

# The Responsibility to Protect and the Private Sector: Making the Business Case for Private Sector Involvement in Mass Atrocity Prevention

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## Abstract

More demanding expectations of the private sector *vis-à-vis* states and citizens have emerged which include among others that businesses should not solely seek profit; they also have societal responsibilities. With the emergence of the Responsibility to Protect (R2P) which acknowledges that states have the primary responsibility to protect their citizens against mass atrocities, the United Nations (UN) Secretary-General called upon the international community, including the private sector, to play a role in helping states meet their R2P obligations. Several reports of the UN Secretary-General clarify the concept of R2P and offer some guidance for relevant actors to implement the doctrine. However, due to a lack of concrete guidance, key actors, including the private sector itself, may not be (fully) aware of the potential of businesses in this domain. This paper will advance the argument that the private sector can effectively contribute to the prevention of mass atrocities and can support states' efforts to meet their R2P obligations. By analyzing the mass atrocity prevention framework, presenting practical examples of how businesses could contribute in this domain and by drawing lessons from the case of the business association called Kenya Private Sector Alliance (KEPSA) that contributed to the prevention of mass atrocities during the 2013 presidential elections in Kenya, the paper demonstrates that businesses can provide important contributions to mass atrocity prevention. The private sector should therefore be recognized as key partner within the context of R2P and the broader framework of mass atrocity prevention.

Keywords

Conflict, Conflict Prevention, Mass Atrocities, Mass Atrocity Prevention, Private Sector, Responsibility to Protect



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## Introduction

The principle of Corporate Social Responsibility (CSR) has encouraged businesses to assume a greater societal responsibility that goes beyond merely seeking profit. An increasing number of businesspeople are more cognizant of the impact of their activities on human rights and attempt to operate responsibly.<sup>1</sup> The idea of businesses having responsibilities to society is also addressed in the Guiding Principles on Business and Human Rights which were recognized by the UN Human Rights Council in 2011.<sup>2</sup> In addition to the CSR principle, there is the principle of Corporate Security Responsibility, which exemplifies that the expanding role of the private sector not only emerges in peaceful situations.<sup>3</sup> A role for businesses in conflict prevention and resolution has also been recognized during the first Policy Dialogue of the UN Global Compact on the role of the private sector in zones of conflict that was held in March 2001.<sup>4</sup> In April 2004, the UN Security Council met to discuss the role of the business sector in conflict prevention, peacekeeping and peacebuilding.<sup>5</sup> The private sector is increasingly put forward as a “promising and much-needed complement to the activities of states and civil society actors.”<sup>6</sup> Indeed, in several cases, the private sector has played an important role in conflict prevention and resolution. In Colombia, for instance, the National Business Association of Colombia (ANDI)<sup>7</sup> supported the peace talks between the Colombian government and the rebel groups. High-level representatives of ANDI took part in the negotiations that sought to promote dialogue between the warring parties.<sup>8</sup> In Burundi, the main employers’ organization, the Association of Burundi Employers (*Association des Employeurs du Burundi*, AEB), was actively involved in conflict resolution efforts between Hutus and Tutsis through among others advising workers and lobbying among politicians, public civil servants and the international community.<sup>9</sup>

1 See, for example, the growing number of participants of the UN Global Compact, more than 12,000 corporate participants and other stakeholders from over 145 countries; “Overview of the UN Global Compact”, last modified April 22, 2013, <https://www.unglobalcompact.org/AboutTheGC/index.html>; *Fourth Meeting of the Global Network of R2P Focal Points*, Global Centre for the Responsibility to Protect, 2014, [www.globalr2p.org/media/files/r2p-focal-points-2014-meeting-summary.pdf](http://www.globalr2p.org/media/files/r2p-focal-points-2014-meeting-summary.pdf).

2 “UN Framework and the Global Compact”, last modified May 2, 2014, [https://www.unglobalcompact.org/issues/human\\_rights/The\\_UN\\_SRSG\\_and\\_the\\_UN\\_Global\\_Compact.html](https://www.unglobalcompact.org/issues/human_rights/The_UN_SRSG_and_the_UN_Global_Compact.html). Other efforts to ensure that businesses act in accordance with human rights standards are: OECD Guidelines for Multinational Enterprises (2000), Tripartite Declaration of Principles concerning Multilateral Enterprises and Social Policy 1977, revised in 2000), UN Principles for Responsible Investment (2006), Conflict Sensitive Business Practice: Guidance for the Extractive Sector (2005).

Alice de Jonge, “Corporate Social Responsibility: An International Law Perspective”, in *International Business under Adversity. A Role in Corporate Responsibility, Conflict Prevention and Peace*, ed. Gabriele G.S. Suder. (Cheltenham: Edward Elgar Publishing Limited, 2008), 26.

3 Klaus Dieter Wolf, Nicole Deitelhoff and Stefan Engert, “Corporate security responsibility: towards a conceptual framework for a comparative research agenda”, *Cooperation and Conflict: Journal of the Nordic International Studies Association* 42 (2007): 297, accessed November 6, 2014, doi: 10.1177/0010836707079934.

4 Frederick M. Muia, “The Private Sector in Conflict Prevention and Post-Conflict Reconstruction”, in *Jobs after War: A Critical Challenge in the Peace and Reconstruction Puzzle*, ed. Eugenia Date-Bah, (Geneva: International Labour Office. 2003), 259; “The Role of the Private Sector in Zones of Conflict”, accessed November 6, 2014,

[https://www.unglobalcompact.org/issues/conflict\\_prevention/meetings\\_and\\_workshops/01\\_ny\\_report.html](https://www.unglobalcompact.org/issues/conflict_prevention/meetings_and_workshops/01_ny_report.html).

5 United Nations, Security Council, *The role of business in conflict prevention, peacekeeping and post-conflict peace-building*, 4943rd Meeting, New York, April 15, 2004.

6 Wolf, Deitelhoff and Engert, “Corporate security responsibility: towards a conceptual framework for a comparative research agenda”, 297.

7 ANDI represents more than 1,100 companies in among others manufacturing, food and health sectors. National Business Association of Colombia, accessed November 6, 2014, <http://www.andi.com.co/WebEnglish/about-us/>.

8 Muia, “The Private Sector in Conflict Prevention and Post-Conflict Reconstruction”, 274.

9 Ibid., 275.

Existing literature linking the private sector with prevention focuses primarily on the role of the private sector in conflict prevention.<sup>10</sup> Initiatives, such as the “Business for Peace” platform of the UN Global Compact,<sup>11</sup> mainly focus on how businesses could prevent supporting conflict. Less attention has been paid to whether the private sector could play such a role in the context of mass atrocity prevention and what this would exactly entail.

The emerging norm of the Responsibility to Protect (R2P) acknowledges that states have the primary responsibility to protect their populations from mass atrocities. The international community has a secondary responsibility in that it needs to help states in exercising this responsibility. R2P was designed to close the gap between rhetoric and substantial commitment to respond to mass atrocities. However, situations such as in Sudan, Libya and Syria illustrate that states and the international community as a whole face many challenges of implementing R2P. Possible accounts for this deficiency could be found in a lack of political will and operational capacity in order to justly implement R2P in a specific context. Many debates center on the question how to tackle these challenges and which actors ought to be involved. Several reports of the UN Secretary-General clarify the concept of R2P and offer some guidance for relevant actors to implement the doctrine.<sup>12</sup> Some reports specifically link the private sector with the prevention of mass atrocities in the context of R2P, however they fell short of outlining what this would involve in more concrete terms.<sup>13</sup> Due to these rather unclear accounts of the private sector’s potential role in mass atrocity prevention and R2P, key actors – including the private sector itself – may not be (fully) aware of the potential of businesses in this domain. This paper seeks to close this knowledge gap and will advance the argument that the private sector can provide important contributions to mass atrocity prevention and support the responsibility of states to ‘prevent, react and rebuild’ in the context of mass atrocities.

