'We have moved on': human rights and intersubjectivity in post-2007/2008 violence in Kenya[1]

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In September 2010, the International Criminal Court Prosecutor, Moreno Ocampo, issued summons against six Kenyans suspected of bearing the greatest responsibility for crimes against humanity committed in Kenya after the bungled 2007 general elections. Immediately after the list of inductees was released, the political elites and their courtiers launched a campaign for Kenyans to reverse the human rights movements' call for 'truth-telling' that had persisted since after flag independence. Using the notion of 'our people', those who had been named suspects and their supporters effectively reformulated the quest for 'truth-telling' to a silencing rhetoric captured by the political elites' and victims' declaration as "we have moved on". I argue that this notion of 'moving on' is part of Kenya's political culture that has for long enveloped gross human rights violations and stifled discussions and quests for any form of justice in Kenya's post-conflict environment. This article gives an account of how postcolonial subjectivities interrupt and complicate the discourse of 'moving on' in Kenya.

D
uring my visit to Free Area Village, Nakuru County, and Eldoret, Uasin Gishu County, in January 2014, in the belly of Kenya's Great Rift Valley, all looked calm. The experience among ordinary Kenyans was of private murmurs on the underlying causes and ramifications of the 2007/2008 violence, on the one hand, and public silences, on the other. Unknown to me, an imaginary boundary[2] existed between the Kikuyu and Kalenjin communities[3]. This imagined demarcation is drawn in a paradox of everyday interactions, but denied in every conversation.

Similar paradoxes exist in Kenya's international relations where, on the one hand, there is the failure of the government of Kenya and its political elite and courtiers to establish either local or hybrid mechanisms for seeking justice for victims of the 2007/2008 violence (Brown & Sriram 2012). On the other hand, there is the ultimate invitation of the International Criminal Court (ICC)[4] who investigated and subsequently opened trials against President Kenyatta[5] from the Kikuyu ethnic group and his Deputy President William Ruto, a Kalenjin. These two along with radio journalist Joshua Sang were charged with crimes against humanity for their alleged role in orchestrating ethnic violence during the 2007-2008 elections in Kenya, which resulted in 1,133 deaths and more than 700,000 internally displaced people (IDP) (GOK 2008).[6]

During my January 2014 visit, I went straight to the chief's camp.[7] Without an appointment, but known to the Nakuru County Commissioner, I intended to

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2   An academic colleague, Emma Wamae, shared this experience. As a member of the Agikuyu language group, and currently undertaking her doctoral research on "Local interpretations of the ICC in Kenya", she often shared her experiences from the field in another part of Nakuru, where 'boundaries' between Agikuyu and Kalenjin are practised.

3   The idea of communities as a homogeneous category of people who share history and culture is often used as a representation of ethnic groups. Even cases where the so-called ethnic categories involve a fairly recent descriptive configuration, such as in the case of what is called Kalenjin community, was discussed in detail. See Karega-Mūnene 2010: 41-54.

4   The history of the ICC either as a post-Nuremburg mechanism against impunity or as a neo-imperial institution is widely documented. This article rather investigates localised issues of subjectivities in Kenya as an attempt to account for interconnectedness between socio-economic and political injustices, and ways in which political elites and *wananchi* entangled themselves in some kind of selective amnesia since independence.

5   The charges against *Uhuru* Kenyatta were dropped on 12 March 2015. Currently, only Ruto and Sang are on trial.

6   Although the figure of 700,000 was finally adopted as the official tally, the figure of 350,000 is commonly cited, as first authored by the Commission of Inquiry into Post-Election Violence (CIPEV), also known as the Waki Commission.

7   In the context of Kenya, a chief is a government officer appointed as part of the provincial administration. This administration is part of a never reformulated continuity from the colonial

use this connection to open up a conversation about life after the 2007/2008 election violence. On arrival at the camp, approximately 10 other people were waiting to see the chief, but as soon as I disembarked from my car, a middle-aged man, who introduced himself as *mzee wa chief* (an elder who works for the chief),[8] approached and asked me to proceed to the chief's office. Upon entry, the chief stood up to greet me, as is often done for 'big men'[9] in Kenya, and asked, "*Unatoka kwa* county commissioner?" (Are you from the county commissioner?). I was not, but we know each other pretty well. So I said, *"Hapana lakini tulikuwa naye juzi, mimi ni mgeni wenu na ninapitia tu kujua jinsi mnavioendelea"* ("No, but we were together two days ago. I am your guest just passing by to find out how you are fairing"). He invited me to be seated as he took his seat on a huge wooden chair facing the door.

A wooden table extending from his main table forms a T-junction with the dual function of office and meeting place. This is a common design in government offices in Kenya, but for Kiambaa, which is rather far from the capital city of Nairobi, its imposing authority served numerous other roles, attesting to the intended omnipresent nature of the government and the state.

