



Graduate School of Development Studies

Internal Displacement in the Kenyan Context: Challenges of Justice, Reconciliation and Resettlement

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Abbreviations and Acronyms

CIPEV	Commission of Inquiry into Post-election Violence
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW-OP	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
CMD	Centre for Multiparty Democracy
ECHO	European Community Humanitarian Aid Office
FGD	Focus Group Discussions
GNU	Government of National Unity
HPG	Humanitarian Policy Group
IASC	United Nations Inter Agency Standing Committee
ICC	International Criminal Court
IDP	Internally Displaced Person(s)
IMF	International Monetary Fund
IRC	International Rescue Committee
JWR	Judiciary Watch Report
KNCHR	Kenya National Commission on Human Rights
KRCS	Kenya Red Cross Society
MP	Member(s) of Parliament
NARC	National Alliance Rainbow Coalition
NCCK	National Council of Churches in Kenya
NDR	National Dialogue and Reconciliation Process
NGO	Non Governmental Organisation
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
ODM	Orange Democratic Movement
OHCHR	Office of the High Commissioner for Human Rights
PEV	Post-election Violence
PNU	Party of National Unity
SGBV	Sexual and Gender Based Violence
STK	Special Tribunal for Kenya
TJRC	Truth Justice and Reconciliation Commission
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations high Commission for Refugees
UNICEF	United Nations Children's Emergency Fund
USAID	United States Agency for International Development

Abstract

This research is concerned with the actions of reconciliation and justice pursued by different institutions and actors, following the post-election violence in Kenya in 2007/2008.

Many different institutional and community actors have played different parts in the reconciliation efforts and pursuit of justice: the Kenyan government and its different ministries, the local, national and international civil society organizations and international agencies such as UN, the International Criminal Court (ICC), the internally displaced people and their host communities. My main interest was to examine the actions regarding reconciliation and justice by the state, and see how its actions foster justice, reconciliation and peace building after the violence. To do so I also look at some of the national actors involved in reconciliation and justice efforts, and at their criticism of and involvement with the state. Finally I look at the situation of the IDPs and their experiences of violence as well as post-violence interventions by the state and civic justice and reconciliation actors.

Findings generally indicate that the state has done little to improve the situation, while other actors have done little to motivate or control the state. Internally displaced have lost all faith and hope in state initiated justice and reconciliation efforts, and this has been aggravated further by the well entrenched culture of impunity. Furthermore more political inertia in addressing the issue, continuing incitement by the political elite and the lack of inclusion of politicians in peace meetings has contributed to lingering possibilities of resurgence of violence due to unresolved underlying economic, social and political issues. The continuing skewed distribution of resources (such as land) and opportunities along ethnic and socio economic strata as well as perceived bias in humanitarian assistance along the same lines has led to animosities festering between neighbours and IDPs, both landless and landed. Ultimately, while reconciliation among various grassroots communities has been cited as the most preferable pathway towards a lasting peace and attainment of a stable society, its achievement remains uncertain.

Relevance to Developmental Studies

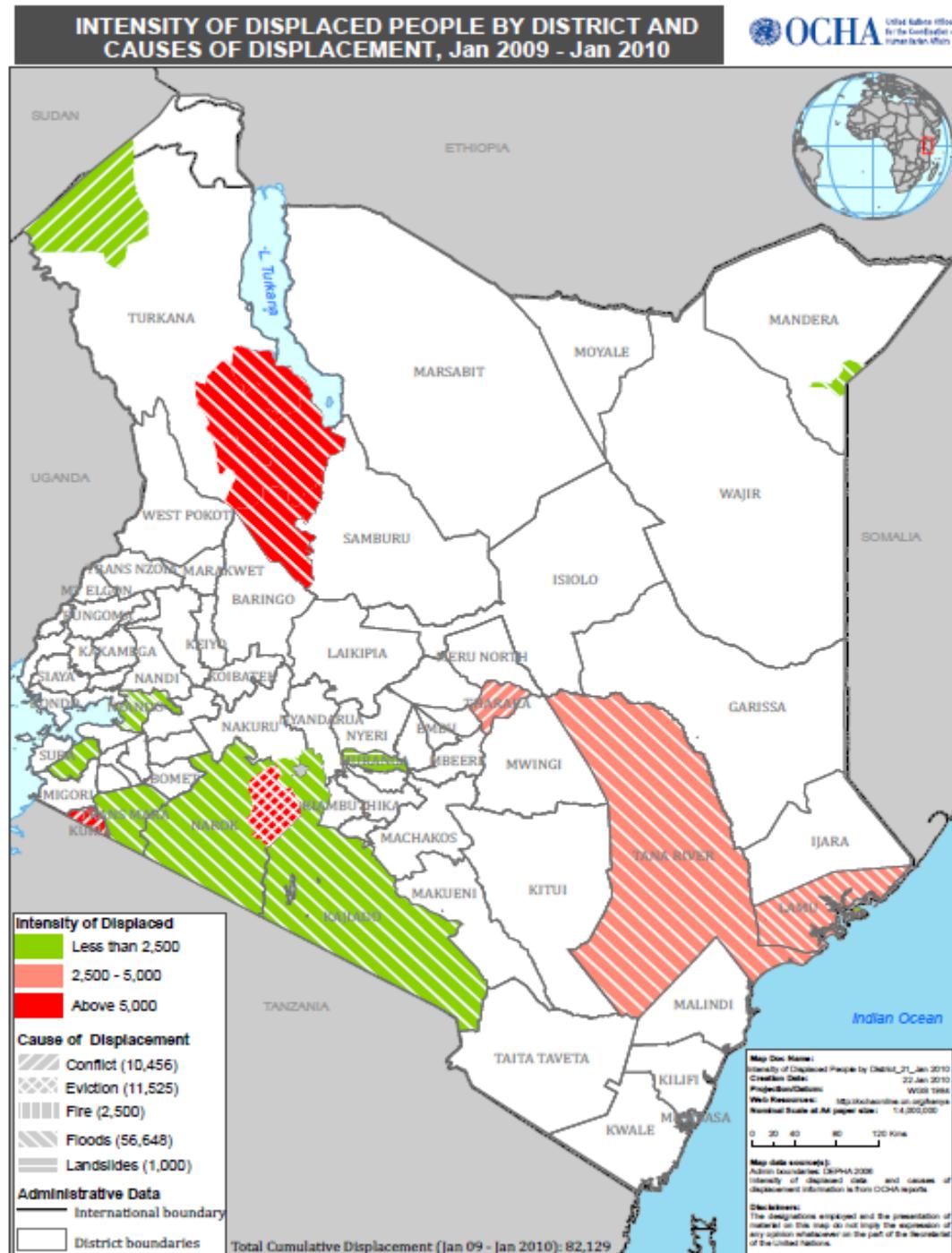
Although they currently outnumber refugees who have crossed officially recognised borders, internally displaced people do not enjoy the same recognition and assistance that the former have as guaranteed under the 1951 Refugee convention as established by the UN Office of the high commissioner for refugees. IDPs are produced by various circumstances which are usually beyond their control and these include: natural environmental disasters, wars/ political turmoils, persecution (ethnic/religious/racial) and various developmental policies and programmes involving land and water use all of which have a negative impact on their lives. As a result, apart from being disposed of their lands and livelihoods, their poverty levels are further aggravated and their basic human rights are further infringed upon, especially

when they are identified as enemies of the state. Such situations deprives them from rightful participation in the social, economic and political development of their country. This paper therefore stress that the recognition of internally displaced people and the recognition of the predicaments they face will guarantee their right to participate and be part of social life as true citizens of their respective nations.

Keywords

Internally displaced persons (IDPs), violence, justice, reconciliation, elections, impunity, gender based violence, ethnicity

Map of Kenya Showing Internally Displaced Persons by District



Source: United Nations Office for the Coordination of Humanitarian Affairs (OCHA).

Chapter 1 INTRODUCTION

1.1 Background to the Study

Internal displacement has been a permanent feature of Kenya's history from colonial times onwards. Starting with the evictions of natives from their ancestral land to make way for settlers in colonial Kenya to recent violent evictions accompanying the 1992, 1997 and 2007 general elections, internally displaced persons (IDPs) have been a constant feature of the country's political and demographic landscape and they form the human face of the problem caused by post-election violence (PEV) (CIPEV, 2008: 273).

In the colonial context, the first recorded displacements were the Maasai moves of 1904/5 and 1911/12 which removed the predominantly pastoralist Maasai community from their traditional grazing grounds in today's Central Rift-Valley province and relegated them to the periphery politically as well as geographically, and severed many of their links with surrounding communities (Waller 1976). This was followed by the 1915 'Orders in Council' displacements by the colonial British government which saw Africans being evicted from the Kenya highlands (Wakhungu *et al.* 2008). Property was appropriated from suspected Mau Mau militants and their supporters who happened to be predominantly members of the Kikuyu community with some Embu and Meru. These were moved to the "reserves" in a well organised system of villagisation, which was later used by administrators to re-order the Kikuyu community, making them probably the least land endowed group in Kenya in post-independence times (Wakhungu *et al.*, 2008). Land issues and displacements which was used as a counter-insurgency measure by the colonial authorities prompted anger among the natives and increased resistance to British colonial rule in early 1950s

After independence, in 1964 the first president Jomo Kenyatta, himself a Kikuyu, was in a political position to re-settle his tribesmen in various parts of the country mainly the Coast and Rift Valley provinces. Population increase and political changes in Kenya put pressure on the relocation lands, and placed the Kikuyu in a precarious position, especially after multi-party politics was reintroduced in 1992. Since then pre-election and post-election violence and displacements have regularly been used as strategies of winning elections by both the opposition and ruling parties (Keung, 2001).

It will also be of importance to note that it is not just the Kikuyu community that suffers displacements, although they form the bulk of the affected. Other ethnic communities have lost land in both colonial and post-colonial periods, while the numbers of again others have increased beyond the carrying capacity of their ancestral land. Some have also been displaced by cattle rustling, but this group remains rather invisible due to the fact that pastoralists are highly mobile and therefore cannot easily be seen as displaced (Kamungi, 2001; Nowrojee and Takirambudde, 1997).

1.2 The Research Problem

This research is concerned with dynamics of reconciliation and justice embedded in state institutions, actions and actors, following the election violence in Kenya in 2007/2008, and the subsequent reactions and actions of civil society and IDPs to government's efforts. In the context of this research the IDPs of the post-election violence of December 2007 to early 2008 will be of central interest. This violence not only produced the largest number of IDPs in Kenya's history but was also reported widely by local and international media. The 2007/2008 post-election violence was the first in Kenya's history where the government sought to redress its impact. Some IDPs were even escorted back to their homes by armed government security officers and paramilitaries in what was known as *Operation Rudi Nyumbani* (Operation Return Home) working with an already 'over-stretched provincial administration' (CIPEV REPORT, 2008: 289).

