



# Social Media as the New Means to Commit International Crimes

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# Atrocity speech in International Law

Atrocity speech crimes: incitement, persecution, ordering, instigation

Crime of persecution:

Widespread or systematic attack against any civilian population, with knowledge of the attack + policy requirement + discriminatory deprivation of fundamental human rights

Incitement to genocide:

Public and direct requirements + the genocidal intent (to destroy, in whole or in part, a national, ethnical, racial or religious group, as such)

# Post-election violence in Kenya (2007)

Core issues: an ethnically driven political polarization – PNU (Kibaki) v. ODM (Odinga), a long-standing ethnic tension

Key events: Mwai Kibaki wins the elections – violence against PNU supporters erupts

Relevant ICC charges: *Prosecutor v. Ruto and Sang* – crimes against humanity  
Persecution by contributing “in any other way to the commission or attempted commission of such a crime” – broadcasting inflammatory statements, providing perpetrators with the radio resources

# Later developments in Kenya

2008 – hate speech regulatory measures (2008 Cohesion and Integration Act):

- Criminalisation of hate speech
- Strict regulation of the (traditional) media
- Mobile service regulations

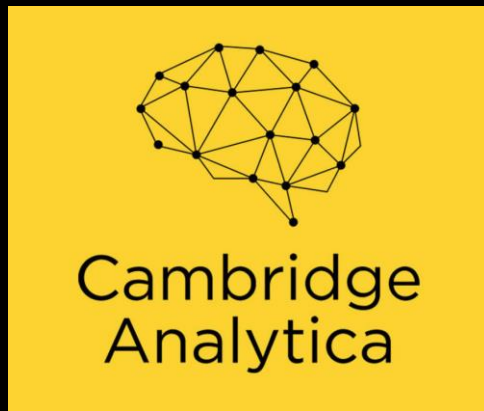
2010 – the grow of the Internet users and

2014 – the accessible Internet (Free Basics) provided by Facebook

2017 – another post-elections violence in Kenya

# Kenyatta's campaign and Cambridge Analytica

Cambridge Analytica is a data analysis company specialised in providing solutions for political parties



It is alleged to have used data from Facebook to manipulate votes (misinformation, targeted political posts)

The scheme was revealed in 2018 (with regards to the US elections), then it was confirmed the votes manipulation was used in Kenya in 2017

*"We exploited Facebook to harvest millions of people's profiles. And built models to exploit what we knew about them and target their inner demons. That was the basis the entire company was built on."*

# Myanmar and Facebook

2012 Human Rights Watch report – inflammatory speech in the [traditional] media

In 2018, the UN Fact-Finding Mission on Myanmar issued a 440 paged long report on human rights violations in Myanmar.

74. *The role of social media is significant. Facebook has been a useful instrument for those seeking to spread hate, in a context where, for most users, Facebook is the Internet. Although improved in recent months, the response of Facebook has been slow and ineffective. The extent to which Facebook posts and messages have led to real-world discrimination and violence must be independently and thoroughly examined. The mission regrets that Facebook is unable to provide country-specific data about the spread of hate speech on its platform, which is imperative to assess the adequacy of its response*



An example of a fake post presented in the report

# Incitement online

## Issues:

- “diffusion” of perpetrators online – identification of perpetrators
- Jurisdictional requirements

“The Court may assert jurisdiction pursuant to article 12(2)(a) of the Statute if at least one element of a crime within the jurisdiction of the Court or part of such a crime is committed on the territory of a State Party” (ICC-01/19-27 14-11-2019)

Territorial link vs Global Internet



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