more sensitive to internal threats and overreact to any challenges.

- Ulfelder, Jay & Benjamin Valentino. "Assessing Risks of State-Sponsored Mass Killings."

Political - Regime & Ideology

6 - Orientation towards Force and Coercion to Seize and Maintain Power

Elites accustomed to using violence in response to challenges to their power are more likely to use coercion against real or perceived threats. This may escalate into mass atrocities and genocide, which are more likely to be viewed as acceptable measures.

- Harff, Barbara & T.R. Gurr. "Systematic Early Warning of Humanitarian Emergencies."

- Charny, Israel. "An Early Warning System Can Prevent Genocide," Contemporary Issues Companion: Genocide. William Dudley, ed. (San Diego: Greenhaven Press, 2001).

7 - Commitment to a Harmful Ideology

Regimes are more likely to commit genocide when they subscribe to belief systems that justify the dominance or expansion of specific groups which are viewed as superior or the subjection of others who are seen as inferior. Such ideologies may be exclusionary, antagonistic, or revolutionary in nature and generally promote the separation of groups, hostility between them, and dehumanization of outgroup members. These messages may lead to genocide by psychologically preparing people to participate in the persecution and killing of target groups or to stand idly by while others do so.

- Harff, Barbara & T.R. Gurr. "Systematic Early Warning of Humanitarian Emergencies."

- Fein, Helen "Genocide - A Sociological Perspective" (chapter), Genocide: An Anthropological Reader. Alexander Laban Hinton, ed. (Malden: Blackwell Publishers, 2002), pp. 74-90.

- Staub, Ervin. "Genocide and Mass Killing: Their Roots and Prevention" (chapter), Peace, Conflict, and Violence: Peace Psychology for the 21st Century. D.J. Christie, R.V. Wagner, and D.D. Winter, eds., (Upper Saddle River: Prentice Hall, 2001).

- Charny, Israel. "An Early Warning System Can Prevent Genocide."

- Harff, Barbara & T.R. Gurr. "Toward an Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases Since 1945," International Studies Quarterly, 32(3): 359-371 (September 1988).

8 - Charismatic Leadership that Generates Mass Followership

This is particularly dangerous when the leadership appeals to intangibles such as national pride, prestige, or communal group (e.g. racial or ethnic) consciousness. It increases the likelihood of genocide by encouraging members

of the dominant group to become either active perpetrators or passive bystanders if victimization and killing begin.

- Harff, Barbara & T.R. Gurr. "Systematic Early Warning of Humanitarian Emergencies."

9 - Low Degree of Freedom of Speech

The degree to which individuals, institutions, and the media are able to speak freely and criticise the government is a good indicator of the level of freedom in broader society. Lower levels of freedom correlate to a higher risk of genocide as the government is able to act more freely with members of civil society being able to publicize and condemn these actions.

- Note: This risk factor was not derived from any specific source(s); it was extrapolated from a general understanding of the conditions common to authoritarian and genocidal regimes.

10 - Installation of a Newly-created Regime

This may lead to genocidal acts against minority groups, particularly if the new regime is revolutionary in nature and minority groups are somehow associated with the former regime (either in reality or perception).

- Harff, Barbara & T.R. Gurr. "Toward an Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases Since 1945."

11 - Ruling Group Deems the Outgroup(s) to be Dangerous

This may raise the likelihood of retributive genocide if there is a minority group which poses a real or perceived threat to the ruling elite.

- Harff, Barbara & T.R. Gurr. "Toward an Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases Since 1945."

12 - Severe Government Discrimination or Active Repression against Communal Groups

Governments that practice discrimination or active repression against communal groups have been found to be significantly more likely to perpetrate mass killings than governments that do not. This suggests that governments which have demonstrated a willingness to use such measures against their citizens during periods of stability are more likely to resort to even more extreme measures during crises. This may also increase the likelihood of inter-group violence as disenfranchised groups try to access resources and the regime tries to suppress them.

