

# Reparations and the politics of waiting in Kenya.

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## Reparations and the politics of waiting in Kenya

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### ABSTRACT

This article examines transitional justice in Kenya, drawing on interviews and focus groups with survivors of the post-election violence of 2007–2008. Focusing particularly on the experiences of women and internally displaced persons (IDPs), it explores how survivors understood and negotiated waiting for reparations and analyses the effects of temporal uncertainty (around timing and scope) and of inequality (in relation to waiting times). Uncertainty and inequality contributed to survivors' senses of passivity and exacerbated their feelings of marginalisation. To delay reparations for an uncertain time contributes to senses of continuity with the past, which transitional justice precisely seeks to disrupt. However, the study also demonstrates that waiting is not only endured, but at times actively resisted or rejected, which might be understood as a claim to ownership of local peace and exercise of peacebuilding agency but also as resistance against the dominant temporality of transitional justice. By framing survivors' experiences with the scholarship on time and power and the "politics of waiting", the research contributes to the literature on local experiences and understandings of transitional justice and to recent debates around its temporalities.

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Reparations; Kenya; time; power; waiting; transitional justice

This article examines transitional justice in Kenya, drawing on interviews and focus groups with survivors of the post-election violence of 2007–2008. Focusing particularly on the experiences of women and internally displaced persons (IDPs), it explores how survivors complied with, negotiated and resisted waiting for reparations. Transitional justice describes the various judicial and non-judicial measures that are undertaken by societies to confront legacies of violence, abuse and repression. While initially – in the 1980s and 1990s – being thought of as 'a vehicle for helping to deliver liberal goods in postconflict and postauthoritarian societies', transitional justice has increasingly been applied to contexts that do not involve a liberal political transition and has become associated with peacebuilding after mass violence.<sup>1</sup> The Kenyan case illustrates this shift well: the establishment of its transitional justice mechanisms – a truth commission (the Truth Reconciliation and Justice Commission, or TJRC), and international criminal prosecutions under the mandate of the International Criminal Court (ICC) – followed

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the post-election violence of 2007–2008 and a long post-independence history of authoritarianism, political repression and widespread gross violations of human rights.<sup>2</sup>

Common transitional justice tools include criminal prosecutions, truth seeking mechanisms, reparations, constitutional and institutional reforms, amnesty, lustration and memorialisation.<sup>3</sup> Of these mechanisms, reparations are considered to be most directly and immediately centred on victims and their needs.<sup>4</sup> Recent debates – for example around the potential and challenges of linking reparations to development, to socio-economic transformation, and to gender transformation<sup>5</sup> – reflect wider critiques about the marginalisation of socio-economic and structural concerns in favour of civil and political rights violations in transitional justice. The ideal of reparations, whether material or symbolic, to restore the *status quo ex ante* of the victim might be considered a fantasy,<sup>6</sup> but, as feminist scholars have demonstrated, it is also perverse for women and members of other disadvantaged groups, implying the return of the victim to a state of unjust disadvantage.<sup>7</sup> In practice, reparations involve processes of social and political contestation and negotiation, which shape, and are shaped by, potentially competing definitions and hierarchies of victimhood and the agency of different social actors.<sup>8</sup> Reparations programmes in a diverse range of post-conflict settings have been divisive, creating tensions and competition between different groups of victims.<sup>9</sup>

Despite an emphasis on ‘adequate, effective and prompt reparations’ in the UN’s legal framework, the Right to a Remedy and Reparation,<sup>10</sup> reparations are often delayed and waiting for justice characterises the everyday lives of many victims of human rights violations. Of the 84 transitions that took place between 1970 and 2004, reparations were implemented in only fourteen cases, and, even then, victims wait an average of five and a half years after a transition to democracy to receive reparations.<sup>11</sup> In Kenya, this is apparent in the fact that the TJRC published its final report in 2013 – recommending lustrations, prosecutions and a reparations policy, the latter including individual reparations (such as pensions, medical and psychosocial support) and collective reparations (such as land restitution, socio-economic measures and commemorations) – but its recommendations have not been implemented to date.

In order to analyse how such long-term waiting impacts survivors and how it shapes their understandings of justice and peace, the paper draws on the sociology of time, which highlights that delays are not neutral or co-incidental: as Pierre Bourdieu put it, waiting is one of the key sites in which the link between time and power can be experienced.<sup>12</sup> Recently, there has been growing attention to the temporalities of transitional justice and to how time shapes transitional processes. Time is central to the very aims of transitional justice: transitional justice mechanisms act as temporal framings that seek to control what is and is not brought from the past, so that nations can build new peaceful futures.<sup>13</sup> Historian Berber Bevernage argues that truth commissions, as a key transitional justice mechanism, serve to produce and manipulate temporal distance by ‘enforc[ing] the characteristically modernist belief in a break between past and present.’<sup>14</sup> By establishing a sense of historical discontinuity, transitional justice aims to construct a present freed from the haunting past and its violence and injustice.<sup>15</sup> Recent scholarship in peace and conflict studies has charted how the dominant transitional justice temporality, while constructing the (violent) pasts and (peaceful) present as clearly delimited,<sup>16</sup> does not represent the lived experiences of people recovering from trauma, violence and suffering.<sup>17</sup> Past and present can seem continuous because

violence has not ceased or because experiences of marginalisation continue in the “post”-conflict era;<sup>18</sup> historical injustices, such as colonial structural violence, and their importance to contemporary conflict, are part of a ‘larger temporality that exceeds mainstream conceptualizations and legal-technocratic approaches that inform [transitional justice] scenarios.’<sup>19</sup> While experiences of waiting are the focus of this paper, temporal domination in transitional justice is far broader than enforced waiting.<sup>20</sup> For instance, it can be enacted through the social and political pressures exerted on survivors to conform to the temporality of transitional justice,<sup>21</sup> or through the power of certain actors to set or limit timeframes for transitional justice institutions.<sup>22</sup>

