

Human Rights Conditions of IDPs in Kenya: The Case of 2007/8 Post Election Violence Victims in Kenya

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Abstract- Population displacement has been a global issue in the contemporary world. In Africa, Electoral violence has become one of the major cause of inter-state conflicts and the resultant internal displacements in the contemporary society. This paper seeks to examine the Government policy on population displacement; the current human-rights conditions of post-election violence as a result of 2007/8 electoral violence; and finally to find out the challenges facing the applicability of the available legal instruments in Kenya in alleviating the plight of IDPs. The used survey researches design. This paper found that although legal mechanisms are in place, they remain in paper and its implementation is wanting, the human rights conditions of IDPs are deplorable and finally, most of them are largely un-resettled.

Index Terms- internally displaced persons, policy, electoral violence, human rights

I. INTRODUCTION

There has been a drastic increase in the numbers of internally displaced persons since the end of the Cold War, with a 50-percent rise in the number of IDPs since 1989 (Internal Displacement Monitoring Center Quarterly Report, July-September 2013). The ebb and flow of conflict has resulted in some new names appearing on the list of countries facing major displacement (including Algeria, Côte d'Ivoire, DRC, Uganda, and Zimbabwe), increases in already heavily affected countries (especially Sudan, where about 2 million people have been displaced in the Darfur region, Colombia, Iraq, Somalia, and Nepal), and some improvements with the restoration of stability and resettlement of IDPs in others (Global IDP project, 2005). Since 1998, the Norwegian refugee council's internal displacement monitoring center has monitored internal displacement resulting from conflict and violence across the world. In 2011, the number of people internally displaced by these causes stood at 26.4 million (Forced migration supplement, 2012). In 2011, Internal Displacement Monitoring Center (IDCM) monitored internal displacement in 21 Sub-Saharan African countries. There were an estimated 9.7 million IDPs in these countries, representing over a third of the world's total population of internal displacement. Sudan, the Democratic Republic of Congo (DRC) and Somalia continued to be the countries with the largest internally displaced person in Africa. While governments

or associated armed groups were the main agents of displacement in the majority of situations, the role of armed opposition groups in forcing people to flee was significant. Armed criminal groups also caused displacement especially in areas where government security forces had little capacity to combat banditry.

In West Africa, disputed elections accasioned massive displacement in 2011. In Cote d'voire, after both Alessane Outtara and Laurent Gbagbo claimed victory in December 2010, a battle for national control between their respective supporters caused a four months wave of new displacement. In Nigeria, violence which broke out after the results of the presidential elections were released led to the displacement of some 65,000 people across the northern states ((UN refugee agency for internally displaced persons figures 2010-2013). In both countries, internal displacement also followed inter-communal disputes over land and access to economic and political power, and attacks by non-state armed groups.

Sudan was Africa's largest country until July 2011, when it divided into two with the independence of Southern Sudan. While the separation itself was relatively peaceful, subsequent outbreaks of violence in the South Sudan states of unity, upper Nile and Joglei, in the disputed border area of Abyei, and in Somalia 's southern kordofa and Blue Nile states, all led to large-scale displacement. Although the citizenship status of 700,000 Southerners living in Khartoum remained to be determined, the combined internally displaced population of the two still made for the largest internal displacement situation in Africa at the end of 2011 (www.unhcr.org).

DRC remained the country with most IDPs on the continent after Sudan. In Eastern Congo, attacks by armed groups and military operations against them continued to cause the displacement of tens of thousands of people in 2011.

In the 1992 and 1997 general elections respectively, Kenya witnessed violence though in lower intensity compared with 2007/2008 post-election violence. It is estimated that during the violence that ensued in 2007/8, 1,133 lives were lost, 78,254 houses were destroyed country wide and some 663,921 people were displaced. Out of the 663,921, it is estimated that about 350,000 people sought refuge in 118 camps, 313,921 were integrated amongst various communities in the country while 640 households fled to Uganda (KNHRC, 2008). It is also estimated that economic and business losses were in excess of Kshs. 100 billion. Population displacement always leaves the victims

vulnerable to human-rights abuses. It is, therefore, against the foregoing background that this study set out to examine the human rights condition of the Internally Displaced Persons as a result of 2007/8 post-election violence in Kenya.

