

Legal or Alternative Justice in Restoring Peace in Post-Conflict Situations: Lessons from Kenya's IDPs

Nelson Ng'arua Ndiritu

Department of Literary and Communication Studies, Laikipia University, Kenya

***Corresponding Author:**

Nelson Ng'arua Ndiritu

Email: endiritu2013@gmail.com

Abstract: This paper explores the options available for putting the pain of displacement and loss behind the victims of displacement due to violence in one's country and how the options are rated by the victims. It examines the discourse of the Internally Displaced Persons (IDPs) in Kenya's 2007 post-election violence on the subject of justice and seeks to understand their expectations as a solution to the injustice they have suffered. On the one hand the study considers the choice of institutionalized legal framework of subjecting the suspected perpetrators of the violence to the criminal justice procedure and on the other is a social process whose primary objective is to restore the lives of the victims to an economically stable position and put the matter to rest. The question is addressed by analysing the views of displaced persons collected through interviews. The analysis is guided by Critical Discourse analysis. A key finding of this paper is that that restorative justice transcends legal justice.

Keywords: displacement, justice, peaceful co-existence.

Introduction

In many parts of the world, human armed conflict is experienced among communities in competition for resources and for power and influence. Such conflicts leave the parties involved with wounds which strain their relationship and could potentially stoke the embers of any subsequent hostility. A realistic quest for sustainable peace would be based on healing the wounds that are sustained in conflict situations and putting an end to the differences as the foundation for a durable peaceful co-existence in a post-conflict situation. This paper examines the possible answers to Kenya's need for a harmonious co-existence between communities that have been engaged in violence from time to time mostly in the run up to general elections. Each of these options has their own implications. The common strictly legal route has its costs and political ramifications while the alternative social route would appear to turn a blind eye on crimes and tend to encourage recalcitrance. The paper evaluates the views of the displaced persons following Kenya's 2007 post-election violence and gauges the weight of pursuing legal means to seek justice against the softer option of restitution to get over the pain and loss that goes with displacement. The paper is based on data collected from 24 displaced persons from at least seven ethnic communities involved in the violence. The paper offers suggestions on the more effective and less costly option to manage post-conflict situations.

History of Kenya's Inter-ethnic Violence

Kenya was engulfed in violence following the announcement of the disputed results of the general elections on 30th December 2007. The violence was not new for Kenya has experienced post-election violence almost in the run up to every General election since 1991. This violence involved looting, arson, assault, raping, maiming and killing. The protests had two forms: one being a general protest against the announced outcome of the elections and the other of violence against those who were believed on the basis of either tribal or party affiliations to have supported Mr. Kibaki by supporters of Raila [1] in what Berman [2] has termed 'blunt ethnic cleansing.' According to Dagne [3] in a report to the United States Congress, the violence was perpetrated mostly by the Kalenjins and Luo on Kikuyu and Kisii communities. The targeted communities returned violence with similar acts. The KNCHR [4] estimates that during the violence, at least 1,162 people were killed in both the initial and retaliatory attacks. The violence was classified as 'low-tech' with the assailants mainly using machetes, clubs, bows and arrows. It cannot however be classified as a civil war for the parties were not politically and militarily organized and there were no clearly stated objectives of the conflict although it hit the minimum figure of a thousand deaths per year [5]. Members of the targeted communities who lived in areas dominated by these communities fled their homes for safety.

In the 1991, violence occurred in the Western part of the country between the Sabaot and the non-Sabaot communities just before the first multiparty elections in 1992 during which the Bukusu, Teso and Kikuyu were brutally attacked. The motive of the violence was to drive these ethnic communities away from this area for they were poised to vote for the opposition in the 1992 general elections [6]. There was also ethnic-related violence in 1992 in Narok whereby illegal occupation of forestland was cited as justification to evict non-Maasai from parts of Narok.