This study specifically examines the ways in which women survivors that qualified for reparations understood and negotiated their waiting. Women’s experiences of violent conflict as well as their transitional justice needs after conflict differ from those of men.<sup>23</sup> What is more, feminist scholarship has long documented the continuities between times of conflict and supposed “peace” times for women.<sup>24</sup> This makes it important to investigate women’s experiences of waiting for reparations. An additional focus is on the experiences of IDPs, which is appropriate given the linkages of displacement with waiting in previous scholarship and the fact that IDPs are one of the only groups of victims who received some government assistance.<sup>25</sup> This paper then contributes to two areas: the scholarship on local experiences of transitional justice and the emerging critical debates around its temporalities. The article now proceeds as follows. Part two discusses the literature on time and power as it relates to transitional justice, particularly emphasising the relevance of a politics of waiting through which states and other actors exert temporal domination. After an overview of the methodology, section four provides some contextual background on violence and the shift from transitional justice to a limited form of restorative justice in Kenya. I begin discussing the empirical data in section five. Despite the relatively long passage of time since the post-election violence (PEV), the majority of participants characterised themselves as still waiting for the implementation of the reparations programme and for compensation. I highlight the effects of, first, temporal uncertainty and, second, inequality. Nonetheless, some interviewees actively chose to refuse waiting for reparations, sometimes in favour of exercising peacebuilding agency at the local level, as section six demonstrates. To give up waiting can be understood as resistance against the passivity and subordination of waiting and as a rejection of transitional justice time itself. In concluding, I set out the significance of an analysis of the politics of waiting in relation to transitional justice.

### **Experiences of transitional justice and the politics of waiting**

Transitional justice scholarship has increasingly attended to the ways in which transitional justice policies and mechanisms are experienced and interpreted by those affected by past violence. Whether conceived of as victim-centred transitional justice, local experiences of transitional justice or transitional justice from below, this literature, while diverse and context-specific, establishes that people’s experiences of and priorities for transitional justice are frequently very different to the intentions or predictions of transitional justice interventions.<sup>26</sup> By focusing on one aspect of transitional justice, reparations, I do not intend to conflate the two or suggest that reparations necessarily constitute justice for survivors. However, as Robins’ large mixed method study of the

reparative and justice needs of victims of human rights violations throughout the post-colonial era in Kenya shows, most prioritised compensation or economic support. While there were some differences in the preferences of victims of various types of violations (such as displacement, sexual violence, state violence or ethnic violence), only a small minority who were financially secure, largely educated and urban, prioritised issues of truth and justice over compensation.<sup>27</sup> Similar findings emerge from studies of victims' needs in other transitional settings, with socio-economic concerns and distributive justice particularly prioritised in contexts of ongoing insecurity and extreme poverty.<sup>28</sup> The focus, in this paper, on experiences of reparations is moreover justified by the TJRC's own prioritising of reparative justice.<sup>29</sup>

Waiting is an everyday experience – one that is often described as a condition of modernity and bureaucracy. Yet, as the literature on time and power reveals, it is not neutral. For example, Schwartz claimed that 'the distribution of waiting time coincides with the distribution of power', with those who are kept waiting considered to have less social worth.<sup>30</sup> Despite its universal nature, waiting appears to be a 'recurring, almost modal, experience among the destitute'.<sup>31</sup> Recent work demonstrates that subaltern populations, be they welfare recipients,<sup>32</sup> asylum seekers and refugees,<sup>33</sup> the displaced,<sup>34</sup> or the unemployed,<sup>35</sup> are often facing long-term or chronic waiting – 'situations in which people have been compelled to wait for years, generations or whole lifetimes, not as the result of their voluntary movement through modern spaces but because they are perpetually unable to realize their goal.'<sup>36</sup>

As part of the growing attention to (a) how transitional justice mechanisms are experienced by people themselves and (b) the temporalities in transitional justice, it is important to analyse the effects of long-term waiting for transitional justice on survivors. In order to do so, this article frames survivors' experiences of reparations with the scholarship on the politics of waiting, defined as 'temporal processes in and through which political subordination is reproduced.'<sup>37</sup> In his ethnographic study of social welfare recipients in Buenos Aires, Auyero finds that waiting produces compliant subjectivities, manufacturing 'subjects who know, and act accordingly, that when dealing with state bureaucracy they have to patiently comply with the seemingly arbitrary, ambiguous, and always changing state requirements.'<sup>38</sup> Waiting exacerbates poor people's marginalisation, because it affects those without resources disproportionately more severely.<sup>39</sup> As discussed earlier, women in "post"-conflict settings constitute a group that is marginalised in particular ways. Uncertainty about the duration of the wait in particular is a key factor that can operate as a form of social control.<sup>40</sup> Research from South Africa highlights that delays in the implementation of victim support policies have fixed some survivors of Apartheid-era human rights violations in a "permanent liminality" that impacted their ability to transition out of their victimhood.<sup>41</sup> Waiting was partly endured by these survivors because they could not afford not to wait, and partly because of their loyalty to the African National Congress (ANC).

These arguments might suggest that waiting is a passive and oppressive act. But there is evidence that it can in fact be active, productive or strategic. Discussing the experiences of residents waiting for eviction in Ho Chi Minh City, Harms shows that the temporality of eviction has diverse effects. Some were oppressed by waiting, whereas other, typically male, residents, transformed the long wait into an economically productive and sometimes empowering experience, such as when their livelihoods, built on networking and

connecting people, 'operate outside the linear, goal-oriented spacetime of neoliberal capitalism.'<sup>42</sup> For young unemployed men in India, shared waiting enabled new political and cultural opportunities across different castes.<sup>43</sup> Brun's study of internally displaced people in Georgia contends that people living with protracted uncertainty can nonetheless move on through 'agency-in-waiting': their 'capacity to act in the present, in everyday time, based on the experience of displacement [...] and a critical reflection of the future possibilities framed as waiting and hope.'<sup>44</sup>

## Methodology

This study draws on semi-structured interviews and focus groups with predominantly female survivors of the PEV of 2007–2008, undertaken in January and February 2017. It was informed by an interpretivist methodology, enabling a focus on the experiences, interpretations and understandings of people directly affected by violent conflict. The academic research from which this article draws sought to understand the reparative and development needs of female survivors of the PEV in order to examine the intersections and tensions between transitional justice and transformative justice.<sup>45</sup>

Three focus groups were undertaken – one in Nakuru County (10 participants, all female), and two in Kisumu County (12 and 8 participants respectively, both including male and female participants), lasting between two hours and two hours and a half. One of these focus groups comprised only individuals who identified as IDPs. Twenty-seven semi-structured interviews were carried out (23 female and four male interviewees) and lasted between 30 minutes and one hour. In Bungoma, Uasin Gishu and West Pokot Counties, interviews were conducted while accompanying field visits of the Eldoret-based NGO Rural Women Peace Link whose activities centre on conflict mitigation and gender justice. This also enabled me to sit in on meetings, trainings and workshops and observe the organisation's work with stakeholders such as community organisers and village elders. I participated in two advocacy workshops to localise the Kenya National Action Plan (KNAP) in West Pokot County and attended a meeting of civil society organisations working on conflict prevention in Bungoma County with a UK development funder.

