

**THE ROLE OF KENYA GOVERNMENT IN  
ADMINISTRATION OF JUSTICE TO POST ELECTION  
VIOLENCE VICTIMS OF 2007-2008 IN KENYA: THE  
DILEMMA OF INTERNALLY DISPLACED PERSONS  
(IDPS) STILL RESIDING IN CAMPS**

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Abstract

The phenomenon of Internally Displaced Persons has been a common occurrence in different parts of the world particularly in Africa where political differences have led to thousands of people running away from their homes to become refugees either within or outside their respective countries. The genocide that took place in Rwanda in 1994 and also in the Democratic Republic of Congo up to today puts to question the levels at which human rights are safeguarded. Here in Kenya, the issue of displaced persons goes back to 1895; this is when the British imperialists and colonizers started alienating, abusing and even enslaving Kenyans. They occupied the most fertile land and confined Africans in reserves (villages) in disregard and in violation of their rights. Human rights are legal entitlements which every person possesses by virtue of being human. These rights are universal and apply to everyone, regardless of gender or social status. They are protected by the constitutions and domestic laws of most countries of the world including that of Kenya. The paper focused on how the Kenya government has responded to the violation of human rights in the Rift Valley region with special emphasis on Molo District. Since 1987, there has been recurrence of violence in this District which has been caused mostly by the tension between the two groups of people namely, the Kikuyu and Kalenjin. In most cases, the Kikuyu have been perceived as intruders and as replica of the early colonizers who had occupied the Kalenjin land. Hence, the study evaluated how the Kenya government has done in

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the administration of justice to the post election violence victims, particularly those internally displaced from Molo and its environs. The paper was mainly based on Karl Marx Dialectical Materialism thus arousing the consciousnesses of Kenyans on the importance of human rights so as to enhance peaceful coexistence among various communities.

## Introduction

Displacement of people has been occurring in different parts of the world particularly here in Africa as evident in Rwanda, Congo, Somalia and Kenya. This problem has also been witnessed Bosnia, Latvia and recently in the Arab world due to unrest and political oppression. The genesis of displacement in Kenya dates back to the early colonial period when the whites alienated the most fertile land and confined Africans into reserves (villages). In these reserves there was human suffering arising due to congestion, overstocking and restricted movement of the Kenyan people. In most cases, the African was perceived as an inferior being that did not deserve any respect at all; therefore their rights were persistently violated. They were also divided along tribal lines which literally made them to hate one another. Internally Displaced Persons (IDPs) has therefore become a common occurrence.

Displacement of people in violence prone regions of the world in general and Kenya in particular is unethical, unlawful and inhuman as it undermines and violates the sanctity of life and dignity of the IDPS. After independence, in 1963 the Kenya government established various systems that would enable Africans buy white owned farms through a cheap loans scheme. The land was subdivided into smaller units by farm buying companies and sold to individuals or allocated to people. These farms became the source of serious conflict between indigenous landless people of the area and the new comers. When the British colonizers left Kenya in the eve of independence, most Africans thought of a new dawn but it turned out to be a nightmare for many (Akiwumi, 1998). According to the Human Rights Watch (1993), the Kenya government has been characterized by political patronage, killings, detentions and restriction on freedom of speech and association. The same government has also been accused of political murders of Pio Gama Pinto (1965), Tom Mboya (1969), Josiah Mwangi Kariuki (1975) and Robert Ouko (1991). These political leaders were at the fore front in criticizing actions by Kenya Government that deemed to

amount to abuse of human rights but however they were silenced by violation of their right to life through political assassinations. Recently, the level of human rights abuses, corruption and patronage has been on the increase. The Kenya Government intensified efforts to consolidate power. Among other steps, the constitution was amended to make the Kenya African National Union (KANU) the sole political party by law in June 1982. The change of the constitution, led to a frozen democratic space which left the citizens to be dissatisfied with the ruling class which led to a coup. The human rights situation deteriorated steadily accompanied by decreased accountability for government actions.