In August 1997, ethnic violence rocked the Coastal region of Kenya in Kwale and Mombasa where the local communities targeted the non-indigenous communities who lived in the area blaming them for the poor conditions faced by the indigenous ethnic groups in their quest for jobs, land, and educational opportunities. The violence led to 100 deaths, displacement of over 100,000 [7, 8]. The people of Coast Province have detested the fact that the land market allowed so many non-indigenous people to own large tracks of land there. The Coastal people, especially the Digo, attacked mainly the Kikuyu, Luo, Kamba and Luhya [4]. These communities were also believed to have voted against KANU in large numbers in the 1992 General Elections which had cost the party two of the four parliamentary seats in one district. Their displacement was therefore to enhance the political fortunes of KANU which indeed came to pass. KANU won three parliamentary seats in the district and had its ally win a fourth seat on a newly registered party [9]. In 2001 there was ethnic violence pitting the Kisii and the Maasai along the GuchaTransmara boarder in which 62 people died. In the same year, more than 50 people died in a week of fighting between the Pokomo and Wardei communities in Tana River district [10]. Ethnic conflict has also been known to occur in the North Eastern region involving Somali clans and the Borana and at times also the Orma, Burji and the Garre.

There was some ethnic violence between different ethnic communities in the pre-colonial period. The Akiwumi report [6] says that before colonialism in Kenya, the Rift Valley which is a common flashpoint of the violence was occupied mainly by the Kalenjin, the Maasai, the Turkana, the Samburu, the Pokot and sections of the Luhya and they held land communally. The pressure on land was not as great as it is today but even so, inter-clanal and sometimes inter-tribal conflict was not uncommon. According to Yieke [11], the violence was however, never of the large-scale type

Internal Displacement and Its Effects

Internally displaced persons are people who have been forced to leave their places of residence due to conflict. They are distinguished from refugees in that refugees cross international borders while the internally displaced persons remain within their country. It is

estimated that in the year 2010 there were 27.5 million displaced persons. A vast number of these people were in sub-saharan Africa standing at around 11 million. This is about five times the number of refugees who were around 2 million [12]. In the year 2013 there were about 16.7 million refugees and about 33.3 million IDPs in the world (Global Reports 2013 in the United Nations High Commission for Refugees. The United Nations Agency). Africa has also hosted the highest number of refugees.

The United Nations recognizes a number of rights of the displaced. Some of these are the right to assistance which includes the provision of food shelter, health and education and the right to protection which entails ensuring asylum, securing basic human rights, provision of travel documents and facilitating durable solutions such as reparation, resettlement and integration (Abadil Resource Centre 2010).

Nyukuri [13] has considered the social, economic, political and environmental effects of the 1992 election related violence and displacement in Kenya. The social effects included rendering the victims homeless and landless, making them destitute and inflicting injuries and abuse. It also caused insecurity and a great loss of human and economic resources through acts of destruction especially by burning. There was also illegal transfer of property belonging to the victims to the communities that perpetrated the violence through looting and buying some especially land at throw away prices. Production from land also declined due to insecurity as some farmers were not stable enough to carry out their economic activities and some crops were burnt. Food production in this period was found to have dropped by about a half [14]. As a result the areas affected suffered food shortages. The 2007 post-election violence similarly had a devastating effect on the county's economy. It also reduced agricultural production led to 'hunger, environmental degradation, stresses on health care systems, surges in crime, and greater insecurity' [15].

A major political consequence of the clashes was ethnic considerations in voting people into political offices. There was also increased ethnic animosity and as DIFD (n.d) notes following the 2007 post-election violence and such violence increases mistrust between rival communities. For example, it has been reported that following the 2007 post-election violence, those who returned to Uasin Gishu, in the Rift valley region after displacement had a strained relationship with the dominant community that had attacked them. The two groups held each other in suspicion and marriages had broken and friendships between members of the two groups were discouraged [16]. The physical environment suffered during the violence as forests in Molo, Nandi and Mt. Elgon were burnt to destroy the

attackers' hideouts. The loss of vegetation has adversely affected rainfall patterns and hence the success of agricultural activities.