Participants were recruited through community-based organisations and personal contacts in Nairobi, Eldoret and Kisumu. They were between 23 and 67 years old. Their names have been anonymised. Field sites included communities in Bungoma, Kisumu, Nakuru, Nairobi, Uasin Gishu and West Pokot Counties that were selected because they were among the most severely affected during the PEV. Kenya's diversity in terms of cultures, languages and ethnicities mean that there are considerable variations between survivors' experiences of violence and of transitional justice. Topics in focus groups and interviews covered participants' experiences of policies and programmes for justice and development; their peace, justice and development demands; and their understandings of transition and transformation. This article only focuses on one set of findings around the experiences and negotiations of waiting for reparations for the violations participants experienced during the 2007–2008 PEV.<sup>46</sup> This is because participants most frequently talked about reparations when asked about their transitional justice.

While participants were almost all female, thus not allowing a comparison of experiences across genders, previous scholarship shows that women's transitional justice needs

after conflict differ from those of men, partly as a result of traditional gender roles that men and women continue to perform.<sup>47</sup> In his study of Kenyan victims, Robins identified demands for livelihoods and compensation as particularly important for women who suddenly became heads of households as a result of conflict, as was the case for a number of women in this study.<sup>48</sup>

### **From transitional justice to restorative justice**

The violence that erupted in Kenya between December 2007 and the end of February 2008 followed a disputed presidential election. It involved police use of excessive force against protestors as well as violence by supporters of the ruling and opposition parties, triggered by weak institutions, ethnically-driven clientist political parties and a decline in the state's monopoly of legitimate force.<sup>49</sup> Some 1,100 people were killed, 660,000 displaced and 40,000 became victims of gender-based violence. The PEV reflected decades of political manipulation of ethnic tensions and enduring injustices concerning land, corruption, marginalisation, regional inequality, and inequitable distribution of resources.<sup>50</sup> Violations of human rights have characterised the experiences of Kenyans since colonial times and encompass political assassinations, extrajudicial killings by the police and torture as well as the displacement of people, which significantly contributes to current conflicts over land.<sup>51</sup>

Since 2007, there have been a number of attempts to address these past violations, including institutional reform, international and domestic prosecutions and the Truth, Justice and Reconciliation Commission (TJRC).<sup>52</sup> The TJRC's mandate did not only cover the events of 2007–2008; it sought to investigate gross violations of human rights (encompassing bodily integrity and socio-economic rights violations), economic crimes, socio-economic marginalisation of communities and ethnic violence between 12 December 1963 (when Kenya gained independence) and 28 February 2008 (when a power-sharing agreement was finalised).<sup>53</sup> The commission found that land violations had happened on a huge scale and were causally linked to ethnic and political violence, that five regions had been systematically marginalised, and that unlawful killings, torture and sexual violations had been widespread and often committed by state security agents. It made far-reaching recommendations for lustrations, prosecutions and for a reparations framework. The latter involved individual reparations (pensions, medical and psychosocial support) and collective reparations (land restitution, socio-economic measures and symbolic reparations), designed to benefit victims of bodily, socioeconomic and structural violence.<sup>54</sup>

A lack of political commitment means that the recommendations of the report have not been implemented. However, compensation was given to IDPs, with government efforts particularly directed at the Rift Valley.<sup>55</sup> Assistance programmes included Operation *Rudi Nyumbani* (Operation Return Home), aimed at encouraging individuals living in IDP camps to return to their homes, with the government offering transport costs, building and farming materials and some financial compensation. The government also built houses and allocated plots in affected areas and sought to foster peace and reconciliation.<sup>56</sup> Despite the considerable efforts undertaken, thousands of IDPs remained unable to return to their homes or settle in new areas, often due to having lost their livelihoods or no longer being accepted in their communities of origin.<sup>57</sup>



The timing and scope of the resettlement programme was criticised as premature, ethnically divisive, and conducted without consultation or confidence-building measures.<sup>58</sup> More recently, in 2019, the Auditor-General reported that the government irregularly paid millions of shillings to people claiming to be IDPs.<sup>59</sup>

By contrast, survivors of sexual violence and their particular needs have been largely ignored altogether. A constitutional petition by eight survivors and four NGOs – seeking to hold the Government of Kenya accountable for its failure to prevent post-election sexual violence, investigate perpetrators, and provide reparations – faced ‘excessive delays in the justice process [...] and frequent transfer of judges.’<sup>60</sup> Constitutional Petition No. 122 of 2013 was finally heard in court in May 2020, with a landmark judgement in December 2020 awarding compensation to four petitioners and finding government responsible for a ‘failure to conduct independent and effective investigations and prosecutions of SGBV-related crimes during the post-election violence.’<sup>61</sup>

In 2015, President Uhuru Kenyatta announced a fund for restorative justice of 10 billion Kenyan Shillings that is not operationalised to date, though steps have been taken to establish it. The scope of the Fund was not clearly set out, but appeared to be considering a far narrower definition of victims, those of certain bodily integrity rights violations. Lynch contends that the restorative justice fund was mooted as an alternative to prosecutions, contributing to an overall trend of justice increasingly focusing on reparations at the expense of accountability and retribution.<sup>62</sup> That the President announced this Fund as seemingly separate from the TJRC process, and without including victims of socio-economic rights violations or addressing collective reparations, might be understood as an attempt to marginalise the TJRC processes by rendering reparations as magnanimity rather than a right of victims.<sup>63</sup> President Kenyatta reiterated commitment to the Fund in 2019, but stated that it would be applied ‘towards establishing symbols of hope across the country through the construction of heritage sites and community information centers’, as part of the Building Bridges Initiative (BBI), which marks a significant departure from earlier promises of individual reparations.<sup>64</sup> The Building Bridges to a United Kenya taskforce had been appointed after the symbolic handshake between President Kenyatta and his opponent Raila Odinga that followed the deeply contested 2017 elections, and has been branded as a national healing and unity initiative.<sup>65</sup> It involved two years of consultations with citizens, civil society organisations, cultural leaders and the private sector, but has been criticised, in relation to the concerns of this paper, for its neglect of the TJRC’s findings and recommendations on corruption, land injustices, and human rights violations.<sup>66</sup> At the same time, the Attorney-General has blamed the National Assembly for failing to pass laws that would enable the restorative justice funds to be released.<sup>67</sup>