The paper primarily targets private sector actors and aims to increase awareness of their potential, identify some of the opportunities for action and advise on the mitigation of challenges that the private sector may face. Second and towards a more integrated response, this paper seeks to inform states and civil society organizations of the potential of the private sector as a key partner within R2P and the broader framework of mass atrocity prevention.

Many businesses may claim that their involvement in mass atrocity prevention is beyond their duties and not their responsibility. After all, businesses are generally established to make profit, not to protect civilians. Furthermore, new obligations may lead to additional costs. However, businesses should not perceive their involvement as merely another source of

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10 See for example Muia, “The Private Sector in Conflict Prevention and Post-Conflict Reconstruction”; Andreas Wenger and Daniel Möckli, *Conflict Prevention. The Untapped Potential of the Business Sector* (Boulder, Colorado: Lynne Reiner Publishers, 2003); Jane Nelson, *The Business of Peace: The Private Sector as Partner in Conflict Prevention and Resolution*, International Alert, Council on Economic Priorities, and the Prince of Wales International Business Leaders Forum 2000; Brian Ganson, *Business and Conflict Prevention: Towards a Framework for Action*, (Geneva Peacebuilding Platform, 2011).

11 “Business for Peace. Background Information”, last modified April 4, 2014, [https://www.unglobalcompact.org/Issues/conflict\\_prevention/further\\_links.html](https://www.unglobalcompact.org/Issues/conflict_prevention/further_links.html).

12 United Nations, General Assembly, *Implementing the Responsibility to Protect: report of the Secretary-General*, A/63/677 (12 January 2009); *Early warning, assessment and the responsibility to protect: report of the Secretary-General*, A/64/864 (14 July 2010); *The role of regional and sub-regional arrangements in implementing the responsibility to protect: report of the Secretary-General*, A/65/877–S/2011/393 (27 June 2011); *Responsibility to Protect – Timely and Decisive Response: report of the Secretary-General*, A/66/874–S/2012/578 (25 July 2012); *State Responsibility and Prevention: report of the Secretary-General*, A/67/929–S/2013/399 (9 July 2013); *Fulfilling our collective responsibility: international assistance and the responsibility to protect: report of the Secretary-General*, A/68/947–S/2014/449 (11 July 2014).

13 See for example United Nations, General Assembly, *Implementing the Responsibility to Protect: report of the Secretary-General*, 9, 26; *Fulfilling our collective responsibility: international assistance and the responsibility to protect: report of the Secretary-General*, 7.

expense. Just like CSR policies, private sector involvement in mass atrocity prevention could provide an opportunity for individual businesses to improve their business environment, engage with and build trust among stakeholders. Additionally it will advance their reputation and will allow them to become a market leader which will boost their bottom-line.

Recognizing that the private sector is not a monolithic community, but rather exists in many forms and entities with diverse interests and capacities, this paper will build on the assumption that all these entities share the goal of maximizing wealth, and with that it is assumed that they share the incentive to make sure that this goal is not undermined, for example by means of conflict or mass atrocities. As a result these entities, with the exception of those that benefit from conflict or mass atrocities, share motives to contribute to conflict prevention and mass atrocity prevention. For the purposes of this paper, the definition of the business sector provided by the UN in the “Guidelines on Cooperation between the United Nations and the Business Sector” will be used. These Guidelines define the business sector as: “(a) For-profit, and commercial enterprises or businesses; (b) Business associations and coalitions (cross-industry, multi-issue groups; cross-industry, issue-specific initiatives; industry-focused initiative); including but not limited to corporate philanthropic foundations.”<sup>14</sup> One section of the paper will specifically address the role of business associations by looking at the experiences of Kenya Private Sector Alliance (KEPSA) which contributed to the prevention of mass atrocities in Kenya during the 2013 presidential elections among others through organizing closed-door meetings with donors/development partners, the media, civil society and political parties. It is presumed that collective action has more clout and can have a more powerful impact in the context of R2P. Furthermore businesses, when acting in concert with others, are able to share costs of the preventive efforts.

“Conflict” as discussed in this paper is defined by the Uppsala Conflict Data Project as “a contested incompatibility that concerns government or territory or both where the use of armed force between two parties results in at least 25 battle-related deaths. Of these two parties, at least one is the government of a state.”<sup>15</sup>

Mass atrocities concern exceptionally high-level violence that is inflicted on large numbers of civilians either by state or by non-state actors.<sup>16</sup> “Mass atrocities” refers to any of the four acts specified in paragraph 138 of the 2005 World Summit Outcome Document, namely genocide, war crimes, ethnic cleansing or crimes against humanity.<sup>17</sup>

The paper is structured as follows: section one will present the various incentives for businesses to become involved in mass atrocity prevention. Section two will discuss the conflict and mass atrocity prevention framework in general. Section three will provide practical examples of how the private sector has played a role in conflict prevention and resolution, and how businesses could play a role in mass atrocity prevention. Section four will outline the various challenges that businesses may face when taking up this role and will offer some solutions. Section five will present examples of how KEPSA has contributed to the

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14 United Nations, *Guidelines on Cooperation Between the UN and the Business Sector*, (2009).

15 Nils Petter Gleditsch et al., “Armed Conflict 1946–2001: A New Dataset”, *Journal of Peace Research* 39 (2002): 618-619, accessed November 7, 2014, doi: 10.1177/0022343302039005007.

16 Task Force on the EU Prevention of Mass Atrocities, *The EU and the Prevention of Mass Atrocities. An Assessment of Strengths and Weaknesses*, Budapest Centre for the International Prevention of Genocide and Mass Atrocities and Foundation for the International Prevention of Genocide and Mass Atrocities, (2013).

17 United Nations, General Assembly, *Implementing the Responsibility to Protect: report of the Secretary-General*, 28; General Assembly resolution 60/1, *2005 World Summit Outcome, A/RES/60/1*, (24 October 2005).

prevention of mass atrocities during the 2013 presidential elections in Kenya, and lessons learned for future situations that require mass atrocity prevention measures. The final section will present the main findings and conclusions.

## 1. Incentives for the Private Sector

This section will outline the incentives for businesses to become involved in mass atrocity prevention based on economic – both in terms of the costs of conflict and atrocities, and the benefits of preventing these phenomena – moral and legal grounds.

### 1.1. Economic incentives

#### 1.1.1. The Costs of Conflict and Mass Atrocities

When linking the private sector with conflict and mass atrocities, we often think of examples that illustrate the negative impact of businesses on human rights. Indeed, in the past the private sector has acted as a spur to conflict or was directly involved in criminal activities.<sup>18</sup> Natural resource exploitation, for instance, has financed various wars.<sup>19</sup> The radio station *Radio Télévision Libre des Mille Collines* was directly involved, by way of incitement, in the genocide in Rwanda in 1994.<sup>20</sup> Less well known is the impact of conflict and mass atrocities on the private sector.