According to the Kiliku Report (1992) ethnic clashes started in Miteitei farm in Tinderet Division of Nandi District, Rift Valley. The clashes started on the night of 29<sup>th</sup> October 1991 and spread out to the rest of Tinderet division. They lasted until 1992 all because of the perceived allegations that those from outside Nandi particularly the Kikuyu were foreigners and new colonizers like the former British. Evidence collected by Kenya National Commission of Human Rights (KNCHR) indicated that Molo experienced ethnic violence in 1992 and 1997.

It showed the pattern of attacks was Kalenjin raiders attacking and killing members of Kikuyu community, stealing their domestic animals and other private property and burning their houses. The Kikuyu in turn organized themselves and retaliated thus killing the Kalenjin and also burning their houses as well. Hassan Noor, former Provincial Commissioner (PC) of Rift Valley contended that elections had been used as an excuse since 1992 to cause chaos mainly arising over land in the region. The Chairman of the Law Society of Kenya (LSK) Rift Valley Chapter Gordon Ogola argued that land was not the cause of the conflict but voting pattern. Ogola further says the Kalenjin saw Kikuyu voting against their wishes.

They followed the voting patterns of their tribesmen elsewhere across Kenya thus escalating animosity in a region they had been perceived as foreigners. The above argument is morally unacceptable as it infringes on one's democratic rights to vote for any candidate of their choice. Ogola added that the other cause was the allocation of Mau forest to well connected individuals at the expense of Ogiek community, who viewed the western Mau forest to be their ancestral home (Waki Report, 2008). The Kiliku Report documented 779 unlawful deaths and 654 injuries in the districts which were subject of inquiry. 50,000 people were also displaced according to the report during the post election violence of 1991. (Waki Report 2008).

## Methodology

A total of 200 IDPs in the area were selected as a sample through simple random sampling in 7 IDP camps. The study was conducted in the following IDP camps: Kalukia, Kamungei, Sertunok, Segutiet, Kaptich, Cheseon and Sururu. The sample was drawn from five ethnic groups for the study to be representative as much as possible. It included both adults and children. According to Mugenda and Mugenda (2003) a sample of 5% to 30% of accessible population is representative thus the sample of the study was representative. The purpose of sampling is to secure a representative group which will enable the researcher to gain information about the population.

The study area had a target population of 5000 IDPs as per the records of the District Commissioner of Molo but the accessible population was 3,750 IDPs as some of them had already been assimilated within the population in town either staying with relatives or renting rooms. The study used 200 IDPs in Molo. The reason for the selection of this region was not only because it is cosmopolitan but the population has experienced post election chaos since 1992. Their rights have been persistently abused since the introduction of multi-partyism. The study was not only limited to Molo but the entire Rift Valley for it to be representative.

To get the data required in this study, direct personal interviews were the main instrument for data collection. It was reinforced by direct observation. Field notes were used to record data and tape recording. The questions were framed in a way that relevant information was acquired so as to understand the historical and ethnic background of clashes. All questions in the instruments were scored on a non negative 5-point Likert type scale based on the extent to which the respondents agreed with the statements. The 5 point scale ranged from Strongly Disagree (SD), Disagree (D), Undecided (U), Agree (A) and Strongly Agree (SA).

The data was analyzed qualitatively and quantitatively by describing the findings of the study and using SPSS version 11 to analyze the data attained. Reactions from IDPs were explained and described using Karl Marx critique of law in a class society. SPSS version 11 was used to analyze the data attained. It was relevant to the study as it made difficult analysis easier through advances in usability and data access. It quickly analyses volumes of social science data gathered through various methods of research.