## Waiting for reparations

The women in this research had experienced displacement, dispossession, gender-based violence and other severe ill-treatment during the 2007–2008 PEV. Some had also survived gross human rights violations in previous episodes of electoral violence. At the time of research, campaigning for the 2017 elections was under way and was already impacting people’s senses of safety. The eventual elections, in August and October 2017 involved serious human rights violations by Kenyan security forces and more

than 100 people were unlawfully killed by police and pro-government gangs in Nairobi and in western regions.<sup>68</sup> This cyclical character of political violence in Kenya – political violence has accompanied, to varying degrees, every election since the advent of multi-party democracy in 1992 – and the structural violence that many continue to experience constitute sources of uncertainty and ‘chronic crisis’<sup>69</sup>, and are important for understanding how the politics of waiting operate in relation to transitional justice.

While a small number of respondents were not aware that there had been a truth commission in Kenya (in itself not surprising, since the final report was not disseminated as adequately as the TJRC had stipulated and the hearings only received limited media coverage), the majority knew about the TJRC and their entitlement to reparations. With most interviewees not having received reparations or compensation, a decade after the PEV, they felt neglected and forgotten about.

A smaller section of the participants identified as IDPs, one group of victims that did receive some assistance, albeit unevenly, given that the government has been accused of prioritising survivors from the Kikuyu community and focusing on supporting IDPs in the Rift Valley over those displaced in other regions.<sup>70</sup> Altogether, over 660,000 people were internally displaced from ethnically heterogeneous parts of the country. Many of them initially lived in camps until the government assisted in resettling them. As also observed in previous literature showing the passivity and temporal suspension of enforced waiting,<sup>71</sup> participants often spoke about the negative effects of “doing nothing” in the IDP camps: ‘when we were in the camp, you could not do anything [...] we really suffered.’<sup>72</sup> Senses of passivity in the accounts of participants in this study were linked to their experiences of temporal uncertainty and of inequality, as I show below. What is more, the notion of waiting as constituting dead or wasted time can also act as a ‘powerful trope through which people can critique political, economic and social systems of oppression.’<sup>73</sup>

### ***The uncertainties of waiting***

Participants’ experiences were characterised by fundamental uncertainty around if, when and what kind of reparations would be received, and who would qualify. Many reflected on their experiences of being put off, promises not being kept and goal posts forever moving. Atieno, a 40-year-old community leader and single mother of 6 children who identified as an integrated IDP, is worth citing at length:

On 25 October 2015, we sat with the devolution team, they came here, they were at a hotel, they said that we would be compensated KES 20,000 each so that we can start small businesses, so that we can be able to start life. And in 2016, [KES] 6 billion was set aside for the integrated IDPs. But we have not seen it. Nothing. [...] We are really suffering. And we keep on having meetings every day. We want justice, we want compensation. [...] Many come, nobody gives justice. When you want to talk to us, what can we say? There is no justice. We have been asked too many times. We get asked to come to meetings, we get given soda, and we leave with nothing. Our children remain with hunger, we don’t go to work, and we go back with nothing.<sup>74</sup>

The function of (un)certainty has been discussed in relation to waiting in a number of contexts, such as asylum processes or detention,<sup>75</sup> but it has not been considered adequately in relation to transitional justice.

Access to information is central to how people cope with managing risk and uncertainty.<sup>76</sup> A great deal of misinformation by the state and its agencies clearly characterised the transitional justice experiences of survivors like Atieno. Officials and politicians occasionally visited conflict-affected areas like Kisumu or Mount Elgon and often made new promises – but participants did not see any subsequent positive change. Some spent considerable time seeking advice and information from government representatives, NGOs and others that were perceived to be “in the know”. Participants in Cheptais (a small town in Bungoma County in Western Kenya) and Eldoret (a city in the Rift Valley) were told that reparations funds had now been withdrawn by a separate department; they did not know where these funds were and when they would be paid out. Yet other interviewees had met with representatives from the TJRC and reported being promised that reparations would be given:

- R: I spoke to them. And they told me that there is hope in life. And there is a time ... because the government goes very slowly ... we are going to help you, so we still are waiting.
- I: When was this?
- R: 2009.<sup>77</sup>

What is more, as Atieno’s narrative above shows, seeking to resolve temporal uncertainty, for example by trying to find information or to mobilise for reparations, has immediate economic implications: in informal economies, time spent in meetings is time not spent earning money. Those living without resources and in precarious or insecure situations are disproportionately more severely affected by temporal uncertainty<sup>78</sup> and these effects may be exacerbated for women who are single heads of households with responsibilities for dependents.

That the promise of justice for past violence was used by politicians during the 2017 election campaigns has further exacerbated survivors’ senses of uncertainty. Implementation of the TJRC report, particularly in relation to redressing land issues, was part of the opposition’s presidency campaign, after some years of the report and its findings being mostly ignored.<sup>79</sup> The Restorative Justice Fund is another example of shifting ground around redress for past violence. While it was initially discussed in terms of assistance to victims for specific, but already more limited, violations than had been detailed in the TJRC report, it subsequently appeared to have morphed into a potential resource for generalised reconciliation efforts under the BBI.<sup>80</sup> At the time of writing, there is no clarity about the timing of implementation for the Fund. What is more, neither of the two BBI reports makes any mention of the Fund. The second report refers to the TJRC findings only in passing when discussing “ethnic antagonism” and “shared prosperity”, stating that:

Kenyans [consulted as part of the taskforce] recommended the implementation of past Commission and Taskforce reports, including the Truth, Justice and Reconciliation Commission (TJRC) report, and the need to address historical injustices and land reforms once and for all.<sup>81</sup>

Temporal specificity, such as a concrete deadline for reparations or an implementation schedule for assistance programmes, represents a ‘point in the imagined [...] which engenders a certain degree of expectation of an outcome in temporal terms’.<sup>82</sup> Conversely, temporal uncertainty does not only encompass frequent delays and postponements,

but also sudden disorienting changes like speeding up.<sup>83</sup> This involved announcements about changes in policies as well as political campaigning that promised reparations payments. There were reports, in early 2017, that integrated IDPs in Kisii and Nyamira Counties were to be compensated, for example. However, in April 2017, Nakuru High Court barred the Government from disbursing KES 6 billion set aside for resettlement and compensation because those on the list were considered not to be genuine IDP and the process lacked transparency.<sup>84</sup> On one hand, participants welcomed that campaigning had made the TJRC and its recommendations the subject of some public debate again; on the other hand, they felt that possible compensation pay-outs were used selectively to gain political mileage, disadvantaging areas that are already not considered to be supportive of government and therefore marginalised.

