



NATIONAL
COHESION AND
INTEGRATION
COMMISSION
KENYA

KENYA'S NATIONAL ACTION PLAN AGAINST HATE SPEECH



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PLATFORM FOR PEACE

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Abbreviations and Acronyms

CoK	Constitution of Kenya
CSO	Civil Society Organization
DCI	Directorate of Criminal Investigation
HS	Hate Speech
ICC	International Criminal Court
KIPPRA	Kenya Institute of Public Policy Research and Analysis
KNCHR	Kenya National Commission on Human Rights
NCIC	National Cohesion and Integration Commission
NSC	National Steering Committee on Peacebuilding and Conflict Management
OSAPG	Office of the Special Advisor on Prevention of Genocide

FOREWORD

May I begin by reminding us about philosopher George Santayana's quote that "Those who forget their history are condemned to repeat it." Kenya remembers that the 2007 post-election violence was fueled by the hate that spread in physical meetings, radios, televisions and online platforms, to name but a few. This, among other factors, informed the creation of the National Cohesion and Integration Commission in 2008 and also the limitation placed on the right to freedom of expression in Article 33 of the 2010 Constitution of Kenya.

Since inception, the Commission has put in place several measures to prevent, combat and address the effects of hate speech including producing alternative narratives to hate speech. Sadly, hate speech, based on intolerance, ethnocentrism, discrimination and hostility, remains part of the political discourse in Kenya today. Information technology has significantly contributed to spreading and amplifying this severe conflict trigger. As such, hate speech continues to pose an urgent challenge to social cohesion and nation building.

With just months to the General Election, it is imperative that an 'out of the box' initiative be mooted and implemented to address the effects of past incidents and to prevent future occurrences. It is on this background that the Commission led the development of Kenya's first National Action Plan against Hate Speech. Special appreciation goes to the UN Office of the Special Adviser on Prevention of Genocide for the support and guidance that bolstered our effort to deliver this Plan.

In acknowledging the importance of actions by individual stakeholders in the fight against hate speech, the Commission undertook consultations with various actors to consolidate this Plan of Action. The major thrust behind this initiative is to develop a comprehensive and coherent approach towards tackling hate speech in the country. To this end, the Plan sets stage for the generation of practical tools and the mobilization of a 'no hate speech' movement. It shall also enhance the synergistic efforts of stakeholders by improving their strategic capabilities in combating the increasing proliferation of hate speech.

The Commission in collaboration with stakeholders laid out the actions being currently undertaken by various actors but also set out commitments for both the short term (2-12 months) and the long term (12-26 months). The Plan advises on how to take optimum advantage of the available opportunities to advance a hate-free society.

I therefore welcome all stakeholders, individuals or organizations, who have the boldness to say 'NO' to hate speech to join us and Pamoja, we shall take Kenya to the hate-free zone.

REV. DR. SAMUEL KOBIA, CBS
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I. Introduction

In response to rising incidences of hate speech around the world, the UN Secretary-General Antonio Guterres launched the United Nations Strategy and Plan of Action on Hate Speech in June 2019. The strategy recognizes that over the past 75 years, hate speech has been a precursor to atrocity crimes, genocide, war crimes and crimes against humanity. When launching the United Nations Strategy and Plan of Action on Hate Speech, the UN Secretary-General Antonio Guterres referred to hate speech as an attack on tolerance, inclusion, diversity and the very essence of human rights norms and principles on which the United Nations are grounded. More broadly, he stated that hate speech undermines social cohesion, erodes shared values, and can lay the foundation for violence, setting back the cause of peace, stability, sustainable development and the fulfillment of human rights for all.

Hate speech in the Kenyan society reached heightened levels in 2007 when it was not even recognized as a crime. To date, the hate speech continues to be blamed for societal polarization and the attendant violence which results in the loss of lives, destruction of property and mass displacements among others. It is therefore imperative for all Kenyans to stand up against this vice. There is no better way to do this than to adopt a country plan of action against hate speech and related offences. The Plan acknowledges the role of the various stakeholders in combating hate speech and offers a coordination reference point where all these efforts can be synergized to achieve greater impact. The Plan will act as an accountability tool for the public to check the various stakeholders' contributions.