Klopp (et al, 2010: 7) points out that even with training from PeaceNet and a small but important Police Peace Corps, the administration police in areas of IDP relocation could not properly support the exceptionally challenging resettlement and peace building process, especially since they simultaneously were dealing with broader security concerns. It is not surprising, then, that inadequate peace-building took place: there were no proper plans to develop transparent registries, compensation, and restitution schemes, nor was there a place where IDPs could check up on the whereabouts of lost loved ones. Instead, the government ordered the provincial administration to dismantle camps, putting the administration in the awkward position of forcing people out, sometimes into hostile communities where informal militias persisted, exacerbating the security problem that *Operation Rudi Nyumbani* was supposed to address. There was no program for the displaced, who were in slums or "integrated" by fending for themselves. The total number of IDPs was estimated (depending on who is counting) to be between 350,000 and 650,000 people or more (Klopp et al, 2010: 7). Paradoxically some of these conflicting statistics come from state agencies like the Ministry of Special Programmes and the Kenya National Bureau of Statistics (Klopp et al., 2010: 7).

Apart from the IDP network (a local NGO that acts as an umbrella group for coordinating all organisations that are involved in humanitarian aid to IDPs) and some of its local partners, no monitoring system was put in place to assess the return process. The government could have invited actors such as the KNCHR (Kenya National Commission on Human Rights) and its partners, along with peace building networks such as PeaceNet, the NCCK (National Council of Churches of Kenya), and the IDP Network, to help develop a monitoring scheme. Instead, the process was opaque, and lent itself to corruption and political manipulation, further worsening the security situation. This exacerbated resentment among the displaced, even deepening ethnic divisions. Some IDPs believed compensation was meant for only one ethnic group, the Kikuyu. Yet there is evidence that the majority of IDPs did not get compensation, whatever their ethnic background. A Kenya Land Alliance Survey of 2008 found that the majority of the 2,746 displaced people

interviewed did not receive the promised start-up capital of 10,000 to 25,000 Kenyan shillings (K.sh). In another location, IDPs found that the chief had allocated their compensation to his supporters, including some young people involved in the violence (Klopp, 2010: 8).

The success of Operation *Rudi Nyumbani* cannot yet be assessed fully. The fact that some returnees relocated once more after the investment of so much effort, manpower, and other resources by the state, suggests that it was not a success. Some have cited psychological discomfort in living next door to former persecutors, a situation reminiscent of genocide survivors in Rwanda (Zorbas, 2004; Buckley, 2006). Some IDPs have been victims of multiple displacements (in 1992, 1997, and 2007), sometimes even by the same perpetrators (Klopp *et al.*, 2010: 7).

There are conflicting reports about the success of Operation *Rudi Nyumbani* (Agenda 2, 2009). On the one hand resettlement statistics show a steady decline in the number of officially recognised IDPs from 210,594 to 21,431 by 8th July 2008 (CIPEV, 2008: 292). These figures also show a decline in the number of IDPs who have not returned to their homes. On the other hand findings by civil society organisations such as Catholic Peace and Justice Commission and the Humanitarian Policy Group suggest that the crisis is far from over (HPG, 2008: 2).

Publications, from 2001, based on earlier post-election violence incidences of 1992 and 1997, reveal the inefficiency of the Kenyan government in dealing with IDPs in the past consigning them to permanent homelessness in sheer neglect of their plight. Hence, any reports of success of operation *Rudi Nyumbani* are suspect (CIPEV, 2008: 292; Kamungi, 2001). Many IDPs have not re-established their homes on their farms but have opted to remain in transit camps in return areas. Part of the reason for this is their fears of reprisal from their former neighbours. Mwiandi (2008: 3) has remarked:

“Many observers are concerned that this exercise was not carried out voluntarily or with sufficient consultation with IDPs and did not engage civil society. Moreover, the active engagement of the military, the closure of camps, the placement of conditions on assistance and the decision to proceed with the return of IDPs without assurance of security has further led some to questioning the voluntary nature of the whole process”.

She goes further to quote Klopp (2008) who noted that,

“It is interesting—the way in which we think about IDPs. They become people who should be managed, although they were active citizens prior to the displacement. We should think of IDPs as a resourceful people with skills and rights. Without that approach, the government will make many avoidable mistakes”.

1.3 Objectives of the Study and Personal Motivation

The main objective of the study is to investigate the actions regarding justice and reconciliation taken by the Kenyan government, and the way various

reconciliation and justice institutions, as well as IDPs have reflected on those actions.

My personal interest in focusing on the internally displaced in Kenya was connected to my background in anthropology and social justice at academic, professional as well as at a personal level. I first encountered internally displaced persons while working as a programme officer with a local NGO in March 2008 in Nairobi. Before that I had only heard of land clashes and displaced persons via the mass media, since these events, as they were happening in Kenya, were at a far distance from the capital city of Nairobi in which I was born, raised and which I have generally spent most of my life in. This encounter with masses of people in desperate plight, disenfranchisement and dissolution made me try to understand the circumstances that lead to displacement and what might possibly mitigate such conditions. I have especially been interested in gender-based violence, which emerged as important in various violence reports and is central in the interviews and focus group discussions (FGDs) conducted for this research.

Point to note is that the purpose of this paper is not in the first instance to solve the internal displacement problems of Kenya, which happen to be widespread and complex both physically, socially and historically, but simply to highlight the challenges that face a typical IDP community in terms of reconciliation, peace building, resettlement and the pursuit of justice, and to test governments efforts to contribute to a lasting solutions.

1.4 The Research Question

The main research question is: What are the dynamics of reconciliation and justice processes among the different actors involved in dealing with the 2007/2008 post-election violence in Kenya?

The Sub Questions are:

- What are the main characteristics of the violence and what have been the dominant interpretations of it?
- What have been the actions of the Kenyan government regarding justice and reconciliation?
- What has been the actions of the national and local justice institutions and actors (be they NGOs, faith-based organizations, different peace commissions etc)?
- What are the narratives of the IDPs about their experiences of violence and displacement, and of justice and reconciliation?
- How do IDPs perceive the actions of the state and other actors?

1.5 Scope and Limitations of the Research

As mentioned elsewhere in this paper, internal displacements have accompanied all general elections of Kenya from 1992, 1997 to 2007. I have restricted myself to displacements that occurred from 2007, but as a build-up

to my paper I reviewed literature from 1992 to date. I look at a limited number of actors: the Kenyan government, the various local and national justice actors and the IDPs. There are many other actors involved in dealing with the aftermath of 2007-2008 violence, including the ICC. Given the time and word-count limits, however, this will not be taken up.

Due to logistic and financial constraints I was not able to do the fieldwork myself, but I asked Mr. Dennis Khamati, a researcher from the University of Nairobi, to do the interviews and FGDs in Kenya for me, on the basis of my interview guides and associated instructions. We also discussed the research process and the findings by using Skype and email. I use 'we' in the text when I refer to the process of the fieldwork to acknowledge the role of Mr. Khamati.

1.6 Methods of Data Generation, Selection and Analysis

This study was conducted in two IDP camps in Nairobi, namely Kasarani and Waithaka, although data from previous independent studies conducted in Nakuru and Eldoret were also used.

The study included fifteen individual in-depth interviews, four key informant interviews and four focus group discussions, as well as secondary sources. The main people involved in the focus group discussions and in-depth interviews were IDPs who had stayed in the camps for at least the last year. For the in-depth interviews a guiding questionnaire was used (Appendix I).

Key informant interviews were conducted with professionals involved in the resettlement process: a Red Cross worker, a Local Government official (chief), officials of the Ministry of Lands and the Ministry of Special Programmes both working for the IDPs Resettlement Secretariat. These interviews were important in bringing out the government policies on permanent IDP solutions, as well as the socio-economic and political barriers experienced in the implementation process (see interview guide in Appendix ii).

With regard to the FGDs women and men of 35 years and above were selected for separate discussions, while females and males aged +/-18-34 also selected for separate discussions to represent the opinions of the youths. An FGD guide was used (Appendix iii).

We purposively selected the respondents, while in some cases also the snow-balling technique was used. Most were individuals aged 18 and above. For those aged below 18, we sought permission of parents to interview them and if need be, their parents' presence. The study was conducted between 21st July and 25th August 2011. All qualitative data was transcribed, coded and analysed thematically.

Secondary data was collected through literature search of both published and unpublished materials from various institutions. A search on the internet was also carried out to supplement existing materials. This secondary data helped focus the questions that were asked in collecting primary data.

Secondary sources include Kenyan government official publications and official and grey publications by NGOs and other organizations working on the ground during the post-election violence period as well as during the following period when the IDP problem was at its peak.

1.7 Ethical Considerations

The field investigator, Mr. Dennis Khamati, sought government approval at local and national levels to conduct the study. Furthermore the information obtained from respondents was treated with confidentiality. Therefore, no respondent's views were attributed to his/her name unless with their express permission. Finally, all respondents participated on a voluntary basis, and were informed of their rights to withdraw from any stage of the study.

We recognized that IDPs are a special group of respondents living in extra-ordinary circumstances owing to having been uprooted from their homes of residence and places of work. Most of them had undergone terrifying moments during the evictions and still had physical and mental scars from the experiences. That called for extreme care in the course of interviewing them. It was important to understand their situation and act in their best interests.

1.8 Structure of the Thesis

In the remainder of this thesis, Chapter II presents the historical and contemporary socio-economic injustices in Kenya underlying the violence, the prevailing political environment and the ethnic dimension of the violence, as discussed in academic literature. Chapter III examines the post-election violence in 2007/2008, and the actions of the state. This chapter also reflects on the ways those actions affected IDPs, using interview material. Chapter IV also relies in interview material, focusing on the sexual and gender-based violence affecting the women IDPs both during the post-election violence as well as during their displacement afterwards. Chapter V introduces the notion of transitional justice and elaborates on the state actions in this regard, and the civil society organizations' responses. Chapter VI gives the conclusions of this study.

Chapter 2

Injustice and Inequity: Understanding Post-election Violence in Kenya

This chapter reflects on literature dealing with historical and contemporary context of social justice and inequity in Kenya. I place the current electoral violence within the context of social, economic and political inequalities, which in Kenya also have an ethnic dimension. Literature pertaining to those issues is reviewed and discussed in the light of its relevance for the post electoral violence of 2007-2008.

2.1 Social Justice in Kenya

The post-election crisis in Kenya is a manifestation of underlying and longstanding unresolved problems. This crisis is also about the shortcomings of the country's ideological, constitutional, legal, institutional and structural environment (CMD, 2008: 4). The crisis in Kenya is complex, consisting of at least two layers. The immediate crisis is linked to the electoral process during the December 2007 elections. While unfair election practices were clearly the catalyst for the violence, the conflict itself was fuelled by entrenched socio-economic, political and legal judicial inequalities between different communities. In other words, the second layer of the conflict is of a structural nature which is rooted in inter-communal dynamics and has a long history that dates back to colonial and post-colonial dynamics. This means that there was a great extent to which identity politics, specifically ethnic identity in Kenya, was a factor in the conflict. We have to emphasise here also that the link between ethnicity and economic class was a major contributor to the conflict (Creaw, 2008).

Historical injustices linked to land issues and perceived or real discrimination in access to jobs and other financial opportunities were, behind some of the most expressed inter-ethnic violence. The dispute over the presidential results, suspensions of some fundamental rights and freedoms and the subsequent violence leading to deaths, displacement and destruction of property attest to the failures of the institutions in the country. According to OHCHR (2008), the violence triggered by the flawed electoral process should be analyzed in the context of long standing conflict over land rights, prevailing impunity for human rights violations and highly unsatisfactory fulfilment of economic and social rights. The weakness of the state was realized in its inability to ensure political stability, government effectiveness and observance of the rule of law (CMD, 2008).

