



ELUSIVE JUSTICE

A STATUS REPORT ON VICTIMS OF
2007—2008 POST-ELECTION VIOLENCE IN KENYA



The Kenyan Section of the
International Commission of Jurists



KENYA HUMAN RIGHTS
COMMISSION

ELUSIVE JUSTICE

A status report on victims of
2007—2008 post-election
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COVER PICTURE: Child-headed households in Maua IDP Camp, Nyahururu.

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About the Kenyan Section of the International Commission of Jurists

ICJ Kenya advances the legal protection and enforcement of human rights, respect for the rule of law and entrenching democracy in Kenya, within the East Africa region and internationally in Africa and the world. It is a fully-fledged, committed national section of the International Commission of Jurists in Geneva. Registered since 1974 as a national society of human rights lawyers, ICJ Kenya is a non-governmental, not-for-profit organisation that since 1990 has worked to improve democratisation and good governance under the rule of law in Kenya and Africa. Our broad objectives directed at this triple heritage include:

- To promote, enforce and protect human rights under the rule of law;
- Advance the independence of the judiciary and the legal profession and the fair administration of justice in Africa under international standards;
- Promote universal adoption of international standards of civil, political, economic, social and cultural rights;
- Foster increased access to effective and efficient judiciaries in Africa that are responsive to society's needs; and
- Encourage the new or emergent constitutionalism in Africa that supports the rule of law and democratic change and cherishes the respect for human dignity at all times.

About KHRC

The Kenya Human Rights Commission (KHRC) was founded in 1992 and registered in Kenya in 1994 as a national level Non-Governmental Organisation (NGO). Throughout its existence, the core agenda of the Commission has been campaigning for the entrenchment of a human rights and democratic culture in Kenya through monitoring, documenting and publicising rights violations.

The mission of the KHRC is to work towards the respect, protection and promotion of all human rights for all individuals and groups. This is achieved through multiple strategies and actions aimed at entrenching human rights and democratic values in Kenya by facilitating and supporting individuals, communities and groups to claim and defend their rights and holding state and non-state actors accountable for the protection and respect of all human rights for all Kenyans. The vision of the KHRC is a Kenya that respects, protects and promotes human rights and democratic values.

The KHRC also works at community level with 27 human rights networks (HURINETS) across Kenya and strives to link community, national and international human rights concerns. KHRC's strategic plan aims to 'Secure civic-driven, accountable and human rights-centred governance'

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Further, we do warmly acknowledge the individual victims, victims' groups and their leaders in various parts of this Country and other human rights

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Executive Summary

This report is a joint project of the Kenya Human Rights Commission (KHRC) and the Kenyan Section of the International Commission of Jurists (ICJ Kenya) to review the current status of the victims of the 2007/2008 Post Election Violence (PEV) in Kenya. The research project was informed by the concern that whereas there have been attempts by multiple groups in Kenya to assist in the identification, processing and registration of the victims, the efforts have not been comprehensive and holistic. This report is based on data collected through interviews with individual victims, representatives of victims groups and key informants at more than 200 sites across Kenya during the months of July—September 2011. More than 800 respondents participated in the research.

In brief, field research with victims revealed that the Government of Kenya has failed to meet its obligations to victims of 2007—2008 violence in substantial ways. Our research mirrors the findings of other documentation efforts carried out by Kenyan and international human rights organizations.

While victims of the post-election violence experienced killings, grievous injury, sexual and gender based violence, as well as forced displacement, the Government of Kenya's efforts to

address the needs of victims have focused almost exclusively on displacement. Those whose family members were killed, who lost substantial productive capacity due to injury, and those who experienced sexual and gender-based violence have seen virtually no targeted response to their violations. Some victims reported that they had received medical care paid for by the Government, but many also reported that they had never received any assistance. Victims of sexual and gender based violence reported no access to psychosocial support, along with many other challenges such as access to anti-retroviral treatments.