The development of this national plan of action would not have been at a better time. Kenya faces a general election in just five months, necessitating timely and effective interventions on hate speech. The Plan has been developed through review of laws and regulations against hate speech and consultations with relevant stakeholders. If well executed, this Plan of Action will reinforce deterrence against hate mongering.

II. Background

Kenyan politics have been accompanied by large-scale violence since the reintroduction of multi-party elections in 1992. In 2007/08 post-election violence, over 1,500 lives were lost, about 650,000 people were displaced, and properties worth millions of Kenya shillings were destroyed. This is besides the severe psychosocial impact left on both perpetrators and victims of the said violence. In 2013, over 430 people died while in 2017 serious human rights violations were recorded. In all the electoral violence, sexual and gender-based violence was meted against members of the public as well as female political candidates.

It is a fact that electoral violence in Kenya does not exist in a vacuum. Politicians always take undue advantage of community grievances to polarize communities before, during and after elections. The notable grievances have included inequalities, land and boundary conflicts, competition for resources, and poor governance among others. This manipulation has routinely involved the creation and escalation of ethnic suspicion and hatred through hate narratives.

¹ <https://www.un.org/en/genocideprevention/hate-speech-strategy.shtml>

² United Nations Office on Genocide Prevention and the Responsibility to Protect

³ Dialogue Africa Foundation, (2009). Kriegler and Waki Reports: Summarized Version. DAF

⁴ HRW, (2013) High Stakes: Political Violence and the 2013 Elections in Kenya. Accessed online on 13th February 2022 at <https://www.hrw.org/sites/default/files/reports/kenya0213webwcover.pdf>

⁵ KNCHR, (2019) Silhouettes of Brutality. KNCHR

In 2007, the ICC charged Joshua Sang' for spreading hate content via a vernacular radio station. By this time, the country had no law that defined nor criminalized hate speech. In 2008, the NCI Act was enacted, thereby establishing the NCIC to tame hate speech and promote national cohesion and integration. In defining hate speech, the Act highlights two main thresholds; the use or spread of content that is threatening, abusive or insulting, and the intent to stir up ethnic hatred. The Act also covers other offences related to hate speech namely Ethnic Contempt and Incitement to violence.

Section 77 of Kenya's Penal Code also contains laws that relate to incitement to violence and disobedience of the law. The 2010 Constitution of Kenya expressly prohibits hate speech by stipulating that the right to freedom of expression does not extend to incitement to violence, hate speech and advocacy of hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm. On the other hand, the 2nd schedule of the Media Act provides that quoting persons making derogatory remarks based on ethnicity, race, creed, color and sex should be avoided. In the bid to combat hates speech, the National Cohesion and Integration Commission sought to build the capacity of the media and the criminal justice system in hate speech management by developing the 'Media guideline on hate speech' and the 'training manual for investigators and prosecutors'.

In the years following the 2007 violence, and with the establishment of so many social media platforms, hate speech shifted from mainstream to online media. In 2013 general elections, large numbers of threats and incitements to violence were reported on social media networks. Hootsuite 2021 reports that there were 59.24 million mobile connections and more than eleven million social media users in Kenya in January 2021. This number, equating to about 20% of the entire population, had grown by 2.2 million (+25%) between 2020 and 2021.

Despite uniting and connecting people on so many grounds, social media platforms are also contributing to spreading suspicion, disseminating inflammatory statements and spreading hate speech. In fact, 54% of the hate speech and related offences cases pending before court in Kenya in 2022 were perpetrated on social media. The perpetrators in these cases include politicians, journalists, bloggers, public officials, artists, and religious leaders among others. Some of the propagandists who mete hate speech are used as instruments for politicians and their parties.

Notably, the crime of hate speech is punishable by law. The NCI Act provides that 'A person convicted of hate speech is liable to a fine not exceeding KES 1,000,000 or to imprisonment of up to 3 years, or to both.' Unfortunately, while many suspected individuals are charged in court, this does not yield many successful convictions. Unfortunately, the failure to garner successful prosecutions cements impunity. Part of the problem is attributed to the backlog of cases in the Kenyan judiciary. In October 2021, the judiciary announced the setting up of five specialized courts in Nairobi, Mombasa, Nakuru, Kisumu and Eldoret to deal with hate speech cases in the run up to, and during, the 2022 general elections.