Once seated, I re-introduced myself to the chief and explained my interest to understand how social life was in the area after the 2007/2008 elections, in particular the reaction of the local residents to the ongoing trial of William Ruto and the anticipated trial of journalist Joshua Sang. On mentioning the cases and the ICC, he became verbally aggressive:

> We have all moved on. Can't you see? Do you see all these women who come here for my services, and do you think they are bothered with ICC? Will ICC give them food? Do you know how much they suffered during the violence? Please do not take us back. If you want to speak to me about *maendeleo* (literally 'progress'),[10] you

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administration, which appointed chiefs to govern over the natives as part of the indirect rule system. Currently, chiefs work as part of the office of the president and are, to a large extent, unpopular, because they are regarded by most common *wananchi* and human rights groups as part of an authoritarian presidency, as described in great detail by Anyang' Nyong'o (2007).

8   This is part of a patronage network created by Daniel Arap Moi who was president of Kenya between 1978 and 2002. The network was linked to the erstwhile ruling political party, Kenya African National Union (KANU), and was notorious for informal repression and coercing locals to show support for KANU and Moi.

9   This idea of 'big men' and sometimes 'big fish' is a common attribute in Kenya's political discourse of patronage.

10 *Maendeleo* is like a promissory note of nationalist struggles. *Maendeleo* is more concerned with the *post-uhuru* national projects that often follow from nationalist movements. It is hegemonic and state centric.

are welcome, but if you want to divide my people, you will not be considered a friend.

To affirm his point, he pointed to two women who had come to see him,[11] because they had missed out on payouts that formed part of government aid efforts[12] that followed in terms of the "Operation Rudi Nyumbani" (Operation Go Back Home) initiative.[13] He posed the question, "Can you ask these women if they have not moved on"?[14] The two ladies literally froze and stared at me as if pleading silently, "Please do not ask". I conceded to the women's beckon and attempted to warm up the chief: "Of course *Bwana* chief, we have all moved on.[15] That is the only reason I was able to come this far to visit you!" So fierce was his reaction, that the *mzee wa chief*,[16] who kept watch outside, peeped through the wooden door and its lateen to find out if everything was alright.

After this visit, I headed for lunch at a popular kiosk next to Kip Choge Keino Stadium where I met one man who was at the chief's camp earlier. I shall call him Nyanyo. Nyanyo described himself as a victim of the post-election violence at Kiambaa and maintained that for him, "moving on" was the best option as it is what the leaders want. During the violence, he said, he had lost his livestock after his neighbours accused him of collaborating with the "outsiders" who ought to have been evicted. His family had to move to a different township for two months for fear of their lives. When they returned, a great deal of their property had been plundered, literally leaving their house an empty shell. He claimed to know the people who looted his property and instigated the arrest of his son as a suspect in orchestrating the violence. In his own words, Nyanyo said he had moved on, because that is what the State wants: "... when I go to church, to the chief's *Baraza*, the keyword is 'move on' ... In church, the keyword is 'move on' ...

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11   Intersubjectivities of the women is comparable to the chief's reactions to the state, whose failure he knows and would like to resist; yet he is obliged to be loyal and ensure loyalty of those within his jurisdiction.

12   The money allocated by the government was Ksh. 400,000 (US$ 5,000) to "rebuild their lives".

13   The operation is based on the premises that every Kenyan has a 'home' that, here, is treated as synonymous to 'homeland'.

14   The chief's reaction did not surprise me, as I had received the same response when I first met the County Commissioner of Nakuru. In December 2013, he scrutinised me to determine whether I was an 'innocent' researcher.

15   A Swahili word in patron-client political lingua in Kenya, meaning 'master' or 'higher social hierarchy' for a male.

16   The chief appoints these individuals, generally as part of the patron-client history, with no other role besides working around him as courtiers who promote his patron-client inclinations.

you cannot make any other decision and you do not want to be perceived as an outcast; so you have to 'move on'"[17].

This article makes use of these observations and conversations from my most recent fieldwork (2013-2014) complemented by my historical analysis and recent monitoring of the ongoing cases against two inductees at the ICC. It interrogates how the language related to victimhood, stemming from post-elections violence, has shifted from the initial 'truth-telling' to that of 'moving on', in a context confounded by a limiting binary of a 'peace versus justice debate'. Although I engage the 'transitional justice' and 'national building' in Kenya that were developed by other scholars (see Branch & Cheeseman 2009, Lynch 2011, Mueller 2008), I shed new light on human rights subjectivities in postcolonial Kenya and the 2007/2008 post-elections violence. Therein I open an account of the unfolding silence and the current impetus for 'transitional justice', 'national building' and quest for a culture of human rights practices that depart from the now common political patronage.