**Results and Discussions**

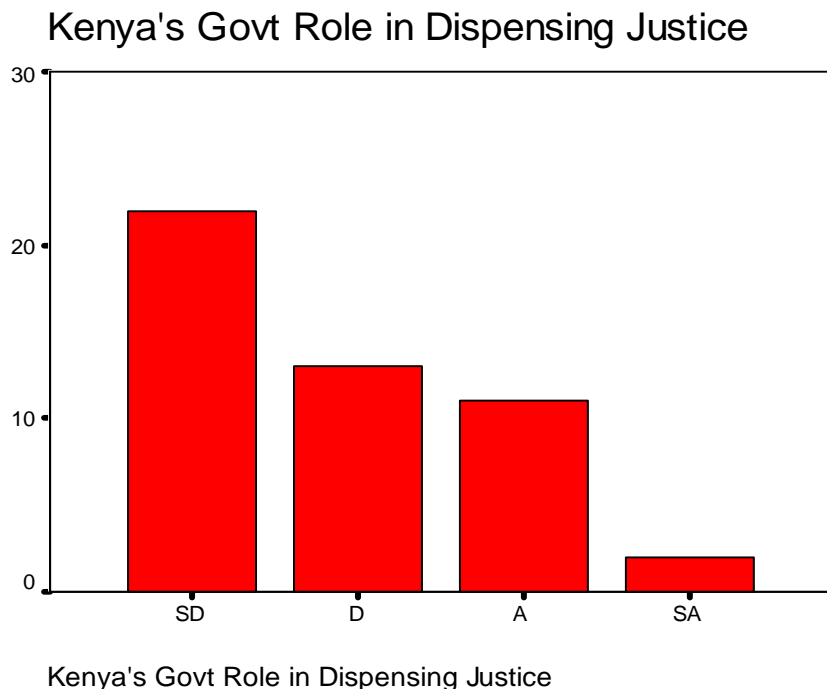
**Results**

Out of the 200 IDPs that were interviewed only 182 responded to the questions that tried to examine if the government had accorded justice to the IDPs. The results are summarized in the following table and bar graph.

**Table 1: Role of Kenya Government in Administering Justice**

		<b>Frequen</b>	<b>cy</b>	<b>Percent</b>	<b>Valid</b>	<b>Percent</b>	<b>Cumulativ</b>	<b>e Percent</b>
Valid	SD	83		41.5	45.8		45.8	
	D	49		24.5	27.1		72.9	
	A	42		20.8	22.9		95.8	
	SA	8		3.8	4.2		100.0	
	Total	182		90.6	100.0			
Missin	System	18		9.4				
g								
<b>Total</b>		<b>200</b>		<b>100.0</b>				

Figure 1: Kenya's Government Role in Dispensing Justice



The results indicate that 41.5 % strongly disagreed that the Kenya government has administered justice to the IDPs while 24.5% disagreed, 20.8% agreed and 9.4% did not respond to the questions that sought answers on the role of government in ensuring attainment of justice among the displaced persons.

### Discussion

The findings of the study revealed that the Kenya government has not done anything to ensure that the IDPs have attained justice. For one to be able to enjoy fundamental rights and freedoms that are entrenched in the constitution one should be able to seek legal redress if his/her constitutional rights have been infringed. In the case of IDPs their constitutional rights were violated yet the Kenya government has not been able to address the historical injustices. Molo since 1991 has experienced a series of violence in which politicians have been blamed for fueling animosity among the communities. Some of these leaders are known yet the Kenya government has been unable to bring them before a court of law. To the IDPs, the rule of law is not being exercised by the judiciary thus undermining their efforts to seek justice. Kenya as a



democratic country implies that it respects and is governed by the rule of law. The rule of law implies that all persons regardless of ethnic background, political conviction, religion, economic status are equal before the law. Law is not supposed to employ double standards and should apply to everyone. Rule of law entails:

1. Judiciary must work without favour or fear in dispensing justice
2. Equality before the law
3. Separation of powers of the three arms of the government
4. Excising of powers only stipulated by the law

Joseph 39 years argues that these politicians have been enjoying protection from the government. In some instances they were summoned by the police to write statements and then they were released immediately. This clearly shows the culture of impunity that has been embraced by the political class. Impunity means the exemption from punishment. In the international law of human rights it refers to the failure to bring perpetrators of human rights violation to justice and as such itself constitutes denial of the victims' right to justice and redress. Impunity is especially common in countries that lack a tradition of rule of law, suffer from corruption or that have entrenched systems of patronage or where the judiciary is weak or members of security forces are protected by special jurisdiction or immunities.

