From social hostility to social media: Religious pluralism, human rights and democratic reform in Africa

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Summary

This article examines the new terrain of religious freedom and human rights in Africa, with particular attention to the role of social hostilities in restricting religions. In the current environment of 'post-secularism' and the global resurgence of religion, the relationship between government restrictions and social hostilities is particularly complex in Africa, in light of the high degree of religiosity and the notably-intertwined relationship of religion, culture, politics and law, in marked contrast to the secularist and separationist paradigms that prevail in Europe and North America. Paradoxically, though the restrictions on religious freedom in many African nations stem from or have been exacerbated by social hostilities, including pernicious and inflammatory uses of social media, solutions to social hostilities may depend a great deal on empowering religious and civil society groups in the creative and constructive use of social media to change the normative perceptions, attitudes and values that underlie successful constitutional and democratic reform. Indeed, some of these creative uses of social media are already happening, but are threatened by crackdowns on freedom of expression and social media by the state. This article examines uses of social media both to inflame and to reduce social hostilities in recent elections and constitutional referenda in Kenya, Tanzania and Zambia and argues the need for a 'socio-legal' paradigm for understanding both perceptions of religious hostilities and religious human rights claims in their full social, political and cultural context.

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1 Religious resurgence, religious pluralism and religious rights

God is back is the title of a recent book by the editors of *The Economist* on the global resurgence of religion in what is now being called the 'post-secular' era.[1] This assertion is perhaps nowhere more true than in Africa, which has been described as one of the 'most religious places in the world' by the Pew Forum on Religion and Public Life in its 2010 report *Tolerance and tension: Islam and Christianity in sub-Saharan Africa.*[2] In fact, many, if not most, Africans would likely argue that God never left. Over centuries of colonisation and missionary expansion, particularly in the course of the twentieth century, the world's two fastest growing religions, Christianity and Islam, both gained large numbers of adherents in Africa, effectively dividing the continent between Muslim north and Christian south.[3] Religious concerns over a number of issues, including homosexuality, religious pluralism and Muslim-Christian relations, have manifested themselves in recent African political elections and constitutional referenda – sometimes inflaming emotions, offending feelings, and threatening to cross the line into 'hate speech'.[4] These elections and constitutional reforms have also raised religious tensions between Muslims and Christians in countries with significant Muslim populations and even

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1   J Mickelthwaite & A Woolridge *God Is back: How the global revival of faith is changing the world* (2009). For more on the trend of religious resurgence and its international political implications, see MD Toft *et al* (eds) *God's century: Resurgent religion and global politics* (2011); TS Shah *et al* (eds) *Rethinking religion and world affairs* (2012). For discussions of post-secularism and its implications for contemporary society, see PL Berger *The desecularization of the world* (1999); C Calhoun *et al* (eds) *secularism* (2011); E Mendieta & J van Antwerpen (eds) *The power of religion in the public sphere* (2011); EK Wilson *After secularism: Rethinking religion and global politics* (2011); P Gorski *et al* (eds) *The post-secular in question: Religion in contemporary society* (2012). See also M Naím *The end of power* (2013) esp ch 9, for a fascinating chronicle of the decline of traditional sources and sites of power that includes a keen analysis of the 'competition for consumers and for believer in the great religions' as they have sought to hold onto and even expand their authority.

2   For statistics on the growth of Islam and Christianity in Africa and the high levels of religious affiliation, particularly of Islam and Christianity in Africa, see Pew Forum on Religion and Public Life *Tolerance and tension: Islam and Christianity in sub-Saharan Africa* (2010) i-ii 3 and chs 1-2.

3   This pattern of religious division can even be seen within individual countries, on a north-south axis, as in the case of Nigeria and Sudan, and on an east-west axis in places like Kenya and Tanzania, where Muslims inhabit the eastern coastal areas. For an excellent account of these north-south divisions, see E Griswold *The tenth parallel: Dispatches from the fault line between Christianity and Islam* (2010). For a briefer synopsis focused on Nigeria, see also E Griswold 'God's country' *The Atlantic* 1 March 2008.

4   For a detailed review of these religion and constitutionalism developments in Kenya, Tanzania and Zambia, see MC Green 'Religious pluralism in recent African constitutional reform' (2013) 28 *Journal of Law and Religion* 401-39. For a discussion of some of the emerging literature on the relationship between religious freedom and freedom of expression, particularly the problem of hate speech, see MC Green 'Between blasphemy and critique: Freedom of religion and freedom of speech' (2014) 29 *Journal of Law and Religion* 176-96.

in countries where the Muslim population remains relatively small but fears of Islamic incursion loom large.

At the same time that religious tensions and social hostilities have been on the rise in some parts of Africa, so have new means of communication and social interaction. Access to the internet and various online social media has been fuelled in many African countries by the proliferation of cellphones and smartphones, which surpass computers in many cases as the most common means of African access to the digital world.[5] These social media have played a major role in facilitating democratic and constitutional debate, but in some cases their use has exacerbated social tensions and raised hate speech concerns. The profusion of African digital discourse has also prompted new laws and government initiatives limiting freedom of expression in the name of preventing hate speech prevention. Some of these measures risk threatening important forms of inter- and intra-religious critique, even as they are aimed at defusing religious and ethnic tensions. The clampdown on freedoms of religion, expression and the press in some countries also threatens journalists, activists and religious leaders and organisations, who often serve as key defenders of human rights. Concerns about social hostilities and social media, when they are converted into laws limiting freedoms of religion and expression, thus place in jeopardy larger goals of democracy, religious pluralism and human rights in Africa.

In this article, I examine this new terrain of human rights in Africa around freedom of religion and freedom of expression, with particular attention to the effects of social hostilities around religion and ethnicity – two categories of communal identity which often go hand-in-hand in Africa – with a focus on the potential of social media to either fan the flames of intercommunal conflict or to be a means toward democratic reform. The relationship between government restrictions and social hostilities is particularly complex in Africa, in light of the intertwined relationship between religion, culture, politics and society that can often exist, in marked contrast to the secularist and separationist paradigms of religion and state that exist in Europe and North America. I argue that the current context of global religious resurgence and technological advances in communication, coupled to the weak, corrupt and increasingly authoritarian governments in some African nations, has created situations in which social hostilities around religion and ethnicity and their expression, particularly in social media, warrant close attention. Yet, even as social hostilities around religion and ethnicity are at risk of exacerbation through pernicious uses of social media, the solutions to these hostilities may also lie in civil society and religious organisations being empowered to use social media creatively and constructively to disrupt and transform in a more positive direction the normative perceptions, attitudes and

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5   See T Shapshak 'Africa not just a mobile first continent – It's mobile only' *CNN.com* 4 October 2012.

values that are the necessary underpinning for democratic reform and the development of an African human rights culture.

With these ideas in mind, I examine the current context of religious human rights, social hostilities around religion and ethnicity, and the rise of social media, in the context of recent political elections, constitutional referenda and civil discourse in Kenya, Tanzania and Zambia. I pay particular attention to Muslim-Christian relations in these countries,[6] as well as to more general questions of religious freedom and religious pluralism, especially where these have manifested themselves in social media. In that connection, I analyse the prospects for religious freedom and religious pluralism in these countries in connection with the larger context of human rights - especially freedoms of religion and expression - that are increasingly at risk in these East and Southern African nations. I conclude with some remarks on the need to develop a 'socio-legal paradigm' for understanding religious human rights in Africa that goes beyond the prevailing secularist and separatist paradigms of religion-state relations and is capable of taking into account perceptions, attitudes and values that might seem imperceptible, intangible, and even illusory, but which nevertheless have a profound effect on religious pluralism, democracy and human rights in Africa today.

2 A Durban epiphany: Religious human rights and the rise of social hostilities

In its ongoing examination of global religious forces, the Pew Forum on Religion and Public Life (recently renamed the Religion and Public Life Project) has in recent years kept a tally of global restrictions on religion, including both *government restrictions* on religion and religious restrictions due to *social hostilities*. In its 2009 report, *Global religious restrictions*, Pew Forum researchers reported that one-third of the world's countries, containing 70 per cent of the world's population, had 'high or very high' restrictions on religion.[7] The Pew Forum's 2011 follow-up report, *Rising religious restrictions,* reported that one-third of the world's population lives in places where restrictions on religion are increasing.[8] This most recent Pew study reported that social hostilities around religion reached a six-year peak in 2012 – with Africa among the four out of five world regions where religious social hostilities have increased.[9] Among Africa's two largest religious groups, 68 per cent of Christians and 57 per cent of Muslims

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6   Again, for additional and expanded analysis of Muslim-Christian issues, see Green 'Religious and legal pluralism in recent African constitutional reform' (n 4 above).

7   See Pew Forum on Religion and Public Life *Global religious restrictions* (2009) 1.

8   Pew Forum on Religion and Public Life *Rising religious restrictions* (2011). The statistic is contained in the report's subtitle.

9   Pew Research Center Religion and Public Life Project *Religious hostilities reach six-year high* (2014) 7 25.

reported experiencing some form of governmental or societal harassment.[10]

It is especially significant that the recent Pew Forum studies are not limited to government restrictions, but also take into account social hostilities.[11] The reports list a number of social hostilities which restrict religious freedom, including 'mob or sectarian violence, crimes motivated by religious bias, physical conflict over conversions, harassment for attire for religious reasons, and other religion-related intimidation and violence, including terrorism and war'.[12] The two categories of religious restriction are not airtight or mutually exclusive. Social hostilities around religion are sometimes actively fomented or passively tolerated by government actors, but they also importantly involve a range of private individuals and groups whose actions serve to restrict religion – including restrictions that religions seek to impose on each other.