The article also builds on ongoing work around postcolonial subjectivities to understand how these ideas and practices of justice and post-violence silences have influenced or have been influenced by the 2007/2008 post-elections violence (Ouma 2009, Lynch 2009: 604, Brown & Sriram 2012). The key protagonists in this conflict, at least according to popular narrative and ICC charges, were Kikuyus and Kalenjins. In that imagined binary, the Kikuyus were regarded as 'aliens' in the Rift Valley – regarded as Kalenjinland – while the Kalenjins were positioned as 'natives' of the Rift Valley. The juxtaposition of these two categories effaces a much more complex interplay between different actors, institutions, discourses, narratives and structures (Lynch 2009). Drawing from Mamdani (1996), I emphasise that the never-ending notions of homeland have shaped this misleading, yet powerful, binary opposition.

1.   Kenya's political culture and the notion of 'homelands'

The 2007/2008 post-elections violence in Kenya cannot be understood without a detailed history of Kenya's statecraft and development of its internal boundaries. In this section, I present the two subjects in response to the question of the homeland and political culture in postcolonial Kenya.

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17   Susan Chelimo, interviewed by Steve Ouma, Eldama Ravine, 1 January 2014.

1.1   The question of homeland

While both Mudimbe's *The invention of Africa* (1988) and Mamdani's analysis in *Citizen and subject* (1996) are useful for explaining the colonial governmentality in Africa, Mamdani (1996) provides us with a conceptual framework that is useful for understanding indirect rule in former British colonies such as Kenya. His model of citizens and subjects is useful not only for understanding how indirect rule worked, but also for reading the statecraft project and production of citizens under British indirect rule. Mamdani argues that the colonial law (characterised by civil law and customary law) made a fundamental distinction between two types of persons: the indigenous and the non-indigenous; in other words, natives and non-natives. Within this binary, rights belonged to non-natives, not to natives. The best that was available for the natives were customs. Although social life and interactions of the colonial moment are much more layered and contain a great deal more multiplicity, Mamdani's theory is perhaps the most useful for understanding how the state's classification of persons produced homelands as part of the British state's politico-economic structures.

Most importantly, the persistence of colonial statecraft and its project of classifying citizens and allocating homeland offers a critical perspective on political culture in post-*uhuru* Kenya and the post-elections conflict of 2007/2008.[18] Evidently, the kind of binary and public discourse that defines 'insiders' and 'outsiders' seems to be a continuity of 'citizens' versus 'subjects' categories. Commenting in the Ugandan newspaper *The Daily Monitor* on this continuity that is manifest in Kenya, Mamdani opined that at the centre of the conflict of 2007/2008 was "a colonial era notion that land belongs to those native to the land versus a market-based notion that land belongs to whoever holds the title. This pitted two ethnic groups, Kalenjin and Kikuyu, against one another, and was at the heart of the 2007 election violence" (Mamdani 2013: 10).

As captured in Mamdani's comments, the formation of Kenya as a political unit is an incomplete discussion that continues to evoke protests in some instances, and solidarity in others. At the time the formation of Kenya as a political unit was completed by the British colonial administration between 1895 and 1920, it created a congregation of divided ethnic entities that could not be called a nation. In its origin, the land mass that came to be called Kenya was occupied by a separate collectivity of nations who had a sense of location.[19] These precolonial societies also constituted a separate collectivity of identities. The criterion of this

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18   *Uhuru* means 'independence' in Swahili. The post-*uhuru* moment refers to the period after flag independence.

19   I insist, here, that far from the historical accounts that claim that boundaries are responsible for creating identities, there is anthropological evidence that identities have also created boundaries.

nationhood was based on subsistence modes of production, lineage and other relational axioms. Inevitably, ethnic groups were constituted more by internal debate over how to achieve honour in the unequal lives of patron or client, than by solidarity against strangers (Lonsdale 2008). Internal contradictions in these groups were minimised by the absence of any central power that would otherwise have arranged groups according to hierarchical relations.

This rather fluid assemblage of ethnicity was later solidified by historical and anthropological scholarship and state extrapolation that continue to influence the characterisation of people and places in postcolonial states such as Kenya.[20] Many early 'ethnographies' by colonial administrators were more or less monographs on one 'people' or another who were often associated with particular cultures and places. Although the majority of these monograph reports were later used to design and govern the Kenya Colony, the works were, to a large extent, undertaken without the support of colonial officials in Kenya.[21] Even after independence, historians such as Bethwell Ogot (1961) and his contemporaries Gideon Were (1967) and Godfrey Muriuki (1974) disrupted the 'othering' characteristic of colonial, historical and anthropological scholarship, but left intact most of its essentialist character and the notion that all people had a culture and a homeland. Yet, even in this context of imagined homelands and ethnographies of some kind of stable identities, the nature of ethnic identities, even that which was encouraged by the colonial administration, is never fixed. Instead, as evidenced in Kenya's political history, there is an ongoing construction, negotiation and regeneration of ethnic identities (Lynch 2006). This is evident in the complex ways in which identities have been presented and used as the basis of politics in post-independence Kenya.