At the same time, the NCIC developed the wall of fame to recognize political aspirants who promote cohesion and wall of shame to dishonor political aspirants who perpetrate hate speech or related offences even before they are charged in court. Nonetheless, more needs to be done to address hate speech in Kenya. Finally, the Commission identified six roadblocks to peaceful coexistence namely lack of trust, sub-culture of violence, selfish leadership, ethnic polarization, untimely and inadequate response to emerging conflicts, and structural inequalities as shown in the figure below.

ROADBLOCKS TO PEACEFUL ELECTIONS IN KENYA



LACK OF TRUST

- Low trust levels between communities.
- Declining public trust in government institutions.
- Distrust among leaders.



SUB-CULTURE OF VIOLENCE

- People use violence to express dissent.
- Some politicians encourage the imposition of violence on people of opposing political persuasions.

SELFISH LEADERSHIP

- Political actors put self-interest above national interest.
- People protect selfish leaders simply because they belong to the same tribe.



ETHNIC POLARIZATION

- Hate related speech increases during campaigns.
- Media escalates conflict by disregarding conflict sensitive reporting.
- Social media intensifies polarization.

UNTIMELY & INADEQUATE RESPONSE TO CONFLICT

- Delayed response to conflict.
- Citizens do not report incidents timely.
- Inadequate coordination & synergy between peace actors.



STRUCTURAL INEQUALITIES

- Kenya remains an unequal society.
- Historical injustices have not been fully addressed.
- Some pre-existing community conflict remain unresolved.

(c) National Cohesion and Integration Commission

Objectives

Kenya's National Action Plan against Hate Speech include the objectives, the actors contributing to combating hate speech, the priorities, commitments, challenges and opportunities in the process of hate speech management.

The objectives of this National Action Plan are to:

1. Provide a platform for synergy building among stakeholders who prevent and counter hate speech in Kenya
2. Guide the implementation of hate speech management in Kenya

III. Mapping of actors involved in addressing hate speech in Kenya

There is an array of stakeholders who work towards preventing, countering and addressing the effects of hate speech in Kenya. All these actors bring different and distinct qualities to the process of combating hate speech.

MAPPING OF ACTORS ENGAGED ADDRESSING HATE SPEECH IN KENYA		
ACTOR	FOCUS	ONGOING ACTIVITIES
NCIC	Investigation	<ul style="list-style-type: none"> • Carry out research and inquiry on hate speech and related offences • Gather evidence on perpetrators of hate speech • Attend court as witnesses and to track the court process
	Monitoring	<ul style="list-style-type: none"> • Procure and distribute monitoring gadgets to investigations agencies • Monitoring of Public spaces, mainstream and social media to detect incidences of hate speech • Deployment of peace and cohesion monitors particularly during electioneering periods
	Empowerment of various stakeholders	<ul style="list-style-type: none"> • Training of Investigators, Prosecutors criminal justice actors, local security actors • Public Awareness and sensitization
	Community empowerment	<ul style="list-style-type: none"> • Undertake conflict prevention • Address ethnic discrimination and structural inequalities • Build capacity of communities and institutions to promote cohesion • Lobby for cohesion friendly legal frameworks • Commission scientific research into national cohesion and integration
	Conciliation	<ul style="list-style-type: none"> • Develop tools to govern the conciliation process of hate speech • Constitute a conciliation committee as need arises • Undertake conciliation between perpetrators and complainants of hate speech