Sub-Saharan Africa is not the worst region in the world when it comes to religious restrictions. The Middle East-North Africa (MENA) region, the Asia-Pacific region and Europe all ranked higher than Africa on social hostilities restrictions, with the Americas having the lowest number of both governmental and social restrictions.[13] Indeed, from 2011 to 2012, sub-Saharan Africa and the Asia-Pacific region were the only regions to show significant decreases in social hostilities around religion, but these decreases were often attributable to improved conditions in just a few countries, whereas 58 per cent of countries in Africa saw rising social hostilities overall.[14] The latest Pew data indicates that the level of social hostilities in sub-Saharan Africa rose slightly above the global median in 2011-2012.[15] Indeed, by some measures, such as the relative length of accounts of the social hostilities section in the International Religious Freedom Reports published by the US State Department, levels of social hostilities around religion in sub-Saharan Africa seem to be increasing even as the levels of government restrictions are decreasing.[16] And it turns out that Kenya, a key country examined in the article, had the second highest increase in its score on the Pew Social Hostilities Index from 2007 to 2012 – exceeded only by Mali, which subsequently plunged

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10   Pew Forum (n 8 above) 66.
11   The distinction actually predates the Pew Forum reports, as the United States State Department's International Religious Freedom Reports have, since their inception in 1999, distinguished between religious restrictions that come from legal and policy frameworks, on the one hand, and those that come from 'societal attitudes', more recently referred to under the category of the 'status of societal respect for religious freedom'.
12   Pew Forum (n 7 above) 17.
13   Pew Forum (n 7 above) 14.
14   Pew Forum (n 9 above) 24. African countries in which social hostilities had decreased in the 2011 report covering the period up to mid-2009 included Chad, Liberia and Tanzania. See Pew Forum (n 8 above) 55 57.
15   Pew Forum (n 8 above) 26.
16   Pew Forum (n 8 above) 48.

into civil war.[17] So, social hostilities around religion in Africa may not be as high as in some areas of the world, but they appear to be increasing and are difficult – sometimes deadly – for those who experience them. The near-genocide of Muslims taking place in the Central African Republic is the most recent example.

This recent Pew Forum research on the impact of social hostilities on religious freedom is consistent with earlier research conducted at the Center for the Study of Law and Religion (CSLR) at Emory University. In the spring of 2008, the CSLR convened a consultative workshop in Durban, South Africa, on the topic of 'Law, religion and human rights in Africa'.[18] Our legal, religious and academic consultants at the Durban conference all affirmed the importance of religious human rights in Africa as manifest in constitutions modelled on US, European and international religious freedom norms, generally including constitutional protections of freedom of conscience, religion and belief. Yet, when it came to matters of religious freedom, our Durban consultants emphasised not so much the standard US constitutional concerns about preventing government establishment of religion or protecting the free exercise of religion from state restriction, as reflected in the First Amendment to the US Constitution, but rather the ways in which both religion and the state have proven equally capable of mutual manipulation, co-optation and exploitation of each other in the quest for power and authority. In this larger social, political and cultural context of social hostility and mistrust – sometimes between religion and state, but more often between religious and ethnic groups – our consultants tended to be skeptical of *both* religion and the state.

Indeed, our conversation at Durban would have been much less lively if we had limited ourselves to a discussion of matters of governmental restrictions on religion and religion-state relations. What was fascinating to watch was the way in which our Durban consultants, mostly lawyers and scholars of the law, morphed into cultural anthropologists, sociologists of religion and political scientists in attesting to the complex social and political realities of religion and human rights and the heightened sense of religious competition in Africa in the post-secular resurgence of religion. In these discussions, the focus was less on government restrictions than on religious hostilities and intergroup relations - in other words, what religions do to one another. Our consultants spoke at length, not so much of a 'clash of civilisations',[19] but of perceptions of an intergroup and often

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17   Pew Forum (n 8 above) 67. Kenya's more than 6-point rise in social hostilities based on religion exceeded even Nigeria's 4-point increase. Tanzania's social hostilities increased by only 2,5 points, but was significantly exceeded by Zambia's more than 3-point gain.

18   The papers from the consultation were published in JD van der Vyver & MC Green (eds) Symposium Issue on 'The foundations and future of law, religion, and human rights in Africa' (2008) 8 *African Human Rights Law Journal.*

19   See SP Huntington's still-controversial thesis in *The clash of civilizations and the remaking of world order* (1996).

interethnic 'competition of monotheisms' taking place between Christianity and Islam, both religions with a longstanding presence in Africa, but who were now sharpening their rhetoric and stepping up their efforts at proselytisation to convert or re-convert adherents to their religion – and all this despite recent studies showing little religious conversion actually taking place on the ground, as demonstrated in the Pew Forum's report on *Tolerance and tension: Islam and Christianity in sub-Saharan Africa*. Our Durban consultants spoke of the ways in which competitive religious 'branding' involved tended to emphasise religious distinctiveness and religious differences in ways that converted each religion into its most orthodox – and sometimes extremist – forms in ways that both increased group polarisation between Christians and Muslims and tended to marginalise African traditional religions. Many of the concerns about religious and social hostilities that emerged at the CSLR's 2008 Durban consultation were confirmed and validated by the *Tolerance and tension* report.

Another issue that made its way into the Durban discussion was the question of hate speech, including legislation proposed in various parts of the world that would extend the definition of hate speech to include speech that 'offends religious feelings' without rising to the higher standards of harm, incitement to harm, or the promotion or propagation of hatred. At Durban, the consultants highlighted the contrast between the perceived need to place limits on freedom of expression and the strong protections of free speech that exist in the United States.[20] The American perspective came under criticism by some of our African consultants, particularly those hailing from conflict or post-conflict zones like the Democratic Republic of the Congo and Liberia, and particularly from Nigeria with its recent and bloody history of religious tensions. Our African colleagues argued energetically against American 'free speech absolutism', arguing that in the multi-ethnic, multi-linguistic, multi-cultural and multi-religious states of post-colonial Africa, restrictions on freedom of expression are justified to preserve public order, public safety and social harmony.[21]

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20 The strong constitutional protection given to freedom of expression in the United States was recently reaffirmed in the decisions in *United States v Stevens* 559 US 460 (2010) (upholding First Amendment protections of depictions of animal cruelty); *Snyder v Phelps* 562 US 131 S Ct 1207 (2011) (upholding the right of the Westboro Baptist Church to picket funerals with messages against homosexuality); and *McCutcheon v Federal Election Commission* 102-536 (slip opinion), decided 2 April 2014 (striking down regulations limiting aggregate contributions to federal election campaigns as restrictions on political speech).

21 It is worth noting that the recent Pew reports have pointed out that relatively few countries in Africa (15%) have laws against blasphemy, so it was interesting to hear argument for restrictions on speech potentially offensive to religious believers being invoked and recommended by our Durban consultants; see Pew Forum (n 8 above) 71. On the other hand, our Durban consultants' sensitivity to the potential problem of offending religious sensibilities, without rising to the level of blasphemy laws, could pave the way to a more moderate way to impose limits on speech that promotes religious, ethnic and other forms of hatred, without

As we shall see, 'hate speech', increasingly conveyed through social media and especially along the combustible lines of religion and ethnicity, has become a big issue in the recent elections, constitutional referenda and proposed legislative reforms in a several Eastern and Southern African nations.

3   Texts, tweets and toleration: Recent issues of social hostilities and social media

Recent concerns about hate speech and social media demonstrate the considerable power of social media, in Africa and elsewhere, to alter the political and democratic landscape. Kenya, Tanzania and Zambia are the focus of analysis in this article, but similar issues have arisen in other countries of East and Southern Africa, particularly Rwanda, Uganda and Zimbabwe, where specifically religious hostilities have not been pronounced, but where increasing authoritarian tendencies among leaders Paul Kagame, Yoweri Museveni and Robert Mugabe have led to crackdowns on political opposition and freedom of expression. These threats could eventually extend to religious freedom, since religious leaders and organisations are often leading critics of the state. Recent social science data suggests the existence of important correlations between religious freedom and conflict prevention. In this context, if the eroding human rights climate in some countries eventually restricts religious freedom, the result could be highly combustible. The countries of East Africa, particularly Kenya, Tanzania, Uganda and Rwanda, are linked together by political and legal associations that monitor human rights issues in the region, and they frequently look to each other for lessons on how to conduct elections and constitutional referenda.[22] The Southern African nations of Zambia and Zimbabwe also frequently look to their East African neighbours to the north for examples of democracy and development. While restrictions upon space limit the discussion to Kenya, Tanzania and Zambia here, these countries should be seen in terms of their regional relations and spheres of influence. We proceed first to the Kenyan story, since it is the most developed – mostly because legal and constitutional observers of Tanzania and Zambia have been thwarted in recent years by protracted debates over constitutional reform which have so far not borne fruit, but could

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suppressing legitimate religious and political critique. This could be part of what is being worked out in the recent concerns about 'hate speech' in many African countries.

22   K Jeffang 'Human rights defenders decry lack of press freedom, etc' *FOROYAA Newspaper* (The Gambia) 21 October 2013. Kenya, Tanzania, Uganda and Zimbabwe, in particular, have shared many of the same human rights problems in recent years and have collaborated in monitoring them, exchanging consultants and monitors to observe democratic processes. Zambia, as the southernmost nation included in this study, is somewhat of an outlier, but has also begun to pay attention to politics among its Eastern and Southern African neighbours.

change considerably the situation of religion and other fundamental freedoms in both countries.

3.1   Kenya: Hate speech and high tech in the 'Silicon Savannah'

Kenya is the number one country for any consideration of the impact of social hostilities and social media on religious freedom and human rights. Kenya has led the region in both social conflict and technological development in recent years. The recent Kenyan 2010 constitutional referendum and 2013 general elections have been bellwethers for both destructive and constructive uses of social media. Both of these recent polls were haunted by the spectre of the violence that followed the elections of 2007 into 2008 – with even earlier precursors in the unsuccessful 2005 referendum to replace Kenya's 1963 Constitution. In the run-up to the 2005 referendum, two human rights organisations, the Kenya National Human Rights Commission (KNHRC) and the Kenya Human Rights Commission (KHRC), took out a newspaper advertisement accusing rival political parties of 'using derogatory, insulting and degrading statements' and 'language that constitute[d] the crimes of incitement to violence and hate speech along ethnic or racial lines' in contravention of section 96 of the Kenyan Penal Code.[23] Many of these insults concerned male circumcision – a religious and cultural ritual practised by the majority and largely Christian Kikuyu ethnic group, but not by the more religiously-mixed Luo, among whom can be found adherents of Christianity, Islam and African traditional religions. They also exposed the interrelatedness of three factors – religion, ethnicity and race – in the Kenyan imaginary of intercommunal and intersectional identities.[24] Much of the violence related to the 2007 elections and was also along Kikuyu-Luo lines. Most of the attacks were said to have come from supporters of the draft Constitution and its proponent, President Mwai Kibaki, a Kikuyu, and were directed at Raila Odinga, a Luo, and the leader of the opposition party. In this way, ethnic division in Kenya took on a religious cast in connection with aspersions over the ritual of circumcision.

In 2007, the Kenyan government attempted preemptive action against hate speech before the elections in drafting the Prohibition of Hate Speech Bill 2007, which was criticised by international freedom of expression monitoring groups at the time.[25] The Prohibition of Hate Speech Bill was reintroduced in 2008 and eventually enacted

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23   'Kenyan leaders accused of hate speech in advance of the referendum' *BBC* 16 November 2005.