Notwithstanding those industries that directly or indirectly benefit from conflict or mass atrocities, instability is bad for business. It is destructive for the sector itself and economic growth overall.<sup>21</sup> According to the Global Peace Index 2014, “the economic impact of containing and dealing with the consequences of violence in 2013 was significant, amounting to US\$9.8 trillion per annum or 11.3 percent of global GDP.”<sup>22</sup> Conversely, a peaceful and stable situation with low levels of violence, insecurity and fear allows for an environment in which business can prosper.<sup>23</sup> The level of impact of instability on the private sector varies for each type of industry and investment structure as well as the type and severity of conflict. The geographic proximity of a company to the conflict may also determine the level of impact.<sup>24</sup>

Relevant literature has identified different types of generic *direct costs* of conflict for businesses.<sup>25</sup> First of all, as a direct result of violent conflict businesses risk the loss of personnel and expertise through kidnapping, migration, displacement or death. Secondly, conflict could damage the property of businesses, such as plants, machinery pipelines, or

18 Nick Killick, VS Srikantha and Canan Gündüz, *The Role of Local Business in Peacebuilding*, (Berghof Research Center for Constructive Conflict Management, 2005), 3.

19 For example diamond mining that financed the conflict in Angola and Sierra Leone; Global Witness, *A Rough Trade. The Role of Companies and Governments in the Angolan Conflict* (1998); United Nations, Security Council, *Report of the Panel of Experts appointed pursuant to Security Council resolution 1306 (2000), paragraph 19, in relation to Sierra Leone* (2000).

20 United Nations International Criminal Tribunal for Rwanda, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, Case No. ICTR-99-52-T, Appeals Judgment, 28 November 2007.

21 Nelson, *The Business of Peace: The Private Sector as Partner in Conflict Prevention and Resolution*; Killick, Srikantha and Gündüz, *The Role of Local Business in Peacebuilding*, 4; D. Conor Seyle, “Business Participation in the Responsibility to Protect” (an One Earth Future Foundation working paper prepared for presentation to the 2013 annual conference of the International Studies Association, San Francisco, California April 5, 2013), 9.

22 Institute for Economics and Peace, “Global Peace Index 2014”, accessed on November 7, 2014, <http://www.visionofhumanity.org/sites/default/files/2014%20Global%20Peace%20Index%20REPORT.pdf>.

23 Ibid.

24 Wenger and Möckli, *Conflict Prevention. The Untapped Potential of the Business Sector*, 108.

25 Wenger and Möckli, *Conflict Prevention. The Untapped Potential of the Business Sector*; Nelson, *The Business of Peace: The Private Sector as Partner in Conflict Prevention and Resolution*.

public infrastructure. Thirdly, conflict requires the private sector to incur security and risk management costs. Businesses, for instance, may need to hire companies to protect their personnel and properties. Fourthly, the business environment in general could be damaged by conflict, which leads to opportunity costs. A collapse of the government and institutions can disrupt local markets, supply chains and networks. Furthermore, international responses such as sanctions and embargoes that target the warring parties may directly impact businesses. Fifthly, businesses may face difficulties when raising capital.<sup>26</sup> Sixthly, businesses may need to deal with lawsuits if accused of being complicit in or responsible for human rights violations. Finally, conflict could directly harm the business' reputation if perceived as beneficiary of "operations that directly or indirectly support a 'war economy'".<sup>27</sup>

The private sector could also be confronted with *indirect costs*. These are costs that do not have an immediate impact on businesses, but spill over to these actors. Such costs concern for example "societal" or "internal" costs in the country concerned. These costs impact the society as a whole and could weaken human, social, economic, environmental or political capital of the entire country. The private sector, being part of that society, could be affected indirectly when loss of these types of capital undermine domestic and foreign investment.<sup>28</sup> "External" costs could also indirectly harm the business sector. These include costs that neighboring states, the international community and donor governments may face when dealing with humanitarian crises, refugee flows, and military interventions to address a conflict in the region. These actors will need to use funds to cope with the conflict that could otherwise have been invested in among others business endeavors. In addition, a conflict in the region could lead to political uncertainty and a decline in the economy which affects the private sector since many investors will be reluctant to support businesses that operate in an unstable region.<sup>29</sup>

Those conflicts that target the civilian population specifically, as is the case with mass atrocities, undoubtedly have a detrimental impact on human and social capital. In the Rwandan civil war and genocide in 1994, approximately five to eight hundred thousand people were killed. More than two million people fled Rwanda and one million people became internally displaced.<sup>30</sup> When a country loses such a large part of the population, either due to the fact that they have been killed, displaced or have fled, it has a devastating impact on the labour market. In addition, it can have a demoralizing impact on those who have survived and who may have lost trust in society, including businesses. Furthermore, in the aftermath of such a tragedy security and risk management costs may increase significantly to avoid a relapse, and investments may drop.

Many of the direct and indirect costs mentioned above will not cease to exist once the conflict has come to an end, and may undermine economic growth in general, as well as the bottom-line of individual businesses in the long-term.

### 1.1.2. Benefits of Private Sector Involvement in Mass Atrocity Prevention

To make a case for the private sector to become involved in mass atrocity prevention, we should not only look at the costs of conflict or mass atrocities. Maybe even more compelling

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<sup>26</sup> Ibid.

<sup>27</sup> Nelson, *The Business of Peace: The Private Sector as Partner in Conflict Prevention and Resolution*, 23.

<sup>28</sup> Ibid., 20.

<sup>29</sup> Ibid.

<sup>30</sup> John Eriksson, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience. Synthesis Report Joint Evaluation of Emergency Assistance to Rwanda*, Swedish International Development Cooperation Agency (Steering Committee of the Joint Evaluation of Emergency Assistance to Rwanda:1996).

for individual companies are the benefits of becoming involved in mass atrocity prevention. In a similar fashion to CSR, private sector involvement in mass atrocity prevention is much more than a cost or constraint; instead it provides an opportunity for businesses to become a market leader, to bring innovation and to improve their competitiveness by differentiating themselves in a crowded marketplace.<sup>31</sup> Moreover, it allows businesses to engage with and build trust among stakeholders. Private sector involvement in a good cause, such as the prevention of mass atrocities, could furthermore improve employee satisfaction, customer loyalty and general corporate reputation. Research has found that employees will be more productive when working in a safe environment and when human rights are respected.<sup>32</sup> Customers may be more willing to pay higher prices for products that support a good cause.<sup>33</sup> A 2012 study on CSR concluded that there is “a small but positive relationship between CSR actions and policies and financial outcomes”. It also identified several nonfinancial outcomes such as “operational efficiencies”, “improved management practices” and “attractiveness to investors”.<sup>34</sup> Businesses should, therefore, not see their involvement in mass atrocity prevention as just another source of expense, but rather as an investment that can increase their bottom-line in the long-term.

## 1.2. Other Incentives

In addition to these economic incentives, businesses also have a moral incentive to become involved in mass atrocity prevention. Many people, including businesspeople, share the notion that preventing and halting human suffering is morally the right thing to do.<sup>35</sup> Furthermore, Seyle argues that “if business leaders can be presented with the opportunity to act in line with their moral beliefs, in a way that does not undermine their fiduciary duty to their shareholders or other responsibilities, then it can be expected that they will actively choose to do so”.<sup>36</sup>

Regarding legal incentives for businesses, there are no international treaties that provide specific legal responsibilities for businesses. However, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on the Elimination of All Forms of Racial Discrimination do present some legal inducements for businesses in that these international instruments require states to prosecute those who violate the rights embedded in these treaties.<sup>37</sup> Individual businesspeople could also be brought before the International Criminal Court for those mass atrocities that fall within the Court’s mandate.<sup>38</sup> In addition, pursuant the fiduciary duties of publicly traded

31 Archie B. Carroll and Kareem M. Shabana, “The Business Case for Corporate Social Responsibility: A Review of Concepts Research and Practice”, *International Journal of Management Reviews* 12 (2010), doi: 10.1111/j.1468-2370.2009.00275.x.