MAPPING OF ACTORS ENGAGED ADDRESSING HATE SPEECH IN KENYA		
ACTOR	FOCUS	ONGOING ACTIVITIES
NCIC	Collaboration and Partnerships	<ul style="list-style-type: none"> • Lead a multi-sectorial team on elimination of hate speech • Lobby for partnerships in dealing with hate speech • Undertake hotspot mapping and scenario building • Develop and implement National strategies
Ministry of Interior and Co-ordination of National Government	Monitoring	<ul style="list-style-type: none"> • Set up of National Command Centre on Election Security
	Hate Speech Prevention	<ul style="list-style-type: none"> • Prevent hate speech through resolution of community disputes through District Peace Committees, National Government Administration Officers and nyumba kumi
	Fostering national unity	<ul style="list-style-type: none"> • Provide the lead on national cohesion by using the presidency as a symbol of National unity • Initiate and realize national conversations that reach out to everyone regardless of their ethnicity, religion, region or race
National Steering Committee on Peacebuilding and Conflict Management (NSC)	Peace building and conflict management	<ul style="list-style-type: none"> • Set up and build the capacity of county peace forums • Monitor elections • Train and capacity build CSOs and grassroots organizations • Generate and implement Peace dividend programs in communities
ODPP	Prosecution	<ul style="list-style-type: none"> • Undertake criminal proceedings against perpetrators of hate speech based on evidence collected • Recommend investigation of hate speech Perpetrators; • Contribute to law reforms on hate speech
Directorate of Criminal Investigations	Investigation	<ul style="list-style-type: none"> • In conjunction with the NCIC carry out investigations on hate speech • Collect and provide intelligence on hate speech • Facilitate witnesses during prosecution
	Monitoring	<ul style="list-style-type: none"> • Detect and prevent incidences of hate speech
Witness Protection Agency	Provide Witness Protection	<ul style="list-style-type: none"> • Establish and maintain a witness protection program for witnesses in hate speech cases; • Provide testimonial evidence to the justice system on behalf of witnesses of hate speech

MAPPING OF ACTORS ENGAGED ADDRESSING HATE SPEECH IN KENYA

ACTOR	FOCUS	ONGOING ACTIVITIES
Judiciary	Case Determination and management	<ul style="list-style-type: none"> • Hear and determine hate speech cases • Establish practice directions on hate speech • Set up special courts on hate speech
Treasury	Financial Support	<ul style="list-style-type: none"> • Provide resources to NCIC and other government stakeholders involved in combating hate speech • Facilitate collaboration with the international community and development partners willing to support mitigation of hate speech
Social media Platforms (FB, Twitter)	Regulation	<ul style="list-style-type: none"> • Generate regulations that discourage hate speech perpetration on their various platforms
	Monitoring	<ul style="list-style-type: none"> • Monitor their platforms for breach of their regulations on hate speech • take proactive steps to limit spread of hate speech online by using other tools available to them such as warnings for misinformation etc. • Ensure content moderation in local languages
	Investigation	<ul style="list-style-type: none"> • Investigate and pull down hate speech posts
Political parties and Coalitions	Accountability	<ul style="list-style-type: none"> • Require their members to subscribe to the Peace and Political Decency Charter • Investigate their members who commit hate speech • Put in place measures to sanction members who perpetrate hate speech • Take responsibility on behalf of their members • Punish the deviant political party members and aspirants • Promote messages of inclusion and rights
	Peace champions	<ul style="list-style-type: none"> • Organize awareness raising forums targeting political aspirants • Undertake public and civic education • Award badges of honor to the best performing aspirants in promoting cohesion and integration
Parliament	Legal Frameworks	<ul style="list-style-type: none"> • Generate laws that enable effective handling of hate speech • Institute legislation Oversight for other key Government actors • Organize sensitization and awareness raising efforts on hate speech