24   For a discussion of the fluidity of African notions of identity in the Nigerian context, see MC Green 'Religion, family law, and recognition of identity in Nigeria' in Symposium Issue 'Shari'a, family, and democracy: Religious norms and family law in pluralistic democratic states' AA An-Na'im & MC Green (eds) (2011) 25 *Emory International Law Review* 945-966.

25   Article 19 'Comment on Prohibition of Hate Speech Bill, 2007, Kenya' (2009).

into law in 2009.[26] It is worth noting that in neither of these Bills was hate speech against religion specifically differentiated from hatred on the basis of ethnicity, race, culture and other categories of identity.

The Media Council of Kenya also attempted to address the issue of hate speech in advance of the 2007 elections by publishing a set of guidelines for journalists that included a provision that advised the media to 'refrain from giving space or airtime to hate speeches or utterances that might incite violence or cause social turmoil' and to 'avoid using language or expressing sentiments that may further discrimination or violence on any grounds, including race, sex, language, religion, political or other opinions, and national or social origins'.[27] These guidelines were directed mostly at the traditional print and broadcast media, as Kenya's social media revolution had not yet reached the point that it would three years later in the 2010 constitutional referendum.

These media measures, coming on the heels of the failed Prohibition of Hate Speech Bill, proved inadequate to prevent the eruption of religiously and ethnically-tinged post-election violence. Violence first erupted in the Rift Valley Province between Kikuyu supporters of Kibaki and the Luo and Kalenjin supporters of Odinga. The violence reached its apogee in the burning of a Christian church in the town of Eldoret that resulted in the fiery deaths of several dozen Kikuyu, half of whom were children.[28] There were also riots by Kenyan Muslims in the city of Mombasa.[29] Overall, the post-electoral violence is said to have resulted in the deaths of more than 1 100 people and the displacement of 650 000 from homes and villages that were often burned to the ground. There were also hundreds of reports of sexual violence against women, girls, boys, and men – including cases of forced circumcision of men – that finally began to

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26   See Prohibition of Hate Speech Bill, 2008, http://www.knchr.org/ ReportsPublications/Bills.aspx. See also Article 19 *Commentary on the regulation of 'hate speech' in Kenya* (2009). For a good summary of other recent Kenyan laws pertaining to freedom of expression, hate speech, the media and other recent issues pertaining to democracy in Kenya, see TL Lansner *Countries at the crossroads, 2012* (2012), esp 9-10. See also OC Nyambane 'Prosecuting hate speech in Kenya' 21 August 2012, https://www.academia.edu/2554800/ Prosecuting_Hate_Speech_In_Kenya. For a survey of hate speech regulations in African countries, see H Maina 'The prohibition of incitement to hatred in Africa: Comparative review and proposal for a threshold' (working paper) (a study prepared for the regional expert meeting on Article 20, organised by the Office of the High Commissioner for Human Rights, Nairobi, Kenya, 6-7 April 2011), http:// www2.ohchr.org/english/issues/opinion/articles1920_iccpr/docs/HenryMaina (accessed 31 March 2014).

27   Media Council of Kenya *Guidelines for election coverage in Kenya* (2007) 3 para 7, http://www.cohesion.or.ke/index.php/resources/downloads (accessed 31 March 2014).

28   J Gettleman 'Fire set by mob at Kenyan church, killing dozens' *The New York Times* 2 January 2008.

29   J Gettleman 'Opposition protesters clash with police in Kenya' *The New York Times* 17 January 2008.

make their way to formal and informal 'truth-and-reconciliation' style courts in 2014.[30]

A key social media technology that grew out of the violence was the Ushahidi (Swahili for 'testimony' or 'witness') project, which used crowdsourcing and interactive mapping technology to collect eyewitness reports of the post-election violence.[31] These reports were submitted by e-mail and text message and then uploaded to mapping software that created a temporal and geospatial account of the events. Ushahidi has become a leading Kenyan software development company and a spearhead of technological innovation that has led to Kenya's recent rise as Africa's 'Silicon Savannah'.[32] Ushahidi crowdsourcing technology for the purpose of citizen journalism and 'activist mapping' of events using geospatial information systems (GIS) has since been used worldwide to chronicle a range of situations of civil unrest, natural disasters and human rights violations - including the 2010 earthquake in Haiti, the 2011 Arab Spring uprising in Egypt, the 2011 earthquake, tsunami and nuclear disaster in Japan, the 2012 Syrian civil war, and the 2013 attack by Al-Shabaab-affiliated terrorists at Kenya's Westgate Mall in Nairobi.[33]

As part of the power-sharing agreement between President Mwai Kibaki and Prime Minister Raila Odinga in the aftermath of the post-electoral violence of 2007-2008, the Kenyan government also established a statutory body known as the National Cohesion and Integration Commission (NCIC) to promote national reconciliation, cohesion and integration through the 'elimination of discrimination based on ethnic, religious, racial and social origin' and the facilitation of 'laws, policies and practices that counter racial, ethnic and religious tensions'.[34] The National Cohesion and Integration Act 2008, the NCIC's founding instrument, does not specifically distinguish religious

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30   See C Chumo 'Community meetings address legacy of Kenya violence' *Capital News* (Nairobi) 25 March 2014; J Nyanyuki 'Kenyan women want justice over post-election sexual violence' *The Guardian* (UK) 25 March 2014. For a comprehensive account of the 2007-2008 post-electoral violence, see Kenya National Commission on Human Rights 'On the brink of the precipice: A human rights account of Kenya's post-2007 election violence: Final report' 15 August 2008, otherwise known as the 'Waki Report'.

31   See the Ushahidi website at http://www.ushahidi.com.

32   D Smith 'Kenya building a digital future in Africa's Silicon Savannah' *The Guardian* (UK) 30 October 2012; G York 'The entrepreneurs of the Silicon Savannah' *The Globe and Mail* (Canada) 3 September 2013; M Amoore 'Kenya sees the light with tech; Mobiles open up Silicon Savannah' *The Sunday Times* (London) 15 September 2013; J Puhl 'Silicon Savannah: Africa's transformative digital revolution' *Der Spiegel* 5 December 2013.

33   P Meier 'New Kenyan technology can map outbreaks of crises' *The Global Post* 29 November 2009; DK Were 'Nairobi mall attack inspires new apps to aid in an emergency' *The Guardian* (UK) 26 September 2013. For the wider implications of this technology in war and peace and the rise of the 'PeaceTech' movement, see also S Himelfarb 'The quiet revolution' *Foreign Policy* 3 October 2013.

34   For more on NCIC, see the Commission's website at http://www.cohesion.org.ke. Other Kenyan government bodies charged with monitoring hate speech include the Communications Commission of Kenya (CCK) (www.cck.go.ke) and the National Steering Committee on Media Monitoring (NSCMM).

discrimination from these other forms of discrimination.[35] A training manual produced by the NCIC was informed by a variety of religious and civil society groups, including the Inter-Religious Council of Kenya.[36] The manual describes culture as an 'important superstructure in a nation with many subcultures such as ethnicities and religions' and encourages dialogue that 'brings together all religions in search of sustainable peace', and cautions against 'politicisation of ethnicity and religion'.[37] The manual also recommends programmes of 'interreligious dialogue' and 'ecumenical dialogue among religious orders' with a view to 'promoting ethnic and cultural diversity'.[38] It particularly emphasises the need, among other measures, of a programme of 'religious empowerment' that involves 'enlightening members of the community to understand their own beliefs and appreciate and tolerate the belief systems of others' and which 'abhors religious extremism and embraces religious dialogue to settle differences'.[39] In the same vein, the manual identifies 'religious fanaticism and religious bigotry' as 'challenges to national values and good governance'.[40] These are the main mentions of religion in the NCIC's 185-page training manual. Elsewhere, religion mostly falls within the standard rubric of ethnic, racial, linguistic and cultural differences to be addressed. The manual did include brief mentions of the internet in its analysis of best practices for communication, but these were limited as Kenya's technological revolution was not yet at its current peak.[41]

In 2010, looking ahead to the 2013 presidential election, the NCIC produced a revised set of media guidelines for election coverage

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35   See National Cohesion and Integration Act 12 of 2008, 24 December 2008, http://www.cohesion.or.ke/index.php/resources/downloads.

36   See Kenya Ministry of Justice, National Cohesion and Constitutional Affairs *National Cohesion and Integration training manual* November 2011 xxi 7, http://www.cohesion.or.ke/index.php/ resources/downloads.

37   Kenya Ministry of Justice, National Cohesion and Constitutional Affairs (n 37 above) 18 19 87.

38   Kenya Ministry of Justice, National Cohesion and Constitutional Affairs (n 37 above) 132. The NCIC's implementation matrix for its strategic plan for 2013-2016 recommends similar efforts at religious dialogue and consultation, including bi-annual meetings of religious leaders, toward the outcome of 'religious community propagating national unity' and to be measured in performance indicators that include, eg, 'sermons spearheading acceptance for diverse religious orientations' NCIC *Strategic Plan (July 2013-July 2016)* (2013) 37. Mapping and monitoring of hate speech are also components of the strategic plan, which includes funds for the purchase of geographical informations system (GIS) software along the lines of the Ushahidi model. See Kenya Ministry of Justice, National Cohesion and Constitutional Affairs 28 36 55.

39   Kenya Ministry of Justice, National Cohesion and Constitutional Affairs 114.

40   Kenya Ministry of Justice 146.

41   Kenya Ministry of Justice, National Cohesion and Constitutional Affairs 95 99. It is worth noting that a separate training manual on hate speech for the police does not include specific or extended discussions of questions of religion or of online speech via social media. See NCIC *Police training manual: On the enforcement of the law of hate speech* (2011) http://www.cohesion.or.ke/index.php/resources/downloads (accessed 31 March 2014).

noting that religious organisations, civil society, international organisations and government agencies had all been critical of the role that the media had played in fanning the flames of violence in 2007. Radio stations, in particular, were accused of[42]

> incitement, promoting stereotypes and perpetuating hate messages, misreporting events and general misrepresentations ... which is now seen as one of the causes of the post-election violence and can also be blamed for heightening negative ethnicity.