1.2 Homeland and post-independence politics in Kenya

After independence in 1963, the new African-led government took over the seat of power with the promise of, among others, reversing all loss of homelands. However, within two years, they abandoned the vision of nation-building and used their newfound independence to build an authoritarian state (Anyang' Nyo'ngo' 2007: 65). Consequently, the country's political system degenerated into a patrimonial political one characterised by the personalisation of power, the politics of patronage, and the ethnicisation of politics that sustained it (Ghai 2002: 6). What followed was a system of political ethnicity, building on the colonial classify-and-rule project, a postcolonial trend that numerous academics

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20   This has been discussed in great detail by Neocosmos 2011.

21   The native commissioner reports, written between the 1930s and the 1950s, show an over-reliance on these monographs in describing the 'tribes' and their 'uses' to the colony (see Hailey 1942: 146).

have documented (see Mafeje 1971, Bates 1986, Klopp 2001).[22] The subject of the ethnicisation of politics has been based on the perception of culture as those symbolic acts that demarcate boundaries among groups. This is further sustained by the authoritarian presidency and the fact that the state has retained the status of being the sole agency whereby citizens could aspire to climb the commanding heights of the economy against male- and ethnic-entrenched interests in land, commerce and finance. Essentially then, Kenyan politics was reduced to that of 'eating the national cake'.[23] This explains why the Kenyan government adopted the creation of a Truth Commission.[24]

The most recent findings of the botched[25] Truth, Justice and Reconciliation Commission (TJRC), have revealed that Presidents Jomo Kenyatta, Daniel Moi and Mwai Kibaki, through their legal and, to a large extent, illegal appropriation of land, contributed to the displacement of vast numbers of Kenyans from their 'homelands'. This explains the contestation against three paragraphs in the TJRC Report that gave an account of the tragic dispossessions and displacement of various communities during Jomo Kenyatta's reign. Writing on 3 June 2013, three members of the TJRC (Prof Ron Sly, Berhanu Dinka and Judge Gertrude Chawatama) disclosed these sections of the TJRC reports that speak to both the question of the homeland and authoritarian presidency in post-*uhuru* Kenya. The contested paragraphs were later deleted in the official TJRC report in this *history of denial*, as Uganda legal scholar Oloka Onyango calls it.[26] While these contestations are evidence of how issues and problems in Kenya's contested histories is often expressed by both the elite and *wananchi* in 'ethnic lens', it also attests to how truth commissions often become "theatres of power" in a context of competing socio-political interests and "framework of knowledge" (Ashforth 1990). As Wilson and McCargo suggest in the cases of South Africa and Thailand, respectively, truth commissions may be used

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22   This refers to the tendency among political elites to mobilise ethnicity toward political ends.

23   In Kenya, 'national wealth' is known as the 'national cake'. Since independence, the hopes of building a viable Kenyan nation relied heavily on the successful distribution of the 'national cake' across ethnic divisions. One of the clearest means of access to the 'cake' is through active participation in political processes, and thus those with better political representation hoped to gain some access. In fact, the clamour for political power *vis-à-vis* the 'national cake' exposed the flaws in the very make-up of the Kenyan nation.

24   The Task Force, established in 2003 under the leadership of the doyen of human rights activism in Kenya, Makau Mutua, chose the Truth Commission as a mechanism for responding to past injustices in Kenya.

25   I describe this Commission as a fiasco, because it failed to mobilise or create the kind of national or truth-telling moment that one would have expected similar to that witnessed in Rwanda following the 1994 genocide.

26   See Oloka-Onyango 2007.

to legitimate a national hierarchy and distract attention from more meaningful reforms (Wilson 2001, McCargo 2010).

It is important to note that the notion of 'homeland', whether in reference to colonial displacement or dispossession of land by post-*uhuru* governments, has far-reaching consequences, including producing not only many internal diasporas, but also numerous populations that have acquired strangers' identities, which, while continuously contested, represent suffering and tragic dispossession that stand at the very heart of Kenya's 2007/2008 conflict (Hall 2004, Mamdani 1996).[27]

Consequently, forced movement of the various communities, whether caused by the colonial administration's land appropriation and divide-and-rule tactics, or the later postcolonial appropriation of land, has led to the existence of numerous internal diasporas in Kenya. In particular, I am referring to: the Kikuyus in Rift Valley, the Kalenjins in Narok, the Luhyas in Luo Nyanza, the *wabaras* (those from the mainland) on the coast of Kenya, to name but a few. Therefore, the limits of studies and political processes that define ethnic identities on the basis of geographic locations in contemporary Kenya involve the fact that numerous ethnic groups, including the Kikuyu and the Kalenjins, who are major centres of focus in this article, are transregional. Even so, Kenya's political boundaries and forms of administration still largely adhere to ethnicised regionalisation (Akoth 2011). As has been observed in the era of political pluralism in Cameroon, where the return of multiparty political systems seems to have elevated the emphasis on who votes where, language communities or ethnic groups in Kenya are often treated as identical to particular political interests (Geschiere & Nyamnjoh 2000). Thus, elections and electioneering moments are presented as times when ethnic allegiance is most important, and those defined as 'strangers' are urged to return to their 'homelands'.[28] This has been at the centre of the birth of political culture and the narratives of Kenya's modernity.