Unresolved land disputes and a constitutional order that accords the President the power over crown lands has been cited as one of the problems facing the country. Given the centrality of the presidential figure and the community-based political environment, land has been used in Kenya to reward patronage, solidify support and build alliances (OHCHR, 2008). This

has resulted in the tendency of the institutions to be structured around the interest of those in power thus placing a lot of strain on the Kenyan social fabric especially those in the periphery of power.

This impunity from previous episodes of electoral violence has continued to foster the resurgence and persistence of new violence. The state consistently failed to act on the findings and recommendations of its own commissions of inquiries and studies. Examples include the Saitoti Report on Political Pluralism, the Ng'eno Report on ethnic and land clashes, the Ndung'u report on land ownership, the Goldenberg Report on Grand corruption, and the Kiruki Committee on the Artur brothers, among others (Waki Report, 2008).

This makes many Kenyans think that the various commissions and committees are formed to show that the government is doing something about a certain issue. Once that particular issue dissipates from the limelight everything goes back to normal. It is also important to point out that appointment to these commissions and committees are more often than not motivated by economic rent and political considerations rather than addressing the issues at hand. Therefore, these commissions also provide a channel through which the public coffers can be raided to reward political cronies and extinguish raging political fires (Crisp, 2000: 15).

Violations of economic and social rights sparked the violence ; the World Bank rates Kenya as one of the ten most unequal societies with the richest 10% controlling 42% of the country's income, while 45% of the population experience absolute poverty (IFHR/KNCHR, 2007). Moreover, sharp differences in provincial level rates of adult literacy or distribution of health facilities and economic development indicate that some regions benefit more from the government while others have to do with little infrastructures (Friedman, 2003; OHCHR, 2008). Githinji and Holmquist (2008: 5) have noted:

“This high degree of inequality becomes even more problematic in an economy where the state is central to the process of accumulation. Those in government have often been able to use their influence to build their own companies or those of their allies or simply to amass wealth. Further, the ability of government to improve conditions for their favoured regions has added to regional inequality..... The stakes for controlling the government in Kenya are therefore extremely high. Many of those who lost out in the 2002 elections found themselves on the outside looking in during a period in which great personal fortunes were being made. Conversely, many of those who benefited from the 2002 election did not want to see their fortunes threatened or reversed in 2007”.

They go further to point out that

“Throughout modern Kenya’s history from the colonial period to the present, the state has been central to the process of private accumulation. Accumulation has taken place through four main mechanisms. One is the distribution of land by the state. A second involves corruption, especially in the procurement process through over-billing and non-delivery of services and goods already paid for. Third, there is the illegal conversion of government property into private property. The final mechanism works through the IMF/World Bank-inspired process of privatization” (Githinji and Holmquist, 2008: 5).

Thus, the role of the state in issues of structural inequalities and justice cannot be overstated. For this reason, I pay major attention to state actions regarding IDPs.

2.2 Political Competition and Ethnic-based Violence

The predicament of IDPs has much to do with the politics of division that has been taken precedence in Kenya over the decades. But what happened during the last general election was unprecedented and totally disturbing (Buckley-Zistel, 2006: 5).

The question occupying the minds of many Kenyans and external observers is what really led to post-election conflict in Kenya? It is, therefore, important to point out that political and socio-economic factors played an important role leading to this post-election conflict. There are many underlying issues that emerged during the election campaigns and after the elections. Some authors posit that these include poor governance, impunity and indifference to the rule of law, manifested in the unequal distribution of resources and disregard for human rights. This happened although the Constitution guarantees *inter alia* the right to life and liberty and protection of private property against unlawful destruction (Meyers, 1989). Mueller (2008: 1) mentioned three key factors that could have precipitated the violence if not aggravated the violence further:

“First the gradual loss of the state’s monopoly of legitimate force and the consequent diffusion of violence. Second is the deliberate weakening of institutions outside the executive in favour of personalised presidential power, raising the question about the credibility of other institutions to resolve the election on the table rather than in the streets. Third is the lack of programmatic political parties which gave rise to a winner-take-all view of parties that were and still are inherently clientist and ethnically driven. This last factor raised the stakes and gave rise to violence” (Mueller, 2008: 1).

She further mentions:

“The violence of 2008 had a clear predecessor in 1992. With the repeal of section 2A of the Constitution in 1991, the Moi regime was faced for the first time the prospect of multi-party elections in twenty- two years. His thoughts on multi-partyism were well known: the idea galled him and he desired to stay in power through any and all means. His favorite instrument of choice was to deploy hired gangs to displace and kill and maim those opposed to him in key electoral areas. Dead and displaced people don’t vote.” (Mueller, 2008: 6)

Klopp (2001: 21) has highlighted a specific case in Narok Constituency in the Rift Valley province in 1992 in which voter intimidation and the ethnic card were used as tools to ensure that the ruling party KANU won the parliamentary seat. A local cleric, reverend Julius Kamwaro complained that local administrators and youth aligned to KANU were preventing Kikuyu

voters from registering. This culminated with the killing of three people and burning of ten buildings at Enoosupukia registration centers by ‘young Maasai warriors’ leading to a drastic fall in voter registrations. Despite continued intimidation, threats of evictions and denial by some local politicians the election went ahead resulting in a predictable win by KANU.

Boone (in Mueller 2008: 8) confirms this by noting that 70% of those who had been pushed off their land in the 1990s had not returned by 2002. Anderson and Lochery summarise this culture of violence by stating, “Thus, since the early 1990s, Kenyans seem to have learned to live with political violence to the extent that it has almost become a normal part of their lives. This “normalisation of violence” has been embedded so much in their daily existence that acts of political violence are observed and reported without any expectations of prosecution or punitive measures being expected to take place.... This form of prevalence of politically oriented and instigated violence and the blatant impunity associated with it happens to be one of the most noticeable components of Kenyan party politics. Furthermore the Kenyan political elite has over time learnt how to skilfully turn the land question into an ethnic struggle over territory, thus avoiding the more obvious implications of a class struggle over property” (Anderson and Lochery, 2008: 12, 13).

2.3 Conclusion

This chapter has looked at literature indicating how historical injustices pertaining to socio-economic and political rights have been intertwined with ethnicity to create and sustain structures that resulted in differential development of various regions and unequal enjoyment of rights by individuals based on their ethnic identity.

Although previously reported as either ‘land clashes’ or ‘ethnic clashes’ by both local and international media, electoral violence in Kenya actually stems from structural inequalities and historical injustices rooted in unequal distribution of land and in socio-economic issues across various regions, often populated with different ethnic communities. As the cited authors argue, this has been aggravated further by previous episodes of impunity as regards past electoral violence, violation of human rights, as well as deeply entrenched political patronage, a winner-takes-all political environment, and a political class that has perfected the art of turning the land question into an ethnic tussle. In the next chapter I take those views on board while examining Kenyan government actions, the way they have been enabled by the lack of independent control, and the way they have been perceived by the IDPs.

Chapter 3

The 2007/2008 Post-election Violence and the Role and the limits of the State

3.1 Introduction

In 2007 after the break-up of the National Alliance Rainbow Coalition (NARC) the Party of National Unity (PNU) became the flagship of the incumbent president, Mwai Kibaki in his quest for a second term in office after a five year stint at the helm. Its main opponents were the Orange Democratic Movement (ODM) and Orange Democratic Movement of Kenya (ODM-K) led by Raila Odinga and Kalonzo Musyoka respectively. Many analysts at the time and even later described these political formations as nothing more than ethnic based parties representing specific regions of the nation which were attempting to make a tribal grab of the presidential office with its accompanying powers and privileges. When keeping in mind the winner-takes-all paradigm of Kenyan politics, the situation could as well have been described as a 'do-or-die' situation.

Following the announcement of Mwai Kibaki as the winner of the Kenyan general elections on 29th December 2007 violence arose, apparently spontaneously, in several places in the country. Beginning with the major urban areas of Nairobi, Kisumu and Eldoret it spread to other smaller towns of Naivasha and Nakuru. This spate of violence included the burning of houses and business premises, looting of property and killing of individuals from communities that were perceived to be supporters of the winning side of PNU. Police intervention was severe with reports of use of live ammunition and extrajudicial execution. Later in the month of February 2008 there were revenge killings by pro PNU gangs on ODM supporters in areas such as Naivasha and Nakuru before it all came to an end later that month. It is estimated that 1,500 people died while 650,000 ended up being displaced. Many of the survivors escaped their areas of residence and ended up in camps for IDPs across the country. These camps offered, however, only limited protection from violence. In this context, it is important to note that gender based violence such as rape accompanied the post-election violence in Kenya. Humanitarian aid workers have, for example, consistently identified the danger to women who must venture far outside the confines of camps to search for firewood or other staples unavailable in the camp. Research undertaken has found that more than 90 percent of reported rapes occurred under these circumstances. Despite the long-standing evidence, however, not enough has been done to anticipate and avert this predictable risk in more recently established camps (Kimani, 2008: 2).

This is also what our field interviews revealed and hence the reason why the next chapter will focus on gender-based violence as an in-depth case study

of the events. Before that, however, I discuss the role and responsibilities of the government, as well as its actions regarding the violence.

3.2 Role of the Kenyan Government in Protection of IDPs.

According to estimates, hundreds of both local and international NGOs became active in the follow-up of the violence to alleviate the suffering of the IDPs. Over 500 of those NGOs worked throughout the affected areas. For instance, the International Rescue Committee (IRC) spent four days in Kitale near Kenya's border with Uganda distributing basic hygiene supplies, assessing needs and determining which locations would be best served by their response and supported the Kenyan Red Cross Society (KRCS) to deliver emergency relief services in twelve settlements (OHCHR, 2008). The Livelihoods Recovery Programme backed by USAID and ECHO helped returning farmers with tools, seeds and fertilizer at the beginning of *Operation Rudi Nyumbani*, although no equivalent of this was extended to non-farming IDPs.

However, Kamungi and Klopp (2008: 2) have pointed out that the NGO responses were short lived:

“ Less than a year after the violence (by August 2008) the international community seemed to believe that Kenya's humanitarian crisis was over and that now a functioning government was in place, the IDP problem would be automatically solved. Humanitarian NGOs working in the region started focusing on more serious and visible conflict situations in neighboring Somalia, Sudan and Uganda. For its part, the UN in Kenya has largely failed to accept that IDP protection falls within its mandate. Field and head quarter officials of OCHA, UNDP and UNHCR have not advocated for the rights of the displaced in an effective and assertive manner. Kenya is a key base for relief operations in the Horn of Africa and as the IDP issue is politically sensitive the UN would seem to prefer to avoid any problems with the Kenyan government” (Kamungi and Klopp, 2008: 2). This situation allowed Kenyan government to act without a major control by either civil society or international agencies. Furthermore, despite, the existence of the Great Lakes Protocol on Internally Displaced Persons, Kenya does not have any policy guidelines to deal with internally displaced persons (Waki Report, 2008; Kamungi and Klopp 2008: 2) - even though the current IDP issue is not new in the country and some people have become perpetual refugees from 1992 to date (Mbarta, 2008).

Various humanitarian responses were initiated by the state to address the plight of the displaced persons in the country. These included setting up the camps for the displaced, and the provision of relief food and other supplies.