In its detailed list of forbidden hate speech, the guidelines specifically forbid 'speech or utterances that encourage ethnic, religious or group violence', the adjudicative standard being that the 'speech must encourage the audience into some negative action', as well as forbidding other forms of speech and publications in the media that might lead to discrimination or ridicule on the basis of religion or other categories of group identity.[43] The 2010 guidelines were also notably expanded to include all electronic media, reflecting the technological advances in communication and social media that had taken hold in Kenya since 2007. The expansion of the 2010 hate speech guidelines was well timed to coincide with the rise of communication technology and social media, as access to the internet in Kenya (in addition to the ubiquitous cellphone usage) has reportedly doubled each year since 2010.[44]

In advance of the 2010 constitutional referendum, predictions of a repeat of the 2007-2008 post-electoral violence were at a fever pitch, particularly in the international press. Whereas religious organisations had led the call to prevent further social hostility after the 2007-2008 electoral violence, the role of religion in the 2010 referendum was more ambiguous. On the one hand, religion was a positive force, with religious organisations playing instrumental roles both in calling for a referendum and in engaging popular participation in the referendum process. On the other hand, in its 2009-2010 annual report, the NCIC observed:[45]

> The referendum competition pitted the 'NO' team mostly fronted by Christian churches and 'YES' side led by President Mwai Kibaki and Prime Minister Raila Odinga. The Christian churches were opposed to the draft Constitution over the issues of abortion and the inclusion of Islamic courts. The religious slant to the referendum debate portended a big challenge to the NCIC being the institution charged with the responsibility of addressing matters of ethnic, racial and religious discrimination and victimisation.

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42   NCIC *Guidelines for monitoring hate speech: Monitoring hate speech in the electronic media in Kenya* (2010) 5. It is perhaps worth noting that the 2010 guidelines lump discrimination on the basis of 'colour, race, religion, nationality or ethnic or national origins' under the category of 'ethnicity' NCIC (above) 4.

43   NCIC (n 42 above) 14.

44   Institute for War and Peace Reporting 'Tackling online hate speech in Kenya' *ACR* 340 26 February 2013.

45   NCIC *Annual Report 2009-2010* (Nairobi, 3 May 2011) 17.

In the end, the 2010 constitutional referendum largely defied predictions of violent conflict by unfolding peacefully and productively and with two-thirds of the population ultimately supporting the draft Constitution.

Much as the post-electoral violence of 2007-2008 spawned the Ushahidi movement, the 2010 referendum also gave rise to new civic innovations in the technology of democracy. This time the focus was preventative, rather than *post hoc*, and led to the creation and peaceful deployment of novel social media initiatives aimed at fostering education on and participation in the referendum process. In addition to these new proactive civic education platforms, new technologies and social media were also used forensically in the 2010 referendum to report and collect data on problems and irregularities in the referendum process.[46] The NCIC, for example, set up an SMS text-messaging service to which citizens could text reports of hate speech during the period preceding the referendum.[47]

One especially innovative social media venture, Katiba Mobi, was designed to allow Kenyans to access the proposed Constitution article by article, in both English and Kiswahili, over the screens of mobile phones.[48] This public dissemination of information via mobile phone was well-suited to Kenya – and other African nations – where the cellphone is a major means of access to the internet. The Katiba Mobi initiative was not limited to one-way dissemination. Kenyans could text in their own commentary on the proposed Constitution. An accompanying website collected information on public access to the service, including the number and kind of searches performed on the website by Kenyans seeking more information about particular proposed provisions. The website tracked both most-read constitutional provisions and searches of specific terms, the latter of which tended to cluster around issues of religion, particularly the issue of the Islamic Shari'a courts, known as Kadhis' courts, which had been the subject of much public opposition from Kenyan Christian leaders in the period before the referendum. In fact, the top ten searched words and phrases on the Katiba Mobi site included religion, marriage, and no fewer than three variations on the topic of Kadhis' courts. Thus, fully half of the top ten terms of interest – and controversy – in the Kenyan constitutional reform had to do with religion.

The concern over Kadhis' courts, particularly among leaders of Kenya's majority Christian community, focused on provisions of the

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46   The 2010 referendum was monitored in part through the use of an Ushahidi-based citizen-reporting website at https://uchaguzi.co.ke.

47   'Kenya launches text service to stop hate speech' *BBC News* 14 July 2010.

48   See the Katiba Mobi website at http://katiba.mobi. The Katiba Mobi Twitter site reported the website's launch on 10 May 2010, and subsequently reported on 26 May 2010 that the site had drawn 100 000 views. On 4 August 2010, the day of the referendum, the site drew 4 000 views. See https://twitter.com/#!/katibamobi.

draft Constitution that favoured the courts' recognition and expansion. While the proposed Preamble to the Constitution expressed Kenya's pride in its 'ethnic, cultural, and *religious diversity*' and its determination 'to live in peace and unity as one indivisible sovereign nation',[49] it also committed the government to protecting 'vulnerable groups in society', including 'members of particular ethnic, religious or cultural communities'.[50] A general constitutional provision on equality and non-discrimination was qualified to allow the 'application of Muslim law before the Kadhis' courts to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce or inheritance'.[51] Two new provisions on freedom of conscience prohibited the denial of access to 'any institution, employment or facility, or the enjoyment of any right, because of the person's belief or religion' and the compulsion of any persons 'to act, or engage in any act, that is contrary to the person's belief or religion'.[52] Even more controversially, the new Constitution proposed to extend the jurisdiction of the Kadhis' courts over all of Kenya, far beyond their earlier limitation to the Muslim coastal regions of the Zanzibar Protectorate.[53] Katiba Mobi and similar initiatives likely played important roles in the 2010 referendum, and the proposed Constitution passed with an overwhelming majority of the vote.[54] In highlighting the significance of the Kadhis' courts issue to the Kenyan electorate, the Katiba Mobi application and website are an important source of information on issues of religious pluralism and Muslim-Christian concerns in the 2010 referendum process.

More recent Kenyan history, following on the success of the 2010 constitutional referendum, seems to be a case of 'one step forward, two steps back' in terms of the social unity and pride that many Kenyans took in the successful constitutional referendum. In July 2012, several churches in Kenya's majority-Muslim northeastern province were attacked by groups thought to be associated with the Somali Al-Shabaab Islamist terrorist organisation. Muslims and Christians in the region condemned these attacks, and Muslims formed patrols to guard the churches of their Christian neighbours.[55] In August 2012, Kenya was engulfed in an outburst of tribal violence, some of it said to have been inspired by political hate speech.[56] The

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49   Preamble Constitution of Kenya (27 August 2010).
50   Sec 21(3) Constitution of Kenya.
51   Sec 24(4). The equality and freedom from discrimination provision is at sec 27(4).
52   Secs 32(3)-(4).
53   Sec 170.
54   For more on the Kenyan constitutional history and referendum and the Kadhis' Courts issue, see Green 'Religious pluralism in recent African constitutional reform' (n 4 above).
55   See T Odula 'Kenyan Muslims, Christians vow to prevent violence' *The Huffington Post* 3 July 2012; F Nzwili 'After attacks, Kenyan Muslims guard Christian churches' *The Christian Science Monitor* 10 July 2012.
56   See 'Kenyan President calls for responsible use of social media' *BBC* 3 May 2012; 'Analysis: Taming hate speech in Kenya' *IRIN News* 24 August 2012.

scheduled 2012 Kenyan general elections were postponed in August and then again in December. The election was finally held on 4 March 2013, resulting in the victory of Uhuru Kenyatta, a deputy prime minister and the son of Kenya's first independence President and founding father Jomo Kenyatta. Uhuru Kenyatta had been named by the International Criminal Court (ICC), along with his running mate, William Ruto, as a suspect in crimes against humanity committed in the post-2007 election violence. Among other things, the two were specifically accused of funding death squads of the mysterious political-religious group known as Mungiki, said to have perpetrated much of the violence in 2007-2008.[57] Kenyatta and Ruto ultimately did prevail in the elections and were sworn into office in April 2013. By March 2014, Kenyatta was being said to have prevailed at the ICC, as well, with the trial against him being described as on the 'verge of collapse'.[58] But later that month, the ICC rescheduled Kenyatta's trial date for 7 October 2014, to give the Kenyan government more time to provide evidence in the case – so Kenyatta, and Kenya, are not yet out of the woods when it comes to international human rights scrutiny.[59]

When the drumbeat of foreign prognostications of electoral violence began again in connection with the March 2013 presidential elections, social media savvy Kenyans countered the pessimistic narratives of violence with counter-narratives on Twitter, under the hashtags #TweetLikeAForeignJournalist, #Kenyadecides and #proudlykenyan.[60] Nonetheless, even though the 2013 elections went off peacefully on the ground, they featured concerns about hate

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57   Mungiki is a secretive Kikuyu quasi-religious and political group that advocates a return to Kikuyu indigenous religious traditions, opposes Kenyan modernisation, and calls for revolution and resistance against the government. It is also known for beheading, skinning, and even drinking the blood of its victims, and has been banned as a terrorist group and criminal organisation since 2002. For a description of Mungiki's suspected role in the 2008 post-election violence, see Kenya National Commission on Human Rights 'Waki Report'. For general information on the Mungiki and recent Kenyan affairs, see 'Profile: Kenya's secretive Mungiki sect' *BBC News* 24 May 2007; J Gettleman 'Might drink your blood, but otherwise not bad guys' *The New York Times* 22 June 2007; S McCrummen 'Brutal Kenyan sect aims to provoke strife' *The Washington Post* 2 July 2007; S Childress 'Kenyan gang revives amid political disarray' *Wall Street Journal* 1 May 2008; C Goffard 'Court sheds light on scary Kenyan gang' *Los Angeles Times* 27 November 2011; 'Police warn of new Mungiki violence plot' *The Daily Nation* (Nairobi) 3 June 2012; H Makori 'Kenya: Fears of poll violence as Mungiki reemerges' *Pambazuka News/AllAfrica.com* 21 February 2013.

58   T McConnell 'How Kenya took on the International Criminal Court' *MinnPost/The Global Post* 26 March 2014.

59   'Hague Court sets trial date for Kenyan President' *Reuters* 31 March 2014.

60   For an analysis of the Twitter campaign, see AX Mina 'Hashtag memes: Breaking the single story through humour' *Al-Jazeera* 23 March 2013; D Musegwa 'How Kenyans used #TweetLikeAForeignJournalist in response to global coverage of elections' *TechPost.ug* 11 March 2013.

speech online, some of it aimed by and toward religious groups. As one blogger puts it:[61]

> After the 2007 general election, some Kenyans went after each other with clubs and machetes. For the 2013 poll, the war has taken a different shape; it has gone online, in the form of 'hate speech'.