Of course the violations that victims experience often overlap, so some victims have received assistance related to displacement but not related to the other violations they experienced. However, many victims reported that the Government's efforts at addressing displacement, most notably through an initiative termed Operation Rudi Nyumbani, were unorganized, not transparent, and left many victims out. Indeed, the Government's own statements in this regard, four years after the violence, recognize that many victims still need services in the form of resettlement and home rebuilding assistance. Virtually all victims interviewed during the field

research indicated their strong need for livelihood assistance and compensation for their losses. No comprehensive program to compensate victims has been undertaken and livelihood assistance, such as retraining and provision of farm inputs, has been minimal in comparison to the need.

As a result of these Government failures to adequately address the needs of the displaced, many families remain homeless or in very tenuous living situations within host communities or with family members. The needs of these individuals, especially those in camp settings around the nation, demand immediate intervention in order to prevent needless deaths and other negative consequences. The displaced persons interviewed for this report are living under the shadow of multiple ongoing social and economic rights violations; they are without adequate shelter, without adequate food and water, without decent sanitation, without access to health care and work opportunities, and they report discriminatory treatment in schools, local governance and other public spaces. On top of this, field research and other human rights reports demonstrate that corruption has been a major concern in addressing the needs of the displaced. Officials entrusted with the responsibility to provide critical support to these most vulnerable of people, have often utterly failed to do so and acted purely in their own interests.

This report also highlights the fact that apart from failing to meet its obligations to provide basic assistance to all victims to ensure that their rights are protected and that they can live in dignity, the

Government of Kenya has also failed to provide justice and reparation to victims of the crimes committed during the violence. The rights to know the truth about violations, to justice, and to reparation are basic rights of all victims of gross violations of human rights. Despite the establishment of a Truth, Justice and Reconciliation Commission, no domestic justice mechanism has been established to hold perpetrators of crimes accountable. Moreover, no comprehensive reparations scheme has yet been established. It is anticipated that the Truth, Justice and Reconciliation Commission will make recommendations in this regard, but given extensive credibility, leadership, and logistical problems at the Commission it is unclear how effective its recommendations in this regard will be. The political will to implement any recommendations also remains a serious concern.

In conclusion, this report makes substantial recommendations to the Government and to other actors to ensure that the needs of victims, who have now been neglected for four years, are finally addressed in a substantive way. The main recommendation is that the Government of Kenya must take seriously its obligations under the Constitution and treaties to which it is a State Party to respect, protect, and fulfil the rights of victims of post-election violence. These instruments provide a clear roadmap for the Government to follow and can be used as a benchmark for all interested parties in monitoring Government actions.

As Kenya moves toward elections in 2013, it is our hope that this report will serve as a reminder of

the suffering of victims from many elections past and that it demands an answer from the Government of Kenya to rise to meet its obligations to its citizens.

List of Abbreviations

CBO	Community-Based Organization
CIPEV	Commission of Inquiry Into Post-election Violence
CSO	Civil Society Organization
DC	District Commissioner
HIV	Human Immunodeficiency Virus
ICC	International Criminal Court
ICJ Kenya	Kenyan Section of the International Commission of Jurists
IDP	Internally Displaced Persons
KHRC	Kenya Human Rights Commission
KSh.	Kenyan shillings
OHCHR	Office of the High Commissioner for Human Rights
PEV	Post-Election Violence
SGBV	Sexual and Gender-Based Violence
TJRC	Truth, Justice and Reconciliation Commission
UN	United Nations
UNDP	United Nations Development Programme

A. About this Report

This report is a joint project of the Kenya Human Rights Commission (KHRC) and the Kenyan Section of the International Commission of Jurists (ICJ Kenya) to review the current status of the victims of the 2007/2008 Post Election Violence (PEV) in Kenya. Victims for the purpose of this report included those who had experienced the killing of a family member, those who suffered grievous injuries, those who experienced sexual or gender-based violence, and victims of forced displacement. These categories of victim frequently overlapped, with many people experiencing multiple harms. Among victims of displacement, the research team sought out victims who were living in formal or informal camps, those who had returned to their habitual place of residence, and those who had found accommodation through integrating into a new community. KHRC and ICJ Kenya researchers visited the Rift Valley, Western, Nyanza, Nairobi, Eastern, Central and Coast

Provinces for mapping and identification as well as documenting first-hand experiences of victims of PEV at their present locations.