Mwiandi (2008: 4) has also noted:

“There have been efforts to resettle and compensate the displaced. Indeed the government received 30 billion shillings for resettlement and compensation of the IDPs from well wishers and the state coffers. But this process was fraught with omissions. These were policy related as well logistical. Out of the 30 billion shillings earmarked for the entire resettlement exercise, less than one billion has been raised and spent on the IDPs .For IDPs who have lost significant amounts

of wealth and property in the violence, the 10,000 shillings offered was insufficient to rebuild their lives. They remained in camps hoping for more support" (Mwiandi, 2008: 4).

The government did not have policy guidelines regarding the resettlement and compensation of IDPs. Hence, the process of resettlement and compensation was chaotic and unplanned. At the present juncture, the IDP issue has gradually faded into near oblivion as the political class is engaged in preparations for the forthcoming 2012 general election making possibilities of restitution for IDPs even more remote.

While the government was pushing for the quick resettlement of the internally displaced, some commentators felt that speedy resettlement would not augur well for the returnees. Indeed some observers have voiced concern over the safety of the returnees, given that most of the underlying issues surrounding the conflict have not been addressed, leave alone resolved (Bii, 2008: 15)(HPG, 2008: 1).

A report prepared by the UK based group Humanitarian Policy Group has highlighted that

"The government is yet to domesticate and adhere to the provisions of the Great Lakes protocol that in particular stresses that humanitarians need to engage with land specialists to ensure that their programming not only avoids exacerbating tensions, but is also consistent with efforts to address the structural causes of conflict. Return, relocation and local integration should not be promoted as durable solutions in the absence of serious attempts to resolve land related grievances. If durable solutions are to be found programmes also must take into account of those who were forced to move in earlier waves of displacement including the wider landless who have been waiting for a long time to be resettled or to be allocated land and are currently living in very difficult conditions"(HPG,2008: 6).

The same report goes further to note that

"Insistence in encouraging IDPs to return despite continued political uncertainty and insecurity raises clear protection concerns. This includes both physical security and wider issues to do with rights, community reconciliation and sustainable access to the means of subsistence and livelihoods. Furthermore in the absence of political progress and stability, urbanisation is likely to accelerate as displaced people seek alternative livelihoods. This kind of self resettlement will only aggravate land grievances in places such as Nairobi and Central provinces, where land scarcity and population density is already high" (HPG, 2008: 6).

There were also localised efforts at peace building and reconciliation among the affected communities. Nevertheless, some political leaders seem to be opposed to the process arguing that the underlying issues have not been addressed (Njaga, 2008: 17).

3.4 Ethnicity, Economy and IDPs: Limits to Government's Efforts of Reintegration

As mentioned previously there have been problems with IDPs going back to their original homes or being resettled elsewhere. Mwiandi (2008: 3) has stated that

“Tension and localized violence in some areas continued to prevent the large scale reintegration or return of the displaced into communities, and those who attempted to return have faced attacks in various places despite the existence of newly built police camps.” (Mwiandi, 2008: 3).

The issue is highlighted further when Mwiandi notes that

“Rather than return to their homes, IDPs leaving the campsites have established more than 134 transit camps near their previous residences, particularly in the farming areas of Uasin Gishu, Transnzoia, Kwanza, and Molo districts within the Rift Valley province while others have relocated to ‘ancestral homes’. The IDPs farm and work during the day but spend the night at transit camps fearful of their hostile neighbours. The continued existence of these camps reflects the degree of unresolved hostility, likelihood of future violence, increased ethnic intolerance, failure of inter-personal and group reconciliation and the inability of the government to assure its citizen’s safety” (Mwiandi, 2008 4).

Kamungi (2009: 12) lends more support to this when she posits that

“Generally of the 341,000 IDPs who went into camps only a tiny minority have managed to return to their farms, despite the government’s resettlement programme, shelter reconstruction and livelihoods recovery projects supported by NGOs. In areas bordering Chepakundi in Molo, no one has been able to return fully to their lands. In some return areas, UNICEF reported allegations of deliberate poisoning of water sources and ethnic segregation of schools and markets. In other areas like the rift valley and some urban slums, ethnic Balkanization was evident where people from rival tribes refused to share public transportation vehicles and civil servants were unable to resume duty due to fear of credible threats.” (Kamungi, 2009: 12).

Further elaboration by Kamungi (2009: 12) reveals that

“IDPs’ houses in urban areas and lands were illegally occupied, and those without land have lost the prospect of squatting on or leasing land. Similarly, landlords refused to let their houses or business premises to IDPs as they were afraid that the property would be destroyed in outsider targeted violence or as part of a broader strategy to resist their return.” (Kamungi, 2009: 12).

Other authors on the topic like Klopp (2020: 12) have revealed that

“Secret initiations and clandestine oath taking presents yet another stumbling block to peace building as exhibited by the case of one young man who had undergone a month-long initiation process in which he was very clearly taught that other Kenyan cultures were inferior. This is not unique to the Kalenjin and Kikuyu and raises critical questions about the limitations of workshops and trainings when confronted with problematic teachings in secretive traditional spaces. These ceremonies, which appear to have a large effect on youth identity and mores, constitute a challenge for peace building that requires further

investigation, engagement, and collaboration with those who do these initiation rites. Furthermore some peace activists have been killed for organizing meetings and many peace builders have been silenced by violence and fear. This problem is compounded by the ever-widening circulation of small arms.” (Klopp, 2010: 12).

Finally Klopp (2010: 12) has put a twist in the tale by noting that

“There is an incident in Kuresoi in which one youth group decided to return stolen things to the displaced, now mostly destitute. They negotiated for two bicycles— important assets for a poor member of a rural community—to be returned in a small ceremony. They also organized home visits to return three cows, four goats, and fifteen iron sheets” (Klopp, 2010: 12).

Many other similar incidences of community initiated reconciliation activities have taken place in the Rift Valley province and it happens that local elders have been the driving force behind their materialization. This aspect will be further elaborated in Chapter 6.

3.5 The IDP Experiences of Operation *Rudi Nyumbani*

From the findings we can deduce that the *Operation Rudi Nyumbani* was hampered by a number of militating factors. One of them was perceived ethnic bias. In areas of Kenya, there is a perception that only members of one ethnic community were in camps or affected by post-election violence though some members of other groups were displaced or suffered from the post-election violence as well. As one FGD in Dagoretti reported, while some IDPs in camps have received shelter, seeds and fertilizers, as well as start-up and shelter reconstruction funds, only a few IDPs from other affected communities have received the same assistance. These perceived biases in humanitarian assistance further put reconciliation efforts in jeopardy.

Another factor is related to the “Do No Harm” principle and to “conflict-sensitive programming”. The FGDs found that focused assistance to IDPs in camps - without inclusion of local population in camp neighborhoods - has increased resentment towards their specific ethnic community. According to the discussants these sentiments formed from March 2008 with increased exclusive delivery of humanitarian assistance to camps, increased security around transit camps, and delayed reconstruction of destroyed local schools by the military. These activities created a perception of bias in favor of the returnees. Indeed, some observed that “*they take everything to the camps and even the police are from one community*”. These perceptions have sustained resentment and suspicion, particularly between the Kikuyu and the Kalenjin, and have undermined reconciliation efforts.

At the same time, there are IDPs with nowhere to go. If one considers that *Operation Rudi Nyumbani* began by targeting land-owning displaced persons who were willing to return to their farms, other types of IDPs were simply not in the picture. Consequently, other livelihood groups and landless

people had to wait for assistance sometimes in closed camps without humanitarian assistance. Many such IDPs used to rent land or business premises, but trading centers had been destroyed and savings exhausted. Some of these IDPs had no other 'ancestral home' and failure to access Government assistance compelled them to remain in camps without prospects for durable solutions. In addition, some property owners had lost access to their homes and livelihoods in urban areas due to illegal occupation of their premises. As it emerged from the key informant interviews, this was particularly true of Kibera and Mathare settlement areas. This implies that while all land-owning IDPs might eventually return to their farms, pockets of IDPs would remain, albeit scattered and invisible in urban areas or in rural communities. The search for durable solutions therefore needs to look into this problem and the underlying need for reconciliation.

Another problem is relocation. Individual households and groups of IDPs have moved away from pre-displacement areas to new locations they consider safe. The movement pattern indicates IDPs are unwilling or unable to return. Some access their farms during the day from transit camps (when security allows), while many have established other homes in urban and 'ancestral' districts. Self-help groups comprising over 10,000 displaced households have relocated to new farms in Nyandarua, Nakuru, Naivasha and Nyeri in Central Province and the Kikuyu-dominated South Rift. An unknown number of Luo and Luhya IDPs have also returned to Nyanza and Western provinces where they have integrated into their kinship groups and other social support networks. Kamungi (2009:12) states: "These movement patterns are indicative of unresolved conflicts, likelihood of future violence, increased ethnic intolerance, failure of inter-personal and group reconciliation, and loss of confidence in the Government to guarantee security and justice. There is a gradual balkanization of parts of the Rift Valley and some urban slums along ethnic lines".

At the same time, an unknown number of IDPs have integrated into host communities and urban areas. However, there is compassion fatigue in host families and increased competition for resources, jobs and social facilities in host areas, leading to xenophobic attitudes towards IDPs, such as for example by associating them with increased crime. These factors have bred hostilities that in some cases have led to violence in host areas.

On the one hand, some displaced communities claim the project was aimed at benefiting the Kikuyu only. On the other hand, the Kikuyu claim fears of insecurity make it difficult for them to return and reconstruct homes. Still, there are those who argue that the criterion for selecting 40,000 beneficiary households was unclear since more than this number was affected. There were also allegations of corruption, double registration of households and false claims. This was all further compounded by the government's advocacy for quick resettlement.

Then there is the Livelihoods Recovery Support: At the start of *Operation Rudi Nyumbani*, the Government gave seeds, fertilizer and farm tools to returning farmers. In some regions of the Rift Valley and Nyanza, IDPs with access to their farms were supported to plough. Donors such as ECHO and

USAID supported a voucher scheme to IDPs, mostly farmers, to purchase seeds, farm tools and implements upon return. NGOs such as the Catholic Relief Services, Save the Children-UK and Accord also gave support in the form of agricultural training and tools. However, livelihoods support has been focused on farmers and did not focus on urban and peri-urban IDPs. The Food Security and Early Recovery Cluster has been exploring ways of supporting non-farmers, and an assessment was scheduled for mid-January 2009. What became of it is yet to be seen.

Finally, many IDPs are not satisfied with the legal process as pertains to punishing those who committed crimes during the violence. This has been the biggest impediment to the promotion of healing and reconciliation. The KNDR agreement required the President and Prime Minister as well as other political leaders to promote healing and reconciliation by, among other things, holding joint rallies, developing a national resettlement programme, de-emphasizing ethnicity in documents, establishing all-inclusive peace and reconciliation committees, and appointing a Truth, Justice and Reconciliation Commission. We observed that most peace activities exclude politicians and target only IDPs and persons without influence in the community. One respondent observed, *“What we fear most about politicians is their aspect of doublespeak. They will say this in one forum and issue a different statement in another. But where they support us you will see a lot of enthusiasm. Where they don’t, you’ll see them avoiding the issues.”* Besides, few activities seek to involve the people in mutually beneficial projects. There is a need for new approaches to peace-building that are sensitive to local perceptions and sensitivities and include local political actors.