In the weeks leading up to the 2013 elections, the NCIC reportedly deployed 400 hate speech monitors and 1 500 police officers to conduct investigations and prosecutions of those engaging in offensive speech.[62] Under the new monitoring programme, a number of politicians, musicians, broadcasters and bloggers were charged with and prosecuted for hate speech violations. In addition to these forensic uses, SMS texting platforms and other social media technologies were being used affirmatively by organisations transmitting mobile phone text messages advocating peace and non-violence to conflict-prone regions.[63] Kenya's religious groups took part in these peacemaking uses of social media. A group of Christian and Muslim religious leaders in Kenya's Rift Valley, the site of much of the post-2007 election violence, called upon the government to take action against those using social media to spread ethnic and religious hatred, and they were joined in this call by separate statements from the National Council of Churches of Kenya (NCCK) and the bishops of the Catholic Church.[64] During the 2013 elections, NCCK sponsored a SMS platform on its website so that people could text reports of any issues, irregularities or issues or hate speech they were observing in

61   M Wasamu 'Kenya's political cyber war' *New Internationalist Blog* 9 April 2013, http://newint.org (accessed 31 March 2014). For more on the recent escalation of hate speech in Kenya in connection with the 2013 elections, see M Gathigah 'Kenyan media magnifies hate speech - Again' *Inter Press Service News* 19 February 2013; M Pflanz 'In Kenya, social media hate speech arises as nation awaits election ruling' *The Christian Science Monitor* 21 March 2013; 'Social media become Kenya's new battleground' *Die Welt* 21 March 2013. See also the report titled 'Umati: Monitoring online dangerous speech: Feburary and March 2013 Report' (Nairobi: iHub Research, March 2013) http://www.research.ihub.co.ke/uploads/2013/april/1365508815_819_823.pdf (accessed 31 March 2014). The Umati hate speech monitoring project was co-ordinated by Ushahidi.

62   For more on the initiatives of the NCIC and other organisations against hate speech, see D Jorgic 'Kenya tracks Facebook, Twitter for election "hate speech"' *Reuters* 5 February 2013; R Gojineni 'Kenya cracks down on hate speech before elections' *Voice of America* 26 February 2013; 'Kenya cracks down on hate speech ahead of poll' *BBC News* 26 February 2013; R Wanjiku 'Kenyan government takes cautious approach toward social media' *Computerworld Kenya 2* March 2013; M Malakata 'Kenya petitions Facebook and Twitter over senders of hate speech' *Computerworld Zambia* 19 March 2013; A Jamah 'Four to be arrested over hate speech on social media' *Standard Digital* (Nairobi) 20 March 2013.

63   For more information on the deployment of these peace-texting technologies, see the various Kenya reports on the website of PeaceTXT, one of the leaders in this movement, http://poptech.org/peacetxt (accessed 31 March 2014).

64   See M Waruinge 'Kenya: Churches on hate speech' *The Star* (Nairobi) 17 March 2013; M Ndany & J Bore 'Kenya: Rift valley religious leaders decry hate speech on social media' *The Star* (Nairobi) 19 March 2013; 'Clerics call end to hate speech on social media' *The Nation* (Nairobi) 22 March 2013.

the elections.[65] Overall, the situation in Kenya seems to be one in which, while there are religious divisions over particular issues, such as abortion, homosexuality and the status of the Islamic Kadhis' courts, the recent experiences of violence have prompted religious and civil society organisations, along with government agencies, to use social media to address social hostilities.

A key question that emerges from the Kenyan context has to do with the way in which social hostilities are described as falling along lines of 'ethnicity, race and religion' that are often intertwined and undifferentiated categories of social, cultural identity. The triadic reference to 'ethnic, racial and religious' hatred is repeated frequently in Kenyan anti-hate speech efforts, but rarely in a way that questions the distinctiveness of these categories. Is religious identity, for example, different from ethnic and racial identity because it is often as much a matter of choice as of birth in the modern, post-secular context? This seems to be the implication of concerns over proselytism and conversion in many parts of Africa. Is advocacy of religious hatred different because it invokes specific constitutional guarantees of religious freedom? Even though the Kenyan constitutional provisions often conflate ethnicity, race and religion, religion also receives specific protection through provisions on freedom of conscience and belief and non-discrimination.[66] Is there something about religious hatred that makes it important to address in a way that is qualitatively different from ethnicity, race, culture, or other category of identity? Recent studies have suggested that the addition or superimposition of religion can increase levels of intergroup conflict, which could itself be an important and pragmatic reason for treating religion differently.[67]

A leading statement of freedom of expression in connection with religion produced by the international monitoring organisation, Article 19, emphasises that '[s]tates should not prohibit criticism directed at, or debate about, particular ideas, beliefs or ideologies, or religions or religious institutions, unless such expression constitutes hate speech'.[68] And it is here that restrictions on speech about religion in criminal codes and other areas of the law need to be taken into account alongside general constitutional projections. For example, analysing section 138 of the Kenya Penal Code on 'offences

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65   See the NCCK website at: http://www.ncck.org (accessed 31 March 2014).

66   Some of the consultants at the CSLR Durban conference argued that constitutional protections of religion are sometimes strategically used to ratchet up conflicts based on other criteria to take advantage of religious freedom protections.

67   See SL Neuberg 'Religion and intergroup conflict: Findings from the Global Group Relations Project' (2014) 25 *Psychological Science* 198-206.

68   See Article 19 *Camden Principles on Freedom of Expression and Equality* (April 2009) para 12.1, http://www.article19.org/resources.php/resource/1214/en/camden-principles-on-freedom-of-expression-and-equality#downloads (accessed 31 March 2014).

relating to religion', the East Africa office of Article 19 has concluded:[69]

> This provision essentially provides for the criminalisation of insult to religious feelings and in this way is similar way to laws prohibiting blasphemy or 'defamation of religions' which protect religious ideas or tenets. Such laws are in clear contravention of international standards on freedom of expression. Hate speech on religious grounds can only be prohibited under international law if it meets the criteria of article 20 of the ICCPR. In other words, there needs to be actual incitement to hatred against individuals or groups on account of their religion. The 'wounding of religious feelings' does not meet this test.

With this in mind, the Kenyan context is one where it would be worth thinking further about the precise nature of religious freedom and the relation of religion to ethnicity, race and other identity categories. Nevertheless, this level of reflection is often elided by the tendency to bury religion within long lists of identity categories reflexively, but perhaps unreflectively.[70]

So far it appears that recent legislative efforts in Kenya to combat social hostilities and hate speech in the media, particularly in the burgeoning realm of social media, have avoided the crackdowns on freedom of expression that have been proposed or taken place in other East and Southern African nations. The Kenyan government has continued to be supportive of technological development in media and communications in a way that other African countries have not, even with the political challenges of management and monitoring that these require. Still, in light of the ongoing ethnic and religious tensions in Kenya, there remains the risk of these regulations running afoul of international protections of freedom of expression if they are strengthened or expanded in the name of reducing social hostilities along religious and ethnic lines. But this possibility could also prompt some necessary self-policing in the mainstream and new media. As the leading Kenyan journalist and media commentator, Charles Onyango-Obbo, expresses it while attending an international media and democracy conference in 2011:[71]

> Though there are still bad apples amongst us, I sense that many more media managers and editors are aware that we have one last shot at this. With the growing popularity of blogs, a new generation of Kenyan websites, and Twitter and Facebook, I think, if some of the media become battle-wielding ethnic warriors in 2012, our audiences will abandon us and never return.

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69   See Maina (n 26 above) 13-14.

70   For an important discussion of the problems attendant in classifying conflicts, see L Hovil 'Why do we continually misunderstand conflict in Africa?' *African Arguments* 10 February 2014. See also N Nyabola 'Why do Western media get Africa wrong?' *Al-Jazeera* 2 January 2014; P Gathara 'If Western journalists get Africa wrong, who gets it right?' *The Guardian* (UK) 24 January 2014.

71   C Onyango-Obbo 'Will the nation burn or not in 2012?' *The Citizen* (Dar es Salaam) 18 May 2011.

3.2 Tanzania: Sovereignty, separatism and social trust in the '*juju* nation'

On 31 July 2010, Tanzania's mostly Muslim, semi-autonomous island province of Zanzibar held a constitutional referendum of its own. There was pronounced debate over a proposed Zanzibar sovereignty amendment, which some considered to be a serious threat to Tanzanian unity. Indeed, one mainland Tanzanian constitutional law scholar observed: 'If the amendments are implemented, there is not going to be a united republic of Tanzania. The nation has broken up.'[72] The referendum passed with two-thirds of the vote, with the sovereignty amendment winning wide support. The government of Zanzibar has since sought to have its sovereignty recognised in the Constitution of Tanzania, most recently in the newly-proposed Constitution based on a three-tiered government plan in which there would be a separate mainland, Zanzibari, and unity governments.[73]

The Zanzibari referendum came at a time when Tanzania was in the midst of ongoing national debates over the proposed Constitutional Review Act of 2011 that has recently produced a (presumably) final draft in 2014. Early drafts drew wide criticism from academics, students, legislators, government leaders and other stakeholders in both mainland Tanzania and Zanzibar. Concerns included issues of freedom of expression and a perceived unwillingness of the government to listen to the views of an increasingly diverse and pluralistic society.[74] The Zanzibaris, in particular, felt that their representatives had been excluded from the process. The Constitutional Review Act 2011 was finally passed in February 2012, clearing the way for the appointment of a commission to draft and propose a new Tanzanian Constitution.[75] In April 2012, President Jakaya Kikwete appointed a new constitutional commission, which in December 2013 produced a second draft Constitution, now expected to be enacted some time in 2014.[76]

Until recently, religion had not been thought to have a particularly strong role in Tanzanian politics. Christians and Muslims were divided on some issues, but boundaries were observed and religious and

72 'Tanzania; After Zanzibar referendum comes constitution dilemma' *The Citizen* (Dar es Salaam) 10 August 2010; F Kimboy 'Why Katiba team has proposed three-tier government again' *The Citizen* (Dar es Salaam) 31 December 2013.
73 'Zanzibar reportedly seeks to have Constitution changed' *BBC* 14 August 2010; 'Tanzania; Zanzibar renews bid for independence' *East African Business Week* (Kampala) 16 August 2010.
74 The Zanzibar concerns have been ongoing. See P Kajwanja 'Grievances galore: Zanzibar remains critical to EA federation' *The East African* 24 February 2014.
75 L Liganga 'MPs reach consensus on Constitution review Bill' *The Citizen* (Dar es Salaam) 11 February 2012.
76 'Tanzania unveils 2nd Draft Constitution, proposes 4-year transition period' *Sabahi/AllAfrica.com* 31 December 2013; 'Tanzania to enact a new constitution this year' *The Saturday Monitor* 14 January 2014. For a critique of the constitutional process in Tanzania, see I Shivji 'The pitfalls of constitution making in Tanzania: Lessons so far' *IPPmedia.com,* 1 December 2013.