32 See *2007 Corporate Social Responsibility: United States, Australia, India, China, Canada, Mexico and Brazil. A Pilot Study* (Society for Human Resource Management, 2007). This study showed that CSR is important for employee morale (50%), loyalty (41%), retention (29%), recruitment of top employees (25%) and productivity (12%). The percentages reflect Canadian responses.

33 Seyle, “Business Participation in the Responsibility to Protect”, 10.

34 Herman Aguinis and Ante Glavas, “What We Know and Don’t Know About Corporate Social Responsibility: A Review and Research Agenda”, *Journal of Management* 38 (2012): 943, doi: 10.1177/0149206311436079.

35 Seyle, “Business Participation in the Responsibility to Protect”; Gareth Evans et al., *The Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty* (Ontario, Canada: IDRC Books, 2001).

36 Seyle, “Business Participation in the Responsibility to Protect”, 14-15.

37 Ibid, 11-12.

38 Article 6 of the Rome Statute (genocide), Article 7 of the Rome Statute (crimes against humanity), and Article 8 of the Rome Statute (war crimes); See for example the case before the International Criminal Court of Joshua Arap Sang, head of operations at Kass FM in Nairobi, who has been charged with crimes against humanity in Kenya.

companies, damaging their bottom-line by failing to protect human rights could lead to a breach of their fiduciary duties and personal liability.<sup>39</sup>

## 2. Conflict Prevention and Mass Atrocity Prevention

There is a strong correlation between conflict and mass atrocities, since many cases of mass atrocity take place during periods of conflict. For acts to be characterized as war crimes such a nexus is necessary.<sup>40</sup> Although conflict could provide an enabling context for mass atrocities,<sup>41</sup> these are not a subset of conflict. Crimes against humanity in Cambodia in 1970s, the mass killings and disappearances in Argentina in the 1970s and 1980s, and the killings in East Timor in 1999 exemplify that genocide and crimes against humanity can occur during peacetime.<sup>42</sup> There is also considerable overlap among the tools to prevent both phenomena. However the objectives of these tools are different. Whereas one means of conflict prevention is to bring several actors together to come to an agreement, mass atrocity prevention is directed towards specific actors and seeks to discourage them from committing atrocities.<sup>43</sup>

The main tools of today's concept of conflict prevention are divided into two categories, namely direct prevention and structural prevention. The former refers to measures that aim to prevent short-term, imminent escalation of a potential conflict. Tools of direct prevention concern the preventive diplomacy instruments such as negotiation, mediation or arbitration.<sup>44</sup> Structural prevention focuses on the long-term measures that address the root causes of a potential conflict. Some examples are economic development assistance or increased political participation.<sup>45</sup>

Despite the adoption of various landmark human rights documents such as the Universal Declaration of Human Rights, the UN Charter, the Convention on the Prevention and Punishment of the Crime of Genocide, the four Geneva Conventions, the two Additional Protocols in international humanitarian law and the Rome Statute of the International Criminal Court, tragedies in Rwanda, Bosnia and Kosovo demonstrated that the international community did not possess an effective framework to prevent or stop mass atrocities. As a response to this failure, R2P was devised by the International Commission on Intervention and State Sovereignty in 2001 and further shaped by the UN.<sup>46</sup> At the World Summit in September 2005, the General Assembly recognized that each state has a responsibility to protect populations from mass atrocities. The international community stressed that it is

39 Seyle, "Business Participation in the Responsibility to Protect", 13.

40 Since 1945, 103 episodes of mass killings with a minimum of 5000 civilians killed intentionally were observed, 69 cases occurred within and 34 cases occurred outside of the context of an armed conflict; Alex Bellamy, "Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Prevent", *The Stanley Foundation Policy Analysis Brief*, (2011), 2.

41 Bellamy, "Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Prevent", 2-3.

42 Task Force on the EU Prevention of Mass Atrocities, *The EU and the Prevention of Mass Atrocities. An Assessment of Strengths and Weaknesses*, Budapest Centre for the International Prevention of Genocide and Mass Atrocities and Foundation for the International Prevention of Genocide and Mass Atrocities, 2013. 33.

43 Bellamy, "Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Prevent", 1, 6.

44 Wenger and Möckli, *Conflict Prevention. The Untapped Potential of the Business Sector*, 34-35.

45 Niklas L. P. Swanström and Mikael S. Weissmann, "Conflict, Conflict Prevention, Conflict Management and Beyond: a conceptual exploration", *Central Asia-Caucasus Institute Silk Road Studies Program Concept Paper Series*, (2005), 19.

46 Paul. R. Williams, J. Trevor Ulbrick and Jonathan Worboys, "Preventing Mass Atrocity Crimes: The Responsibility to Protect and The Syria Crisis", *Case Western Reserve Journal of International Law*, 45 (2012): 474, 477, 481.

willing to take collective action on a case-by-case basis in the event peaceful means are “inadequate” and the state concerned is “manifestly failing” to fulfil its responsibility.<sup>47</sup>

Before analyzing how businesses can contribute to mass atrocity prevention, the different phases in which mass atrocity crimes escalate ought to be considered. The first phase concerns the manifestation or development of risk factors such as economic or social instability, the presence of armed conflict or a history of atrocities.<sup>48</sup> These factors increase the likelihood of mass atrocities though are not sufficient.<sup>49</sup> In the second phase the probability of mass atrocities taking place increases due to a crisis or a shock, such as a disputed election, the assassination of a president or the beginning of an armed conflict. For a crisis to turn into mass atrocity crimes, some form of organization or mobilization is also required. This could include the marginalization of moderate forces or the organization and training of militias. The third, and final, phase involves an imminent emergency which could manifest as violence specifically targeting civilians.<sup>50</sup>

Using the terminology of the conflict prevention framework, structural prevention tools address the first phase and should mitigate risk factors that could increase the likelihood of mass atrocities. Measures should build resilience and could for example include “capacity building”, “economic development programs” or “democracy support”.<sup>51</sup> Addressing the second and third phase requires more targeted, direct prevention, tools.<sup>52</sup> As Bellamy argues, three elements need to be present alongside risk factors for mass atrocities to take place, which are a reason, the means, and the opportunity for (potential) perpetrators to commit mass atrocities.<sup>53</sup> Direct prevention tools should, therefore, be directed towards mitigating or eliminating any of these three elements. Furthermore, measures should not only be directed against perpetrators, but should also be directed against “enablers”, those who facilitate violence, and provide goods, services or support perpetrators in other ways. Finally, efforts could also focus on strengthening the protection of potential victims.<sup>54</sup>

### 3. The Role of the Private Sector in Prevention Efforts

The private sector could claim that it does not have a genuine interest in pursuing the protection of human rights and the provision of public security.<sup>55</sup> As a result, it may not be appropriate for businesses to become involved in either conflict or mass atrocity prevention efforts. However, in various conflict settings the private sector has been an important partner

47 General Assembly resolution 60/1, *2005 World Summit Outcome*, A/RES/60/1, (24 October 2005), 30 (paragraphs 138-139).

48 Ruben Reike, Serena Sharma and Jennifer Welsh, “A Strategic Framework for Mass Atrocity Prevention”, *Australian Civil-Military Centre and Oxford Institute for Ethics, Law and Armed Conflict*, paper 03/2013, 6.