3.6 Conclusion

This chapter has reviewed the actions taken by the state as major actor during and after the post election violence of 2007/ 2008 and the various programs and their limitations. Although the efforts of the civil society NGOs and IOs was laudable at the beginning of the crisis, the fading away from the scene by the same players and the inadequate actions of the state, leaves many questions unanswered as to what will be their future role in IDP assistance. The government’s initial advocacy of quick resettlement, insufficient financial restitution to the displaced and its continuing lack of a clear guideline for handling the IDP problem, clouds any quick judgements as to the state’s real and/or potential capacity to resolve the situation. Efforts by IDPs and affected communities to resolve hostilities at the grassroots level are yet to receive the backing and recognition they deserve from local politicians, civil society and state institutions and consequently remain as isolated and scattered incidences around the country. Furthermore considering that IDP camps and new transit points still exist coupled with allegations of secret initiations and weapon caches, it means that it is of utmost importance for all concerned parties to address unresolved and underlying issues that precipitated the violence in the first place, before the next round of elections comes around. Despite the

waning of political goodwill in supporting the re-integration of IDPs back into mainstream society, some groups of IDPs and local communities have taken their own initiative towards peace building and reconciliation using both formal and informal ways. Civil society and local religious institutions like churches have supported such activities and in odd occasions a local politician has made an appearance. However, such incidents are not the norm but isolated events which in an ideal situation should be replicated all over the country wherever IDPs exist.

Chapter 4

Sexual and Gender-Based Violence

This chapter will focus on sexual and gender-based violence during the violence and displacement period of 2007/2008. Gender-based violence such as rape also accompanied the post-election violence in Kenya and it forms an integral part of any debates and issues that revolve around reconciliation, peace building and re-settlement. This is also what our field interviews revealed. We wanted to find out root causes and consequences of sexual and gender-based violence in the camps where the IDPs are resident. Furthermore, we wanted to examine the trends and patterns of sexual and gender-based violence and exploitation among IDPs. From such an examination we would then proceed to analyse the social and cultural antecedents of sexual and gender-based violence in the camps. It would not be possible to get such information without documenting the experiences of women who have undergone sexual and gender-based violence and the ways these women frame and interpret such experiences. Before discussing our findings from the fieldwork, I first give an overview of international legal frameworks and Kenyan situation in the field of SGBV.

4.1 Legal frameworks and Kenyan situation regarding SGBV

The Kenyan constitution happens to be very clear on the violation of individual liberties and the Kenyan Parliament has passed a number of landmark Acts which protect women and children against exploitation and assault. The Sexual Offences Act as well as the Children's Act is a case in point. But a glaring omission is the failure to domesticate and implement international human rights standards to which Kenya has committed itself to. These include documents such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP), the Declaration on the Protection of Women and Children in Emergency and Armed Conflict and the Declaration on the Elimination of Violence against Women.

International humanitarian initiatives aimed at addressing violence against women in refugee, internally displacement and post-conflict settings are relatively new. Most have been introduced only in the last ten years. During the late 1990s, a number of relatively small-scale but nonetheless vital projects were implemented in various sites around the world. The lessons learned from these efforts emphasise the importance of integrating prevention and response programming within and across service-delivery sectors, specifically in the areas of health, social welfare, security and justice. In other words, survivors must have access to medical care as well as psychosocial assistance; they should be able to rely on the protection of the police, peacekeepers and local military;

and they are entitled to legal assistance should they choose to prosecute those who perpetrate violence against them.

Addressing SGBV requires national education and sensitization at all levels — at the family and community level and at the level of service provision — so that doctors, lawyers, judges and police are able to respond to survivors efficiently, effectively and supportively. It further requires advocating for improved legislation to protect women and girls, as well as policies that support gender equity and equality (Feinberg, 1989: 23).

While the broad outline of roles and responsibilities within this “multisectoral model” provides a general framework for addressing violence against women, an assessment undertaken in 2001 concluded that implementation was weak in virtually every conflict-affected setting around the world. Foremost among the limitations to establishing multi-sectoral programming was the failure—at both the international and national levels—to prioritize violence against women as a major health and human rights concern. The result was a lack of financial, technical and logistical resources necessary to tackle the issue. Many survivors, the 2001 assessment observed, were not receiving the assistance they needed and deserved, nor was sufficient attention being given to the prevention of violence. The outcomes of an independent experts’ investigation spearheaded by the United Nations Development Fund for Women the following year echoed these findings in their conclusion “that the standards of protection for women affected by conflict are glaring in their inadequacy, as is the international response” (Shilabukha, 2007: 18).

These inadequacies persist today. However, the number of field-based initiatives addressing the issue of sexual violence against women and girls continues to grow, even against a wearisome backdrop of limited funding. Methodologies are being refined by many humanitarian organizations to try to extend and improve services for survivors, as well as to build the capacity of local agencies to take on the issue (Rackley, 2002). Standardized procedures for medical treatment of rape are being adopted in an increasing number of settings. Training modules have been developed to build local capacity to meet the psychosocial needs of survivors. Efforts are being made, most evidently in post-conflict settings but also in some refugee settings, to support legal reforms that would provide greater protection against multiple types of gender-based violence against women and girls (Pittway and Bartolomei, 2002: 9).

Widespread community-based education aimed at changing attitudes and behaviours that promote sexual and other forms of violence against women has been carried out in a number of settings. Research on the nature and scope of the problem has also multiplied in recent years, and is bringing pressure to bear on international actors as well as on states to take more aggressive measures to address violence against women in conflict and its aftermath. In addition, several high-level international initiatives are currently underway to promote more coordinated and comprehensive action by humanitarian aid organizations. New guidelines issued by a task force of the United Nations Inter Agency Standing Committee (IASC) provide detailed recommendations for the minimum response required to address sexual violence in emergencies

and hold all humanitarian actors responsible for tackling the issue in their respective areas of operation (Feinberg, 1989: 23).

To this end, is it important to carry out action research to understand and document the nature and scope of sexual and gender-based violence and sexual exploitation of women in IDP camps? There is also a need to look at the policy and human rights implications and aspects of this violence in order to reduce the prevalence of rape and sexual exploitation in IDP camps. Such ambitions may require a “quantum shift” in approaches to sexual violence in war, most especially in terms of prioritizing all efforts to end the levels of impunity that have given rise to the shocking scale and stubborn persistence of the violence (Shilabukha, 2007: 18).

From the reports in the media there were widespread physical and sexual attacks on target communities in the aftermath of the election in 2007. Though many people were attacked for perceived political differences, it was notable that women bore the brunt of the violence. Commentators have postulated that the violence was a window into the status of human rights in Kenya and the gaps in responding to abuses. Below I present the findings of our own research in this respect

4.2 Narratives of Gender-based violence by IDPs.

From the survey it was almost impossible to gather information on sexual attacks before settlement in the camps. This limitation was mainly due to lack of official reports as well as some victims opting to keep silent during the period when the violence was ongoing. But some respondents were able to recall what they heard other people say about what happened. We suspected that a number of them could have been engaging in what social scientists refer to as *proxy reporting*, that is talking about themselves via a third party perspective. However, the FGDs and key informant interviews revealed that indecent sexual assault was the commonest and most frequently reported form of attack. It was followed closely by rape.

The answers to the question as to what kind of sexual attacks occurred in the aftermath of the election dispute indicate that sexual attacks were highly prevalent. These attacks formed the core of the attacks to the target communities. What is striking about reports from the field on sexual attacks was that no one indicated whether their close relatives had been attacked sexually during the election violence or earlier on. This may represent a reluctance to talk about this personally in fear of the stigma associated with rape and the widely spread tendency to blame the victim instead of the perpetrator. This means that the rape and sexual cases could be much higher than reported here.

The fact that the majority of the respondents did not report the sexual attacks prompted us to find out the motivations behind not reporting. Obviously, respondents had preferences as to whom to report. This helped to provide insights into the confidence they had in duty bearers. The findings show how the survivors rate the duty-bearers, especially those mandated by the

law to take care of their needs. In this case the police were the lowest in rank in terms of providing services when it comes to getting reports related to rape.. The police are gate keepers of the government in terms of crime reporting yet very few people were willing to report rape to them. This explains why the majority of attacks went unreported.

One personal narrative in Kasarani actually captured the scenario as to why the survivors were unwilling or otherwise reluctant to go to the police:

“It is a police officer who raped me, how could I even contemplate reporting the attack to his friends, only God will judge him” (KJ, female respondent from the Kasarani camp. In-depth interview done on 16th August, 2011).

Another survivor simply asked:

“Why wouldn’t a woman who is reporting a rape attack be believed?”(HT, respondent from Kasarani Camp. Interview done on 16th August, 2011)

This poignant question is answered by Shilabukha (2007: 27) who points to society’s attitudes to rape:

“..Women are taken to be dupes..... to be taken advantage of.... She may have been raped but somehow she asked for it and therefore, deserved it....”

Another respondent told us:

“After the rape ordeal I sought refuge at the IDP camp in Burnt forest. I did not report the attack on me to anyone or any institution because I felt ashamed and I knew that if I reported it, no one would believe what I was saying, since I couldn’t establish the attackers on me. However later on while staying in the camp, I revealed that information to a girlfriend of my age that encouraged me to go on with life and promised not to tell anyone. I kept this information to myself and therefore since I did not report this anywhere, I know that nothing has been done to the attackers. I feared reporting the attack on me since I felt embarrassed, and I also feared that the same attackers or their community may attack and kill me” (BF, female respondent in Kasarani camp 3rd August, 2011).

This experience reveals the ways in which rape is treated in Kenyan society. The survivors feel helpless and intimidated at the same time. The framing of this experience also depicts a picture of self hate and deprecation. Rape survivors often feel or are made to feel they somehow invited the attack on themselves. Matters are made worse with societal attitudes that treat women as property and sexual objects. Shilabukha (2007: 16) captures this succinctly: “Sexual violence is encouraged in many ways in various cultures. And women are often blamed for rape...this view reflects a massive abdication of responsibility” (Shilabukha, 2007:16).

The women in the camps were also exposed to sexual and gender-based violence in the course of obtaining basic resources such as food, water and fuel for themselves and their families. In Nakuru and Eldoret rapes and other forms of sexual abuse were frequently reported when displaced women and girls had to leave camp areas to gather firewood. In Naivasha and Nakuru

displaced women were forced to exchange sex for aid, including food from national and international workers, according some of the reports we got from the IDPs in the Nairobi camps from individuals who were relocated from those two camps.

It was also striking that the rape attacks were a form of punishment for perceived or imagined political divergence. Some women were raped simply because they came from a community that harbours divergent political views from the perpetrators. The response below captures this concisely,

“When fleeing from her home in search for a safe area, a woman was attacked one night at about 11.00 pm by one person who pinned her to the ground and tied her hands. He immediately began raping her as people looked on helplessly and once he was done he chased her and ran away in a different direction. He told her, “*nafanya biri kama malipo ya kuiba kura*” (I am doing this as payback of your vote theft) while raping her (EH, male respondent reporting the experiences of a female neighbour, Kasarani camp, July 31st, 2011).

The experience of the survivor shows that rape is used as a tool of gender oppression as well as political ethnic intimidation. It is also used as tool for revenge against a target community. In this case this survivor was ostensibly paying for the sins of those who apparently stole the election. Again this shows how women pay for the sins of others. It also shows how women are taken to be pawns in a war or conflict situation they have no idea about or are simply passive participants in. Nevertheless, they pay the ultimate price through their bodies.