Suvin (2005) cited in Caldas-Coulthard & Iedema [17] makes the comment that exile 'requires detaching oneself from all belonging and love of place, and adopting a mind of winter'. He adds, that 'to be displaced from one's country of origin and upbringing is a wrench perhaps comparable in impact to that of war, longer-term hunger or imprisonment'. A similar view is held by Said, (2000) cited in Caldas-Coulthard & Iedema [17] observing that exile means a critical distance from all cultural identities, a restless opposition to all orthodoxies. He adds that moving to another country detaches us from the social ecology which originally defined us leading to instability. He says that discourses portray this detachment negatively. Similarly, internal displacement uproots a person from the place they are used to living in and leads to disorientation.

The violence that culminates in displacement may adversely affect the future relationships between the groups involved. When a community has had experiences of tremendous pain or victimization by other communities, which Volkan (1999) cited in Avruch calls 'chosen traumas' the experiences become part of the group's collective historical memory and a bond for the members of the community. These then become a powerful potential ground for group mobilization in politics and in conflict.

The Quest for Justice

Given the serious acts of human rights violations that were perpetrated, there were many who were aggrieved and their situations called for justice. The quest for justice could take the form of a legal process or alternative justice in the form of restorative justice. Justice obtained through the court process for such acts of violence can be retributive where it would include punishment to the offending party and may not necessarily seek to relieve the victim from their economic losses. There is also the option of dispensing restorative justice whose primary objective is to restore the victim to their situation before they suffered the injury. Retributive justice seeks to deter the offender by punishment and most commonly involves incarceration of the offender and at times subjecting them to hard labour or fining them. The entire process is quite expensive for the state.

The idea of pursuing justice in courts against the perpetrators of the violence became contentious with politicians taking different positions. The fact that the conflict had divided the country right down the middle meant that there were many sympathizers from the lowest to the highest levels of the country's leadership for each of the sides in the conflict. There

was therefore a push for the due process of the law to be followed and bring to book those who were arrested taking part in the violence amid calls for their unconditional release. Those whose sympathies were with the majority of the victims of the violence favoured a disinterested legal process where the attackers would be subjected to the established criminal procedure and a verdict made on the merit of each case. This view was particularly compelling given that there was a judicial system in place in Kenya and it was natural to expect that the wheels of justice in the discharge of their core mandate would need to roll and deliver justice for the crimes committed during the violence.

The then justice minister Ms Martha Karua saw the legal process route as the obvious choice and was quoted responding to calls for the of the implicated youths as follows:

This is a matter that decides whether our country is under the rule of law or the rule of the jungle. There is due process to be followed before the youths are released-they are investigated, prosecuted and charged and those found innocent freed [18].

In the divisive debate, those who had supported the violent demonstrations saw the perpetrators as having been merely expressing frustration at what was perceived as a bungled election and therefore called for amnesty for them.

For a few cases the legal route was followed but this line has not given much promise to the victims of the violence for many of those arrested would be released for lack of evidence. There was also conspicuous absence of influential personalities among the accused. Apart from the small number of prosecutions for those who were arraigned in court, convictions for the crimes committed have remained a distant prospect. It was only in 2012, about four years from the time of the violence that in the Kenya courts, a Nakuru court convicted a man of killing his neighbour in the post-election violence. This was reported to be the first murder suspect in the election violence to be convicted despite the more than 1000 deaths reported (Wairimu, 2012). In 2013, the Human Rights watch reported that it was aware of only seven convictions for the crimes committed during the violence [19]. Further reports indicate that by 2014, some 122 cases arising from the violence had been dismissed and 84 had been concluded with only 18 acquittals. There were also 16 cases pending in court [20]. For the prominent personalities suspected of involvement, the International Criminal Court (ICC) launched investigations into the crimes committed citing lack of a local judicial process in Kenya. The court named six suspects who were accused of having played a prominent role in the organization of the crimes. However, it failed to confirm charges for

two of the suspects and by 2014 had dropped charges for another two suspects. In early 2016 the court dropped charges for the remaining two suspects for lack of evidence.