The absence of certainty can heighten waiters' senses of passivity or paralysis, for instance by undermining their ability to direct their use of time toward productive income earning strategies, or by preventing them from being able to make longer-term life plans.<sup>85</sup> Such heightened passivity was reflected in participants' accounts of feeling hopeless and seeing no positive future. For example, John is a business owner who was displaced from Kiambu Country to Kisumu:

We were told, wait for two weeks, the money is coming. Nothing. So it is something that has really made us lose track. And another thing that is now killing us, so many people have died because of trauma. So many. And our children, so many children have dropped out of school. So you are carrying the trauma to the next generation. Because there is nothing that can happen, there is nothing that is coming off. We are jobless, all that we have invested went into nothing, we are hopeless. You can do nothing. So this thing has really made us to be vulnerable.<sup>86</sup>

Enforced waiting becomes oppressive specifically when it undermines subsistence or interrupts people's ability to plan for better subsistence strategies.<sup>87</sup> Most obviously, as in John's case, where businesses have been destroyed and livelihoods eroded through displacement and violence, financial compensation and alternative employment opportunities are needed. Also, a substantial number of participants still did not have adequate shelter as a result of displacement or lived in accommodation they described as temporary, conveying their senses of impermanence and instability.

There was a clear sense that the long passage of time without reparations was contributing to survivors' senses of marginalisation in relation to services, employment, and health. As one widow from Eldoret put it:

waiting has really eroded our day to day living. Because there are some who do not have anything, they are only waiting for that [KES] 200,000. And you are waiting for something that you don't know whether it will come. It becomes more difficult, and difficult and difficult.<sup>88</sup>

The argument here is not that temporal uncertainty explains the complex challenges faced by the survivors in this study. However, uncertainty about the "whether" and "how much" of reparations or assistance is entangled with other existential insecurities for people living in contexts of marginalisation, poverty and neglect and increases feelings of powerlessness and lack of agency.

Temporal uncertainty in this context is not accidental; rather it is part of a transitional justice politics in Kenya. In relation to immigration detention, it has been shown that the

state governs through uncertainty, producing insecure subjects who do not belong and, as a consequence, are deportable.<sup>89</sup> Examining the experiences of poor people in the welfare system, Auyero demonstrates that waiting manufactures compliance with state policies and turns welfare clients from citizens with rights in the state into “patients” of the state.<sup>90</sup> Applying these insights to the experiences of participants, long-term waiting for transitional justice might be understood as a way of disciplining survivors. As discussed above, the shift to a shallow form of restorative justice at the expense of accountability and retribution encourages people ‘to present themselves as victims in exchange for assistance [...] while a culture of impunity is upheld.’<sup>91</sup> To add to this, prolonged waiting creates a ‘relatively stable condition that may lead to a reclassification of a person’s status and [...] transition into a social role’<sup>92</sup>, for example as an “internally displaced person” or as a “victim”. Temporal uncertainty produces compliant and passive subjects who see reparations not as their right but as a matter of goodwill and patronage, patiently waiting for any kind of generalised support under the banner of reconciliation rather than expecting justice for past violations.

### ***The inequalities of waiting***

If uncertainty is one of the factors that exacerbated the challenges of survivors in this study, inequality is another. Sociologists of time argue that the distribution of waiting time is connected with the distribution of power. Indeed, perceptions of marginalisation were tied to inequalities in relation to reparations. This is perhaps best captured in the words of one survivor who argued that ‘it is not about what happened then. It is about how the society is treating us now.’<sup>93</sup> Sentiments about uneven provision and unequal waiting times were common across many interviews, such as the widespread sense that IDPs in Central Kenya had quickly been given houses, land and financial support to start life again:

Coming from my region [Kisumu County], you will not be compensated. If people don’t come from the town of those in power, you will get nothing. So it is selective support; it is selective compensation.<sup>94</sup>

This perception is reflected by civil society organisations that have accused the government of prioritising resources and support for survivors from the Kikuyu community,<sup>95</sup> while efforts in relation to IDPs were in fact predominantly concentrated on the Rift Valley although displacement also occurred in other provinces.<sup>96</sup>

What is more, government assistance efforts after the 07/08 elections were focused more on IDPs living in camps than so-called “returnees” and “integrated” IDPs.<sup>97</sup> The government considered about 50% of the displaced to have been “integrated” in communities. Somewhat contrary to this idea of being “integrated”, participants had been forced to live with relatives or friends and frequently lacked adequate and decent housing; many had lost their livelihoods; all were encountering a range of complex social, emotional and economic challenges. The very terminology used by Kenyan authorities to describe internally displaced people has spatial–temporal connotations: while those of certain backgrounds are referred to as IDPs, others are labelled “returnees”, with the effect of marginalising the impacts of their displacement and possibly seeking to absolve the government from its responsibilities towards them. The government also did not recognise

displaced persons who do not own land as “genuine” IDPs, which, contrary to international standards, excludes traders, landless people and the homeless.<sup>98</sup>

Interviewees’ understandings of reparations were moreover shaped by broader and long-standing experiences of inequality, injustice and marginalisation, frequently articulated by as being “left behind” and “nobody coming for us”. The TJRC itself was mandated to investigate socio-economic rights violations since independence. It found that identified land injustices rooted in colonial land policies and post-independence governments’ exclusionary economic policies and practices in the distribution of public jobs and services inflicted suffering on huge sections of society, particularly in North Eastern, Coast, Nyanza, Western and North Rift provinces.<sup>99</sup> Narratives of ongoing or repeated marginalisation – both in relation to the past and in terms of the reparations for that past – moreover reflect perceptions, particularly among Kalenjin in the Rift Valley and also among Luo, that their culture led them towards being “integrated” or “returned”, whereas ‘Kikuyu went and “cried” in the open’.<sup>100</sup> As one interviewee from Burnt Forest expressed it,