political differences generally respected. As all constitutional deliberations were taking place at the national level in 2012, Tanzanian Muslim leaders were discussing the need to educate Muslims in their communities about their constitutional rights and the need for recognition of Kadhis' courts, along Kenyan constitutional lines, so that they could fulfil their religious obligations in matters of family law and inheritance.[77] The Muslim mobilisation around sovereignty and the Kadhis' courts continued throughout 2012 and is said to have been a motivating factor behind the Islamist riots that broke out in the fall of that year.[78] Tensions between Muslims and Christians in Tanzania over issues such as Kadhis' courts and Zanzibar sovereignty have been described as 'too complex to be labelled as a fundamental antagonism based on religion'.[79] Even so, President Kikwete, a Muslim, has spoken publicly of the threat posed by some religious rhetoric to Africa's fragile democracies, of political divisions to be based on religion, and of the need to resist attempts to 'Islamise' the government, so as to avoid the sort of political violence that has occurred elsewhere. Contrasting the electoral unrest in Kenya in 2008 with the less volatile political scene in Tanzania, he has cautioned: 'Tribalism is almost alien in Tanzania, although we are multi-ethnic. However, Tanzania has *udini* [religionism], which is not as pronounced in Kenyan politics.'[80]

In light of Kenya's history of overt conflict in recent years, President Kikwete's suggestion that there are tensions lying beneath the Tanzanian surface seems rather ominous. In Tanzania, as in Kenya, the Muslim population is outnumbered by a Christian majority and geographically clustered in the Zanzibar islands and adjacent coastal regions. This geographical clustering gives Muslims a more outsized influence than they might have if they were more integrated into these societies. Kenya and Tanzania also shared international attention in the aftermath of 1998 US embassy bombings in Nairobi and Dar es Salaam and more recently for their geographical and possibly ideological proximity to the Al-Shabaab terror network in Somalia. More recently, acid attacks, alleged to have been carried out by Muslims on two British teenage girls and a Catholic priest, have raised

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77 'Clerics urged to educate Muslims on Constitution' *The Guardian* (Dar es Salaam) 14 February 2012.

78 See 'The Swahili coast: Contagion of discontent: Muslim extremism spreads down East Africa's coastline' *The Economist* 3 November 2012; 'Tanzania: Islamist riots threaten Zanzibar stability' *IRIN News* 24 October 2012. These coastal tensions have also spread to Kenya. See K Kay 'Muslim-Christian relations strained by violence in Kenya's coastal region' *PBS News* 4 April 2013.

79 Shari'a Debates in Africa Project 'Tanzania' http://www.sharia-in-africa.net (accessed 31 March 2014).

80 'Religionism a threat to East African unity' *East African Standard* (Nairobi) 30 March 2008. See also the transcript of President Kikwete 'Managing religious diversity in a democratic environment: The Tanzanian experience' speech at the 5th Anniversary of the African Presidential Archives and Research Center (APARC), at Boston University, 25 September 2012, http://www.ajabuafrica.com/TZPresident'sSpeech.html (accessed 31 March 2014).

concerns about religious extremists and rattled relations between Muslims and the small (5 per cent) Christian minority in Zanzibar.[81] Increasingly, Tanzania, like Kenya, has been riven by interreligious hostilities in a way that could turn out to be combustible, absent intervention, in what some have called the 'juju nation'.[82]

The 'juju nation' moniker comes from a finding in the Pew Research Center's 2010 survey of African nations that Tanzania scores especially high in belief in witchcraft and in the protective value of the juju magic of fetishes, charms and amulets to protect oneself from the 'evil eye' of others. [83] Significantly, Tanzania also stood out among the Pew survey countries, not only for its penchant for juju, but also for its apparently high levels of social distrust.[84] It does not seem far-fetched to think that there might be correlations between belief in the black and white magic of juju and high levels of distrust. But in the case of Tanzania there are also indications of the potential for social hostility to be tempered by social solidarity among religious groups. Tanzanians also ranked high in the Pew study in trusting people with different religious values from their own.[85] This baseline repository of religious pluralism and social solidarity could turn out to be a very important foundation for Tanzanian unity, stability and democracy.

One leading facilitator of religious debate over the proposed Constitution has been the Tanzanian office of the German non-governmental organisation (NGO), Konrad Adenauer Stiftung (KAS). KAS sponsored a forum in November 2011 on 'Faith-based organisations and the constitutional reform in Tanzania', with the aim of discerning 'how religious diversity and tolerance can be reflected appropriately in the new Tanzanian Constitution'.[86] In November 2013, KAS convened its third interreligious forum, which brought ten delegates from Zanzibari interreligious organisations to meet with the Inter-Religious Council for Peace in Dar es Salaam. The meeting produced the report 'Faith is the fountain of peace, love and

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81   See D Bergmann 'Threatened paradise: Growing religious and political violence on Zanzibar' *Konrad Adenauer Stiftung Country Report, Tanzania,* 25 October 2013. But for a critique of Western coverage of these events, see Mtega 'Zanzibar acid attack: UK media not letting the facts get in the way of a story' *mtega* (blog) 11 August 2013.

82   'Welcome to Juju nation!' *The Citizen* (Dar es Salaam) 27 February 2011.

83   See Pew Research Center *Tolerance and tension* 4 34 181-182.

84   Pew Research Center (n 83 above) 83. Tanzania was followed by Cameroon (82%); Senegal (74%); and South Africa (70%) in levels of distrust, but these four nations were the only ones of the 19 nations surveyed in which percentages ran above the sixties. Most responses were in the fifties and low sixties, so the higher scores, including Tanzania's, are quite significant.

85   Pew Research Center (n 83 above) 130.

86   See Konrad Adenauer Stiftung 'Katiba Moja kwa Watanzania Wote – Interreligious dialogue: Religious leaders and their contribution to the constitutional reform' 26 March 2014, http://www.kas.de/tansania/en/events/58956.

understanding'.[87] In January 2014, KAS and the Friedrich Ebert Stiftung and Jukwaa la Katiba organisations hosted a roundtable conference of civil society organisations to discuss the newly-released second draft of the proposed Constitution.[88] In February 2014, KAS hosted the Maendeleo Dialogue on 'Building a national consensus for the new Constitution', which brought together more than 250 participants, including representatives of religious groups. Among other recommendations, the dialogue urged that '[r]eligious bodies should continue to mobilise, inform and sensitise their followers on the importance of the constitutional reform for peace and sustainable development'.[89] In March 2014, KAS sponsored another forum titled '*Katiba Moja kwa Watanzania Wote* – Interreligious Dialogue', on the topic of religious leaders and their contribution to the constitutional reform.[90] KAS has also held fora on political communication on the internet.[91] So, there do appear to be significant interreligious movements afoot in Tanzania that can contribute to peace, constitutionalism and the elimination of religious hostilities.

These interreligious efforts may be bearing fruit. According to the recent Pew Forum studies of global religious restrictions, Tanzania actually saw an overall reduction in social hostilities around religion from 2006 to 2009.[92] Even so, the Pew researchers did report continuing tensions between Muslims and Christians in Tanzania, and these seem to have increased since the time of the study, so there remains work to be done on the interreligious front.[93] The most recent draft of the Constitution commits the government to taking 'appropriate measures' to 'build a culture of co-operation, consensus and compromise, tolerance and respect to customs and traditions as well as religious faith of everyone', and notes in its provision on freedom of expression the 'important duties of the people' to avoid 'propaganda about war, enticement based on colour, tribe, sexual discrimination, religion or any other affair that may negatively affect the nation', and proclaims in it provision on freedom of religion that '[n]o person, group of people or religious institution shall use the

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87   See L Kilimwiko & KV Knobelsdorff 'Faith is the foundation of peace, love and understanding' November 2013, http://www.kas.de/tansania/en/publications/ 36123 (accessed 31 March 2014).

88   See Konrad Adenauer Stiftung 'Second draft of the new Tanzanian Constitution: Round table discussion' 14 February 2014, http://www.kas.de/tansania/en/ publications/36860 (accessed 31 March 2014).

89   See L Kilimwiko & KV Knobelsdorff 'Maendeleo dialogue - Building a national consensus for the new Constitution: Konrad Adenauer Stiftung http:// www.kas.de/tansania/en/publications/36885 (accessed 31 March 2014). See also F Kimboy 'Aim for consensus, assembly urged' *The Citizen* (Dar es Salaam) 7 February 2014.

90   See Konrad Adenauer Stiftung (n 86 above).

91   See Konrad Adenauer Stiftung 'Efficient political communication in the internet: Online strategies and best practices' 13 February 2014, http://www.kas.de/ tansania/en/publications/36862.

92   Pew Forum (n 8 above) 12 17 54 60.

93   Pew Forum (n 8 above) 55.

freedom to preach religion for defaming other faith and religions, propagating hatred or disharmony and chaos claiming to be defending a faith or religion' and that 'religion and religious belief shall not be used in any way that shall divide the people, bring hostility or disrupt peace among people', amid many other provisions guaranteeing principles of equality and non-discrimination on the basis of religion and other factors.[94] On the social media front, Tanzania also seems to be looking toward technological developments in Kenya in much the same way as it looks toward Kenya in anticipating constitutional referenda and elections.[95] In fact, the bloggers behind Kenya's Ushahidi are said to have met for the first time in Tanzania, and Ushahidi was used for the first time to monitor elections in the 2010 Kenyan referendum and the 2010 Tanzanian elections.[96] In 2013, Twitter was used as a means of soliciting public commentary on the Tanzanian constitutional referendum process.[97]

3.3 Zambia: Pluralism and inclusion in the 'Christian nation'

Zambia is another African nation that has recently been experimenting with constitutional reform and social media to enhance its democratic development, but in a context that has also featured rising concerns about religious pluralism and social hostilities. The current Zambian Constitution has been in effect since 1991, with substantive amendments in 1996 and three separate constitutional review commissions convened in 1996, 2005 and 2007.[98] The 2007 National Constitutional Conference finally produced a new constitutional draft in June 2010, but by early 2011 the draft had failed to win parliamentary approval, despite calls from many sectors of Zambian society for a new Constitution to be in place by the time

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94   Second Draft Constitution of the United Republic of Tanzania released 31 December arts 10(3)(b)(iii), 30(2)(b) & 32(5-6). The English translation was provided to the author by Jukwaa la Katiba on 4 April 2014, and by Open Society Initative for East Africa (OSIEA) on 8 April 2014. The translation is unofficial at this time and may be superseded by the subsequent release of an official translation by the Constitutional Review Commission.