II. STATEMENT OF THE PROBLEM

Violent conflicts in developing countries like Kenya have led to serious loss in lives, loss of properties, intercommunity squabbles, and in the end leading to IDPs and other forms of human immigrations.

The majority of IDPs resulting from the numerous displacements in Kenya have not been resettled and their lives restored. The lack of a mechanism to ensure a durable solution to protect IDPs and to restore their lives ensuring that they do not suffer any discrimination has been at the root of the failure by the government to fully resettle victims of the many cycles of displacement in Kenya since independence. The primary responsibility for protecting IDPs and all persons within their own country rests with the national authorities of the country. Moreover, it is sometimes the very governments responsible for protecting and assisting the internally displaced persons that are unable or even unwilling to do so, and in some cases, may even be directly involved in forcibly uprooting civilians. Due to inability or unwillingness of the states to contain political violence, the number of IDPs is increasing at an alarming rate in Africa. It is from this understanding that the researcher sought to find out if there are government policies in Kenya towards the plight of internally displaced persons.

III. JUSTIFICATION OF THE STUDY

The number of internally displaced persons facing humanitarian crisis is increasing at an alarming rate in sub-Saharan

Africa (IDMC, 2009), consequently affecting socio-economic development. Human rights principles are supposed to be observed and protected regardless of the situation by the governments however seem this is not the case in developing countries. The study is expected to form the basis for further research on human rights conditions of IDPs and other relevant agencies in safeguarding the human rights and alleviating the plight of the internally displaced and the emerging issues in both forced migration and international relations. The results of the study will be used by the international, regional and local actors concerned with population displacement.

IV. GOVERNMENT POLICY ON INTERNAL DISPLACEMENT

The study sought to examine the human rights conditions of the internally displaced persons as a result of 2007/8 post-election violence. In order to address this objective effectively the researcher started the inquiry by asking whether there is a government policy on internally displaced persons. Since the issue of internal displacement of the population is the responsibility State/National government (United Nations Guiding Principles on Internal Displacement).

The National Government officials from the Ministry of Interior and National Coordination, departments of County administration, and Kenya Police were required to answer the following questions: does the government have a policy on internally displaced persons?, are there still IDPs as a result of 2007/8 post-election violence?, and why has it taken such a long time before resettling them?, what is the government mandate on internally displaced, and finally do you consider to have succeeded in your mandate? The responses highlighting the issues above are presented below:

Table 15: Government policy on IDPs

	Frequency	Percentage	Valid percentage	Cumulative percentage
	GoK	GOK	GOK	GOK
Valid				100
Yes	12	100	100	100
No	00	00	00	00

Source: Research Data, 2014

From the above table, government official agree that there is a government policy on internal displacement. The IDP Act, which received Presidential assent on 31 December 2012. However the policy was enacted five years after displacement, it

is an important step of the Government to implement its obligations assumed under international and regional law [assumed with the ratification of the Great Lakes Protocol on the Protection and Assistance of Internally Displaced Persons, including the adoption and implementation of the UN Guiding Principles on Internal Displacement as well as the African Union’s Convention for the Protection and Assistance to Internally

Displaced Persons in Africa (the Kampala Convention)]. The policy builds on efforts and experiences of the Government and other stakeholders in addressing the rights and needs of internally displaced persons in its attempts to prevent future displacement.

The IDP Act largely reflects key protection principles throughout the displacement process and establishes an institutional framework for IDPs’ protection and assistance. However, little progress has been made towards its implementation – in particular the establishment of its inclusive implementation committee, the National Consultative Coordination Committee (NCCC). There has been little awareness raising or publicity about the Act with responsible authorities, the general public or IDPs.