The government was a bit biased. They gave [compensation] to the Kikuyus, whereas also there were Kalenjins who suffered. Because sometimes there are people who think that when you scream loudly, you are the one who is so much offended, and there is someone who is just weeping, even though they lost [as] many things than one who is screaming.<sup>101</sup>

Studies from other post-conflict contexts, for example in South Africa and Chile, show that (the promise of) reparations can have unintended divisive effects at community levels, such as increases in family or community conflicts and disruptions of community networks, and can threaten or derail peace processes.<sup>102</sup> In one focus group in a very heterogeneous small town in Nakuru County, some women felt that ‘compensation brings problems’: ‘we are fooled by the politicians, they give us handouts and then we start seeing each other as enemies.’<sup>103</sup>

Attention to the politics of waiting additionally highlights that delays shape survivors’ engagement with the state and with Kenyans from other ethnic or political communities who are perceived to be favoured. While certain groups of victims will consider themselves as comparatively more “left behind” (irrespective of the fact that most victims of the post-election violence did not receive reparations), delays in the implementation of transitional justice are more likely to increase conflict and existing divisions, particularly in ethnically and politically diverse communities. This is because the passage of time allows senses of injustice to fester, while needs that drive people’s reparative demands (and that are often the result of past violations) remain unaddressed. The sense that a long wait can exacerbate conflict was reflected by a number of interviewees who talked about their ‘patience running out’:

The cap of patience is turning over [...] If other people in places have been compensated, and people are going to the next election and so far nothing has ever happened so, you know, that is *a brick to the future*.<sup>104</sup>

Another interviewee said that continued injustice in relation to reparations brings bitterness:

Nothing was done about it [historical injustice] And that injustice brings a lot of bitterness into our hearts. And you start to feel that I am being marginalised, there is no justice in this country and then you *start now hating everybody*.<sup>105</sup>

These comments can be understood as an expression of people's socio-economic conditions not having changed. But, given that transitional justice seeks to enforce a clear break between past and present, waiting might foster a further sense of continuity that threatens the transitional project – it is, as in the above extract, a brick to the idea of a peaceful future. Put differently, if reparations, whether conceived as compensation or as socioeconomic justice, are what helps victims move on from the past, to delay or deny them is to keep the violent past and its injustices firmly in the present. To unevenly delay the implementation of reparations programmes might then not only enhance divisions between survivors, but also undermine their willingness and ability to support the aims of transitional justice.

### Resistance to waiting

As argued above, to be waiting for reparations was frequently articulated with the inability to leave the past behind; it was 'to be paralysed' (*passim*). For some, this association of waiting with stagnation meant that, in order to move on from the past, they needed to give up waiting. About a third of participants said that they no longer expected reparations, and interviews and focus groups highlighted people's very low levels of trust in institutions of the state. As a mother of four in Kisumu put it: 'I have been able to move on. If there is a day that the government will want to compensate us, it is ok. But I have personally given up on waiting. I have literally given up.'<sup>106</sup> A woman from Cheptais described waiting as 'almost insulting': 'To me, waiting is just too much. As someone who has lost property, someone who has lost land, somebody who lost life. Someone who has lost almost everything. And now I have lost trust as well.'<sup>107</sup>

From the perspective of time and power, to refuse waiting for reparations is not only indicative of a lack of trust in government or the end of hope, however; it can be read as a rejection of the passivity and subordination of waiting:

The government was saying it will compensate us. But you know, now it is ten years down the line. [...] So *if we wait to be compensated we will spoil our hearts*. It is good for us to move forward and we are praying for one thing. We want peace which will last so that we can do our things. We can walk ourselves and we can have our peace with our neighbours, we can interact with our neighbours, *we can do many things even without compensation*.<sup>108</sup>

In contrast to the accounts of the survivors summarised earlier, there was a sense in some interviews that peace starts with themselves and that peace necessitates a rejection of the temporality of waiting:

We have many conflicts. But we will not sit and wait. We are doing it at our own level. Even in our village when we have baraza [a public meeting], when we have churches, we talk of peace.<sup>109</sup>

"Not waiting" here involves senses of ownership and agency over what happens after conflict and how sustainable peace can be achieved.

Women were involved in mostly unfunded and informal peacebuilding activities, such as developing early warning systems, community mediation and training, and support groups. Informal and unfunded peace work has recently received increasing attention, with critical peacebuilding scholars questioning the elite-driven 'liberal peace' paradigm that has excluded marginal and subaltern groups directly affected by violent conflict. This

'local turn in peacebuilding' recognises that sustainable peacebuilding involves everyday processes, and centrally focuses on the agency of local actors.<sup>110</sup> Such peace work not only constitutes a form of resistance against the dominant discourse and practices of the 'liberal peace' as MacGinty and Richmond argue,<sup>111</sup> but, in some of the communities where this research was conducted, it occurs instead of national and international actors' involvement, who were often perceived as absent.

What is more, local peacebuilding might well be particularly crucial in communities where violence regularly flares up during electoral periods, and is often perpetrated by the police.<sup>112</sup> While "waiting" for reparations for the violations during the 2007–2008 crisis, people have been experiencing ongoing communal tensions, crises and some periods of deep insecurity for the past decade, or, in some cases, since the beginning of multi-party elections in Kenya. This character of violence shapes how the politics of waiting operate and how waiting is endured, but also sometimes challenged, through local peace work. To build peace locally is a necessary survival strategy in heterogenous areas and it allows people to exercise peacebuilding agency in the context of government institutions and political elites that are deemed to be untrustworthy, corrupt or absent.

Finally, a rejection of waiting is challenging the temporality of transitional justice itself. This dominant temporality envisages that transitional justice processes lead to peaceful futures, moving survivors to the present and leaving violence relegated to the past.<sup>113</sup> The experiences with transitional justice of survivors in this study did not conform to this temporality, however. Reparations have not been implemented. What is more, there is a continuity of violence for many. While waiting for transitional justice, particularly in contexts of ongoing insecurity and extreme poverty such as many participants in this study experienced, is often endured precisely because reparative demands are driven by basic economic needs,<sup>114</sup> some resisted the power of the state and other institutions to subordinate them through the politics of waiting by "moving on" without the kind of narrow justice encompassed in Kenya's reparations framework.