49 Bellamy, “Mass Atrocities and Armed Conflict: Link, Distinctions, and Implications for the Responsibility to Prevent”, 9.

50 Bellamy, “Mass Atrocities and Armed Conflict: Link, Distinctions, and Implications for the Responsibility to Prevent”; Reike, Sharma and Welsh, “A Strategic Framework for Mass Atrocity Prevention”.

51 Bellamy, “Mass Atrocities and Armed Conflict: Link, Distinctions, and Implications for the Responsibility to Prevent”, 11; Reike, Sharma and Welsh, “A Strategic Framework for Mass Atrocity Prevention”, 6-7.

52 Reike, Sharma, Welsh, “A Strategic Framework for Mass Atrocity Prevention”, 7.

53 Bellamy, “Mass Atrocities and Armed Conflict: Link, Distinctions, and Implications for the Responsibility to Prevent”, 9-12.

54 Reike, Sharma, Welsh, “A Strategic Framework for Mass Atrocity Prevention”, 7.

Human Rights First, *How to Disrupt the Enablers of Mass Atrocities: Blueprint for the Next Administration* (2012, updated in 2013); United Nations, General Assembly, *Fulfilling our collective responsibility: international assistance and the responsibility to protect: report of the Secretary-General*, 15.

55 Wolf, Deitelhoff and Engert, “Corporate security responsibility: towards a conceptual framework for a comparative research agenda”, 298.

in conflict prevention and resolution. This section will first address the role that businesses have already played in conflict prevention or resolution by looking at several examples – namely Botswana/Angola, Colombia and Burundi – and second the potential role of the private sector in mass atrocity prevention.

### 3.1. The Private Sector and Conflict Prevention or Resolution

Starting with Botswana/Angola, as a response to an NGO campaign against “conflict diamonds”, De Beers – a multinational diamond company – launched a campaign called “diamonds for development” together with the government of Botswana. The latter passed strict legislation that only allowed certain companies to possess rough diamonds. This was directed towards ensuring that illegal gems could not penetrate the chain, which would fuel the war in Angola.<sup>56</sup> In 1999, after the UN imposed an embargo on UNITA (*União Nacional para a Independência Total de Angola*) gems and widespread reports on conflict diamonds, De Beers decided to stop buying from the open market. Later, De Beers closed its purchasing outlets in other African countries.<sup>57</sup> In his speech at the World Economic forum in 2001, Kofi Annan recognized the work of De Beers: “De Beers has set an example, with its response to criticism of the diamond trade in Africa and its efforts to ensure that traders and consumers of diamonds will no longer unwittingly help to finance warlords.”<sup>58</sup>

In Colombia, high-level representatives of ANDI actively participated in negotiations that sought to promote dialogue between the government and rebel groups.<sup>59</sup> The association took up several responsibilities within the context of peacebuilding, such as creating wealth and employment by continuing its activities, raising awareness on the “important role employers play in the development of the nation”, and promoting “good worker-employer relationships, the recognition of fair salaries and human dignity”. Other business-led initiatives encompass among others a small think-tank, *Fundación Ideas para la Paz*, that was established to raise awareness among entrepreneurs on the importance of engaging in “public affairs for the common good,” to assist with “technical and academic know-how”, and to obtain private sector support for peace negotiations.<sup>60</sup> The private sector also participated in “Peace Labs” aimed at strengthening institutions at the local and regional level and cooperating with civil society in the protection of people from armed conflict.<sup>61</sup>

In Burundi, the AEB was actively involved in conflict resolution efforts between Hutus and Tutsis. It used a politically neutral approach that allowed the organization to engage in peace efforts between the warring parties.<sup>62</sup> Employer representatives contributed to peace efforts by way of advising workers, as well as raising awareness amongst politicians, public civil servants and the international community. Building upon their expertise in collective bargaining and negotiations, employer representatives also acted as mediators. In addition, to

56 Muia, “The Private Sector in Conflict Prevention and Post-Conflict Reconstruction”, 273-275.

57 Andrew Bone, “Conflict Diamonds: the De Beers Group and the Kimberly Process”, in *Business and Security: Public-Private Sector Relationships in a New Security Environment*, ed. Alyson J.K. Bailes and Isabel Frommelt, (Oxford: Oxford University Press, 2005).

58 See the Address by UN Secretary-General Kofi Annan in Davos, Switzerland, on 28 January 2001, to the World Economic Forum, [www.unis.unvienna.org/unis/pressrels/2001/sg2772.html](http://www.unis.unvienna.org/unis/pressrels/2001/sg2772.html), visited on 14 November 2014.

59 Muia, “The Private Sector in Conflict Prevention and Post-Conflict Reconstruction”, 274.

60 Alexandra Guáqueta, *Local Business, Local Peace: the Peacebuilding Potential of the Domestic Private Sector. Case Study Colombia*, (London: International Alert, 2006), 280.

61 *Ibid.*, 287.

62 Muia, “The Private Sector in Conflict Prevention and Post-Conflict Reconstruction”, 275.

tackle tensions that could lead to ethnic divisions, AEB called upon its members to promote social dialogue.<sup>63</sup>

### 3.2. The Private Sector and Mass Atrocity Prevention

A business case for private sector involvement in mass atrocity prevention lies in the strengths of businesses and what they can offer. The private sector, for instance, has experience in managing complex problems involving many different actors, leadership and teamwork, and collective bargaining and negotiations. Moreover, businesses that operate within conflict-prone or conflict-ridden countries for a longer period have invaluable knowledge of the local context and could enjoy a certain degree of local acceptance that other actors may lack.<sup>64</sup> Furthermore, on condition that the workforce represents different social groups, the business work floor provides a good forum for different ethnic groups to interact.

These strengths indicate that the private sector can play a vital role, if both businesses and the more conventional actors (i.e. states and civil society organizations) recognize this sector as an agent of mass atrocity prevention. Nevertheless, it should be noted that businesses do not have the same objectives and capacities as states. Hence, they should not be expected to play the same role and take up the same kind of activities. To give businesses a direct role may thus be inappropriate. They rather should take up an indirect or enabling role and complement efforts of governments and civil society.<sup>65</sup> The exact role that businesses can play varies depending on factors, such as the type and size of the business.

For the private sector to contribute to the structural prevention of atrocities, and mitigate risk factors, within their capacity, the most obvious activity for businesses is to encourage economic activity through which they help strengthen local economies and build resilience in society.<sup>66</sup> Business activities bring funds, provide jobs and create wealth, which can have a positive and stabilizing impact on conflict-prone societies. While these activities may not intentionally be designed to prevent atrocities, through creating economic opportunity, businesses already contribute to structural socio-economic prevention.<sup>67</sup>

Regarding direct prevention tools, there are several opportunities for the private sector to assist the country in which it operates to mitigate or eliminate any of the three elements discussed in section 2. In order to address a reason of (potential) perpetrators, such as countering a serious threat<sup>68</sup>, a history of discrimination practices or acquiring economic wealth, businesses could, as also mentioned in the context of structural prevention, seek to prevent any escalation by encouraging economic activity (e.g. providing jobs). In order to ensure that their activities do not exacerbate social disparities or lead to economic discrimination which could trigger attacks on specific social groups, businesses should uphold non-discrimination policies in all their activities and ensure that the workforce represents all social groups. Furthermore, stakeholders – such as employees, customers, investors, and suppliers – should be able to participate in the decision-making process to safeguard inclusiveness and ensure a participatory process. Companies can also develop affirmative action recruitment policies and reconciliation programs in the workplace that encourage

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63 Ibid.