Apart from implementation, it was opined by some that the draft IDP policy which was ratified into Act in 2012 would add less value though it certainly facilitates implementation. In this case however both instruments are essential to improve the government’s response to the needs of IDPs and the affected communities. On the other hand, (TJRC, 2013) adds by pointing the fast-tracking of the operationalization of the IDP Act and policy and the ratification of the KC are some of the recommendations on forced displacement that the TJRC included in its final report.

The Parliamentary Select Committee on IDPs, 2008 noted that the Government approach to IDPs (and resettlement in general) has been wanting. Since 2007 while the resettlement program received support from different humanitarian and civil society organizations, the program faced operational and administrative challenges, mostly owing to the government’s unwillingness and lack of political will. Government action has been characterized by political manipulation, allegations of corruption, mismanagement of IDPs funds and exclusion.

The question that this research puts to rest is that policies touching on IDPs should not be dormant. They should be implemented or else it be passed by the likely unfolding events surrounding IDPs like deaths, voluntary relocations due to neglect by government, and even being caught in another violence. The slowness of implementation may in future create room for policy reviews even before they are applied, a situation which becomes true because some policies are time bound.

In the table below, 58.3% of GOK respondents agree that there are still Internally Displaced Persons in the region under study as a result of post-election violence 2007/8 whereas 41.7% from the same source dispute such existence.

Table 16: Response on Presence of IDPs by GoK Officials

		Frequency	Percent	Valid Percent	Cumulative Percent
		Gok	Gok	GoK	GoK
Valid	Yes	7	58.3	58.3	58.3
	No	5	41.7	41.7	100.0
	Total	12	100.0	100.0	100.0

Source: Research Data, 2015

The responses from the government affirm the presence of internally displaced persons in the area under study, conforming to the Parliamentary Select Committee on the Resettlement of the Internally Displaced Persons in Kenya (PSC Report, 2012) which

affirms that there are still internally displaced persons at Yamumbi and Kamwingi camps. The researcher also visited the site and the image below depicts the presence of internally displaced persons.

Picture 5: Showing the Presence of IDPs at Kamwingi Camp 20/09/14



Source: Research Data, 2014

V. HUMAN RIGHTS CONDITION OF IDPS

Although, there is no international legal regime regulating the affairs of internally displaced persons, but the Guiding Principles on Internal Displacement identify rights and guarantees rights of IDPs during displacement and resettlement (OCHA, 1998). Just like every other human being, internally displaced people have fundamental human rights and besides, it is the responsibility of the Kenyan government to take care of her citizens.

Unlike the refugees that have fundamental rights guaranteed under international law under the 1951 Convention, 1967 Protocols and OAU 1969 Convention, there is no regime or Convention such legal regime protecting IDPs. The closest they come to that is the United Nations High Commissioner for Refugees (UNHCR) which has been given the mandate to extend humanitarian assistance to IDPs mostly on request of the country involved. But the intervention from international community could be less or absent where political violence is the cause of displacement in the country. This is due to the principle of non-intervention in Article 2(7) of the UN Charter that upholds the principle of territorial integrity of countries over human rights concerns (Barnett, 2002; Mackintosh, 2000).

As a result, the rights of IDPs can be subjected or open to abuse since there is no law or convention binding on the government or any institution involved in the case of IDPs. Hence, it has been stated that: "The importance of rapid and timely action by the government to reduce vulnerability of IDPs to rape and other forms of sexual and gender-based violence cannot be overstated. A June 2007 report by the Internal Displacement Monitoring Centre of the Norwegian Refugee Council to the Committee on the Elimination of Discrimination against Women noted that the rights of Kenya's women and girl IDPs were being violated, although they are protected under CEDAW- which Kenya ratified in 1984. And a UN-NGO report released in March 2008 highlighted the dramatic increase in rape and sexual abuse during and since post-election violence" (Otieno, 2008).

This objective endeavored to find out the current Human Rights situations of IDPs. The data of this objective was gathered through an interview schedule and observation on the site and complimented by taking photos.