- Ulfelder, Jay & Benjamin Valentino. "Assessing Risks of State-Sponsored Mass Killings."

- Nathan, Laurie. "The Four Horsemen of the Apocalypse: The Structural Causes of Violence in Africa," Track Two, 10:2 (August 2001).

13 - Exclusive Group-based Rule

Regimes with a support base rooted exclusively in one communal group are likely to lead to discriminatory practices by the regime which will create popular resentment and threaten regime security. This threat (real or perceived) may make the regime more likely to use violence to defend itself against opposition.

- Fein, Helen & Barbara Harff. "Early Warning" (article), Encyclopedia of Genocide and Crimes Against

Humanity, Volume 3, (Detroit: MacMillan Reference, 2005).

Economic

14 - Economic Status of the Regime

Economic status depends upon the number and value of resources within a state. High-status states with low international economic interdependence will have greater freedom to deal with internal opponents as they wish. The greater economic interdependence of low-status regimes may decrease their freedom of action against internal minorities and political opponents.

- Harff, Barbara & T.R. Gurr. "Systematic Early Warning of Humanitarian Emergencies."

15 - Long-term Difficult Life Conditions

Life conditions refer to quality-of-life factors such as human and material security. Intense, long-term life problems in a society increase the likelihood of intergroup violence and severe economic problems are a powerful source of social cleavage and upheaval. Countries with widespread poverty have been show to be at higher risk of experiencing violent crises than wealthier states.

- Staub, Ervin. "Genocide and Mass Killing: Their Roots and Prevention."

- O'Brien, Sean P. "Anticipating the Good, the Bad, and the Ugly," The Journal of Conflict Resolution, 46(6): 791-811 (December 2002).

16 - Sudden and Severe Economic Hardship

Sudden shifts in national productivity may reduce a state's capacity to distribute resources equitably. A sudden downturn may rapidly escalate hostilities and trigger intergroup violence if long-term economic instability has already strained racial, ethnic, or religious relationships.

- Harff, Barbara & T.R. Gurr. "Systematic Early Warning of Humanitarian Emergencies."

- Keeler, J.A. "Genocide: Prevention Through Nonmilitary Measures," Military Law Review, 2002 (Vol. 171): 135-191.

- Ausink, J.A. & P.H. Baker. "State Collapse and Ethnic Violence: Toward a Predictive Model."

17 - Socioeconomic Deprivation Combined with Group-based Inequality

Widespread poverty increases the likelihood of popular support for political opposition and rebel groups that promise redistribution of wealth, especially when such wealth is present but hoarded by the elite or reserved for distribution to a particular communal group. Intergroup violence and mass atrocities also become more likely when one group is perceived to have an economic advantage over others, even if it is a non-ruling group. Such relative deprivation can be a powerful source of resentment to be exploited by either regime or opposition leaders.

- Ausink, J.A. & P.H. Baker. "State Collapse and Ethnic Violence: Toward a Predictive Model."

- Chalk, Frank & Romeo Dallaire. "Mobilizing the Will to Intervene: Leadership and Action to Prevent Mass Atrocities" (report), Montreal Institute for Genocide and Human Rights Studies, September 2009.

- Nathan, Laurie. "The Four Horsemen of the Apocalypse: The Structural Causes of Violence in Africa."

Sociocultural

18 - Existence of Distinctive Groups Separated by Social Divisions

Genocide requires the separation of an outgroup from the dominant group for victimization. The existence of distinct groups that generally vote or believe as groups facilitates such intergroup violence and possibly genocide by encouraging individuals to view members of groups other than their own as fundamentally different. Conflicts are especially likely to occur if racial or ethnic groups become so intertwined with the general population that individuals do not vote or believe independently. The more traits that people share the stronger their group identity will be, which is also strengthened through shared experiences of repression.

- Keeler, J.A. "Genocide: Prevention Through Nonmilitary Measures."

- Harff, Barbara & T.R. Gurr. "Systematic Early Warning of Humanitarian Emergencies."