The amended set of principles for the protection and promotion of human rights through action to combat impunity submitted to United Nations Commission on Human Rights (UNCHR) defines impunity as the impossibility de jure or de facto of bringing the perpetrators of violations to account whether in criminal, civil, administrative or disciplinary proceedings since they are not subject to any inquiry that might lead to their being accused, arrested, tried and if found guilty sentenced to appropriate penalties and to making reparations to their victims.(UNHCR)

According to Caleb 43 years if the Kenya government was concerned with the welfare of the IDPs they could not have been in the IDP camps four years down the line. According to him, if the government has not been able to resettle the IDPs it cannot be possible for them to be compensated what they lost during the poll chaos. He says that even the current changes in the

judiciary will amount to nothing because it is like putting clean water on a container that already has muddy water...this implies that all the water will be dirty. This shows the extent in which the IDPs have lost confidence in the judiciary thus making it a stumbling block to attainment of justice.

The essence of administering justice is to punish offenders, award victims, settle disputes, offer security, strengthen the civil society, protect private and individual property, provide orderliness in the society, allocate values and protect and guarantee fundamental rights and freedoms. According to Beth 70 years no IDP has gotten any assistance from the government. The old people do not have enough energy to do kibarua's (manual work) thus making difficult for them to fend for themselves.

Even the tents that the government gave the IDPs long time ago are dilapidated. According to her, the Kenya government is only for those who are rich because when Ocampo came with the list famously known as Ocampo six the vice president was travelling all over to seek support from foreign countries so that the suspects can be tried locally...because they know the Kenyan judiciary is weak and they can interfere with the outcome of the case. According to her, it is only God who can assist the IDPs because the leaders whom they elected have failed in speeding the process of attainment of justice.

### Conclusion

Even though the IDPS argue that they have not been given support by the government of Kenya. he government has played n important role in resettling them and administering psychological services. To date, the Government has, through the responsible line ministries, allocated Ksh7.977 billion (approximately US\$100 million) towards the resettlement of IDPs. Also, as will be broken down below, in the 2009/10 and 2010/11 financial years, the Treasury released Ksh1.4 billion and Ksh1.5 billion respectively, a total of Ksh2.9 billion, to the Ministry of Lands to buy land. In the 2007/08 financial year, the Government, through the Ministry of Special Programmes, allocatedKsh1.25 billion for mitigation and resettlement of IDPs. This money was for ex-gratia payment to IDPs (Ksh1 billion) and Ksh250 million for the establishment of a department to deal with the IDP matters. Each IDP household was entitled



to Ksh10,000 as a start up fund, while each family whose house was destroyed was to be assisted with Ksh25,000 for reconstruction.

Further, in the 2008/09 financial year, the Government, through the Ministry of Special Programmes, allocated Ksh1.035 billion for mitigation and resettlement of IDPs – Ksh950 million as ex-gratia payment for IDPs and Ksh85 million for operations and maintenance by the concerned department. In the 2009/10 financial year, the Government, through the ministries of Lands and Special Programmes, gave Ksh3.005 billion to buy land for resettlement and construction of IDP houses in Molo and Uasin Gishu. The Ministry of Lands received Ksh1.4 billion to buy land, while the Ministry of Special Programmes got the remaining Ksh1.605 billion – Ksh936.8 million for construction of IDP houses, Ksh640 million ex-gratia payment and Ksh28.3 million for operations and maintenance by the concerned department.

In the 2010/11 financial year, the Government, through the ministries of Lands and Special Programmes, allocated Ksh2.687 billion for IDP-related activities. Of this amount, the Ministry of Lands received Ksh1.5 billion to buy land for resettlement of IDPs. The Ministry of Special Programmes got the remaining Ksh1.187 billion – Ksh1.013 billion for construction of IDP houses in Molo and Uasin Gishu, Ksh148.2 million for IDP ex-gratia payment and Ksh25.9 million for operations and maintenance by the concerned department. Of the 350,000 IDPs who had sought refuge in 118 camps, a vast majority have been resettled or returned to their farms, leaving 6,802 households (approx. 30,000 people) not yet settled. Currently, efforts are in top gear to seek land on which to settle them and for houses to be built for 2,593 families settled in Turkana District. To resettle landless IDPs, 20,000 acres are required, which translates to three acres a household. Already, the Government, through the Ministry of Lands, has bought 4,055.3 acres at a cost of Ksh828,759,160 in Rongai, Molo, Kuresoi, Ol Kalou and Laikipia West and a total of 1,082 families so far settled.