The research project was informed by the concern that whereas there have been attempts by multiple groups in Kenya to assist in the identification, processing and registration of the victims, the efforts have not been comprehensive and holistic. In carrying out nationwide interviews with victims of post-election violence, this exercise was designed to inform debates about policy development, to vindicate the rights of victims in Kenya, as well as to ensure that basic needs of individuals and families are met. This report is based on data collected through interviews with individual victims, representatives of victims' groups and key informants at more than 200 sites across Kenya during the months of July—September 2011. Throughout this report, details about victims have been omitted to preserve anonymity.

B. Background

The violence that erupted in Kenya at the end of 2007 was the worst Kenya had ever known. The 30 December 2007 announcement by the Electoral Commission of Kenya that the incumbent president had won the election was widely seen as fraudulent and resulted in violence erupting across the nation. The violence affected all but two provinces and was felt in both urban and rural parts of Kenya.¹ The chaos lasted for several weeks, into 2008. The post-election violence marked a turning point in Kenya's history. Despite previous election-related violence, the 2007—2008 violence was unprecedented and pushed Kenya to the brink of civil war. It was the culmination of systematic collapse of institutions regarded as the vanguards of the rule of law, human rights and democracy such as the police, the judiciary and the Electoral Commission of Kenya.

This report does not go into detail regarding the multiple causes of the post-election violence in Kenya, as the roots of the violence have been well-documented in multiple other reports.² However, it is

important to note that the events of 2007—2008 were part of a long-standing pattern of election-related violence that began in large part with the introduction of multiparty politics in 1992. With each electoral cycle, an associated wave of violence created substantial numbers of victims. For instance, election related violence reportedly displaced more than 50,000 people after the 1992 elections.³ As a result of previous waves of electoral violence as well as other factors, reports indicate that there were between 350,000 and 450,000 displaced persons in Kenya in 2006,⁴ well prior to the destabilizing events of 2007.

The purpose of this report is to document the current status of victims of the 2007—2008 post-election violence, in terms of their nationally and

1 *Final Report* (Nairobi: Commission of Inquiry into Post Election Violence (Waki Commission)), 2008).

2 See, e.g., id.; Kenya National Commission on Human Rights, *On the Brink of the Precipice: A human rights account of Kenya's post-2007 election violence* (August, 2008), at <http://www.knchr.org/dmdocuments/KNCHR%20doc.pdf> (last accessed May 1, 2012); OHCHR, *Report from OHCHR Fact-finding*

Mission to Kenya, 6—28 February 2008, at <http://responsibilitytoprotect.org/OHCHR%20Kenya%20Report.pdf> (last accessed May 1, 2012); Amnesty International, *State of the World's Human Rights – Kenya* (2009), at <http://report2009.amnesty.org/en/regions/africa/kenya> (last accessed May 1, 2012).

3 *CIPEV Final Report*, supra note 1, ch. 7.

4 *Women Paid the Price – Sexual and Gender Based Violence in the 2007 Post Election Conflict in Kenya* (CREAW, n.d.), at <http://www.creawkenya.org/creaw-publications/women-paid-the-price.html> (last accessed May 1, 2012); *Gains and Gaps: A status report on IDPs in Kenya 2008—2010* (Kenya Human Rights Commission, National Network for IDPs in Kenya, February 2011).

internationally recognized rights and the Kenyan Government's obligations towards them.