19 - Cultural Devaluation of Outgroup(s)

This practice differentiates between majority society and the outgroup and denigrates the value of the latter. This may be done to strengthen the identity or increase the esteem of the dominant group by elevating it over another, or to justify the lesser status or rights of the outgroup. Such denigration of the outgroup usually builds upon the prior denial of their equality and/or humanity. Such devaluation may be culturally-based and longstanding or a more recent phenomenon.

- Staub, Ervin. "Genocide and Mass Killing: Their Roots and Prevention."

- Fein, Helen. Genocide: A Sociological Perspective. (London: Sage Publications, 1993).

20 - Prior Persecution of Outgroup(s)

In most instances of genocide, there is a gradual progression of thoughts and actions to the ultimate extermination, which is a process that may begin long before the ultimate perpetrators arrive or become active. Such prior abuses encourage increasingly harmful acts by the dominant group. Therefore, outgroups that have suffered persecution in the past are more likely to be targeted for genocide.

- Staub, Ervin. "Genocide and Mass Killing: Their Roots and Prevention."

21 - Legacy of Intergroup Hatred or Grievance

Groups that feel insecurity and mistrust towards another group are more likely to respond to real or perceived threats with violence, which they will view as defensive aggression. Leaders planning to commit genocide will find such pre-existing hostility to be a powerful tool in building support for their cause by reminding their group of the dangers posed by the outgroup (as well as past atrocities committed against them). Feelings of fear and anger encouraged this way can then be forged into forceful feelings of group identity that lead to genocide based on "self-defense" (kill them before they kill us) or revenge. This underlies many conflicts, with aggrieved groups often invoking unresolved injustices that may date back centuries.

- Staub, Ervin. "Genocide and Mass Killing: Their Roots and Prevention."

- Keeler, J.A. "Genocide: Prevention Through Nonmilitary Measures."

- Ausink, J.A. & P.H. Baker. "State Collapse and Ethnic Violence: Toward a Predictive Model."

22 - Population Growth and Youth Bulge

Rapid population growth places tremendous pressure on the economy and social structures as well as government services, infrastructure, and natural resources. Economically weak countries tend to see a direct relationship between high numbers of youth, political instability, and violence. This is primarily because these countries are unable to absorb large numbers of young men into the labour force, increasing the potential for social unrest and violence.

- Chalk, Frank & Romeo Dallaire. Mobilizing the Will to Intervene: Leadership and Action to Prevent Mass Atrocities.

23 - Ethnic Nationalism

Existing cultural assumptions of superiority and exclusive dominance by the members of a particular group facilitate the demonization of outgroups. This is differentiated from regime-promoted harmful ideologies (see Commitment to a Harmful Ideology) in that ethnic nationalism is a pre-existing cultural characteristic of a population which may be exploited by leaders seeking to promote harmful (e.g. exclusionary or antagonistic) ideologies.

- Chalk, Frank & Romeo Dallaire. Mobilizing the Will to Intervene: Leadership and Action to Prevent Mass Atrocities.

24 - Outgroup(s) Viewed as an Obstacle to Economic Progress

When members of a dominant group commonly view outgroup members as obstacles to the acquisition of wealth for the broader society they are more likely to participate in or tolerate the destruction of the outgroup.

- Chalk, Frank & Romeo Dallaire. Mobilizing the Will to Intervene: Leadership and Action to Prevent Mass Atrocities.

Conflict & Upheaval

25 - Political Upheaval

The uprooting of large numbers of people, elites, and/or institutions threatens general security and provides opportunities for both regimes and their challengers to secure/seize power, eliminate threats, and/or attempt to change the social order.

- Harff, Barbara & T.R. Gurr. "Systematic Early Warning of Humanitarian Emergencies."