1.3 Political culture

The historical account and colonial hangover examined earlier are implicated in the contemporary political culture in Kenya around which the 2007/2008 violence took place. This political culture also foregrounds the intervention

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27   In this instance, I mean both the sense of disruption caused by colonial rule discussed by Hall (2004) and the sense of 'removal' from the perspective of homeland, described by Mamdani (1996).

28   Part of the evidence being adduced in the ongoing trial of William Ruto alleges that the organisation of violence was an implementation of demands by some members of the Kalenjin elite that Kikuyus should go back to their 'homeland'.

of the ICC in the quest for justice after the 2007/2008 violence. A reading of anthropologist Angelique Haugerud's *The culture of politics in modern Kenya* (1997), demonstrates that far from the common meta-narrative, Kenya's *post-uhuru* modernity (that is still under production) has been vexed and characterised by struggles for influence by multiple actors. In a study situated in the Meru region of upper eastern Kenya, Haugerud (1997) demonstrates that state politicians, *wananchi* (common or ordinary citizens), religious institutions as well as national and international political economies have influenced 'Kenya's political culture.[29]

Owing to the personified leadership dominant in the imagination of modernity in Kenya and the 2007/2008 violence, this history is best presented through the reigns of Kenya's three post-independent presidents, namely Jomo Kenyatta (1963-1978), Daniel Arap Moi (1978-2002) and Mwai Kibaki (2003-2013). As was the case during colonial overrule (Mamdani 1996), the Kenyatta and Moi states and respective presidencies were so entangled that access to either the president or his immediate circle opened the possibility to shift public policy, alter or stop careers, sack adversaries, promote cronies, restore status and even weigh in on life-and-death issues (Cohen & Odhiambo 1989: 158-9). Yet, in the rhetoric of public participation that was presented as the hallmark for *uhuru*, *barazas* becomes the theatre for re-imaging Kenya (Haugerud 1997: 3).[30] On one side of the *barazas* lie the dominant images and rhetoric of the local political elite, international media and scholars of Kenya as an "exceptional third world country" (Haugerud (1997: 4), while on the other hand *wananchi* contest through songs and remarks often made before the leader speaks, that it is only a few Kenyans who are 'eating'.

During his 1963-1978 presidency, President Kenyatta built on Sessional Paper No 10[31] and on his earlier book, *Facing Mount Kenya* (1938) that had exalted "African values", arguing that these "African values" have been "corrupted" by colonialism (Kenyatta 1948: 90). His presidency was, therefore, about restoring the lost idea of Africaness, and the rhetoric of a 'Black' exploited person versus 'White' *mabepari* (imperialists) was a common theme in Kenyatta's *post-uhuru*

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29   This so-called Kenya's political culture has many names, but it is more often known as the 'politics of the stomach'.

30   The word has its origin in the Swahili language and is practised in coastal Kenya. It entails a convening of the residents who often form a circle with leadership seated in the centre.

31   Its rhetoric was both anti-imperialist and Africanist coached in Sessional Paper No 10 of 1965 on *African socialism and its application to planning in Kenya*. Although details in the 1965 policy paper have been rather the flavour of the mouth, the central theme of Sessional Paper No 10, as it is popularly called, was to 're-root', or more appropriately, seek the 'route' of Kenya as a postcolony in its 'original' past.

speeches. The speeches now form a body of Kenyatta's so-called nationalist literature that guided the government's policy objectives and strategies between 1963 and 1978, often performed at *barazas* (Rajan 1996: 57). In citizenship, there were clear imaginary borders of 'citizens' and 'subjects'. In law, customary and common laws continued to exist in hierarchies developed in the colonial era. Also unfettered was the notion of homeland in the countryside versus national territory. As a result, when a president is in power, it is mainly stated that he and his ethnic group are 'eating'.

The 'eating' ethnic kleptocratic class that came to be associated with corruption, political associations and ethnicisation of politics in Kenya had developed as part of Kenyatta's modernity and was soon fractured. Oginga Odinga, a prominent politician from Luo Nyanza, resigned as Vice President amidst claims that his Luo people were not benefiting from the post-*uhuru* government. He later published a book that was critical of Kenya's modernity at the time when he and his Luo people were supposedly not 'eating'. The book was appropriately titled *Not yet uhuru* (1967) (not yet independent).

After Kenyatta's death in 1978, his Vice President, Daniel Arap Moi, who had been embattled by Kenyatta's cronies and allies and who had come to be referred to as 'Kiambu Mafia',[32] took over office. Within a short time, *Nyayo* (Swahili word for 'footsteps') became the rhetoric that would define Moi's political, economic and social modernity. This had become a strategy of existence and pragmatism that Moi used to assure Kenyans and foreign elites that he would follow in Kenyatta's *nyayo*. By the 1980s, there was already talk of Nyayo's philosophy of peace, love and unity as the embodiment of Kenya's modernity.