ACTOR	FOCUS	ONGOING ACTIVITIES
Civil society (secular and religious)	Monitoring	<ul style="list-style-type: none"> • Monitor mainstream and social media to detect incidences of hate speech • Deploy peace and cohesion monitors particularly during electioneering periods • Undertake social media monitoring for hate speech
	Advocacy	<ul style="list-style-type: none"> • Advocate and lobby for laws and policies that combat hate speech • Speak out against instances of hate speech • Spread counter-narratives
	Public Awareness	<ul style="list-style-type: none"> • Organize sensitization forums on the negative impact of Hate Speech • Disseminate public information and raise awareness on hate speech
	Promoting of cohesion and integration amongst Kenyans	<ul style="list-style-type: none"> • Build capacity of Social Media Influencers • Preach peace and condemn violence from their pulpits • Stop politicians from using their pulpits to spread hate speech
Private Sector	Financial Support	<ul style="list-style-type: none"> • Investigate and pull down hate speech posts
	Workplace Policies	<ul style="list-style-type: none"> • Develop workplace policies against Hate Speech
	Monitoring	<ul style="list-style-type: none"> • Monitor and compile evidence for prosecution
Communication Regulatory Bodies e.g. MCK, CAK etc.	Accountability	<ul style="list-style-type: none"> • Develop and enforce regulations against Hate Speech • Monitor mainstream and social media • Discipline their members whenever they perpetrate Hate Speech • Build capacity of State actors • Regulate the media and communication industry
Mainstream Media	Sensitization	<ul style="list-style-type: none"> • Provide platforms to sensitize the public on effects of Hate Speech • Provide evidence and witness in Hate Speech cases
	Monitoring	<ul style="list-style-type: none"> • Monitor and report before, during and after elections • Deploy investigative journalists • Train community radio stations and other media actors
Ministry of education	Education and Values	<ul style="list-style-type: none"> • Incorporate Hate Speech in the educational curriculum • Develop short audio programs on cohesion and integration • Promote Amani Clubs with a special component on deterrence of hate speech • Foster Character development education • Undertake mentorship and leadership trainings for children and youths

ACTOR	FOCUS	ONGOING ACTIVITIES
Institutions of Higher Learning	Monitoring	<ul style="list-style-type: none"> Conduct research and come up with reports and findings that can inform interventions
FAMILY	Character development	<ul style="list-style-type: none"> Educate and lay good ethical values for the children Undertake mentorship on national values and character Punish errant behaviors

IV. Priorities for addressing hate speech (short and long term)

This national action plan lays out the following short term and long-term commitments. Short term commitments will be implemented within 2 to 12 months while long term commitments will be implemented within 12 to 26 months.



SHORT-TERM

- Monitor and analyze hate speech
- Engage and support victims of Hate Speech
- Convening Relevant actors
- Engage new and traditional media
- Research and Technology
- Advocacy
- Leveraging on Partnerships

LONG-TERM

- Address root causes, drivers and actors of hate speech
- Use Education as a tool for addressing and countering hate speech



V. Plan of Action

This plan of action details the activities that shall be undertaken under each commitment and specifies the roles of different stakeholders in the implementation process.

KENYA'S NATIONAL PLAN OF ACTION ON HATE SPEECH			
SHORT TERM PRIORITIES			
Commitments	Proposed activities	Outcome	Responsible actors
Monitor and analyze hate speech	Monitor, collect, record, analyze and report hate speech in public spaces	Increased deterrence in perpetrating hate speech in public spaces	NCIC, DCI, Ministry of Interior, Kenya National Committee on Prevention of Genocide and Mass Atrocities & CSOs
	Monitor, collect, record, analyze and report Hate Speech on social media	Reduced hate content on social media	CSOs, Media Agencies & NCIC
Engage and support victims of Hate Speech	Offer psychosocial support for Victims of Hate Speech	Increased levels of social reconciliation	CSOs, Religious organizations and NCIC