For the construction of IDP houses, the Government allocated Ksh936.8 million in the 2009/10 financial year and Ksh1.013 billion in the 2010/11 fiscal year, totaling Ksh1.949 billion. As a result, tens of thousands of new houses have been built. To pay ex-gratia payment to IDPs in form of Ksh10,000 start up fund and Ksh25,000 for reconstruction of destroyed houses, Ksh2.7382 billion had been allocated – Ksh1 billion in the 2007/08 financial

year, Ksh950 million in 2008/09, Ksh640 million in 2009/10 and Ksh148.2 million in 2010/11. The government, through the Ministry of Finance, is fully committed to continue to provide more resources until all IDPs have been resettled. Indeed, the Kenya Government, provided a revised budget of an additional Ksh1.823,716,000 of which Ksh1 billion was for compensation of the people evicted from the Maasai Mau Forest and Sh823.716 million for ex-gratia for IDPs. By the end of the 2010/2011 financial year, therefore, the Government had spent more than Ksh9.8 billion (US\$122.5 million) on IDPs. As is evident, the Ministry of Finance has played a crucial role and remains committed to play its part now and in the future until the last IDP has been resettled and has a place to call home.

Even though the IDPs are saying that the Kenya government has not assisted them, it has come up with psycho-social programs despite having little provision for mental health. According to Dr. David Kiima, director of Mental Health in Kenya, there are only 50 active psychiatrists in Kenya to serve a population of more than 30 million: a ration of one psychiatrist for every 500,000 people. Only a third of these psychiatrists work in the public sector, the rest only take on private patients at great expense. The Kenyan budget allocates less than 10 per cent of financial resources to the health sector. Out of this allocation, the ministries of health jointly allocate less than 0.01 per cent of their expenditure to mental health services countrywide.

The Kenya Red Cross Society (KRCS) was appointed by the government as the lead coordinating agency for response to the emergency. KRCS organized psychosocial interventions to support victims of the post-election violence, especially IDPs, in coping with the trauma. Activities centered on psychological support, First Aid, group debriefing sessions, referrals for specialized care or treatment and support in accessing basic needs. Outreach programs were also conducted in institutions of learning and Orphans and Vulnerable Children centers that hosted displaced children.

KRCS, in collaboration with other stakeholders such as the UN Population Fund, UN Refugee Agency, the government of Kenya, and Liverpool VCT (a Kenyan HIV care and treatment NGO), conducted training sessions in designated areas (among them Kisii, Kisumu, Eldoret, Nakuru and Nairobi), to build the local capacity in addressing gender-based violence issues in IDP camps. Counseling services were provided by counselors drawn from the Nairobi Women's

Hospital and Ministry of Health. International Organization for Migration (IOM), in collaboration with the Ministry of Health's Department of Mental Health, KRCS and other agencies, continues to provide psychosocial support to IDPs. This includes direct counseling, capacity-building in psychosocial support and trauma counseling including specialized child therapy trainings, and the establishment of counseling, and recreation centers in the camps. IOM will also build capacity of the local communities by training community members in counseling and psychosocial support to provide sustainability to the psychosocial program.

UNICEF, in collaboration with Trans-Cultural Psycho-Social Organisation, KRCS, and a number of nongovernmental and community-based organizations, created a program to ensure provision of community-based psycho-social support, through training of community-based service providers, including teachers (in cooperation with education). UNICEF is establishing child-friendly spaces/safe spaces to address recreation and psycho-social needs. This program was designed to benefit 250,000 displaced children and women and members of neighboring affected communities. Nairobi Women's Hospital is home to a Gender-based Violence Center that offers free counseling services and support groups to survivors of rape and domestic violence. The center provides free post-exposure prophylaxis to survivors as well as HIV care and treatment to those individuals who are HIV-positive.

### **Recommendation**

The paper recommends there is a need for clearly stipulated legal frame work not only to protect human rights but to ensure the Kenya government complies. In other words the law should bind all State organs and all persons. In interpreting the law, a court, tribunal or other authority shall promote the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and the spirit, purport and objects of the law. The law should restructure the judicial system so as to be effective and restore confidence for the IDPs for justice to be attained

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