64 Wenger and Möckli, *Conflict Prevention. The Untapped Potential of the Business Sector*, 86-88.

65 Ibid., 132.

66 See United Nations, General Assembly, *Fulfilling our collective responsibility: international assistance and the responsibility to protect: report of the Secretary-General*, 7.

67 Wenger and Möckli, *Conflict Prevention. The Untapped Potential of the Business Sector*, 85-86, 100; Seyle, "Business Participation in the Responsibility to Protect", 16.

68 Bellamy, "Mass Atrocities and Armed Conflict: Link, Distinctions, and Implications for the Responsibility to Prevent", 12.

positive inter-group relationships. Furthermore, to minimize inter-group competition businesses could develop and fund long-term training programs for the more disadvantaged groups.<sup>69</sup>

Alongside this ‘active’ role, the private sector should refrain from providing perpetrators with the means and opportunity that are required for carrying out mass atrocities. Businesses should make sure that their products, services and technologies are not directly or indirectly contributing to serious human rights violations.<sup>70</sup> This is especially important for those businesses that participate in transactions that sustain atrocities; provide telecommunication which could help perpetrators to track down certain ethnic or social groups and coordinate attacks; or are involved in the extraction, refinement or trade of natural resources that perpetrators could use to generate profit or to build their capacity.<sup>71</sup> By complying with the Guiding Principles on Businesses and Human Rights, businesses might be able to reduce the risk of facilitating those who engage in crimes involving mass atrocities. By conducting risk analyses in the countries concerned, businesses can inform themselves of the consequences and implications of their activities, as well as “their own role and relationships in those environments”.<sup>72</sup> Also through exercising due diligence in their supply chain or customers relationships, businesses can avoid that they directly or indirectly enable perpetrators.<sup>73</sup> For those businesses that are already committed to CSR policies and responsible business conduct, many of these tools or opportunities will not impose new obligations. After all, they are already embedded in the CSR and due diligence principles.

As indicated, mass atrocity prevention does not only focus on perpetrators. Prevention tools could also address the protection of potential victims. Those businesses whose products, services or technologies are relevant for the protection of victims or their relocation could play a direct role in this effort. Other businesses could fund state or civil society programs that protect victims.

## 4. Challenges

Undoubtedly, the private sector may face challenges when contributing to the prevention of mass atrocities, which is a complex and delicate endeavor in and of itself. First of all, the private sector faces legitimacy issues. While the UN Secretary-General links the private sector with R2P, states and civil society actors still largely see the private sector as a competitive actor that is primarily profit-oriented. The private sector could, therefore, be confronted with the claim that it fails to represent the interest of the wider public. Consequently, it may not be regarded as a legitimate actor in the atrocity prevention context.<sup>74</sup> Close involvement of the business sector is a sensitive issue and acquiring legitimacy will be

69 *Conflict-Sensitive Business Practice: Guidance for Extractive Industries*, International Alert, 2005.

70 United Nations, General Assembly, *Fulfilling our collective responsibility: international assistance and the responsibility to protect: report of the Secretary-General*, 7, 15.

71 *Enablers of Mass Atrocities? What Companies Should Know and Do About the Risks of Contributing to the World’s Worst Crimes*, Human Rights First, 2011.

72 *Enablers of Mass Atrocities? What Companies Should Know and Do About the Risks of Contributing to the World’s Worst Crimes*; see also United Nations, General Assembly, *Fulfilling our collective responsibility: international assistance and the responsibility to protect: report of the Secretary-General*, 7; Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition*, (OECD Publishing 2013). <http://dx.doi.org/10.1787/9789264185050-en>.

73 *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, United Nations Human Rights Office of the High Commissioner, 2011; *Enablers of Mass Atrocities? What Companies Should Know and Do About the Risks of Contributing to the World’s Worst Crimes*.

74 Wenger and Möckli, *Conflict Prevention. The Untapped Potential of the Business Sector*, 85, 158-159.

a challenge for businesses, but this is not insurmountable. A first step towards such recognition is for businesses to move away from practices such as corruption or exploitation that could damage their reputation, integrity and trustworthiness.<sup>75</sup> The anti-corruption policy of Nigerian Breweries provides a good example of how a company seeks to distance itself from such practices. The brewery upholds the policy rule that those employees who cannot reach their target because they refuse to get involved in bribery practices will not be held accountable for this.<sup>76</sup> The issue of legitimacy could also be avoided when the business sector pursues its efforts jointly with other, legitimate, actors, in particular with the UN or governments that are democratically elected.<sup>77</sup>

A second challenge that the private sector may face is the lack of enforcement power. Potential preventive measures of the private sector are neither binding nor coercive unlike the efforts of states, such as arms embargoes or travel bans. Therefore, the effectiveness and success of business efforts rely heavily on the willingness to cooperate of those that are targeted by the specific preventive measures. The private sector could overcome this challenge by joining the efforts of the state concerned that does have enforcement powers.<sup>78</sup>

Businesses may also find it difficult to convince their shareholders of the necessity to actively become involved in prevention efforts.<sup>79</sup> In principle, a publically traded company needs to be accountable to its shareholders and only to shareholders pursuant to its fiduciary duties. Advancing the interests of other stakeholders, such as employees or communities, may therefore ostensibly be considered a breach of the company's duty of care. However, failing to prevent mass atrocities or the risks thereof while this would be within the capacity of the specific company could potentially jeopardize its reputation and could lead to negative economic consequences for its shareholders.<sup>80</sup> As a result, such a failure to act could be considered a breach of the company's fiduciary duties. This shows that businesses that are keen to become involved in mass atrocity prevention do not have to undermine their fiduciary duties. Conversely, it could improve their business reputation and increase their bottom-line.

Fourthly, businesses may presume that their involvement in mass atrocity prevention brings additional costs. Bearing these costs may be a challenge for some businesses. As discussed in section 1.1.2., the private sector should, however, note that such costs are to be seen as an investment that provides an opportunity for businesses to improve their long-term business models, marketing strategy, employee satisfaction, customer loyalty and their general corporate reputation which will in turn boost their bottom-line. These benefits will outweigh the costs in the long-term, a finding that is supported by a study undertaken by *Deutsche Gesellschaft für Internationale Zusammenarbeit* on costs and benefits of CSR in the mining industry, chemical industry and light industry of China.<sup>81</sup>

Lastly, the business community is largely fragmented. Isolated business efforts may only have a limited impact. To illustrate, since 1959 the Dutch brewery Heineken has been operating in

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75 Killick, Srikantha and Gündüz, *The Role of Local Business in Peacebuilding*, 7.

76 Femke van Zeijl, "Geen geld voor een auto, wel voor bier", *NRC Handelsblad*, 20 September 2014.

77 Wenger and Möckli, *Conflict Prevention. The Untapped Potential of the Business Sector*, 170.

78 *Ibid.*, 170.

79 *Ibid.*, 159.

80 Cynthia. A. Williams and John M. Conley, "Is there an Emerging Fiduciary Duty to Consider Human Rights?", *University of Cincinnati Law Review*, 74 (2005): 75, 93.

81 Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, *Costs and Benefits of Corporate Social Responsibility (CSR). A company level analysis of three sectors: Mining Industry, chemical industry and light industry*, (Sino-German Corporate Social Responsibility (CSR) Project, 2012), available at: [http://www.chinacsrproject.org/Uploads/%7BEA74A6EC-FCD4-4699-B0ED-FE83A70F854D%7D\\_Costs%20and%20Benefits%20of%20CSR\\_20120615.pdf](http://www.chinacsrproject.org/Uploads/%7BEA74A6EC-FCD4-4699-B0ED-FE83A70F854D%7D_Costs%20and%20Benefits%20of%20CSR_20120615.pdf).