While President Mwai Kibaki (2003-2013), under whose watch the post-elections violence 2007/2008 occurred, may not have had a very clear political philosophy; his background and acclaim as a renowned economist seem to have had bearing on his political priorities and public disposition. His major public calling was to lead Kenya as a "working nation", even though many able and willing Kenyans had no gainful employment. During the 2007 general elections, he captured this notion of commitment to "work" under the slogan "*kazi iendelee*" (a Swahili phrase that means 'let the work continue'). Speaking of Kibaki's political philosophy (after the 2002 elections), a renowned Kenyan journalist, Gitau Warigi, notes: "... President Kibaki's fundamental mistake was to imagine that life could go on like it was before 1978 without taking into account that he was in office not entirely because of his national popularity, but because

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32   Kiambu is part of central Kenya that is predominantly inhabited by Kikuyu speaking people.

he was put at the helm of a coalition whose partners had a different motivation" (Warigi 2008).

This context of a modernity in flux, characterised by ethnic nationalism, asymmetrical power relations between the state and its citizens, continuities of colonial knowledge systems and symbols as well as contested images of Kenya, informed some critical legal scholars and civil society organisations to appropriate the language of human rights and the rule of law as an alternate imagination of a modern Kenya. The language of rights, as an expression of Kenya's modernity, first took root in the mid-1990s as the country further fragmented into ethnic enclaves.

In summary, Kenya's political background and culture has had a bearing on the 2007/2008 elections violence and the subsequent re-ethnicisation, from which stems an illusion among the political elite to build a grand national reconciliation that mutes public debate on violence in everyday life and strife embedded in the country's political culture. In the four presidencies, this project of grand national reconciliation without confession, truth-telling or public debate is captured under varying rhetoric, but with one cord. It is *Harambee* under Jomo Kenyatta, *Fuata Nyayo* under Daniel Arap Moi, *Working nation* and *Kazi iendelee* under Mwai Kibaki and *Moving on* under *Uhuru* Kenyatta that constitute the politics of negations and reversals that fermented the 2007/2008 violence during the second term of Mwai Kibaki.

2.   Post-elections violence

It is, therefore, apparent that the post-elections violence in Kenya was much more than political competition between Mwai Kibaki of the Party of National Unity (PNU) and Raila Odinga of the Orange Democratic Movement (ODM), who had jointly won elections in 2002 under the banner National Rainbow Coalition (NARC). Rather, the moment of elections became some kind of a 'theatre of war', where the majority of historical contestations between the governors and the governed played out. So vexed were these contestations that even the various human rights instruments such as the International Bill of Rights and Africa region human rights instruments to which Kenya is signatory could not be brought to bear. Under these circumstances, the matter was referred to the ICC, the court of last resort for matters of war crimes and crimes against humanity. Yet, even after this referral, the questions of 'nation-building' and 'justice' were not pursued solely in the liberal discourse as legal subject whose presumed response would have been to engage the matter in courts of law. The responses to the ICC indictment were characterised by a rather mingled cultural and legal engagement typical of practices of human rights in postcolonial Kenya. Reactions from the six

suspects (commonly known as the 'Ocampo Six') opened a debate on universalist commitments to human rights and the creative expression of historicised and situated identities.

Kenya's media, public rallies, prayer meetings and common parlance showed that there is no such conflict between cultural recognition and implementation of international commitment to human rights. The Ocampo Six and the 'communities' they mobilised responded to the charges against them by engaging lawyers to counter the prosecution's claims against them in The Hague, through intervention by Councils of Elders, political rallies and prayer *barazas*. This illustrates that, although the economy of interest deployed in the quest for cultural recognition and international human rights instruments may be different, their objectives are not necessarily incompatible.

It should however be noted that, although patronage politics runs through Kenya's political culture, the practice of ethnicity (whether ethnicisation of politics or politicisation of ethnicity) is not certain and uniform. In the political referendum on the Constitution of 2005, for instance, there was evidence of de-ethnicised voting. While the indictment of Kenyatta and Ruto and the subsequent trials at the ICC re-ethnicised Kenyan politics, more and more ethnic groups were organised politically and centrally. Because of its ethnicised imagery and the re-coil effect of propelling the *Uhuru* and Ruto alliance to power, the ICC has become a space for contesting the truth and justice about the 2007/2008 elections, rather than a confessional or reconciliation space. In Rift Valley and general public discourse in Kenya, the ICC is a taboo subject; those who tend to agree with it are marginalised and branded as enemies of Kenya's sovereignty. For those who want justice, state and private sector-led humanitarian assistance is the way to go, and then, 'they should move on.