26 - Conflicts over Status, Power, and Rights

When subordinate groups demand greater rights and opportunities, the resulting conflict can lead to genocide with either the protesting group or the dominant group as potential perpetrators. In the first case, protest can turn into revolt which may, if successful, lead to mass killings or genocide against the dominant group and others associated with the former regime. In the second case, protest and rebellion may provoke reprisal atrocities against the outgroup by the regime. Independence movements create significant disputes, especially if the seceding group uses no military force and the government responds with military force.

- Staub, Ervin. "Genocide and Mass Killing: Their Roots and Prevention."

- Keeler, J.A. "Genocide: Prevention Through Nonmilitary Measures."

27 - History of Conflict

Armed conflict and other crises increase the likelihood of genocide by increasing intergroup tensions, breaking down inhibitions against killing, and providing opportunities to eliminate real or perceived threats. Countries that experience 6 years of conflict within a 25-year period are an average of 15 times more likely to experience a crisis in the year following that period.

- O'Brien, Sean P. "Anticipating the Good, the Bad, and the Ugly."

28 - History of Genocide

A history of genocide, whether recent or in the distant past, increases the likelihood of subsequent genocide by helping to define group identities in terms of victimization by a neighbouring group. This helps those intending to perpetrate genocide build support by reminding group members of their past victimization. The feelings of fear and anger created by these memories of past brutality and injustice are often channelled into strong feelings of the need for group "self-defense" or revenge by eliminating the outgroup.

- Keeler, J.A. "Genocide: Prevention Through Nonmilitary Measures."

- Fein, Helen & Barbara Harff. "Early Warning."

29 - Ongoing Insurgency or Civil War

The majority of genocides and other mass atrocities have occurred during or shortly after wars and rebellions. Governments are most likely to perpetrate mass killing when confronted with insurgencies or engaged in civil wars, especially if the outgroup is a source of real or perceived support for anti-government combatants.

- Harff, Barbara & T.R. Gurr. "Toward an Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases Since 1945."

- Ulfelder, Jay & Benjamin Valentino. "Assessing Risks of State-Sponsored Mass Killings."

30 - Large-scale, Nonviolent, Anti-government Protest

Countries in which large portions of the population have publicly displayed disapproval of the regime in the period prior to an episode of instability are significantly more likely to suffer a mass killing during that instability as those which have not experienced such events.

- Ulfelder, Jay & Benjamin Valentino. "Assessing Risks of State-Sponsored Mass Killings."

6.0   APPENDIX 2 — NEXT STEPS

This risk assessment is the beginning of a much larger and more engaged process which will now begin in order to create a greater understanding of the situation in Kenya. Now that a comprehensive risk profile has outlined the structural factors in Kenyan society that affect the underlying risk of genocide, the Sentinel Project will carry out the following:

- Establishment of partnerships with civil society organisations working in Kenya to facilitate information sharing

- Monitoring of ongoing events to identify genocidal processes that may be taking place

- Assessments of whether any prominent Kenyan organisations - either state or non-state - or individuals harbour genocidal intent

- Assessments of vulnerability to determine which - if any - ethnic groups in Kenya are the most likely to be targeted for genocide

- Release of periodic threat assessments summarizing the information relevant to the above points

- Development and articulation of recommended prevention measures to be implemented by civil society and policy makers

[1] United Nations Development Programme, 2010. Human Development Report 2010, New York: Palgrave MacMillan, p. 162. Intensity of deprivation assessed at 50 per cent; population below income poverty line at 46.6 percent.

[2] L. Morlino, "Hybrid Regimes or Regimes in Transition?" Fundación para las Relaciones Internacionales y el Diálogo Exterior (FRIDE) Working Paper 70, 2008, p. 7.

[3] The 2010 Democracy Index scored Kenya 3.92 for electoral process and pluralism, 4.29 for functioning of government, 4.44 for political participation, 5.63 for political culture and 5.29 for civil liberties. In 2008, Kenya scored 3.50, 4.29, 5.56, 5.63 and 5.00 respectively in the aforementioned categories.

[4] Freedom House, 2011. Freedom in the World 2011, New York: Freedom House. In 2011, Kenya had a political rights rating of 4 and civil liberties rating of 3. In 2010, it had a political rights rating of 4 and a civil liberties rating of 4 (1 being most free and 7 being least free).