1. Previous Documentation of Post-Election Violence Victims in Kenya

1.a The Commission of Inquiry Into Post-election Violence

The first attempt to document the status of victims of the 2007—2008 post-election violence took place in 2008, only a few months after the violence had subsided and a political power-sharing agreement had been put into place.⁵ The Commission of Inquiry into Post Election Violence (CIPEV) undertook a detailed and comprehensive examination of the causes and consequences of the violence that shook Kenya. The Commission's report broadly grouped the crimes that took place into the following categories: sexual violence, displacement, deaths, injuries and destruction of property. In order to understand the current status of victims, more than four years later, it is helpful to review the CIPEV findings.

First, CIPEV examined deaths as a result of the violence. The Commission's data reflect not only the tragic loss of life as a result of the conflict, but also

the regional patterns reflected in the violence. The most severely affected region in terms of loss of life was the Rift Valley. CIPEV found that 744 individuals were killed in the region, accounting for two thirds of the total 1133 deaths nation-wide. This finding highlights the regional intensity of the violence. Rift Valley, while being the most populous region in Kenya, nevertheless is home to only 25% of the national population.⁶ The regional centre, Nakuru, along with the rural Trans-Nzoia and Uasin-Gishu districts, were hardest hit, with a total of 547 deaths in those areas alone. Nyanza and Nairobi recorded the second highest number of deaths, with 124 and 135 respectively. CIPEV reported less than 100 deaths per region in other areas of Kenya.⁷

Not surprisingly, the prevalence of other forms of violence also followed this general regional pattern. CIPEV reported a total of 3,561 injuries that did not result in the death of the victim, with almost two thirds being reported in Rift Valley.⁸ The non-fatal nature of the trauma does not undermine the serious nature of many of these injuries and the life-altering impact on the victim, as will be discussed below.

CIPEV made a concerted effort to examine sexual and gender-based violence perpetrated against both men and women. Ultimately, 31 witnesses testified before CIPEV regarding their experiences of sexual

5 Kenya National Dialogue and Reconciliation, Through the Mediation of H.E. Kofi A. Annan and the Panel of Eminent African Personalities on the Resolution of the Political Crisis: Annotated Agenda and Timetable (Feb. 2008), at [http://www.dialoguekenya.org/docs/Project context and summary of findings.pdf](http://www.dialoguekenya.org/docs/Project%20context%20and%20summary%20of%20findings.pdf) (last accessed May 1, 2012).

6 Kenya National Bureau of Statistics, *2009 Census Summary Results*, at <http://www.knbs.or.ke/censuspopulation.php> (last accessed May 1, 2012).

7 CIPEV *Final Report*, supra note 1, ch. 9.

8 Id.

violence.⁹ CIPEV's findings suggest that the vast majority of victims of sexual violence – more than 80% – did not report the violence to the police, and that a substantial number were not able to access medical treatment after their violation. Nevertheless, some data is available – a report from the Center for Rights Education and Awareness states that 653 cases of sexual violence as a result of the post-election violence were treated at a single hospital in Nairobi, some 80% of which were rape cases.¹⁰

Property destruction had a significant impact on many victims. CIPEV reported that more than 100,000 properties were destroyed during the violence.¹¹ Other reports indicated that 78,254 homes were destroyed during the violence.¹²

1.b Other Reports on Victims of PEV

Displacement has perhaps been the most well documented aspect of the post-election violence. The Kenyan Government initially reported that 350,000 people were displaced as a result of the 2007—2008 violence.¹³ Later reports indicated that the number was almost double that, more than 660,000.¹⁴ The vast majority were internally displaced within Kenya, with approximately half of them moving into established camps and the other

half integrating into communities around Kenya. Again the largest displacement was from Rift Valley Province, with 61% (more than 408,000 people) displaced in the region. Nakuru, Kericho, and Eldoret also experienced substantial displacement. Around the rest of Kenya, just less than 18% of displaced persons were from Nyanza province and another nearly 9% were found in Western.