Methods

The author used face to face interviews to collect the views of the IDPs on whether there was a possibility of peaceful co-existence between the warring communities and what they considered to be important for them to feel that their plight was addressed satisfactorily. The data from the interview was analysed using Critical Discourse Analysis (CDA). CDA takes language use as social practice. It studies and shows interconnections and causes which are not obvious (van Dijk 1993b: 131). This will be done by a careful analysis of the words employed in the discourse on the IDPs' quest for justice and how they rate the possible routes for seeking justice for the violence.

Analysis

The respondents named their assailants as members of other ethnic communities who belonged to

a rival political party. They narrated how they had lived among their host communities. Most of the displaced persons had lived for over 10 years in the places where they were uprooted from and they described their relationship as mostly cordial saying that they did not expect such hostility from these hosts. Two of the 24 respondents reported that they had suffered displacement before in 1992 each time with loss of property. Most of them had moving tales of the devastating effects of the displacement on their economic and social lives, on their children's future and on their self-image.

The IDPs were also asked whether they thought it was possible for them to live peacefully with the communities that had attacked them to which all responded in the affirmative. They were also asked what they considered critical for their lives to return to normalcy and what they wished to be done regarding the afflictions they had suffered. The IDPs invariably asked for restitution in form of land for resettlement or capital to engage in business as we find in the responses in the Table-1

Table 1: The Displaced Persons Conditions for a Return to Normalcy

Serial No.	Category	Sex	Age	Ethnicity	Place/District	Chances of co-existence	Conditions for Normalcy
1	Resettled	Male	56	Kisii	Trans-Nzoia	Yes	Restitution
2	Camp	Female	78	Kikuyu	Pipeline Nakuru	Yes	Restitution
3	Camp	Female	26	Turkana	Pipeline Nakuru	Yes	Restitution
4	Camp	Female	27	Luo	Pipeline Nakuru	Yes	Restitution
5	Camp	Female	20-30	Tugen	Rongai	Yes	Restitution
6	Camp	Male	49	Luhya	Pipeline Nakuru	Yes	Restitution
7	Camp	Male	29	Kamba	Mai-mahiu	Yes	Restitution
8	Resettled	Male	18	Kikuyu	Trans-Nzoia	Yes	Restitution
9	Resettled	Female	18	Kisii	Trans-Nzoia	Yes	Restitution
10	Camp	Female	20	Kikuyu	Mawingu Nyandarua	Yes	Restitution
11	Camp	Male	21	Kisii	Mawingu	Yes	Restitution
12	Integrated	Male	62	Luo	Kisumu East	Yes	Restitution
13	Camp	Male	22	Kikuyu	Kianda Foundation	Yes	Restitution
14	Integrated	Male	53	Kisii	Kisumu East	Yes	Restitution
15	Integrated	Female	60	Kisii	Kisumu East	Yes	Restitution
16	Integrated	Female	34	Luo	Kisumu East	Yes	Restitution
17	Integrated	Female	47	Kikuyu	Kieni East	Yes	Restitution
18	Integrated	Male	60	Kikuyu	Kieni East	Yes	Restitution
19	Integrated	Female	26	Luhya	Rongai	Yes	Restitution
20	Integrated	Male	58	Kikuyu	Nyeri	Yes	Restitution
21	Resettled	Male	57	Kikuyu	Chiptiri	Yes	Restitution/Strong

							government
22	Resettled	Female	26	Kipsigis	Rongai	Yes	Restitution
23	Resettled	Female	50	Kisii	Rongai	Yes	Restitution
24	Resettled	Male	29	Un known	Rongai	Yes	Restitution

Source: Author's data

From table 2 above, the respondents prioritized restitution over all the other needs asking to be resettled and facilitated to get on with their lives. They were also asked what they thought should be done to those who had launched attacks against them. Most of them said that they had forgiven their attackers.

Some of the responses are discussed in the next section.