Interview Schedule for Internally Displaced Persons on Human Rights Issues

The researcher interviewed internally displaced persons in two camps i.e Kamwingi and Yamumbi camps which have 68 and 23 households respectively. According to the report of the Select Committee on the Resettlement of Internally Displaced Persons, April 17, 2012 Kamwingi IDPs owned land in Keiyo but they had refused to go back to their farms owing to security concerns. They had requested for alternative settlement. Saka saka IDPs who are now at the Kenya police post plot at Yamumbi are 33 households (not recognized by Government) were squatters evicted from plot 10, the prisons farm. The interview schedule was majorly dealing with the current human rights condition, the main concern was on the following variables:

Shelter

Article 43(1) (b) of the Kenyan constitution (2010), and Article 9 (2b) Kampala Convention on refugees and internally displaced provides for the right to accessible and adequate housing. However, despite of the above legal instruments, internally displaced persons are still living on tents/ camps which are worn out. These tents were distributed to them by the Red Cross society during the emergency period in 2007/2008 which was intended to serve for a short time but they have continued using them for almost seven years after displacement. The entire respondents lamented that their condition is worse than that of animals as the tent can no longer protect them from adverse weather conditions and are surviving under the grace of God. They also reported that the tents are small in size compared to the number of persons in the households.

Most IDPs admitted that they were businessmen who were renting premises for their businesses before post-election violence. That is why they did not benefit from government programme of Operation Rudi Nyumbani since they had nowhere to call home, they were not also considered in house construction programme since they didn't own land. This issue was one of the recommendations by the parliamentary select committee on IDPs (2012) requiring the Government to ensure the provision of humanitarian assistance to all IDPs and ensure that each IDP has shelter and the current food rations cover all of them on a regular monthly basis until they are all resettled.

Picture showing Shelter Status of IDPs at Kamwingi Camp



Source: Researcher Data 29/10/2014

The shelter situations in both camps are the same. The internally displaced in these two camps have been renamed fake IDPs by the government.

Health and sanitation

Article 43(1) (a and b) of the Constitution of Kenya provides for the right to the highest attainable standard of health (which includes the right to health care services including reproductive care) and reasonable standards of sanitation. Article 42 provides for the right to a clean and healthy environment. Article 7(5c) Kampala Convention, Principle 18 of the UN Guiding Principles on Internal Displacement of 1998, pg 34 of the IDP Policy Framework.

Article 43(1)(d) of the Constitution of Kenya provides for clean and safe water in adequate quantities. Respondent X claimed that the piped water which was connected by Red Cross society to serve them during hostilities was disconnected by the government. In addition the IDPs live in Kenya police land where there is piped water but they can't access, they are forced to depend on neighbors and boreholes whose water are not safe for use.

Health facilities

Due to harsh environment the IDPs are exposed to health risks. Most of the respondents cited malaria, typhoid and pneumonia as the most common diseases affecting them. When they visit the health facilities they are required to pay for the services irrespective of their IDP status. They have been depending on well-wishers and herbal medicine for treatment.

Water

Water is an essential commodity in human life therefore, an important basic need. Among the essentials for IDPs would include food, shelter, and clothing where water is a necessity. In relation to this, the chairperson of Yamumbi camp noted that the piped water was cut off immediately after resettlement exercise (Operation Rudi Nyumbani) way back in 2010. Since then they have been relying on neighbours for piped water for drinking which some time they have been denied. The access to piped water at the Yamumbi Police Post has been denied by the officers.

Picture showing the Living Environment of the IDPs at Yamumbi Camp.



Source: Research Data, 2014

Security

Security provision is the mandate the government. IDP Policy Framework Pg 22,24,31 and Article 29 of the Constitution of Kenya provides for freedom and security of the person. Physical security was confirmed by those interviewed that there is calmness in the area. The government after post-election violence beefed-up security in the region by constructing more police posts in the area. For instance, Yamumbi, Kiambaa, Kesses, Langas police posts among others.