To show how GBV was widespread, here is another account of one survivor of a rape ordeal. This is her account:

“On the 31st December 2007 at 9.00 pm that was when our home was attacked and we all fled in different directions in fear of our lives. I managed to find a place for shelter and at wee hours of the night while still living in fear, I heard the attackers coming towards the place I was hiding and I immediately began running away again. The attackers chased me for quite a distance where they managed to catch up with me and put me to the ground and began raping me. On that night the police were not nearby to assist me and no one came to my rescue to assist me since I tried to scream but my mouth was held. They later on finished raping me at about 1.30 am and left me helpless and I remember they were like five people. I was not able to establish their identity by face though I knew they were Nandi through the way they talked” (In-depth interview conducted at Dagorretti Hospital, 7th July, 2011).

According to one police officer we interviewed in Nakuru as a service provider, no rape cases were reported during the conflict. This was very remarkable coming from a senior police officer, an OCS (Officer Commanding Station). The same sentiments were aired by another police officer in Naivasha. The OCS had this to say,

“No one came here to report that they had been raped. The only reports we have concern physical assault, destruction of property and looting. As far I am concerned no report of rape was recorded here (Interview conducted on 2nd August, 2011 with a junior police officer in Naivasha town)”

The denial did not come from the police officers only; even other respondents seemed to confront the problem of rape with trepidation. They were unwilling to discuss the extent as well as the magnitude of the problem. This came out clearly when we interviewed a community leader at Waithaka.

“Many people in my (*Kikuyu*) community are not open about what happened, especially as far as rape is concerned. These things happened during the emergency period in 1952 and they were hushed up. It also happened in 1992, 1997 and 2002. I think the community has learnt to live with scars and they seem to wish the problem away. In a way, some people hold the view that rape, even in cases where it is gang rape, is not a serious crime to warrant attention. I can tell you that many women were raped. But few of them are willing to testify. It is a shame but that is the reality” (KV, a community leader within the Waithaka IDP camp, 5th August, 2011).

As our findings indicate, most of the survivors did not report to the police. The reasons varied. However, it emerged from some interviews that some parents were compromised by the attackers as illustrated by this case study from Waithaka.

“The people who raped me were like six in number and I could easily identify or knew one of the attackers since I used to see him pass near my home when grazing cattle out in the field. One day, I saw him and I immediately told my father that I had seen him at the road side since when I reunited with my family I explained to them what had happened and they knew my story. My father assured me that we will go to the police and report. Later friends came towards us and stopped my father. They asked him where and what he was going to do. They pulled him aside and began talking to him. I then saw him being given some money which I assume might have been Kshs 4,000 so that he would not report. I asked my father what went on, and he told me “*nyamaza ama nikupige, nenda nyumbani*”(Keep quiet or I beat you, go back home). Since that day the matter was never reported to the police station and I remained silent and lost hope” (GR, 20 year old woman who was 16 at the time of the incident. Interviewed in Waithaka camp on 14th August, 2011).

At the same time it emerged that actually some police officers participated in the sexual violence and some senior police officers either intimidated the parents of survivors or bribed them into silence. In some cases the police simply ignored pleas for assistance when the actual rape was going on, especially if one of them was involved. This was a common complaint from many respondents. In reality many places were not under any type of police surveillance and were dangerous for women as the following quote shows:

“It is dangerous to venture into section B of this camp. It is populated by louts and layabouts. In fact these smartly dressed ladies will be stripped naked and even raped by those criminal minded goons in that part of the camp (PK, a respondent in Kasarani camp 14th August, 2011).

It appears that women survivors of rape and defilement are not ready to report attacks simply because they believe nothing can be done about it. Another

dimension to this line of action points to the willingness of the survivors to blame themselves for what happened to them. Then there is the feeling that a woman who is raped brings shame to her family. This kind of thinking also emerged very much during the interviews. In this regard, the findings indict the duty bearers, especially the police for negligence of their duties in dealing with rape and other sexual offences. Furthermore, there was intimidation and negative reception from the police as well as possible reprisal attacks from the perpetrators.

As to whether any rapes have occurred in the camps most of the service providers informed us that rape cases were rare, even non-existent. But this contrasted sharply with what most respondents had to tell us. According to one respondent from Nakuru who had relocated to Waithaka camp, a lady was raped by a gang of men in the side B of the camp. But she did not report until she discovered that she was pregnant. By that time it was too late to do anything about the case in regard to punishing the culprits. To complicate matters, she could not even remember who they were since it happened at night. This means the risk of rape and sexual abuse remains high for the young girls and women living in the camps and this further hinders possible reconciliation and peace building.

Apparently the sexual attacks did not end with the resettlement of the IDPs in the camps. It appeared that the camps only provided a brief reprieve from the attacks.

4.3 Conclusion: Failure to Protect against Sexual and Gender-based Violence

The Guiding Principles on Internal Displacement explicitly call on governments to provide protection for women and girls. Provisions regarding displaced women and girls are guided by two core concerns: to safeguard them from gender-specific violence and to uphold their rights to equal access to services and participation in assistance Programmes. But even in the presence of such clear cut guiding principles abuses against displaced women and girls in Kenya have generally been perpetrated with impunity, and a majority of displaced women and girls did not have adequate access to physical, legal and social protection during their stay in the camps. This means that the government has abdicated its role of providing security and protection for the IDPs, especially the women and young girls.

Since some of the duty bearers were the very perpetrators of the SGBV in the first place and victims still have deep emotional and psychological scars, reconciliation efforts will have to address the feelings of shame by the victims as well as find ways to facilitate victim representation and protection from potential reprisal from their former persecutors who still posses the power to do so. Furthermore systems need to be established in which reports can be filed in an easier manner and records can be kept safely for future reference. Any peace-building effort that does not factor in the SGBV dimension will be set to achieve nothing in terms of significant progress. In the next chapter we shall turn our attention to issues of transitional justice.

Chapter 5

Transitional Justice by the State and other Justice Actors

In this chapter, I will discuss transitional justice and related issues such as impunity, amnesty, transitional society, reparations and truth commissions.

5.1 Transitional Justice as a Context

The term “transitional” carries the connotation of movement from one point or state to another. Musila, (2009: 28-29) defines transitional justice as

“The process by which states seek to address the challenges that confront their societies as they move from an authoritarian or otherwise repressive regime to a more democratic one. This definition presumes a past depicting human rights violations and focuses on the mechanisms that are put in place to redress them. Such mechanisms seek to confront the perpetrators before a judicial forum, address the needs of the victim and start a process of reconciliation. In this sense transitional justice is institutional: it speaks to institutions or mechanisms through which states and societies seek in practice to address past injustice and chart a new path. In the grand scheme of things, transitional justice has a number of broad objectives: to establish truth, pursue accountability for the crimes and violations committed, make reparations for the victims and reconciliation of the parties. In this regard, basic approaches to transitional justice that can be deployed include criminal prosecutions, truth commissions, victim reparation programs, gender justice, sector reforms (dimensions of institutional reforms including constitutional and security sector reforms) and memorialisation efforts.... In view of the scope of past abuses that a transitional government needs to deals with, no single basic approach may suffice. Effective transitional justice should therefore include measures that complement each other and which are designed to strengthen peace and democracy” (JWR, 2009: 28-29).

Furthermore Musila (2009: 30) continues to argue that,

“Several African countries like South Africa, Sierra Leone, Liberia and Uganda that have emerged from different kinds of conflict such as civil wars and undemocratic rule have had to make decisions on the appropriate transitional justice mechanism to adopt. The choices in each case are defined by the particular circumstances of the societies involved and the specific aims sought.” (JWR, 2009: 30).

Finally Mutua (2008: 1) has captured two aims of transitional justice:

“First, it acknowledges the temporary measures that must be taken to build confidence in the post despotic society. Secondly, by its own definition, transitional justice rejects a winner-take-all as a beachhead to the future. In other words, transitional justice calls for deep concessions on either side of the divide”.

These two ideas set transitional justice apart from normal justice by highlighting the unique conditions in which it is implemented and guides some of its expectations.

5.2 Kenya as a Society in Transition

Transitional justice exists also in a society that is changing (Anderlini et.al 2005:5). Musila, (2009: 30) elaborates that

“Agenda Four of the National Dialogue and Reconciliation Process (NDR) comports broadly with the package of measures and tools or approaches generally associated with transitional justice in its broadest sense. This agenda, which relates to ‘long term’ issues and solutions’, focuses on a number of relevant issues: undertaking legal and institutional reform; tackling poverty, inequity as well as combating regional imbalances; tackling unemployment, especially among the youth; consolidating national cohesion and unity; undertaking land reform; and addressing transparency and impunity. To address the more contentious question of accountability and impunity, subsequent agreement to the establishment of a Truth, Justice and Reconciliation Commission (TJRC) was reached. The proposal to establish a Special Tribunal for Kenya (STK) remains unimplemented..... At the beginning of 2003 when the NARC government took power, the transition was merely perceived as an end to the repressive regime under Moi and entry into a new dispensation under NARC. It is thus arguable that the ‘transition moment’ was lost when plans to establish a TJRC were abandoned in 2003, as Kenya fitted more comfortably into the description of a transitional society: one exiting authoritarianism into democratic governance ” (JWR, 2009: 30).

Regarding the effectiveness of the transitional period and whether Kenya really could be considered a transitional society, serious questions remain. Musila, 2009: 32) points out that

“The failure to establish a TJRC as per the recommendations of the TJRC Task Force in 2003 gave room for the emergence of other issues that have inevitably redefined the mandate of relevant institutions, in particular the commission. For instance, the continued incidences of graft and other economic crimes within high levels of government that emerged during the first term of the NARC regime rendered its credibility and commitment to restoration of democratic rule and respect for human rights questionable. In addition, the fact that the 2007 elections did not produce a legitimate government resulted in a GNU (Government of National Unity) in which rancor and contestation for political space between the main coalition partners reigns. The viability of transitional justice – at least as it relates to prosecution – is further put in doubt because of the apparent closing of ranks between members of opposing sides in the coalition, some of whom happen to be part of the suspects being tried for crimes against humanity and post-election violence at the ICC at The Hague” (JWR, 2009: 32).

Initially a number of options were viable as transitional justice mechanisms for Kenya. These were the TJRC, the STK, ordinary Criminal Courts and the ICC. It is important to note that of the four probable options regarding transitional

justice mechanisms in as far the Kenyan context is concerned only the ICC option has so far been implemented, although the TJRC is currently up and working but mainly as a cosmetic measure, an issue which will be discussed later in this paper.

5.3 Impunity as a Concept and in Context

As far as history can tell, Kenya has been dogged by impunity when it comes to seeking redress of politically instigated violence and injustices. In the international law of human rights, impunity refers to the failure to bring perpetrators of human violations to justice and, as such, itself constitutes a denial of the victims' rights to justice and redress. Impunity is especially common in countries that lack tradition of rule of law; suffer from corruption or that have entrenched systems of patronage, or where the judiciary is weak or members of the security forces are protected by special jurisdiction and immunities. The first Principle of The amended set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states that:

“Impunity arises from a failure by states to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violation” (2005: 14)

According to its terms of reference, the Commission of Inquiry into Post-election Violence (CIPEV 2008: 446) made the following requirements.