[5] Ibid, p. 18.

[6] Officially enacted on 27 August 2010.

[7] See section 85 of 1963 Kenya Constitution (now repealed). Preservation of Public Security Act still contains reference to section 85 as Act has not yet been amended since passing of new Constitution.

[8] The 2009 Global Integrity Index categorised Kenya as "weak" in both rule of law and law enforcement.

[9] Transparency International, 2010, Global Corruption Barometer 2010, Berlin: Transparency International, p. 45. Kenya police received an average score of 4.6, indicating a perception of extremely corrupt, while political parties, the judiciary and the Parliament were also ranked amongst the most corrupt institutions, with an average score of 3.8.

[10] See Public Order Act 1963 and International Covenant on Civil and Political Rights, ratified by Kenya in 1972.

[11] See section 108 of repealed 1963 Kenya Constitution.

[12] 2010 Kenya Constitution, article 245(2)(a).

[13] Republic of Kenya, 2008. Report of the Commission of Inquiry into the Post-Election Violence, Nairobi: Kenya Gazette, p. 479.

[14] W. Odihiambo, P. Kamau, and D. McCormick, 2006. Managing the Challenges of WTO Participation: Case Study 20 – Kenya's Participation in the WTO: Lessons Learned, Geneva: World Trade Organisation.

[15] In a press release dated 25 October 2010, the ICC stated that Kenya had a clear obligation to cooperate with the ICC to execute the warrant and arrest Al Bashir given it was a signatory to the Rome Statute.

[16] The Rome Statute provides that any withdrawal of a state party shall take effect one year after the date of receipt of the notification by the UN Secretary-General.

[17] J. Macharia, "MPs pass motion urging Kenya to withdraw from ICC," Reuters Africa, 22 December 2010, accessed 9 April 2011, <http://af.reuters.com/article/kenyaNews/idAFLDE6BL1RA20101222>

[18] P. Leftie, S. Kumba, and K. Kelley, "Kenya petitions UN organ to delay trials," Daily Nation, 10 February, 2011 accessed 9 April 2011, <http://www.nation.co.ke/News/politics/Kenya+petitions+UN+organ+to+delay+trials+/-/ 1064/ 1105328/-/ 12yufy5/-/index.html>

[19] W. Menya, "Igad: Kenya case may trigger walkouts," Daily Nation, 22 March 2011, accessed 9 April 2011. <http://www.nation.co.ke/News/politics/-/1064/1130700/-/7q5iev/-/>

[20] Republic of Kenya, see note 13, p. 380.

[21] Transparency International, see note 9 above, p. 45. Kenya military received an average score of 2.8; perceived to be less corrupt than the police, judiciary and parliament.

[22] Human Rights Watch, "Kenya: Army and Rebel Militia Commit War Crimes in Mt. Elgon," Human Rights Watch, 2 April 2008, accessed 16 April 2011, <http://www.hrw.org/en/news/2008/04/02/kenya-army-and-rebel-militia-commit-war-crimes-mt-elgon>

[23] Stockholm International Peace Research Institute (SIPRI), 2010. SIPRI Military Expenditure Database 1988-2010, accessed 16 April 2011, <http://milexdata.sipri.org/files/?file=SIPRI+milex+data+1988-2010.xls>

[24] Ulfelder, Jay and Benjamin Valentino. "Assessing Risks of State-Sponsored Mass Killing." Political Instability Task Force, February 2008, electronic copy available at: <http://ssrn.com/abstract=1703426>

[25] D. Beetham et al, 2000. Democracy Report for Jamhuri ya Kenya, The International Institute for Democracy and Electoral Assistance (IDEA)/Series on Alternative Research in East Africa (SAREAT), p. vi.

26   Fund For Peace. "Country Profile – Kenya (2009)" Accessed 9 April 2011.
       <http://www.fundforpeace.org/web/index. php?option=com_content&task=view&id=416&Itemid=580>.