Education

Article 43(1)(f) of the Constitution of Kenya enshrines the right to education. Same to Principle 23 of the UN Guiding Principles on Internal Displacement of 1998. Though the government has provided free and compulsory primary education, most IDPs children cannot access. Out of the 12 interviewed IDPs only 17% have been able to educate their children to standard eight while non-had been able to take their children to secondary schools. This means that 83% of the IDPs children cannot access primary education. The parents cited that though there’s free primary education, they can’t basic needs not only for their children but also for themselves. This means that the constitutional rights of these children have been infringed.

Food

Pursuant to Article 43(1)(c) of the Constitution of Kenya which guarantees the right to be free from hunger, and to adequate food of acceptable quality. The IDPs in both camps confirmed that they last received food rations from the government in 2010 when the main camp at the show ground was officially closed. Thereafter they have been surviving on their own. Their means for survival has been manual labour. Those living in Yamumbi camp have cultivated maize on Kenya police plot where they are residing but yield are not forthcoming since the plated uncertified seeds and lack of fertilizer.

Table 13: Challenges faced by GOK in securing HR for IDPs

	Responses		Percent of Cases	
	N	Percent		
Challenges HR. observance	Insufficient funds	4	33.3%	44.4%
	In genuine IDPs	5	41.7%	55.6%
	Lack of political will	1	8.3%	11.1%
	Poor road transport	1	8.3%	11.1%
	Shortage of N.P.I.G	1	8.3%	11.1%
Total		12	100.0%	133.3%

Source: Research data, 2014

Of the respondents, 4(33.3%) cited that the challenge was insufficient funds, 5(41.7) ghost IDPs, lack of political will, poor road transport and shortage of N.P.I.G each had one response (8.7%).

From the respondents, the research concurs with the challenge that the funds were insufficient. It has been cited in this work that there was mismanagement of funds by the then provincial administration even though the allocation was inadequate.

Insufficient funds

This challenge is supported by the parliamentary report on IDPs which states that, “The National Humanitarian Fund for mitigation of effects and resettlement of victims of 2007 violence was allocated only Kshs.419.28 million in 2011/2012 which is not sufficient. The Committee felt that failure to implement and fully operationalize the Department of Mitigation and Resettlement and the National Humanitarian Fund for mitigation of effects and resettlement of victims of 2007 violence in the Ministry of Special Programmes were the main reason why the Government’s response to the plight of IDPs was haphazard and unstructured”.

Ghost IDPs

This problem originates from initial profiling of IDPs which was done by the then provincial administration which was blamed as having played a significant role in registering fake IDPs to the disadvantage of the genuine IDPs (Parliamentary Select Committee on IDPs, 2012). In most cases, the IDPs recommended the removal of District Commissioners (DCs), District Officers (Dos) and Chiefs in the vetting of IDPs (Kamungi and M.Kilop, 2008).

The researcher tends to differ with this issue in that seven years since the PEV there are still IDPs living in tents as observed. In the normal situations no one is willing to live in such conditions.

Lack of political will

This challenge is supported by the fact there are internally displaced persons who are still in camps seven years after PEV. Despite the enactment of the various policies to address the plight of internally displaced population, the policies are just on papers. Even those accused of embezzlement of funds meant for resettlement and compensation have not yet been brought to book. If the government was serious about the issue the suspects could have been brought to book.

VI. POOR ROAD TRANSPORT

The problem of transportation is supported other non- governmental organizations and confirmed by Kenya Red Cross preliminary report of 2008 January which states that, “the KRCS will conduct emergency distribution of relief items once the road network is accessible”. This shows that there were other areas which were not assessable. This problem was the least and could have been prompted by the agency of delivering the assistance.

In conclusion the human rights condition of IDPs in the camps is wanting. This is supported by the office of the High Commissioner for Human Rights (OHCHR) which found that the protection and assistance provided to be “largely inadequate”, compromising IDP’s basic rights to shelter, food, water and sanitation and their access to basic services such as schools or medical clinics (OHCHR, February 2012). The delivery of essentials to the victims was also hampered to a larger extent by lack of political will-inadequate funding and profiling of the victims.

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