“First it recommended that measures be taken to prevent, control and eradicate the occurrence of similar deeds in future. Secondly measures be taken in regard to bringing to justice those persons responsible for criminal acts and lastly measures be taken to eradicate impunity and promote national reconciliation. These measures were hoped would not only eradicate impunity, but would be instrumental in blowing off the cover for persons who break the law of the land but also deter others who may contemplate similar deeds in future. At the time of drafting of these recommendations, it was firmly believed that a strong and firm foundation in the rule of law would also promote reconciliation, healing, peace building and foment stronger bonds of national cohesion within the nation of Kenya. The commission also pointed out that elements of systemic and institutional deficiencies, corruption and entrenched negative socio- political culture are the primary but not necessarily the sole causes of and promoters of impunity in Kenya which is best illustrated by the five year cycles of pre and post-election violence that have rocked various parts of the country since 1992 when multi-party system was introduced” (CIPEV, 2008: 446).

Brown 2011: 11) attempts to explain why the phenomena of impunity is well embedded in Kenya by highlighting that,

“The NARC (National Alliance Rainbow Coalition) coalition that supported Kibaki during his first mandate and the current GNU, created by the 2008

power-sharing agreement, both depend on cross-ethnic elite cooperation in which some of its members are responsible for the violence of the 1990s and 2008.... Such conditions favour the status quo and, given their dependence on regional powerbrokers such governments are unlikely to muster the political will to prosecute alleged perpetrators and this is despite deep political fractures among them. With this in mind one can trace a strong continuity between Moi's authoritarian state and today's formally democratic one. Though a formal democratic transition has taken place, it is in many ways not a significant one. Given the partial nature of the transition, domestic transitional justice mechanisms, such as the proposed SKT and the TJRC created in 2008, are unlikely to hold high-level officials accountable—or prevent future political violence" (Brown, 2011 :11).

5.4 The Role of the State in Post Violence Justice and Reconciliation Processes

State actions as regards the pursuit of justice have been mired by internal political wrangling and acts of omission. At the onset of the coalition, both NARC and ODM had a common interest in shielding suspects of the post election violence since this included individuals who served as Cabinet Ministers and Members of Parliament from both sides of the political divide. As a result, legislator advocated in public the establishment of an STK while in parliament they interfered on several occasions any attempts of to pass enabling legislation (Brown, 2011: 10). Brown (2011: 10) goes further to point out that,

"Likewise, though the government promised to cooperate with the International Criminal Court (ICC), should the latter have decided to pursue some of those who bear the greatest responsibility for the violence, it initially refused to refer the matter to The Hague (which it already has) despite being demonstrably unable or unwilling to try them domestically? Currently, international actors are the only ones who can hold perpetrators to account, even if only a handful of the worst offenders. In fact, were it not for the Commission of Inquiry into Post-Election Violence (known as the Waki Commission), created as a result of the National Accord threatening to hand over evidence to the ICC (which it eventually did), it seems unlikely that the government would have made any steps at all to implement its recommendation of setting up a Special Tribunal.. In retrospective light of the events as they unfolded it is absolutely clear that no accountability will be achieved for the electoral violence of 2008, just as there has been complete impunity for the "ethnic clashes" of the 1990s" (Brown, 2011: 10).

In December 2008, interviews conducted in Nairobi by Stephen Brown of the University of Ottawa revealed that many donors' initial strong commitment to the establishment of the STK, which they believed would prevent violence from erupting anew in conjunction with the next general elections by holding perpetrators to account hence serve as a lesson to others. The same donors had even threatened to withhold aid if the recommendations of the Waki Commission were not implemented, a threat they are yet to carry out despite non compliance on the issue by the Kenyan state. Further interviews in January 2010, however, revealed that donors no longer consider the compliance

essential. They had by then changed their interests and are now more focused in change and implementation of a new Constitution (which has already happened although not in full) and the establishment of a new Electoral Commission in time for the 2012 elections, rather than issues of accountability and violence. Maybe they believe that institutional reform will be sufficient to mitigate future conflict. This can be seen as pragmatism, since the international community cannot compel the Kenyan government to pass any legislation. (Brown, 2011: 10).

In the mean time, indictments have been issued by the ICC and all six main suspects have already appeared before the ICC Pre-trial Chamber for confirmation of their charges in September 2011 and all this happened without overt donor intervention.

5.5 Local Justice Actors and the State

We are charged to unearth the truth of our dark past, to lay the ghosts of our past, so that they will not return to haunt us. — Bishop Desmond Tutu

As mentioned elsewhere in this paper one of the four transitional justice mechanisms was to form a TJRC which until the recently initiated ICC trials was the most popular (among the citizenry) and most viable since there was already a special task force recommendation to the state to establish it by the end of 2004 which was way long before the more recent post-election violence of early 2008 (JWR, 2009: 36). The commission finally started its work in April 2011 but has been befallen by some setbacks. Before delving into that, it may be important to have a brief overview of truth commissions as institutions of justice. Meltzer 2004: 7 defines these institutions in the following manner.

“Truth commissions are considered one of the most fundamental tools in processes of justice and reconciliation, not as alternatives to, or substitutes for, legal processes, but rather as integral and complementary components of reconciliation. The implementation of truth commissions has varied in different contexts, ranging from official inquiries into human rights abuses mandated by the state with direct links to judicial processes, to non-governmental initiatives to document violations. Common characteristics of truth commissions include: their status as a non-judicial body; their mandate to investigate patterns of violations committed over a specified period of time; their temporary nature (often from one to two years); and a mandate that includes a final report with conclusions and recommendations for redressing violations, including reparations and institutional reforms” (Meltzer, 2004: 7).

Meltzer (2004: 7) and Hayner (1995: 225) have both specified that:

“Truth commissions are considered to contribute to justice and reconciliation in several ways that are distinct from, and/or add-value to formal prosecution. They create a public space for victims to be heard and acknowledged; they allow for collective and institutional responsibility, unlike formal legal processes that are restricted to the individual; they can contribute directly to legal judicial procedures or make prosecution more likely in the future; they offer an opportunity to make recommendations regarding the reconciliation processes

including reparations and institutional reforms, as well as putting in place funding structures required, like special funds, etc.; they establish a shared understanding of the past, which is important for reconciliation. In spite of their advantages, truth commissions can be controversial and risky. Revealing the truth and uncovering the path can de-rail peace initiatives and trigger conflict, particularly if it is perceived as a substitute for retributive justice. Also, it is a psychologically painful process, and is susceptible to manipulation or reinterpretation by certain parties. The design, structure and implementation have a major influence on the outcomes of commissions, and it is important that they be given careful consideration by national as well as international actors" (Meltzer, 2004: 7).

The path towards setting up a truth commission for Kenya has been dogged by upstarts and a plethora of other contentious issues as the following illustration shows.

Soon after it came to power, the Kibaki government (2003 to date) promised to set up a truth commission since it had managed to win the elections on a platform of change. The regime even appointed a task force to pursue the issue but later opted to ignore its recommendation. Although there were no official explanations as to this, many observers have postulated that the new government realised that the coalition of parties that had brought it to power was composed of powerful elements from the old guard of the Moi era (1978-2002) some of whom are believed to have been participants in the numerous abuses of the period, that ranged from massive corruption and grand larceny to the afore mentioned state induced violence against opposition supporters in the 1990s. It was only later during the National Dialogue and Reconciliation process of 2008 that the issue of a truth commission came up again since the situation at the time called for one. In less than a week of the signing of the National Accord, delegates came to a consensus that stipulated the parameters, principles and composition of the long awaited TJRC and committed the parties to create the commission as fast as possible. Despite this agreement the commission began its work only in April 2011 and this delay can be attributed to among other things political foot dragging, state withholding of financial support and the highly contested appointment of Bethuel Kiplagat as the commission's chairperson. He is an individual who has been mentioned in previous commissions of inquiry as having had a hand in some abuses committed under the Moi era some of which fall under the TJRC's jurisdiction. Apart from a brief life span that should end before the elections of December 2012, there is the added peril that the TJRC's findings may be politicised leading to more episodes of violence (Brown, 2011: 5).

Furthermore the broad mandate given to the commission by the TJRC Act of reviewing human rights abuses in Kenya from independence in 1963 to the signing of the National Accord in February 2008 is yet another stumbling block to its work. Criticisms have been voiced by Kenyan and international human rights organizations concerning the limited independence given to the commission and the sustained ability of the government in having a final say on prosecutions and amnesty. Observations on the provisions for amnesty and witness protection have also revealed that they are inadequate or simply not well spelt out. Although commissions of its kind are supposed to work

towards truth telling by individuals, availing symbolic recognition, make possible a detailed account of past abuses, negotiate reparations and dignity restoration to victims; some challenges already face the Kenyan TJRC even before it attempts to achieve those goals. First is that the making public of an “official truth” more so when highly contested may lead to compromises in witness protection as witnessed in Rwandese gacaca courts. Then there is the issue of publicly naming and shaming of high profile offenders and then granting them amnesty later which may not auger well with victims and hence raising tensions. Furthermore, the government’s delay in paying out money towards the TJRC’s budget gives early indications that it will be even more reluctant to settle issues with victims as regards compensations and reparation. External assistance in terms of underwriting payments to individuals is even less likely (Brown, 2011: 6).

Further, debates revolving around amnesty in the Kenyan context have been cited by the Waki Commission which points out that amnesty will save the state expensive prosecutions especially considering the huge number of youths who were detained following the violence and whose release is tied up to resettlement of IDPs which may in turn lead to greater possibilities of true reconciliation, peace building and assured resettlement of the same IDPs. Furthermore truth commissions when conducted well can easily prompt violators to come forward who might otherwise have eluded authorities; and prompting reconciliation between offenders and society. In the Kenyan context it may be necessary to consider an offer of amnesty to some low and mid level offenders in exchange for truthful confession and assistance in the arrest and prosecution of the planners, organizers, financiers and in the case of the security agencies, the perpetrators of the post-election violence (CIPEV, 2008: 464). The same commission has also presented counter arguments to this by noting that the application of amnesty nevertheless raises issues of justice but also would encourage impunity especially keeping in mind that potentialities of future violence still exist and that past, present and future perpetrators would stop only when they are promised and/or given amnesty. Also noted is that the victims of the violence and international human rights would be devastated if blanket immunity was granted (CIPEV, 2008: 470).

Although the work and outcomes of the TJRC are yet to be seen and be fully evaluated, Kingston (2006: 10) may already have done that as he noted in the East Timor experience that “the citizens may find out that the truth does not set them free and that justice and reconciliation are elusive”.

5.6 Conclusion

This chapter has charted Kenya’s path in the pursuit of transitional justice through the setting up of local institutions like the TJRC as well as referral to external ones like the Hague based ICC. The chapter has also shown that despite all good intentions and justifications, the pursuit of justice via local institutions has been hampered by vested interests of the political class, a broad mandate that may not be achievable within the time span of the commission’s official life time as well as the foreseeable problem of how to handle the

commissions output since there exists potentialities of exacerbating local tensions and put witnesses at risk. Finally there are the contentious issues and debates surrounding amnesty and reparations and which have so far remained unresolved among the concerned parties and which in the end may render the commission's work as irrelevant and maybe even reignite hostilities. As for now it remains a game of 'wait-and-see'.

But the role of the Kenyan government appears significant in all those processes, as there seem to be no other organization or institution able to control or oppose it efficiently and sufficiently. Neither local NGOs nor international donors seem to have either interest or power to confront the state and its avoidance of responsibility for the violence, as well as for dealing with it.

Chapter 6

Conclusions

In this final section I will begin with answering the sub-questions of this study and conclude by responding to my main research question.