## Conclusion

This study contributes to the scholarship on local experiences of transitional justice and to the recent critical debates around its temporalities, by examining the ways in which women survivors of human rights violations that qualified for reparations in Kenya understood, negotiated and resisted waiting for transitional justice. Despite a relative neglect of issues around time and power in transitional justice, this research demonstrates that temporal issues shape societies emerging from conflict and the experiences of people living in them. It finds that temporal uncertainty and temporal inequality exacerbated the challenges faced by the participants and their understanding of and engagement with transitional justice.

The function of uncertainty in relation to social control has been recognised in a number of contexts, but it has not been considered in relation to transitional justice. Here, temporal uncertainty resulted from a fundamental lack of clarity around the timing, scope and schedule of reparations and from long delays as well as occasional speeding up. It contributed to senses of passivity or paralysis and exacerbated survivors' feelings of marginalisation. Adopting a politics of waiting lens, delays in implementation can be understood as a government strategy that seeks to produce compliant victims who



accept reparations as goodwill rather than transitional justice as a right. Recent years under the Kenyatta administration have seen a shift from broader transitional justice aims to a shallow form of restorative justice, resulting in a ‘world of victims without perpetrators.’<sup>115</sup> Inequality in relation to implementation and waiting times were shown to add to people’s senses of being left behind by political elites and to their negative sentiments about those belonging to different political or ethnic group. To delay reparations exacerbates senses of continuity with the past and its violence, which transitional justice precisely intends to disrupt.

Temporal uncertainty and inequality clearly had disempowering effects on the participants in this study. Waiting for reparations is doubly harmful; it marginalises people who have already been marginalised. Gendered experiences of conflict and “peace” and the specific transitional justice needs of particular groups of people may further shape the effects of a politics of waiting. This study mostly focused on the experiences of women survivors, with some identifying as IDPs, and it is possible that victims experiencing different kinds of violations, in different regions, negotiate the politics of waiting differently. Either way, processes of political subordination are only ever partial, as became apparent in the narratives of people who did not wait. This constitutes a surprising finding, as compliance with waiting can in part be explained by socio-economic marginality. I have argued that people’s rejection of waiting can partly be read as exercising agency in relation to local peacebuilding, but also as resistance against dominant temporal frames that characterise transitional justice processes.

However, this kind of resistance against the politics of waiting should not be understood as an alternative to implementing reparations and the wider TJRC recommendations. This paper highlights that the timing of reparations is essential and that transitional justice actors should seek to reduce uncertainty about reparations. What is more, rather than time healing all wounds, senses of injustice and socio-economic marginalisation can increase if the needs that drive people’s reparative demands remain unaddressed. The Kenyan transitional justice mechanism sought to address the socio-economic issues that have driven political violence. It is unclear whether the shift towards reconciliation, such as it is encapsulated in the Building Bridges Initiative, can answer survivors’ concerns and senses of injustice.

## Notes

1. Sharp, “Emancipating Transitional Justice,” 150.
2. Musila, “Options for Transitional Justice.”
3. Lynch, *Performances of Justice*, 7.
4. Waldorf, “Anticipating the Past.”
5. Firchow, “Must Our Communities”; Miller, “Effects of Invisibility”; Walker, “Transformative Reparations.”
6. Miller, “Effects of Invisibility.”
7. Walker, “Transformative Reparations.”
8. García-Godos, “Victims’ Rights.”
9. MacDonald, “From the Ground Up.”
10. UN General Assembly Resolution 60/147 of 16 December 2005. [http://legal.un.org/avl/pdf/ha/ga\\_60-147/ga\\_60-147\\_ph\\_e.pdf](http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf)
11. Olsen, cited in Firchow and MacGinty, “Reparations and Peacebuilding”; MacDonald, “From the Ground Up.”

12. Bourdieu, *Pascalian Meditations*, 228.
13. Mueller-Hirth and Rios, "Introduction: Temporal perspectives," 3.
14. Bevernage, *History, Memory*, 15.
15. *Ibid.*, 84.
16. Hinton, "Transitional Justice Time."
17. Mueller-Hirth and Rios, "Introduction: Temporal Perspectives."
18. Mueller-Hirth, "Temporalities of Victimhood."
19. Castillejo-Cuéllar, "Historical Injuries," 48; also see Maddison and Shepherd, "Peacebuilding."
20. Robinson, "We Have Long."
21. Mueller-Hirth, "Temporalities of Victimhood."
22. Rios Oyola, "Peace Processes."
23. Buckley-Zistel and Zolkos, "Introduction."
24. Pankhurst, "What is Wrong"; Fiske and Shackel. "Gender, poverty, violence."
25. Brun, "Active Waiting"; Conlon, "Waiting: Feminist Perspectives."
26. Robins, "Towards Victim-centred"; Millar, *Ethnographic approach*; McEvoy and McGregor, "Transitional Justice"; also see Macdonald, "From the Ground Up", for a review.
27. Robins, "'To Live as'", examines the transitional justice priorities of victims of gross human rights violations in Kenya, including political violence that preceded the 07/08 PEV.
28. Robins, "Towards Victim-centred"; Vinck and Pham, "Ownership and Participation."
29. Lynch, *Performances of Justice*, 254.
30. Schwartz, "Waiting, Exchange, Power," 867.
31. Auyero, *Patients*, 24.
32. Reid, "Social Policy."
33. Rotter, "Waiting in Asylum."
34. Brun, "Active Waiting."
35. Mains, "Neoliberal Times."
36. Jeffrey and Young, "Waiting for Change."
37. Auyero, *Patients*, 2.
38. *Ibid.*, 9.
39. Reid, "Social Policy."
40. Bourdieu, *Pascalian Meditations*.
41. Mueller-Hirth, "Still Waiting."
42. Harms, "Eviction Time," 360.
43. Jeffrey and Young, "Waiting for Change."
44. Brun, "Active Waiting," 24.
45. This work was supported by the Carnegie Trust for the Universities of Scotland under Grant RIG70490.
46. As the subsequent section will discuss, the TJRC's mandate was not limited to investigating the PEV but rather considered gross human rights violations throughout Kenya's independence. However, the present study focuses only on the 2007–2008 violence.
47. Buckley-Zistel and Zolkos, "Introduction"; Rubio-Marín and de Greiff, "Women and reparations."
48. Robins, "'To Live as'."
49. Mueller, "Political Economy."
50. Truth, Justice, and Reconciliation Commission, "Final Report."
51. Robins, "'To Live as'."
52. This article cannot provide a detailed overview of Kenya's transitional justice mechanisms and political reforms since 2008. See Lynch, *Performances of Justice*; Bosire and Lynch, "Kenya's search"; Murunga, Okello, and Sjögren, "Towards New Constitutional"; Mueller, "Kenya"; Lugano, "Counter-shaming."
53. Kenya Transitional Justice Network, *Summary*. There had been earlier attempts in 2003 by Kenyan civil society to set up a truth commission that could investigate past human rights