The Possibility of Forgiving and Forgetting the Experience

When the displaced persons were asked what they thought needed to be done regarding their loss and displacement and whether action should be taken against their assailants, some said that they felt that they did not stand to benefit from any legal action taken against the perpetrators of the violence and some even felt that they could forget but others said it was not possible to forget the experience.

TC2 an elderly lady of 78 years whose son was killed in the violence was of the view that retribution of their assailants was not the real solution. She explained as follows:

Excerpt 1

I: I riuri no ona ta riu andu aria mekire maundu macio na ni mo ni makiuio-ri, ni tuuge ni matwawo igotini. Tondu ni kwiragwo no matwarwo ringi gugatwika ai anga gutironeka evidence. Inyui riu ni muiguaga uhoro ucio ta guo wa bata muno kaa ona mangiaga [ku

R: [nii ona] mathitwo kana maikare ithui tutiri no horo nao

I: Undu uria munene ni maujha manyu macoke wega.

R: Ithui korwo no tuheo gwaguikarari, na ndione ndi na na tuiiori kamugunda gakwa na na ndirerimira tuiro twakwari, nii ona kana utwarwo igotini ni ndateithika naki? :Kindu kiria mangirariha korwo marariha riri / no riu niiri riu ona ndakorwo ngukuiteri / ndirateithika / aca ndageithika na kii?

I: Ii ndunateithika

R: Ndagiteithika na kii?

I: Now, if you take for example those people who did those things and they are known, if they let's say are taken to court because it is said that they could be taken and at other times it is said that there is no evidence. Now do you

feel that this is the most important thing or you are okay [without]

R: whether they are charged in court or not we don't care about them.

I: What is it important in the betterment of your life?

R: If we are given a place to live and I find myself having a piece of land of my own and am growing my own food/ as for me even if you are you are taken to court ,what do I stand to gain? What they should be seeking compensation over, if they seek payment for those whose people were killed that would be okay. But as for me, even if I were dead, I wouldn't benefit. No what would it benefit me? (TC2P6).

The respondent who lost her son feels that pursuit of justice against the offenders would not be important for it would not benefit the displaced persons. She uses the words 'we don't care about them' showing a total lack of concern for what is done to the perpetrators of the violence. She does not therefore think a legal process would make a difference. She would be better off if resettled where she can find means to support herself. She also suggests that if possible she be compensated for the loss of her son's life.

Similarly, a young lady of 20 years whose father was killed and the family land and property lost says she would forget and forgive if she was resettled

Excerpt 2

I: Mmh/Eeh mm sasa mkatoka hapa, mkaenda shambani mwendelee muishi kwa shamba lenu, mtaweza kusahau na huo uchungu kuisha?

R: Yeah. Hiyo inaweza yeah/ tukiwa ressetled, mii pangu naweza sahau.

I: Mmh?

R: Mm

I: Na unaweza kuwasamehe?

R: Yeah

I: Mmm/Ee mm/ now if you left this place and went to live on your own piece of land , would you forget and be relieved of the pain?

R: Yeah. That can happen yeah/ if we are resettled, on my part I can forget.

I: Mm?

R: Mm

I: And would you forgive them?

R: Yeah

The young lady says she can forgive the perpetrators of the violence for their acts if her family is resettled and she would also forget her pain. She was living in a camp after completing her high school education but could not join a college for training due to the poor financial situation of the family. She says that her father been alive, she would have joined college after completing her high school education. She had therefore lost her some of her educational opportunities due to the loss of her father who had the financial means to sponsor her to the next level after completing her form four. Her response carefully restates the condition that they need to be resettled for them to forgive and she also says that this is her own feeling meaning she does not in any way speak for the other displaced persons

Those who had since been resettled also gave their views. A lady of 50 years from the Kisii community who had been resettled by the government and given a new piece of land said that they had forgiven their attackers for God had come to the aid of the displaced persons. Her response is in the following excerpt;

Excerpt 3

I:Na mambo –kama na : kuhusu wale watu waliwafanya muwe IDP s munafikiria aje?