I started asking what were the main characteristics of the violence and what have been the dominant interpretations of it? Unlike popular characterization of the violence as exclusively ethnic, or exclusively 'land issue', the cause of the violence has been identified as stemming from complex historical and contemporary injustices pertaining to unequal access to economic and social opportunities, based on identity politics and the failure of successive regimes in addressing them in a comprehensive or conclusive manner. In addition to this, a long history of political violence, human rights violations, state inaction on past recommendations by various commissions on these issues and a well entrenched culture of impunity by the political class, gave the masses of frustrated citizens to take their grievances to the streets when all institutional options seemed to have run out in 2008.

My next question was about the actions of the Kenyan government regarding justice and reconciliation. The performance of the recently set up TJRC is still slow and is yet to be fully assessed on any scale. Moreover, its actions are still viewed as cosmetic especially considering that the state is yet to address the underlying contentious issues, some of which are historic and deeply embedded in the public psyche and revolve around unequal access to economic, political and social opportunities and rights. Still the continuing inability of the state to reign in politicians who play ethnic politics, and coming up with a concrete policy on IDPs as well as reviewing the nation's long history of political violence and gaining full monopoly on legitimate use of force has further contributed to IDPs' loss of faith in the state as being a potential source of reconciliation and justice. The number of problems associated with the state sponsored *Operation Rudi Nyumbani* also indicates that the state has not invested enough thought, effort and money to resolve the IDP situation, and support their quest for justice. Actually, the state has ignored its own bodies and institutions, when it did not like their conclusions or recommendations. To compound this further, the prevailing culture of impunity, poor governance, indifference to the law, lack of pragmatic political parties and agendas, use of the state as a vehicle for the amassing of personal wealth and continuing focus on the next general elections by the political class has not helped much in changing public perceptions as to the potential attainability of justice, reconciliation and lasting peace through state intervention.

I have also reflected, though in a limited way, at the actions of the national and local justice institutions and actors, such as NGOs, faith-based organizations, and especially different peace commissions. It is undeniable that the civil society has been instrumental in both material and psychosocial assistance especially during the aftermath of the violence and their efforts at

reconciliation at the grassroots level via peace meetings does focus on the problems from the right perspectives. However, what is required is a more lasting solution in terms of livelihood independence and social reintegration programmes that go beyond localized level programs to national ones. The ability of the civil society to achieve this in the current time is highly doubtful. Furthermore, local or even national and international organizations appear to have too little power, or too little interest, to be able to force the Government to take justice, reconciliation and the lives of IDPs seriously.

The power of the state to influence the civil society, on the other hand, remains high. Even though IDPs see civil society actors and humanitarian aid organizations as almost the only ones willing to address their situation, the state's interference with their operations and the quick withdrawal of some international organizations like the UN and its affiliate branches from the IDP issue puts this confidence into question. This is especially so if those same organizations are supposed to negotiate for reconciliation and justice in such a negatively charged political environment.

The shift in focus by western donors from pressuring the Kenyan state to pursue issues of accountability, post violence justice and implementation of the Waki report to new interests of constitutional reform and the establishment of a new electoral commission in time for the 2012 elections is not helping much either, since this does not deter future recurrence of similar forms of violence especially considering the entrenched culture of impunity. A scarred nation that goes to the ballot without coming to terms with the past could easily be sitting on a powder keg waiting to explode under the right conditions.

Even the actions of distant actors like the ICC are seen to be inadequate since they can only try a handful of perpetrators - the purported ring leaders - while leaving the numerous 'small timers' to get away scot free.

As mentioned previously, the nonchalant attitude of the UN in Kenya as regards the IDP problem, by neither actively assisting the affected nor pressuring the government to speed up reconciliation and resettlement, creates an aura of hopelessness among the displaced who in due time may opt to use violent avenues to address their situation especially if the political climate is right.

An important concern of this research was the narratives of the IDPs about their experiences of violence and displacement, and their reflections on different actions regarding justice and reconciliation. The divisions, suspicions, hopelessness and fear still prevail there.

IDP narratives are a mix of emotions as regards different elements of violence and displacement. There is pain and agony as they recount the loss of property and livelihoods. The same pain is also present as they recount physical attacks including rape. There is hopelessness when it comes to the possibility of getting justice and as previously indicated in this paper, some SGBV victims are opting to remain silent due to various reasons which range from shame and self blame to some duty bearers like the police either denying that sexual violence occurred or even being participants or perpetrators of such acts of violence. This hopelessness transcends from the local levels to higher levels as far as the pursuit of justice and reconciliation is concerned. Further delays in

handling SGBV cases and their associated mental and emotional scars among IDPs as they happened before and during encampment will hamper future pursuit of reconciliation and peace-building.

The IDPs strongly feel that as long as they exist as displaced, come next year's general election, a fresh wave of violence might emerge, which would involve possible recruitment of disaffected IDPs still remaining in camps by marauding politicians on the campaign trail leading to a bigger wave of violence than witnessed before. Among the IDPs the main idea of reconciliation is at the grassroots level via both formal and informal peace meeting that are well supported by politicians and other people of influence, but continuing narratives of fear of attacks both around the camps and potential resettlements areas means that reconciliation is something that is still far from being achieved.

Even in the camps, there is a strong feeling of unequal treatment among Kenyans from different communities and even those who did get some form of compensation for their losses feel that what they got is inadequate. IDPs feel forgotten by the state, and feel that the government has not taken any serious steps to address issues surrounding reconciliation and justice.

Finally, I reflected on how IDPs perceive the actions of the state and other actors they come across through their experiences of displacement. Although the IDPs do appreciate the actions of the local NGOs and various peace commissions in places where they have been active through peace meetings, state input is seen as either nonexistent or inadequate since the government and the political class do not give strong support to these activities. The recently established TJRC is seen to be a cosmetic action, if not simply a token gesture by the state. The ICC trials are viewed not only as being distant but capable of only prosecuting six individuals rather than being able to guarantee the safety of thousands or contribute to a quick reconciliation among communities on the ground. All of those reflections have been used to answer the main research question which was: What are the dynamics of reconciliation and justice processes among the different actors involved in dealing with the 2007/2008 post-election violence in Kenya? The research shows that the strongest actor is still the state, and that its actions do not seriously or consistently contribute to either justice for IDPs or reconciliation in the country. Civil society and faith based groups' such as the Catholic Peace and Justice Commission's efforts to initiate and conduct peace meetings together with the IDPs have been on a piece meal basis since although operating at the grassroots level where it is most meaningful, these efforts remain localised and scattered across different places and are yet to be replicated uniformly across the nation. But again considering that the displacement problem in Kenya is complex and varied from place to place it is highly doubtful that they can come up with a 'one size fits all' solution that can be implemented uniformly across the country.

The government's late set up of the TJRC and its reluctant acceptance of the ICC process indicates that reconciliation and justice have not been part of its plan and its focus on implementing a new constitution and preparation for the 2012 elections also confirms this. Western donors' adoption of the

same focus as the Kenyan government and abandoning issues of accountability and justice mean that reconciliation is no longer part of their agenda. International organisations based in Kenya are either mired in indifference or simply focussing on material assistance rather than establishment of reconciliation mechanisms. This has slowed down any potentials of community healing at the grassroots leaving animosities to run deep among IDPs and host communities.

IDPs themselves do advocate for reconciliation and in some areas they have organised and attended peace meetings. But the simple fact that IDP and transit camps still exist means that the actions taken by the various parties through omission or commission have not contributed to peaceful coexistence between IDPs and host communities or provided any platform for attaining meaningful reconciliation or lasting peace.

Finally, despite the fact that the process of establishing reliable systems of reconciliation and justice is still difficult and insecure and the main themes and paradigms of the same remain disjointed or simply nonexistent among the different actors, leaving the displaced and host communities still at loggerheads, the work in this paper provides motivation for further study on what directions those processes should take. Together with the reflections on present actions and outcomes, thinking of future directions and probable future outcomes may provide valuable lessons to both the Kenyan society and others faced with similar quagmires.

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APPENDICES

APPENDIX ONE: IN-DEPTH INTERVIEW SCHEDULE (CASE NARRATIVES)

1. What is your gender?	a. Male b. Female
2. How old were you on your last birthday?	_____ years
103. Ethnicity	
4. What is your marital status? Married a) Never married a. Divorced b. Widowed d) Separated	5 No. of children a) None b) 1-3 c) 4-6 d) 7+
6 a) What is level of education Primary b) Secondary c) College/University	5 What was your place of residence prior to coming to this camp?
7 What made you leave your place of residence	8. How long have you been at this camp? _____ Months
9 107. Are you here with your family or alone?	10. If alone, where is your family.....
11 Have you hear of operation Rudi Nyumbani? Yes a) No.	12. If yes, from who?
13 What are the objectives of the operation?	14. Who are involved in the programme? (<i>This is to probe about security</i>)
13. What is your assessment of the reconciliation efforts?	15.
15 Why have people not gone back to their homes?	119. What should be done to make people to go back to their homes?

APPENDIX ii: KEY INFORMANT INTERVIEW GUIDE

1. Sex.	2. Marital status
a) Male	a) Married
b) Female	b) Single
	c) Divorced
	d) Widowed
	e) Separated
3. Age	4. Level of education.
a) 18 – 24	a) University
b) 25 – 31	b) Diploma
c) 32-38	c) Secondary
d) 39-45	
e) 45-51	
f) 51+	
5. Job description	<p>Section 2: Information on Operation Rudi Nyumbani Which category of IDPs does this camp cater for?</p> <p>a) The displaced b) Returnee community (returning Home) c) Integration (new community) d) Other</p>
1. What services are offered in this camp?	2. Have you participated in the reconciliation efforts? Give explanation
a) Relief food b) Medical services c) Security for the displaced d) Counselling for the affected e) Other (specify)	
3. Who were involved in the programme?	5. How successful was the project?
.....	
4. Enumerate the local efforts	5. Enumerate the donor and international efforts

<p>6. In spite of the efforts at reconciliation, how come people are still in the camps?</p>	<p>6. What are the major factors hampering reconciliation efforts?</p>
<p>7. What should be done to obtain justice for the victims of the PEV and achieve reconciliation at the same time?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p>7. What is the way forward to avoid a repeat of the PEV in future?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

APPENDIX iii: FGD GUIDE

<u>Section 2: Information on Operation Rudi Nyumbani</u>	
<p><u>1.</u> Which category of IDPs does this camp</p> <p>a) The displaced</p> <p>b) Returnee community (returning Home)</p> <p>c) Integration (new community)</p> <p>d) Other</p>	
<p>2. What services are offered in this camp?</p> <p>f) Relief food</p> <p>g) Medical services</p> <p>h) Security for the displaced</p> <p>i) Counselling for the affected</p> <p>j) Other (specify)</p>	<p>3. Have you participated in the reconciliation efforts?</p> <p>Give explanation</p>
<p>4. Who were involved in the programme?</p>	<p>5. How successful was the project?</p>
<p>5. Enumerate the local efforts</p>	<p>6. Enumerate the donor and international efforts</p>
<p>7. In spite of the efforts at reconciliation, how come people are still in the camps?</p>	<p>8. . What are the major factors hampering reconciliation efforts?</p>
<p>9. What should be done to obtain justice for the victims of the PEV and achieve reconciliation at the same time?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p>10. What is the way forward to avoid a repeat of the PEV in future?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.</p>