27   Center for International Development and Conflict Management (CIDCM). 2008. Polity IV Country Report
       2008: Kenya, CIDCM, accessed 9 April 2011. <http://www.systemicpeace.org/polity/Kenya2008.pdf>, p. 2.

28   Rakov, S.B. "Democratization and constitutional review in Kenya," 2008, accessed 10 April 2011,
       <http://projekter.aau.dk/projekter/files/14091131/Democratization_and_constitutional_review_in_Kenya__S
       ebastian_Bue_Rakov__2008_.pdf >, p. 32.

29   Fund For Peace, "Country Profile - Kenya (2009)."

30   "Q&A: Kenya's constitution referendum." *BBC News*. 26 July 2010, accessed 2 May 2011,
       <http://www.bbc.co.uk/news/world-africa-10729860>

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       <http://news.bbc.co.uk/2/hi/africa/7269476.stm>

32   "Kenya ratifies new constitution." Al Jazeera English. 27 August 2010, accessed 29 April 2011,
       <http://english.aljazeera.net/news/africa/2010/08/20108273312256283.html>

33   Mulliro, Wilfred. "Kenya's proposed constitution promotes negative ethnicity, says Former Minister."
       Alshahid Network. 31 May 2010, accessed 29 April 2011, <http://english.alshahid.net/archives/7274>

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       <http://hdl.handle.net/1902.1/11796> UNF:5:k4xxXC2ASI204QZ4jqvUrQ== V1 [Version]

35   "Background to the 2008 Post-Election Crisis in Kenya." Amnesty International, accessed 21 April 2011.
       <http://www.amnestyusa.org/all-countries/kenya/background-information-on-the-crisis-in-
       kenya/page.do?id=1361008>

36   "Joshua arap Sang." Courts and Tribunals. The Hague Justice Portal, accessed 30 Apr 2011,
       <http://www.haguejusticeportal.net/eCache/DEF/12/477.html>

37   Coley, Sam. "Kenya: Kass FM, Joshua arap Sang." Radio for Development. 26 September 2010, accessed
       30 April 2011, <http://radiofordevelopment.org.uk/?p=748>

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       Newser. Associated Press, 5 April 2011, accessed 30 April 2011,
       <http://www.newser.com/article/d9mdod5g2/hate-speech-from-kenyan-intl-criminal-court-suspects-could-
       fan-flames-of-violence-official.html>

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       accessed 30 April 2011, <http://in.reuters.com/article/2010/05/11/idINIndia-48391920100511>

40   Ibid.

41   "Background to the 2008 Post-Election Crisis in Kenya." Amnesty International. Accessed 21 April 2011,
       <http://www.amnestyusa.org/all-countries/kenya/background-information-on-the-crisis-in-
       kenya/page.do?id=1361008>

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       ed. 2: World 8. Accessed 30 April 2011 via LexisNexis database.

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       Nation on the Web*. AllAfrica, 19 April 2011, accessed 30 April 2011,
       <http://allafrica.com/stories/201104191144.html>

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       official." *Newser*. Associated Press, 5 April 2011, accessed 30 April 2011,
       <http://www.newser.com/article/d9mdod5g2/hate-speech-from-kenyan-intl-criminal-court-suspects-could-
       fan-flames-of-violence-official.html>

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46   Freedom House, "Freedom of the Press 2010: A Global Survey of Media Independence," pg. 151,
       <http://www.freedomhouse.org/template.cfm?page=16>

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       <http://www.rsf.org/IMG/CLASSEMENT_2011/GB/C_GENERAL_GB.pdf>

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       accessed 23 April 2011, <http://www.amnesty.org/en/news-and-updates/man-shot-dead-police-nairobi-
       forced-eviction-protests-2010-07-21>

49   Freedom House, "Freedom on the Net 2011 - Kenya,"
       <http://www.freedomhouse.org/images/File/FotN/Kenya2011.pdf>

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