R:Sisi hatuna umbaya na wao hata.

I:Mmewasame

R:Tumewasamehe na tunaomba mungu ile shetani aliye pita kwao....awasamehe waache hiyo tupendane ,tuwe marafiki ,tuishi vile tulikua hapo mbeleni.

I: What about:- Things like about the people who made you IDPs what do think?

R: We have no ill feelings about them still.

I: Have you forgiven them?

R: We have forgiven them and we pray to God the devil who came through them ... to forgive them. To stop that, we love one another, be friends, live the way we used (TR23P10).

The respondent says that the IDPs hold no grudge against the perpetrators of the violence and adds that they have forgiven these people. She also explains that it was the devil who came through the attackers and they pray to God about it. This description of the violence as having been caused by the devil relieves the perpetrators of a big part of the blame burden for the violence and portrays them as having merely become tools in the hands of the devil and to have had no design for the violence. The IDPs therefore have no strong reason to seek justice against these attackers but are

contented to ask God to deal with this evil spirit that possessed the attackers. In the following excerpt she said that that since she was resettled her rights had been restored.

Excerpt 4

I:Sasa wewe unaona kama haki zako ziliangaliwa .kwa sababu wewe ulifurushwa .

R:Ee kwa vile sasa niko/ nimepewa makao na nimejengewa/,niko –nimeona nimerudishiwa haki yangu.

I: Now for you, do you feel like your rights were taken care of because you were evicted?

R: Yes, since as I am -I have been resettled and a house has been built for me/ I am – I feel that my right has been restored. TR23P10

The respondent does not therefore have any need to pursue any further justice. She does not see any benefit that would accrue to her in the quest for action against the perpetrators of the violence. The offer to forgive after losing so much can be seen as a personal sacrifice on the part of the displaced persons [21].

There were some who even after resettlement which they considered the main solution maintained that the experience had been so traumatic that they could not forget it.

TR9 a young lady said that she would never forget the experience of hostility that they went through as we find in the following excerpt;

Excerpt 5

I:Unaweza sahai hayo yalifanyika? (scream from a drunk passerby)

R:Kusahau?

I:Ee. Huwezi kusahau?

R:Kusahau siwezi / its like the passing of maybe your mother /. You take it yaani simple but kusahau mamako kutoka kwa kichwa /ai deadly hauwezi sahai

I:Kwa hivyo utaka [maisha yako yote ukikumbuka]

R:[Hiyo yeah] I even wrote it somewhere

I:Ile ulipitia

R:=Yeah

I:Kwa hivyo unaona hakuna wakati utaskia [kama mtu yeyote mwingine]

R:[siwezi sahai kabisa] siwezi sahai kabisa maishani cause chenye niliona / aa sijawahi ona maishani. Mtu tu kukuambia ati / haya toka / na unatoka bila hata chochote / na hawakutuambia reason why wanatufukuza /No.

I: Can you forget that that happened? (Scream from a drunk passer-by)

R: Forgetting?
 I: Ee, you can't forget?
 R: I can't forget / its like the passing of maybe your mother / You take it -I mean simple but getting one's mother out of one's mind/ I mean it is deadly. You can't forget.
 I: So you will live all your life with this memory.
 R: [that yeah].Even wrote it somewhere.
 I: Mm. what you went through.
 R: Yeah.
 I: So you see there is no one time when you will
 [feel like any other person]
 R:I cant forget at all /I can't forget at all in life, because what I saw I have never seen in my life. Somebody just tells you move out and you move empty handed / and they didn't give us the reason as to why they are evicting us / No

The young lady is emphatic that she cannot forget the experience due to the gross injustice she witnessed where one appears in another person's house, orders the owner to leave and they take possession of the property therein without any grounds. The lady says that to preserve the memories of the loss, she wrote an account of the experience somewhere. To capture our imagination, she compares the experience she had to the loss of one's mother. A mother is usually very close to a person and is so emotionally attached to a person. The loss of such a person is traumatic and its effects may last for years in one's life. The lady therefore implies that the trauma she had in the violence will remain etched in her memory.