Rwanda. To demonstrate that ethnicity was not an issue in the business practice of the brewery, it adopted a broad non-discrimination policy.<sup>82</sup> It does not come as a surprise that this individual effort to uphold CSR principles within the company was unable to prevent mass atrocities in the region. Consequently, key actors could disregard individual businesses as a serious partner in mass atrocity prevention. To enhance the effectiveness of business contributions to mass atrocity prevention, businesses could act in a more collective manner. Nevertheless individual business initiatives are still important. While they may not be able to stop mass atrocities in a broader region, these efforts impact the companies' employees and local community. Such initiatives can thus still make a difference at the local level.

## 5. Kenya Private Sector Alliance and Mass Atrocity Prevention

The following sections will specifically address the role of business associations in mass atrocity prevention. It will provide practical examples of how business associations can contribute to the prevention of mass atrocity crimes and will draw lessons from KEPSA's efforts during the 2013 presidential elections. This could inform businesses that are keen to engage in mass atrocity prevention efforts.

### 5.1. 2007-2008 Post-Election Violence in Kenya

Soon after the Electoral Commission declared the sitting Kenyan President Kibaki the winner of the presidential elections in December 2007 mass demonstrations turned violent. The fighting parties – supporters and opponents of Kibaki – killed over thirteen hundred people and displaced over six hundred thousand people.<sup>83</sup> Victims were targeted based on their ethnicity and apparent support for a specific presidential candidate.<sup>84</sup> Much of the violence started in the Rift Valley mainly between ethnic Kikuyus, Luos and Kalenjin and spread to other urban centres. The police also actively participated in the violence.<sup>85</sup> Several individuals were charged with crimes against humanity by the Office of the Prosecutor of the International Criminal Court.<sup>86</sup>

One of the many factors that allegedly led to the violence was the political structure that allowed for skewed distribution of state resources and positions in favour of those in power. This meant that the presidential elections would determine which group would “gain

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82 Amnesty International-Netherlands, *The Human Rights and Business Pages. Non-Discrimination and Equality*, 06/07, available at

<http://www.duurzaamadeel.nl/website/var/assets/public/publications/themas/diversiteit-arbeidsparticipatie/non-discriminationandequality.pdf>, 27.

83 Ben Lumsdaine, Trixie Akpedonu and Aminata Sow, *Keeping the peace: Lessons learned from preventive action towards Kenya's 2013 elections*, (Geneva Peacebuilding Platform, 2013); Victor Owuor and Scott Wisor, *The Role of Kenya's Private Sector in Peacebuilding: The Case of the 2013 Election Cycle*, (One Earth Future Foundation, 2014).

84 *The March 2013 Elections in Kenya and the Responsibility to Protect*, Global Centre for the Responsibility to Protect, 2013, 2, <http://www.globalr2p.org/media/files/march-2013-elections-in-kenya-and-r2p-4.pdf>.

85 Lumsdaine, Akpedonu and Sow, *Keeping the peace: Lessons learned from preventive action towards Kenya's 2013 elections*.

86 Abdullahi Boru Halakhe, *R2P in Practice: Ethnic Violence, Elections and Atrocity Prevention in Kenya*, Global Centre for the Responsibility to Protect Occasional Paper Series, 2013,

[http://www.globalr2p.org/media/files/kenya\\_occasionalpaper\\_web.pdf](http://www.globalr2p.org/media/files/kenya_occasionalpaper_web.pdf); [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/Pages/situation%20index.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/Pages/situation%20index.aspx)

unchallenged access to public offices and finances.<sup>87</sup> Poverty, high unemployment and land issues have also been identified as root causes of the violence.<sup>88</sup>

## 5.2. Kenya Private Sector Alliance and Post-Election Violence

To respond to the 2007-2008 post-election violence, the Kenyan government – with the assistance of the international community – introduced several reforms such as constitutional change, electoral reform and judicial reform, as well as transitional justice measures. Also local initiatives played a significant role in preventing the reoccurrence of the election violence.<sup>89</sup> The following paragraphs will highlight some important initiatives in which KEPSA was involved. The activities listed below are only a few undertaken by this umbrella business organization. Numerous initiatives that contributed to peaceful elections in Kenya were also undertaken by others.<sup>90</sup>

KEPSA covers the respective industry associations for small and big businesses, and for big corporate firms.<sup>91</sup> It was part of the peace movement in the period before and during the March 2013 presidential elections. On 30 January 2012, it launched the Mkenya Daima<sup>92</sup> campaign that aimed at contributing to peaceful elections and peaceful transition.<sup>93</sup> The campaign comprised different phases. The first phase involved closed-door meetings between KEPSA and donors/development partners, the media, civil society, political parties and inter-faith groups.<sup>94</sup> The second phase included a launch of a theme song and meetings between the KEPSA board of directors and the National Women's Peace Forum, and later youth representatives to respectively encourage women and young people to become peace ambassadors in their counties of origin and at their universities. The third phase involved bolstering the peace message through several outlets including peace walks, church services, professional students associations, music concerts, op-ed articles, roundtables, and presidential debates.<sup>95</sup> The fourth phase of the campaign, which is still ongoing, involves peace for growth and development. To ensure a stable and peaceful environment for business to prosper, KEPSA is working among others with UNDP and the Ministry of Justice, National Cohesion and Constitutional Affairs.<sup>96</sup>

As some of the media played a key role in spreading hate messages that led to the violence during the 2007-2008 elections, KEPSA specifically targeted the media. To foster peaceful elections in 2013 it worked with key individuals from the media and trained media owners, journalists and radio hosts in how to report on social and political issues.<sup>97</sup>

87 James Ndung'u and Manasseh Wepundi, *Transition and reform. People's Peacemaking Perspectives on Kenya's post-2008 political crisis and lessons for the future*, (Saferworld, 2012), 1.

88 Thomas Obel Hansen, "Political violence in Kenya. A study of causes, responses, and a framework for discussing preventive action", *Institute for Security Studies*, paper 205, (2009), 6.

89 Lumsdaine, Akpedonu and Aminata Sow, *Keeping the peace: Lessons learned from preventive action towards Kenya's 2013 elections*.

90 For example by the National Steering Committee on Peacebuilding and Conflict Management, the National Cohesion and Integration Commission, District Peace Committees, Ushahidi, PeaceNet, and the International Rescue Committee.

91 Including for example Kenya Association for Manufacturers, The Kenya Flower Council, Kenya Bankers Association, the Jua Kali association, Kenya Commercial Bank, Safaricom.

92 Loosely translated in Kiswahili Mkenya Daima means My Kenyan Forever.

93 *Mkenya Daima Report*, Report of the Kenya Private Sector Alliance, 2013, 3.

94 Owuor and Wisor, *The Role of Kenya's Private Sector in Peacebuilding: The Case of the 2013 Election Cycle; Mkenya Daima Report*, Report of the Kenya Private Sector Alliance, 6-7.