- abuses and whose approach was adopted after the post-election violence triggered the establishment of the TJRC in 2008 (see Bosire and Lynch, “Kenya’s Search”).
54. Truth, Justice, and Reconciliation Commission, *Final Report*.
  55. Human Rights Watch, “I Just Sit”; Lynch, “Durable Solution.”
  56. As part of these initial programmes, an estimated 75,000 IDP families received a KES 10,000 start-up grant for resettlement on their farms, while 40,000 families received a KES 25,000 grant for shelter reconstruction (Kamungi, “Politics of Displacement”).
  57. Mbura, “Go Back Home.”
  58. Kamungi, “Politics of Displacement.”
  59. Mwere, “Queries Raised over Ghost IDPs Who Got Millions from State.” *Daily Nation*, 21 July 2019. <https://nation.africa/news/fake-IDPS-stole-millions-from-%20State/1056-5205300-q45nmp/index.html>
  60. Human Rights Watch, *Kenya: Elusive Justice*.
  61. “Court Delivers Justice for Several Survivors of Post-Election Sexual Violence in Kenya.” Physicians for Human Rights Press Release, 10 December 2020. <https://phr.org/news/court-delivers-justice-for-several-survivors-of-post-election-sexual-violence-in-kenya/>.
  62. Lynch, *Performances of Justice*.
  63. *Ibid.*
  64. Speech By His Excellency Hon. Uhuru Kenyatta, C.G.H., President of the Republic of Kenya and Commander In Chief of the Defence Forces during the 2019 State Of The Nation Address at Parliament Buildings, Nairobi, 4th April 2019.
  65. Onguny, “Politics Behind BBI.”
  66. Ndonga and Carranza “Can Building Bridges.” See Oguny, “Politics Behind BBI”, for wider critiques of the politics surrounding the initiative.
  67. “AG blames MPs for delay on TJRC report.” *The Standard*, 29 November 2019. <https://www.standardmedia.co.ke/kenya/article/2001351283/no-law-to-%20%20help-victims-of-past-injustices>
  68. Human Rights Watch, *Kenya: Fresh Evidence*. The elections that took place on 8 August 2017 were annulled by the Supreme Court on account of irregularities. Uhuru Kenyatta emerged as the winner of the deeply contested re-vote in October 2017.
  69. Vigh, “Crisis and Chronicity.”
  70. Human Rights Watch, “I Just Sit”; Lynch, “Durable Solution.”
  71. Rotter, “Waiting in Asylum”; Griffiths, “Out of Time.”
  72. Interview 5, 23 January 2017, Eldoret.
  73. Rotter, “Waiting in Asylum,” 97.
  74. Interview 16, 28 January 2017, Kisumu.
  75. Rotter, “Waiting in Asylum.”
  76. Griffiths, “Out of Time.”
  77. Interview 13, 25 January 2017, Cheptais.
  78. Also see Reid, “Social Policy.”
  79. Lynch, *Performances of Justice*.
  80. Speech By His Excellency Hon. Uhuru Kenyatta, C.G.H., President of the Republic of Kenya and Commander In Chief of the Defence Forces during the 2019 State Of The Nation Address at Parliament Buildings, Nairobi, 4th April 2019.
  81. Steering Committee on the Implementation of Recommendations of the Building Bridges to A United Kenya Taskforce, “Report,” 5.
  82. Rotter, “Waiting in Asylum,” 89.
  83. Auyero, *Patients*.
  84. “Court stops compensation of Sh 6bn to IDPs.” *Nairobi News*, 18 April 2017. <https://nairobi.news.nation.co.ke/news/court-stops-compensation-idps>
  85. Harms, “Eviction time”; Reid, “Social Policy.”
  86. Interview 18, 28 January 2017, Kisumu.
  87. Harms, “Eviction Time.”
  88. Interview 10, 24 January 2017, Eldoret.

89. Bosworth, cited in Turnbull, “Stuck in Middle.”
90. Auyero, *Patients*.
91. Lynch, *Performances of Justice*, 274.
92. Brun, “Active Waiting,” 23.
93. Focus group 2, 28 January 2017, Kisumu.
94. Interview 16, 28 January 2017, Kisumu.
95. Human Rights Watch, “I Just Sit.”
96. Lynch, “Durable Solution.”
97. Ibid.
98. Kamungi, “Politics of Displacement.”
99. Truth, Justice, and Reconciliation Commission, “Final Report.”
100. Lynch, “Durable Solution,” 605.
101. Interview 9, 24 January 2017, Burnt Forest.
102. On South Africa, see Fullard, *Dis-Placing Race*; on Chile, see Lira, cited in MacDonald, “From the Ground Up.”
103. Focus group 1, 22 January 2017, Molo.
104. Interview 8, 24 January 2017, Eldoret; Interview 9, 24 January 2017, Eldoret, emphasis added.
105. Interview 15, 26 January 2017, Kapenguria; emphasis added.
106. Focus group 2, 24 January 2017, Kisumu.
107. Interview 12, 25 January 2017, Cheptais.
108. Interview 10, 24 January 2017, Eldoret; emphases added.
109. Interview 9, 24 January 2017, Eldoret.
110. It goes beyond the scope of this paper to review the diverse literature on local and everyday peacebuilding; for an introduction, see Mac Ginty, “Everyday Peace”; MacGinty and Richmond, “The local turn”; Millar, “Preserving the Everyday.”
111. MacGinty and Richmond, “The Local Turn.”
112. Kenyan National Commission for Human Rights, *Silhouettes of Brutality*.
113. Bevernage, *History, Memory*.
114. Robins, “Towards Victim-centred.”
115. Lynch, “Durable Solution,” 251.

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