There were however, some respondents who did not think well of the idea of forgiving the attackers. TC11 said that it is impossible to forget the pain of losing his grandfather who was hacked to death. He says he will never forget what the attackers did and would hold a grudge against them. His view is illustrated in Excerpt 6 that follows;

Excerpt 6

R:[...] *kwa kukatakatwa tu na hawa/hawakumsamehe/. sasa hio uchungu unajua sasa hata tukisema ni kurudi huko/ Hata serikali wakasema ni kuturudisha huko/ sasa lazima tutaweza kuwa na grudge / juu the pain I have na hao /unajua hao wanafurahia/ juu hawa walikuwa kazi /sasa mimi -mimi sitawahi sahau hata walio nyuma yangu/ haswa /ai ai hiyo generation hiyo muda huo mrefu hivi/, hatutawahi sahau/.*

R:[...] He was killed by being hacked just by those/They didn't spare him/now that bitterness you know now even if we say it's

going back there/even if the government says it will take us back there/ now we must have grudges because of the bitterness I have about them/you know as for them they are enjoying because they were at work./as for me I will never forget even those who are my juniors especially that generation for such a longtime/Oh!Oh!we will never forget,/

The young man reasons that the bitterness they experience for such acts as the hacking of their loved ones to death cannot be erased from the memory of the displaced persons. He portrays this as beyond description and the prospect of forgetting it as totally unthinkable. His use of the interjections 'oh!' twice suggests the pain can't bear thinking about.

Another man TC7 who was displaced from Narok says he does not foresee prospects of lasting peace for the kind of violence he experienced has a chance of recurrence as we find in the following excerpt.

Excerpt 7

I:Sasa ikifanyika/ kwa sababu nasikia bado kuna mipango ya serikali, yakutafutia watu mashamba, ikafanyika kwamba mashamba yapatikane, ukijipata umekaa kwako, nyumba yako utajisikia tena umerudishwa ile hali yako?

R:Bado sitaridhishwa / hata nikipewa nini kwa sababu ee hiyo ni kitu nakwambia labda ikuje kuisha na watoto wetu / lakini kama mimi /, mimi hiyo sioni kama itaisha haraka kwa sababu hata nikiishi pale ninaona kama bado kuna kabila ingine hapo inaweza inuka / bado na inawasuku?

I: Inawasukuma

I: Now because I hear there are still plans by the government find land for you/if they it is found and you are settled/live in your own house in your own place/ will you feel as if you have been restored to your original position/self.

R: Still I won't be satisfied even if I am given what because ee that is something that will maybe happen to our children but as for me I don't see as if it will soon come to be. This is because even if I live there I see there is still another tribe there that can rise and push you, push you out (TC7P7)

For him even if he is resettled, he would not really celebrate for he feels that the seeds of the violence may not be dead yet. He says he thinks the violence could probably come to end in the next generation and there is still a possibility even after resettlement for another ethnic community to rise and

displace him. The displaced person seems to be in need of security guarantees.

Similarly IDPs who remained displaced in 2014 in Eldoret town said upon the appearance of Uhuru Kenyatta in the ICC court in October 2014 that they wanted him back to the country soon to expedite their resettlement [22]. They were apparently little concerned about the outcome of the court process. Eldoret town is one of the areas that was worst hit by the violence.

Findings

From the views expressed by the displaced persons the following can be deduced.