SHORT TERM PRIORITIES

Commitments	Proposed activities	Outcome	Responsible actors
Engage and support victims of Hate Speech	Undertake conciliation between perpetrators and victims of Hate Speech	Reduced retaliation and violence	NCIC
	Conduct gender analysis and interventions to empower women and youth against gender hate speech	Women and youths empowered to engage and mitigate effects of hate speech	National Gender and Equality Commission, Ministry of Public Service, Gender and Youth Affairs, CSOs
	Implement policy initiatives through law enforcement, judicial and other public officials.	Improved community trust in government to handle hate speech	National Police Service, DCI, ODP, Judiciary, Ministry of Interior.
	Recognize and reward the institutions fighting hate speech and shame the perpetrators/ spreaders of hate speech	Increased knowledge on the dangers of hate speech	NCIC, Media, CSOs
	Enhance access to justice by providing legal aid and fairness to victims of Hate Speech	Increased deterrence on the commission of hate speech and relates offences	Judiciary, Law Society of Kenya, CSOs, KNCHR
Convening Relevant actors	Build partnerships to lay policy and programmatic interventions against hate speech	Sufficient financial and technical resources to combat hate speech	NCIC, Ministry of Interior and Coordination of local Government
Engage new and traditional media	Generate and disseminate online/ alternative narratives against hate speech	Dilute hate content on online platforms	CSOs, NCIC
	Empower social media users (bloggers, citizen journalists etc.) to engage responsibly online	More responsible use of social media	NCIC, CSOs, Media
	Build the capacity of mainstream media journalists to report using conflict sensitive means	Increased utilization of peace journalism	Media, NCIC, CSOs
	Strengthen self-regulation and codes of conduct	Reduced hate speech from members or users	Political Parties, Media, IT Companies
	Promote values of tolerance, non-discrimination and cohesion through public engagement	Enhanced resilience among the public against manipulation through hate speech	Media, CSOs & KNCHR
Research and Technology	Undertake research on the use of social media for hate speech perpetration	Increased knowledge on the irresponsible use of social media and the mitigation factors	Academia, NCIC, KIPPRA

SHORT TERM PRIORITIES

Commitments	Proposed activities	Outcome	Responsible actors
Research and Technology	Operationalize an early warning and rapid response system across the country	Increased prevention of violence	NSC, NCIC,
	Undertake a national survey of the status of cohesion in the country (social cohesion Index)	Increased knowledge on the indicators of social cohesion	NCIC, KIPPRA
	Promote the use of technology in the monitoring and analysis of hate speech incidences on social media and support actions against hate speech	Improved tracking of hate speech on online spaces	Tech Companies
Advocacy	Highlight trends of hate speech	Enhanced awareness on the dangers of hate speech	NCIC, Academia
	Carry out campaigns against hate online and offline	Reduced incidences of hate speech	CSOs, NCIC
	Lobby for adoption of relevant policies and guidelines	Empowered legal and policy frameworks to combat hate speech	CSOs, NCIC
	Express solidarity with targeted/ vulnerable groups	Improved capacity for atrocity preventions	CSOs, NCIC
	Develop workplace policies against perpetration and perpetuation of hate speech	More safer spaces and reduced hate speech at workplaces	ALL
	Enact relevant laws to improve hate speech management in Kenya organizations	Effective institutions and agencies More responsible social media	Government of Kenya, Parliament, & Government Agencies
Leveraging on Partnerships	Map the capacity of institutions involved in hate speech management and generate policy options for improvement	Improved capacities of institutions that counter hate speech	CSOs, NCIC
	Train the justice sector actors on hate speech management	Improved enforcement process and hate speech case management	NPS, Judiciary, ODPP

KENYA'S NATIONAL PLAN OF ACTION ON HATE SPEECH

LONG TERM PRIORITY

Commitments	Proposed activities	Outcome	Responsible actors
Address root causes, drivers and actors of hate speech	Ensure equitable representation of all gender and ethnic groups in public employment	Enhanced feelings of belonging to Kenya by all gender and ethnic communities	State and private institutions
	Implement conflict prevention, mediation and transformation	Increased reconciliation within the society	NCIC, CSOs, National and County Governments
	Audit of public service delivery by ethnicity	Enhanced Equality and equity across the nation	NCIC, CSOs, Public Service Commission, Commission on Administrative Justice
NCIC, CSOs, Public Service Commission, Commission on Administrative Justice	Establish Amani Clubs in more schools	More safe spaces for negotiating solutions to existing conflicts	NCIC, Ministry of Education
	Integrate cohesion principles in the school curriculum	Reinforce the impact of education on future generations	KICD, Ministry of Education
	Establish clubs for youths who are out of school and infuse cohesion in informal programs such as rites of passage	Established safe spaces for youths who are out of school	Youth groups, Elders Councils and religious leaders

VI. Challenges and Opportunities for implementation

A. Challenges

The country has faced several challenges in its effort to combat hate speech. These are discussed below:

- Uncoordinated actions from various actors on hate speech: The lack of coordination of key state and non-state actors across the country results into the duplication of activities and functions. The potential for synergy exists and should be taken advantage of.
- Proliferation of Online hate speech: This remains a major challenge for the NCIC going forward, particularly as internet penetration continues to grow across Kenya and as the COVID-19 pandemic sends more people online than ever before.
- Use of pseudo names and accounts: Online hate mongers use fake and pseudo names and accounts therefore making it difficult to identify them
- Electronic evidence Act: The Kenyan law allows electronic and digital evidence provided that the threshold set by the law is met. It is therefore not automatic for the same to be admissible as there are a further set of requirements that must be met before the same is admissible. This is provided for in Section 106 B of the Evidence Act. The provisions are quite technical but the most important thing to note is that electronic evidence on its own will not be admitted unless it has been authenticated usually by an expert.

- Weak legal backing when it comes to the war on hate speech: NCIC is unable to fulfil its mandate due to lack of clarity on hate speech laws. Hate speech vs free speech. Kenya also suffers from weak implementation of laws and prosecution processes.
- Jurisdictional challenges: Some of the individuals who propagate hate speech in Kenya whether online or offline do not live in Kenya making it hard for Kenyan courts to prosecute the suspects since they operate in a different jurisdiction.
- Inadequate understanding of what constitutes hate speech by the public: Kenyan citizens do not understand comprehensively what constitute hate speech and what is freedom of association and expression. Between 2018 and 2022, over 70% of the complaints filed at the Commission were dismissed or referred to other agencies because they did not constitute hate speech as defined by the NCI Act.
- Limited investigative capacity: There is limited capacity to investigate hate speech in Kenya due to existing inadequacy in human resource, financial and equipment requirements. The problem is further compounded by lack of digital software that are crucial for detection and tracking of online hate speech.
- Interference with the investigations and prosecution of cases: Most hate speech suspects are politicians or individuals allied with powerful politicians. Political interference has influenced the enforcement, investigations and/or judicial processes during the processing of hate speech cases. This is aggravated by the fact that the NCI Act can be repealed on the floor of Parliament.
- Intimidation of key witnesses: The prosecution witnesses on hate speech cases face intimidation from perpetrators or their representatives, or are influenced to withdraw their testimonies. There are cases where witnesses withdrew, citing threats, intimidation, or fear of reprisals particularly of cases involving high profile politicians.
- Limited funding for the hate speech work: NCIC is underfunded and understaffed making it more difficult to monitor hate speech across the country.
- Low trust in Government institutions charged with dealing with issues of hate speech: There is a perception bias by the public against the Commission. The fact that few prosecutions have ended in successful convictions cements this negative bias.
- Definition of hate speech is limited to ethnicity, race and religion leaving out a major issue that plays out during elections. There is no clear focus on dealing with hate speech that centers on women. Gender based violence is rampant during elections and one of the major tools used against women is hate speech/slur.

B. Opportunities for the Management of Hate Speech

Legal Framework: Kenya has several laws and policies which support the fight against hate speech. These include but are not limited to the Constitution of Kenya, the NCI Act, the Media Act, the Computer Misuse and Cybercrimes Act, Kenya Information and Communications Act, and the Penal Code.

Existence of other organizations that seek to combat Hate Speech and willingness to build synergy: Hate speech management can leverage on the work of other agencies like CSOs, Religious Organizations, Media and the Private Sector. The religious sector presents a consistent weekly opportunity to engage the masses. CSOs have substantial capacity to raise awareness and lobby for policy adoption.

The private sector can offer financial support to hate speech management efforts. Mass media has the capacity for wide outreach across the country.

Strategic Partnerships: There is room to strike and benefit from non-traditional partners in the fight against hate speech. These include UN agencies, IT companies, international organizations and mainstream government including the Ministry of ICT.

VII. Conclusions

This National Action Plan is the first step towards providing a comprehensive and coherent approach towards tackling hate speech in the country. It acknowledges the unique strengths and contributions of each actor, including the community, in this fight. Using a whole of society approach in the implementation of this Plan of Action will accelerate the attainment of its objectives by reducing duplication of efforts, providing guidelines and emphasizing points of synergy between actors.

This National Plan of Action is a living document that will be updated consultatively on periodic basis by all the relevant stakeholders.

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