95   See also 'Tanzania lauds Kenya's use of technology in the polling, despite failings' *BBC* 7 March 2013. Tanzania is the only country outside Kenya where the electronic currency trend has caught on as an alternative to a poorly-developed banking system. See D McCleod 'Kenya outpaces SA as technology leader' *The Sunday Times* (South Africa) 9 June 2013. The crowd-mapping practice known as 'citizen cartography' by SMS texting has also caught on in Tanzania and Nigeria as a means of reporting water access problems. See D Lewis 'A web of watchdogs and whistleblowers' *Mail & Guardian* (South Africa) 27 January 2012.

96   M Bunting 'Crowdsourcing put to good use in Africa' *The Guardian (UK)* 19 May 2011. See also M Pflanz 'Kenyan referendum monitored by SMS and Twitter' *Christian Science Monitor* 4 August 2010.

97   Tanzanian constitutional review team incorporates Twitter users' views' *BBC* 5 July 2013. See also Twitter hashtag #OSIEAkatibatz.

98   The reports of the earlier Mvunga (1991), Mwanakatwe (1996) and Mungomba (2005) Commissions are accessible at the Zambia Legal Information Institute (ZAMLII) website at http://www.unza.zm/zamlii/mvunga-1991.html, http://www.unza.zm/zamlii/mwanakatwe-1996.html, and http://www.unza.zm/zamlii/downloads/mungomba.pdf (accessed 31 March 2014).

of the general elections scheduled for later that year.[99] In light of these repeated parliamentary failures to arrive at a new Constitution, an ecumenical religious and civil society group known as the Oasis Forum recommended in April 2011 that the process of drafting a new Constitution be removed from parliament and handed over to a committee of experts for eventual subjection to a national referendum, as had taken place in Kenya the previous year.[100] In November 2011, Zambian President Michael Sata appointed the Technical Committee on Drafting the Zambian Constitution (TCDZC), which was to convene the following month.[101] The first draft of the new Zambian Constitution was not released until April 2012, with a final draft promised for June 2013.[102] In October 2013, the final draft was said to be ready for printing the following month. At the time of writing this in April 2014, the TCDZC website still flashes an alert that the final draft Constitution will be released soon.[103] Thus, the April 2012 draft Constitution remains the only publicly-released version and indicator of where Zambia may be headed with respect to religion in the Constitution.

Amid the various efforts to reform the Zambian Constitution, a perennial topic of discussion and debate has been the 1996 amendment adding a preambular provision declaring Zambia to be a 'Christian nation'. The 2012 draft Constitution, like earlier drafts, retained highly-religious language in the opening of the Preamble, acknowledging the 'supremacy of God Almighty' in the first paragraph and professing in the second paragraph to 'declare the Republic a Christian nation, but uphold the right of every person to enjoy that person's freedom of conscience or religion'.[104] The eighth paragraph of the Preamble appeared to acknowledge religious and other types of pluralism in declaring that Zambia shall remain a 'free,

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99   For the National Constitutional Conference's proceedings and the 2010 draft Constitution, see http://www.ncczambia.org (accessed 31 March 2014).

100   'Oasis Forum demands Referendum Commission' *The Lusaka Times* 20 December 2011.

101   The proceedings, reports, and materials of the TCDZC, related to the current constitutional draft, are accessible at: http://zambianconstitution.org (accessed 31 March 2014).

102   The draft is accessible on the TCDZC website at http://zambianconstitution.org. See also 'Final draft Constitution ready by June 1- Kabimba' *The Lusaka Times* 22 November 2012.

103   See Technical Committee on Drafting the Zambian Constitution 'Final draft Constitution ready for printing' 31 October 2013, press release, http://zambianconstitution.org/component/content/article/35-press-release/104-final-draft-constitution-ready-for-printing-.html (accessed 31 March 2014). See also http://zambianconstitution.org/ home.html (accessed 6 April 2014).

104   First Draft of the Constitution of the Republic of Zambia (2012 Zambia Draft Constitution) 30 April 2012, Preamble, paras 1 & 2. The report accompanying the draft Constitution does, however, note that the Preamble has no force of law, art 35 on Freedom of Religion and Conscience being the relevant provision for constitutional protection of religion. See First Draft, Report of the Technical Committee on Drafting the Zambian Constitution, June 2012, http://zambianconstitution.org (accessed 31 March 2014).

unitary, indivisible, multi-ethnic, multi-cultural, multi-racial, multi-religious and multi-party democratic sovereign state'.[105] But new provisions in the 2012 draft Constitution seemed to elevate Christianity even further. A section on 'national values, principles and the basis of state policy' was based on 'morality, Christian values and ethics'.[106] Further, article 35 on freedom of religion and conscience contained, along with qualifying clauses limiting religious freedom in cases of 'propaganda to incite religious wars' and 'conduct that infringes the enjoyment of religious freedoms by others', a clause prohibiting any 'anti-Christian teaching and practice'.[107] These provisions of the draft Constitution enhance the status of Christianity, already the only religious tradition to be given specific mention and protection in the Zambian Constitution.

In April 2013, the TCDZC released a Consolidated National Convention Resolutions report collecting and definitively reconciling resolutions taken in consultation with various provincial conventions convened around the country in early 2013. These give some sense of the tenor of discussions that have likely shaped the forthcoming final draft Constitution. The first paragraph of the Preamble, acknowledging the 'supremacy of God Almighty', was retained as written, despite a move to insert the phrase 'the Creator of heaven and earth'.[108] The acknowledgment of God was deemed to be adequate without further description. In the 'Christian nation' paragraph, the language 'but uphold' was replaced with the language 'while upholding' as more inclusive of the religion and conscience rights of all and reflecting the 'co-existence of Christianity with other religions in Zambia'. At the same time, and seemingly contradictorily, the word 'multi-religious' was stricken from the eight paragraph for being 'contradictory to the affirmation of Zambia [as] a Christian nation' and potentially leading to 'misinterpretation'.[109] More hopeful for proponents of religious pluralism, the prohibition of 'anti-Christian teaching and practice' was stricken from article 35.[110] Nonetheless, modifications to subsequent provisions illustrated the constant give-and-take underway in the constitutional drafting process in matters of religion. Three of the provincial conventions recommended that article 60, on affirmative action programmes for minority and marginalised groups, be amended to state that 'undesirable groups

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105   2012 Zambia Draft Constitution para 8.
106   2012 Zambia Draft Constitution Part III 9(a).
107   2012 Zambia Draft Constitution Part V, 35(3)(a-c).
108   Technical Committee on Drafting the Zambian Constitution, Consolidated National Convention Resolutions (Lusaka, 10-17 April 2013) 1.
109   As above. The consolidated resolutions somewhat confusingly elaborate: 'The proposal to amend the article by deleting the term "multi-religious" was upheld because it may promote other religions that are not [sic] contrary to provisions of this Constitution. These religions can be provided for through subsidiary legislation.' The term 'multi-religious' was also eliminated from art 4(2). Technical Committee (n 108 above) 8.
110   Technical Committee (n 108 above) 36.

such as homosexuals, terrorists, satanists, witches and any other practices inimical to Christian and cultural values are not allowed', language that was rejected by the National Reconciliation Committee to create a more rhetorically-benign but no less exclusive exception for 'practices prohibited under this Constitution or any other law'.[111]

The problem of ethnic and religiously-tinged hate speech, particularly via the web and social media, does not yet seem to have affected Zambia to the extent that it has Kenya and Tanzania. Zambia has followed Kenya and Tanzania in the technological election-monitoring revolution based on Ushahidi. Coverage of the 2011 presidential election reported that Zambians wary of electoral fraud flocked to the internet and social media to expose any irregularities in a closely-contested presidential and parliamentary poll. As one election day account described it, 'Using text messages, Twitter, Facebook and e-mail, Zambians reported scores of perceived voting glitches and irregular poll practices by early Tuesday afternoon – the first such use of mobile technology in the Southern African nation'.[112]

Some recent incidents of hate speech in Zambia have been attributed to political parties hiring 'youth cadres' to intimidate voters. The problem has begun to get the attention of political party leaders, one of whom recently remarked:[113]

> All genocides start small … and we are beginning to see the same trends of hate speech and appearances of small arms here in Zambia. This must be stopped before it is too late.

In September 2012, in the course of investigating statements by members of one ethnic group threatening to eliminate members of another, the Inspector-General of the Zambian police, Stella Libongani, warned the public against engaging in hate speech and stated her readiness to enforce section 70(1) of the Zambian Penal Code against those making statements 'expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin or colour'.[114] That section of the penal code does not mention religion, but hate speech against religion is addressed in a separate section dealing, much like section 138 of the Kenyan Penal Code, with 'offences relating to religion' and prescribing punishments for 'insult to religion

111 Technical Committee (n 108 above) 64. One province would have limited the art 60 right for groups to 'develop their cultural values, languages, and practices' by adding the phrase 'socially acceptable' before the word 'cultural'.

112 M Bosch 'Zambians watch internet, social media for vote fraud' *Reuters* 21 September 2011. The Zambian initiative was organised by Bantu Watch, whose Facebook and Twitter pages are still accessible, even though the main organisation site seems to have expired.

113 J Kimer 'Rising youth cadre violence threatens Zambian stability' *ThinkAfricaPress.com* 28 November 2012.

114 Laws of Zambia, The Penal Code Act, Cap 87 ch 7 sec 70(1).

of any class' and 'uttering words with the intent to wound religious feelings'.[115]

In the same month that the Inspector-General of the police issued her call for civility, the Zambia Information Communication and Technology Authority (ZICTA) was directed to draft a law to punish internet users for hate speech. The Zambian government was said to be concerned about abuse of the internet to promote 'hate and corrupt morals'.[116] The initiative to criminalise internet hate speech initiatives came after several failed attempts to shut down online media organisations for promoting political hate speech. More recently, Zambia has threatened to revoke radio licences for stations broadcasting hate speech and has blocked two news websites for alleged 'ethical lapses' in reporting, and a major media association has called upon the media to eschew hate speech and to 'concentrate on promoting discussions and debates of real issues affecting the welfare of the country as opposed to concentrating on politics of name calling'.[117]

Religious leaders in Zambia have themselves recently been implicated in hate speech on the issue of homosexuality. Reports of the Open Society Initiative for Southern Africa (OSISA) have accused politicians and religious leaders of 'gay-bashing' that has created a climate in which Zambia's sodomy laws are now being used to put homosexual people in jail.[118] This is said to be taking place in a wider political context in which the government of President Michael Sata has 'cracked down relentlessly on opposition politicians and civil society activists', such that[119]

> Zambia is rapidly sliding down the path … where an increasingly authoritarian government supported by a repressive police force trample[s] over human rights, democracy, good governance and the rule of law.