The displaced persons suffered serious violations of their rights. The extent of the violence means that there were many members of different communities involved and therefore complicates the pursuit of retributive justice given the wide public interest in the matter. Most of the displaced persons were not inclined to pursue justice through the judicial mechanisms where it meant retribution against those who had violated their rights. They however rated resettlement or restitution as the most important form of redress and was critical to their feeling that justice had been done. They were ready to forego what was lost and could not be recovered such as the lives of their loved ones unless they were offered compensation. Most of them were ready to forget their suffering, move on and resume normal relations with their assailants and would forgive or had already forgiven their adversaries unconditionally. Although a majority of those affected were ready to bury their differences, the effect of displacement can never be erased from the memories and the lives of those whose relatives and spouses were lost although those affected. These had left deep wounds which time cannot hope to heal fully. However there was no intention on the part of the displaced to retaliate. One of the lessons learnt from this experience is that restitution overrides retribution and the loss of a loved one is not comparable to the loss of property. Thirdly there is need for a guarantee that such painful events will not make a repeat as was evident from TC7. For such a respondent, long-term peace is likely in situations where the authorities are able to protect the rights of all equally.

References

1. Bau V; Five Years on: Identity and Kenya's Post-election Violence. Open Security. Conflict and Peace building, 2013.
2. Berman B; Ethnicity and Democracy in Africa. Working Paper No. 22 Japan International Cooperation Agency Research Institute, 2010.
3. Dagne T; CRS Report for Congress. Kenya; The 2007 Elections and the Challenges ahead, 2008. www.fas.org/sgp/crs/row
4. Kenya National Commission on Human Rights; On the Brink of the Precipice: A Human Rights Account of Kenya's Post-2007 Election Violence Final Report, 2008; 16-19, 154.
5. Markussen T, Kitavi M; When Does Ethnic Diversity Lead to Violence? Evidence from the 2007 Elections in Kenya. Discussion Papers. Department of Economics. University of Copenhagen, 2011. No.11. <http://www.econ.ku.dk>
6. Akiwumi A; Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya: Author, 1999.
7. UNOHCHR -United Nations Office of the High Commissioner for Human Rights
8. Refugee Consortium of Kenya (RCK) and Danish Refugee Council (DRC); Behind the Scenes. Lessons Learnt from Developing a National Policy Framework on Internal Displacement in Kenya. Nairobi: RCK, 2013.
9. Internally Displaced Monitoring Centre, IDMC, 2010.
10. Kimenyi M, Ndung'u N; (n.d) Sporadic Ethnic Violence: Why Has Kenya Not Experienced a Full-Blown Civil War?
11. Yieke F; Ethnicity and Development in Kenya: Lessons from 2007 General Elections: Kenya Studies Review, 2010; 3(3): 5-16.
12. Ferris E; Internal Displacement in Africa: An Overview of Trends and Opportunities. Presentation at the Ethiopian Community Development Council Annual Conference African Refugee and Immigrant Lives: Conflict, Consequences, and Contributions. Project on Internal Displacement, 2012.
13. Nyukuri B; The Impact of Past and Potential Ethnic Conflicts on Kenyan's Stability and Development. Department of History and Government University of Nairobi A paper prepared for the USAID Conference on Conflict resolution in the Greater Horn of Africa June, 1997.
14. Reuters, 9th June, 1993
15. Klopp J, Githinji P, Karuoya K; Internal Displacement and Local Peace building in Kenya. Challenges and Innovations. United States Institute of Peace. Special Report, 2010.
16. Kenya Human Rights Commission; Out in the Cold: The Fate of Internally Displaced Persons in Kenya 2008-2009.
17. Caldas-Coulthard C, Iedema R; (ed) Identity Trouble. Critical Discourse and Contested Identities. New York: Palgrave Macmi, 2008.
18. Daily Nation, 19th June, 1993.
19. Halakhe A; R2P in Practice: Ethnic Violence, Elections and Atrocity Prevention in Kenya. Global Centre for the Responsibility to Protect: Occasional Paper Series, 2013.
20. Daily Nation May 22nd, 2014.

-
21. Verdoolaege A; Reconciliation Discourse: The case of the Truth and Reconciliation Commission. John Benjamins Publishing Company Amsterdam, 2008.
 22. Bwisa G, Kipsang W; All We Want is to be Resettled. Daily Nation Newspaper, Nairobi. Nation Media Group, 2014; 8(1):3.