95 Owuor and Wisor, *The Role of Kenya's Private Sector in Peacebuilding: The Case of the 2013 Election Cycle*.

96 Kenya Private Sector Alliance, email message to author, October 24, 2014.

97 Owuor and Wisor, *The Role of Kenya's Private Sector in Peacebuilding: The Case of the 2013 Election Cycle*.

In partnership with the Ministry of Justice, National Cohesion and Constitutional Affairs, KEPSA also actively engaged politicians by bringing together members of parliament, government officials and judicial leaders to convince in particular the members of parliament to promote messages of peace during their campaigns. Yet it refrained from openly supporting one candidate over the other.<sup>98</sup>

Another activity that impacted the prevention of violence was an initiative by Safaricom, a member of KEPSA. It initiated the development of guidelines to block hate messages, and prevented the mobile networks to be used for spreading political speech inciting violence.<sup>99</sup>

### 5.3. Lessons Learned

The efforts of the Kenyan business community exemplify how the private sector can contribute to the prevention of mass atrocities. It should however be noted that every situation is unique and many factors come into play. Therefore, it is difficult to translate specific lessons to other jurisdictions. In addition, success depends on the commitment of those businesspeople driving the initiative(s).<sup>100</sup> For Kenya and KEPSA everything fell in place in 2013; people were committed to peaceful elections after the post-election violence in 2007-2008, KEPSA had strong partners and opportunities, and it was seen as a credible and legitimate player.<sup>101</sup> Despite these caveats, the case of KEPSA still presents important lessons for businesses that face similar challenges. First of all, although a role in mass atrocity prevention for the business sector may seem problematic and inappropriate at first glance, the case study demonstrates that the business community can indeed play an important role in preventing mass atrocities. Secondly, the legitimacy of the private sector was considered to be central to the success of KEPSA's efforts.<sup>102</sup> Thus, for businesses to have a significant impact at the highest levels of power, the business community ought to be regarded as credible and legitimate by key actors in the mass atrocity prevention domain. Thirdly, the collective action enhanced the impact of the efforts of Kenya's business community and the ability to contribute to mass atrocity prevention. Due to the variety of KEPSA members, from small and medium-sized enterprises to multinationals, diverse activities across the private sector could be carried out.<sup>103</sup> Factors that contributed to the success of KEPSA's work were inclusiveness and a shared vision: "Different stakeholders i.e., civil society organizations, religious groups, the business community, media fraternity, local musicians, youths and the university students all came together under one banner to address the same cause which was to push for the peace agenda."<sup>104</sup> Closely related to this is the lesson that the business community cannot prevent atrocities on its own. The private sector is part of society and needs to act in concert with others to strengthen the impact of its activities. Thus atrocity prevention efforts should not only be undertaken with fellow business entities, though also jointly with the state and civil society. Lastly, KEPSA's efforts showed that the business community could be in a better position than civil society organizations to successfully access

98 Lumsdaine, Akpedonu and Sow, *Keeping the peace: Lessons learned from preventive action towards Kenya's 2013 elections*, 16.

99 Owuor and Wisor, *The Role of Kenya's Private Sector in Peacebuilding: The Case of the 2013 Election Cycle*; See also Fred Mukinda, "Phone firms block 300,000 hate texts daily, says Ndemo" Daily Nation, 21 March 2013, <http://www.nation.co.ke/news/Phone-firms-block-300-000-hate-texts-daily-says-Ndemo-/1056/1726172/-/43sv7d/-/index.html>.

100 *Local Business, Local Peace: the Peacebuilding Potential of the Domestic Private Sector. Executive Summary*, International Alert, 2006, [http://www.international-alert.org/sites/default/files/publications/01\\_exec\\_sum.pdf](http://www.international-alert.org/sites/default/files/publications/01_exec_sum.pdf).

101 Author phone consultation with Dr. Victor Owuor, Friday 5 September 2014.

102 Author phone consultation with Dr. Victor Owuor, Friday 5 September 2014.

103 Owuor and Wisor, *The Role of Kenya's Private Sector in Peacebuilding: The Case of the 2013 Election Cycle*.

104 Kenya Private Sector Alliance, email message to author, October 24, 2014; *Mkenya Daima Report*, Report of the Kenya Private Sector Alliance, 19.

and influence political actors. This may not come as a surprise since political leaders rely on social and economic development for success and popular support.<sup>105</sup>

Despite KEPSA's contributions to peaceful elections in 2013, underlying causes of the violence in 2007-2008, such as the political structure of the winner-takes-all, and longstanding grievances are still present. If not addressed appropriately, these issues could potentially give rise to another outburst of violence.<sup>106</sup> Therefore, all stakeholders should remain committed to strengthening political institutions, economic development, as well as to providing democracy and rule of law support to prevent mass atrocities in Kenya not only in the short-term, but also in the long-term.

## Conclusion

This paper sought to increase awareness of the private sector's potential in the area of mass atrocity prevention, to identify some of the opportunities for action and to advise on the mitigation of some challenges that the private sector may face. With an in-depth analysis of practical examples of how businesses can contribute to R2P and mass atrocities prevention, and lesson drawing from KEPSA's prevention efforts during the 2013 presidential elections, the paper demonstrated how the private sector can effectively contribute to structural and direct prevention of mass atrocities. In fact, businesses already contribute to mass atrocity prevention to some extent in that they create economic opportunity through which they may strengthen local economies and build resilience in society, and mitigate risk factors that could increase the likelihood of mass atrocities. Also those businesses that are committed to CSR policies and responsible business conduct and comply with the Guiding Principles on Businesses and Human Rights may contribute to the prevention of mass atrocities in that they may reduce the risk of facilitating perpetrators. However, to improve the current mass atrocity prevention framework a more formal partnership with other actors in this domain is desired.

Many businesses are sceptical towards any involvement in R2P related issues and argue that it is neither within their capacity, nor is it their responsibility to protect citizens against mass atrocities. Indeed, the state bears the primary responsibility to protect populations under R2P. Yet, this does not mean that other actors have no role to play in this endeavor. Since root causes of atrocities are often linked with poverty, unemployment and economic growth, it is crucial for the business sector to play a role. Furthermore, businesses have expertise, access and invaluable local knowledge that others may lack. Challenges that they may face regarding legitimacy or a lack of enforcement power could be tackled by joining the efforts of other, legitimate, actors and democratically elected governments.

KEPSA's contributions to the prevention of election violence in Kenya also showed that the business associations could play an important role in preventing mass atrocities. However, for businesses to have a significant impact, they should be recognized as a legitimate partner. Furthermore, as indicated above, the case study showed that businesses should act jointly with states and civil society, as well as fellow business entities to maximize the impact of their efforts.

Close involvement of the private sector in prevention efforts remains a sensitive issue and acquiring acceptance as a partner in this domain will be a challenge for businesses. However, as this paper demonstrated, businesses can provide important and possibly crucial

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<sup>105</sup> Owuor and Wisor, *The Role of Kenya's Private Sector in Peacebuilding: The Case of the 2013 Election Cycle*.

<sup>106</sup> Lumsdaine, Akpedonu and Sow, *Keeping the peace: Lessons learned from preventive action towards Kenya's 2013 elections*.

contributions to mass atrocity prevention. With a view to seeking to improve the implementation of the R2P concept which was designed to close the gap between rhetoric and substantial commitment to respond to mass atrocities, states and civil society organizations should recognize the private sector as key partner within R2P and the broader mass atrocity prevention framework.

This paper is a first step in stimulating further thinking on this underdeveloped issue. It benefited from available case studies on the role of businesses in conflict prevention and resolution as well as in the prevention of post-election violence. However to establish a more comprehensive picture of the link between the private sector and mass atrocities, more case studies are required. More theoretical and empirical work on the role of businesses in mass atrocity prevention is necessary. In addition, there is a need for more work on mass atrocity prevention in general and on how it diverges from conflict prevention.

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