Another OSISA report described a radio programme that aired after the release from prison of prominent human rights and HIV activist, Paul Kasonkomona, in which

> religious leaders from American-funded and supported radical evangelical churches and one Muslim Imam called for stiff action against homosexuals – even urging the public to take the law into their own hands should the government fail to respond to this vice adequately,

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115 Laws of Zambia, The Penal Code Act ch XIV secs 128 & 131.

116 'Zambia plans law to curb online hate speech' *Telecompaper.com* 18 September 2012.

117 'Zambia: Government threatens to revoke radio licences' *The Zimbabwean* (Harare) 19 August 2013; 'Media advised against promoting hate speech' *LusakaVoice.com* 26 September 2013. See also N Udoh 'PF moves to intimidate independent radio stations' *Zambia Reports* 20 August 2013.

118 R Lee 'From hate speech to jailing gays in Zambia' *OSISA.org* 7 May 2013. See also T-H Olsen 'Hate campaign against LGBTI persons rises in Zambia' *Pambazuka News* 633 6 June 2013.

119 As above.

a view that was roundly approved by the programme's call-in listeners, the majority of whom 'agreed with them – and called for the burning and killing of all homosexuals in the "Christian nation of Zambia"'.[120]

In these recent actions, the Sata government could end up taking Zambia down the same path that has been taken in recent years by the Musaveni government in Uganda and the Mugabe government in Zimbabwe. In all three countries there have been questions surrounding recent constitutional referenda and presidential elections. Musaveni and Mugabe, with Paul Kagame in Rwanda, are routinely cited as avatars of the 'big man' tradition of African leadership that continues to prevail in some countries and has been bolstered by increasingly authoritarian practices against criticism and opposition. Religious groups have often entered the fray on the side of or in opposition to particular candidates, and religious issues such as homosexuality and interreligious relations (particularly where there are rising Muslim populations) have made their way into politics, where they have been exploited by parties on all sides. In all of these countries, the use of social media is rising along with escalating accusations of hate speech. Zambia is currently positioned somewhere between the Kenyan and Tanzanian efforts at free speech and religious pluralism and the more authoritarian paths being taken by Uganda and Tanzania – thus it will bear watching as these issues of religious freedom, freedom of expression, hate speech and social media continue to be worked out in the Eastern, Southern and other regions of Africa.

4 Conclusion: Perceptions, attitudes, values and human rights – Toward a new 'socio-legal understanding'

As noted toward the beginning of this article, the Pew Forum's *Tolerance and tension* study of religion, politics and society in sub-Saharan Africa confirmed the ongoing nature of the concerns, expressed at the CSLR's 2008 Durban Consultation and at the ICLRS 2013 Ghana Conference, among others, about continuing perceptions of tension between religious groups in Africa today and the implications of these perceptions for religious pluralism, democracy and human rights. Over time, perceptions can harden into attitudes and persistent attitudes can shape normative values. In this way, perceptions can become self-fulfilling realities. Organisations like the Pew Research Center have increasingly found ways to empirically measure and quantify these perceptions, values and attitudes in ways that bear on legal and constitutional views of pluralism, democracy, and human rights – but it is not yet clear that law has found a way to

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120 C Ukwimi 'Sowing poisonous seeds in Zambia' *OSISA.org* 23 April 2013.

take them into account.

The realm of law has heretofore dealt with causation more than correlations, and principles more than perceptions. Law often sees itself as dealing with empirical facts before getting to deductions of normative values and rules. It is consummately evidence-based. What role do perceptions, particularly interreligious ones, play in this legal paradigm? In matters of religious freedom, political democracy and human rights, perceptions and their expression can be highly sensitive – even inflammatory and combustible – if not managed properly. It is likely this realisation that has led some African nations of late to propose limits on freedom of expression, particularly via instant and global social media, in order to address and manage religious and social tensions. These measures often seem to conflict with international human rights standards governing freedom of religion and freedom of speech. In this African context, the rule of law may require such regimes of 'perceptions management', with lawyers stepping into a peacemaking role usually assigned to political scientists and humanitarians in order to broke desired levels of freedom, democracy and rights.

In much the same way that these new perceptual facts challenge the objectivity and neutrality of the law, the 'religious resurgence' of the 'post-secular era' challenges our understanding of the relationship between law and religion and between religion and the state. While state restrictions on religious individuals and religions themselves will continue to be important sites for human rights monitoring and points of legal challenge, the new factor raised by the recent attention to effects of social hostilities in restricting religious freedom is the problem of interreligious (and sometimes intra-religious) conflict as a major source of human rights violations. The problem of religious human rights is no longer limited to what the state does to religion, but must include attention to what religions do to each other. Religious groups in the advanced but largely secular democracies of Europe and North America, particularly but not exclusively the more orthodox and traditionalist groups, have often laid the blame on secularism and modernity for the exclusion of religion from the 'public square' and have sought religious accommodations that would allow them to integrate their religious beliefs into their public lives in a comprehensive way. However, in the often more fragile multi-ethnic, multi-linguistic, multi-cultural and multi-religious societies, a certain amount of secularism, in the form of governmental oversight of religion – particularly religious speech or religious critique that amounts to hate speech – may be necessary in order to preserve the religious and social peace. In such cases, secularism may be not part of the problem, but rather part of the solution.[121]

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121 See n 20 above about the low frequency of blasphemy laws in Africa and the possibility of working out the relationship between religious freedom and freedom of expression through less draconian means. See also the arguments of our host in Ghana, Dean Kofi Quashigah, in this article symposium.

There are those who doubt that there can be a role for law when it comes to managing social hostilities based on religion and who object particularly to the idea that the law is capable of defining and delimiting religion at all in a way that raises the possible 'impossibility of religious freedom'.[122] However, the onus on proponents of this view is to explain what role, if any, the law should play in keeping the peace when human rights and human lives are at stake. The possible incapacity of the law to adjudicate and manage religion may seem especially likely in Africa, where religion and state are sometimes closely intertwined, often by necessity, in the effort to provide for the material needs and common good of the people. The efforts to address hate speech in Kenya and Zambia, and the efforts to bring religious groups together in Tanzania, while not always fully effective in preventing hostilities, suggest that Africans know something about the power of religion in shaping the perceptions, attitudes and values in ways that can lead either to conflict or to peace. It will continue to be interesting to see how African nations strike their own balance between the positive and negative powers of religion in the public sphere, a sector made larger, but also smaller and closer, by the new social media.

Perhaps the most important lesson to take away is that law must step up and develop new theories that take into account the speed and scope of new media and its power to shape perceptions that become new social – and perhaps eventually legal – sources of value and normativity on a context of proliferating sources of data and the profusion of identity and rights claims that come with the proliferation of post-secular religiosity. How does one authenticate a tweet or text message? What is the evidentiary value of crowd-sourced and crowd-mapped human rights violations? How can one verify the truth of these statements and data? How much more difficult is the task of making sense of religious and social claims cast via new media? How is the law, as a site of power and normativity, to take charge of and effectively manage religion, another source of power and normativity, on this basis of these new sources of data that have important perceptions-generating power of their own?

Law has already been said to be behind the times when it comes to understanding the power of statistical information and other indicators in the age of 'big data'.[123] As the legal anthropologist Sally Engle Merry writes:[124]

> As forms of knowledge, indicators rely on the magic of numbers and the appearance of certainty and objectivity that they convey. A key dimension of the power of indicators is their capacity to convert complicated,

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122   See WF Sullivan *The impossibility of religious freedom* (2007).

123   See V Mayor-Schönberger & K Cukier *Big data: A revolution that will transform how we live, work, and think* (2013).

124   SE Merry 'Measuring the world: Indicators, human rights, and global governance' in D Partridge *et al* (eds) *Corporate lives: New perspectives on the social life of the corporate form, current anthropology* (2011) S84-S85.

contextually variable phenomena into unambiguous, clear, and impersonal measures. They represent a technology of producing readily accessible and standardised forms of knowledge. Indicators submerge local particularities and idiosyncrasies into universal categories, generating knowledge that is standardised and comparable across nations and regions. Indicators are a special use of statistics to develop quantifiable ways of assessing and comparing characteristics among groups, organisations, or nations …

The use of statistical information in general, and indicators in particular, shifts the power dynamics of decision making. Indicators replace judgments on the basis of values or politics with apparently more rational decision making on the basis of statistical information …

Indicators provide a technology for reform as well as control. Indicators can effectively highlight deficits, areas of inequality, spheres of human rights violations, and other problem areas. Reform movements depend on producing statistical measures of the wrongs they hope to redress, such as human rights violations, refugee populations, disease rates, and the incidence of poverty and inequality. They are a valuable reform tool in their ability to show areas of state failure.

In connection with these ideas of power and reform, it is worth noting the staple of much Christian legal theory that there is a *pedagogical role for the law*. That pedagogical role is a powerful function of law and potentially a tool of reform. Recent movements that unite law and religion in addressing the problems of conflict and post-conflict societies also invoke a *restorative* or even *therapeutic* role for the law. But to restore or heal in a therapeutic sense requires a proper diagnosis of the problem. In thinking of the problem of diagnosis, I return to the perception, widespread in Africa, about religions being out for proselytism and conversion, compared to the scant statistical data that this is actually occurring. How should the law – how should religions, for that matter – respond to such gaps between perceptual and statistical reality in seeking to adjudicate claims of religious rights violation or religious hate speech?

Lack of space prevents the fleshing out of the issues and questions at stake. However, one thing seems clear. In the post-secular profusion of religious and non-religious claims and multiple forms of data and expression, there needs to be a 'socio-legal paradigm' for understanding these new religious human rights claims in their surrounding social, political, economic, and even technological contexts. The expression of religious claims and religious identities will continue to bubble up in the social media sphere – sometimes in expressions of hatred and hostility, sometimes in intentional efforts to promote peace. Given the nexus of social hostilities and social media in pluralistic societies that at least aspire to become peaceful and fully-functioning democracies and with new ways to measure and describe the interaction of various sectors of society and criteria of identity, we are way beyond the standard 'Western church-state' model of understanding religion and human rights. We are in an era of newly resurgent religion, new means of communication, and new tensions between religious freedom and freedom of expression. From social hostilities to social media, the law has some new terrain to navigate –

and Africa may prove to be an especially apt starting point for that exploration.