3.   'We have moved on'

The notion of 'moving on' that has now displaced the idea of justice in forms of retribution, redistribution or litigation, is not an expression of forgiveness. Rather, it effaces a layered debate on how to address the 2007/2008 election violence by reducing its complexity to a simple choice between "justice and peace".[33] As noted in Kenya's Rift Valley and state-funded interventions such as *Operation*

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33   On 30 March 2013, the Supreme Court of Kenya gave a ruling on the case that challenged the election of Uhuru Kenyatta as fourth President of the Republic of Kenya. Scholars and politicians alike criticised the ruling. I am of the opinion that the Supreme Court ruling was part of the 'moving on movement' captured in making peace and negating justice.

Rudi Nyumbani,[34] the 'moving on' narrative is further developed and grounded in the government's humanitarian intervention that repositions the victims of post-elections violence as beneficiaries. Its effect is to deny voice and create muteness. In a country where the politicians and elites are referred to as 'big fish', 'moving on' is quite literally an assertion that "The big fish won't fry themselves" (see Brown & Sriram 2012). My argument, premised on the above, is that there are various views on the 2007/2008 violence and what should be done about it, but that political authorities have presented this plurality of views as if they were one. This strategy by the so-called 'big fish' is often expressed as an effort towards nation-building. It is herein that the 'big fish' enlist the support and loyalty of locals to be part of their single view, a perspective well captured by what Derrida refers to as "monolingualism" (Derrida, 1998).

Derrida (1998) takes up this notion of 'muteness' and attempts to engage not only the question of his own identity, but also how 'the self' produces itself, as it attempts to produce and understand 'the other'. Although his identity (as that of many people I spoke to in Rift Valley) is malleable, Derrida takes an assertive position at the beginning of the book: "I have only one language; it is not mine". Thus, Derrida speaks simultaneously to an assertion of monolingualisim and to an estrangement from that language. This is no different from the women at the chief's office who had no choice but to proclaim "I have moved on", even though this was not their language. It was thus apparent that although the village chief invited the women to approve of the rhetoric that "They have moved on", these women replied in affirmation of "belonging to the monolingualism" promoted by the state and its operatives. Yet, along with many who were affected by the 2007/2008 elections violence, she appreciates that the language of 'moving on' emanates from a complex shadow of ethnicised political history in Rift Valley and other parts of Kenya. Here, the "mono-" is associated with a hierarchical position and, as will be noted later in this article, it holds the "hegemony" (in Gramcian terms) that characterises Kenyans' political culture since independence, but also disarms *wananchi* at the same time (Haugerud 1997). 'Mono-,' is a neutral expression that is meant to symbolise good citizenship as was previously expressed in other terms such as *harambee* (pulling together) and *fuata nyayo* (following the footsteps). As Derrida (1998: 27) posits, these 'mono-' expressions have nothing to do with singularity or uniformity: "We only ever speak one language. We never speak only one language".

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34 While this operation was neat in dismantling and closing all camps used by internally displaced persons (IDPs), there are camps in Nyeri and neighbouring Uganda. These IDPs have refused to move, as most of their reparation and institutional concerns are yet to be addressed.

The following question arises: If people do not speak one language in the aftermath of atrocities such as those that took place in Kenya between 2007 and 2008, why the expression "We have moved on"? In this context, Derrida speaks of monolingualism, with fascism and totalitarianism in the background. In the aftermath of this period in Kenya, public speech was restricted and often censored (by the authorities and by self) under the guise of 'hate speech', while ethnicity was emasculated in the quest for diversity. Most importantly, these restrictions and silences, as were evident in Eldoret, are often self-inflicted, leading me to conclude, as is the case in Derrida's text, that it is simply the *wananchi* who ultimately induce the kind of powerlessness that characterises the monolingual, "We have moved on".

Buried deep in the hearts of *wananchi* who verbalise the rhetoric 'We have moved on' in Kenya, are struggles against state authorities committed to maintaining the status quo: corruption, murder, greed, promiscuity, theft, cattle rustling, hate, electoral malpractice and tribalism (Adhiambo 2013). It is, therefore, evident that, to the majority of *wananchi* (be they protagonists or the aggrieved) during the 2007/2008 post-elections violence, 'monolanguage', 'We have moved on' is only used to suit the needs, emotions, actions, ambitions and ideas, because they have been made to feel as aliens in the current context.

But following my encounter with the narratives in Kenya's Rift Valley, I tend to be persuaded that the use of the term 'moving on' by those in Rift Valley who are described as the 'other', compared to those who are described as 'native', is much more an expression of the 'muted' limits of existence. Here, monolingualism is the inhalation of the other. It represents the chronic urge and indeed practice to extinguish or surpass both 'diversity' and the very nature and presence of fractured Kenya and the illusion of the nation. When read in the context of the history of Kenya's political culture, 'moving on' may also be a sign of numbness. As American literary critic Shoshana Felman (2002: 121) argues, "… As a legitimate response to trauma, numbness may be a legitimate effect of history". One would then be legitimating the rhetoric of 'moving on', if one reads Felman's conclusion that it (numbness) cannot be a legitimate effect of law, but the language of sharpened awareness. While my ethnographic materials speak of 'moving on' as a 'concept from above', when generated and used by *wananchi* who have gone through numerous episodes of ethnically and politically instigated ethnic violence and land grabbing, it could well be a language of numbness.

4. On intersubjectivity and nationhood in contemporary Kenya

Notwithstanding the civil accent that the nationalist movement has placed on the idea of becoming Kenya, the emphasis, related to the idea of the grand nationalism, was on "cultural nationalism" and the creation of "homelands" that emphasise rigid and impermeable territorial and other kinds of boundaries. This trend has now been consolidated in the Constitution of Kenya 2010, which has demarcated 47 counties with boundaries that are aligned with "ethno spaces" created in colonial Kenya. Since the promulgation of this Constitution in August 2010, 30 cases of inter-boundary conflicts have been reported with either neighbouring ethnic groups or clans wrangling over the limits and marks of the boundaries.

In my encounters with those who experienced the 2007/2008 violence in Eldoret, I realised that the key issue was the residency rights of the Kikuyu in what is commonly perceived as Kalenjin Land, in a context that has been confronted by the now common 'peace-versus-justice' debate. Both the Agikuyu and the Kalenjins whom I spoke to in Rift Valley were aware that, by seeking a homeland in Rift Valley, the Agikuyu were seeking a national state anchored in the particularity of their ethnic grouping. The assertion of particularity is evident in the everyday way of life of the majority of the Kikuyus in Rift Valley that vary from naming places using names synonymous to those in central Kenya, such as Kiambaa, Kiamombi and Mwenderi, as well as voting patterns whose results read like an ethnic census such as that noticed in the Market Ward in Eldoret, which, although in Eldoret Town, has since 2002 been led by civic leaders from the Kikuyu community, perhaps due to the numerical number of Kikuyu voters in the region. Thus, while seeking to be accommodated in Rift Valley because they are Kenyans (and Rift Valley is part of Kenya), the Kikuyus seeking to claim legitimate residence in Rift Valley relied on an exclusive cultural nationalism.

The demand for Kikuyu citizenship in Rift Valley thus retroactively supported the reasoning behind the exclusionary notions of homeland that mandated the expulsion of Kikuyus from parts of Rift Valley or wherever they lived outside central Kenya. The claim of exclusivity when backed by 'invented tradition', the idea of language communities as bounded and homogeneous, could not go hand in hand with the Kikuyu (or any other language community) being at home in many different places or in the various locations where they live within Kenya. If Kenya wants to pursue its objective of developing into a nation state, then the notion of homeland consciousness and the kind of inhumanity visited on Kikuyus and moderate Kalenjin in Rift Valley during the 2007/2008 elections would at least require attention that focuses on how Kenya gets organised as a political nation state. This is the kind of critique I gave on the architecture of the 47 counties.

I view with deep suspicion the alignment of county boundaries with culture, because I perceive in it a concern with corporeality that can never resolve the

myth of homeland consciousness, because it was from the very outset concerned with the preservation of a different body politic without doing enough to sublime the difference or create a plural society.

5.   Conclusion

The particularities of national histories and the context within which they operate have significant implications for the notions, frameworks and practices of human rights. Moreover, in the postcolonial moment, this context tends to pose the question: Can an ethnicised euro-modernist nation state, global human rights movements, and institutions such as the ICC, founded on sovereignty of one law, be reconciled with localised jurisprudence?

In this article, I explored the ongoing post-political violence experienced in Kenya in 2007/2008. Far from the common notion that confession and 'truth-telling' about traumatic experiences such as those that happened in Kenya would be therapeutic, this article established how the dominant political culture in Kenya supported and gave rise to muteness. This silence is captured in the phrase and rhetoric "We have moved on". What is revealing is that, while the political elite and those advantaged by Kenya's political arrangement seem to mobilise and use the rhetoric of 'moving on' as a monolingua that enables control over their subjects, on the one hand, the majority of ordinary Kenyans use the expression "We have moved on" not quite for muteness, but rather as an expression of some kind of numbness, on the other. It is an expression that speaks to the past, present and future as entangled in never-ending state-condoned violations of human rights in the midst of 'transitional justice' and 'nation-building'.

At another level, the notion of 'moving on' is some kind of selective amnesia enveloped in the idea of culture and citizenship. In this localised notion of dealing with trauma and atrocities, the actors (both suspected perpetrators and victims) unite against what is labelled as external interference, sometimes referred to as imperialist and race profiling. International human rights law and instruments such as the ICC are, therefore, barred from intervening. In this practice, 'moving on' is couched under categories such as 'Africans', 'our boys', and so on. I conclude that the events that follow violence produces and is produced by historical and contextual subjectivities.

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