By 2009, the Kenyan Government had been focusing its efforts on addressing displacement. Several programs had been initiated to provide support in camps, resettle IDPs, and provide some economic assistance for resettlement and reintegration costs. Little attention was paid to addressing other types of victimization, such as deaths, injuries and sexual violence, although many displaced victims had also experienced such violations. No specialized mechanism had been established to prosecute anyone responsible for the violence, and only a handful of prosecutions were moving through the national courts.

Despite efforts to address displacement, reports indicate that the Government was facing substantial challenges in meeting its responsibilities to victims. Although the Government claimed that all IDP camps had been closed in 2009, this was far from the reality. Substantial numbers of IDPs had been moved to transit camps,¹⁵ and others were remaining in the

9 *Id.*, ch. 6.

10 *Women Paid the Price*, supra note 4.

11 *CIPEV Final Report*, supra note 1, ch. 10.

12 *Gains and Gaps*, supra note 4.

13 *CIPEV Final Report*, supra note 1, ch. 7.

14 *Gains and Gaps*, supra note 4.

15 Transit camps are sites where IDPs are temporarily sheltered before they return to their homes usually located close to their usual places of habitual residence.

initial camps, without assistance.¹⁶ The majority of victims reported that they were receiving assistance from the Kenya Red Cross, from religious groups, or from private individuals – only 24% reported that they were receiving assistance from the Government.¹⁷ In early 2009, more than a year after the post-election violence, 68% of IDPs living in camps indicated that food was still the most pressing challenge they faced.¹⁸ As described below, this remained a major issue for IDPs in 2011 at the time of the research study.

In relation to cash assistance, the Government initiated a program to provide KSh. 10,000 for resettlement expenses and KSh. 25,000 for home reconstruction. A survey of IDPs indicated that by May 2009, 83% of those in camps reported having received the cash assistance of KSh. 10,000. This mirrors other reports indicating that the majority of cash assistance went to individuals living in camps as opposed to displaced persons who had moved in with family or found other places to live integrated within other communities.¹⁹ The Ministry of State for Special Programs reports that KSh. 1,617,590 was paid to individuals under the program.²⁰ A substantially

smaller proportion of individuals received assistance from the home rebuilding fund. In 2009, only 6% of IDPs in camps reported having received funds to reconstruct homes.²¹ The Ministry reports that the Government paid KSh. 25,000 to 37,788 heads of households amounting to KSh. 944,700,000.²² The distribution of the funds has followed the pattern of the violence, with almost 70% of the total amount of funds disbursed in Rift Valley, and just under 12% disbursed in Nyanza.²³ Another 8% was disbursed in Western and 6% in Central.²⁴

Resettlement programs for IDPs also included Government land purchases for resettlement. Land allocation and resettlement was generally reported as uncoordinated, not planned in consultation with local communities or IDPs, and subject to corruption.²⁵

There have been ongoing concerns over the

16 *Situation Analysis of Post-Election Violence Areas (PEV) Survey Findings* (South Consulting, May 2009), p. 12.

17 *Id.*, p. 14.

18 *Id.*, p. 16.

19 *Gains and Gaps*, supra note 4, p. 23.

20 Ministry of State for Special Programs, "Press Release: Progress on resettlement of internally displaced persons (IDPs)" (Republic of Kenya, January 6, 2012). A list of individuals who had received payments under this program was previously available on the Ministry of State for Special Programs website (http://www.sprogrammes.go.ke/index.php?option=com_wrapper&Itemid=161) but it had been removed at by the time of publication of this report.

21 *Situation Analysis of Post-Election Violence Areas*, supra note 16, p. 14.

22 Ministry of State for Special Programs, supra note 20.

23 *KNDR MONITORING PROJECT: Status of Implementation of Agenda Items 1—4, Progress Report For January—March 2010* (South Consulting, April 2010), p. 22.

24 *Id.*

25 UNDP Kenya, *DURABLE SOLUTIONS TO INTERNAL DISPLACEMENT, RECONCILIATION AND RESTORATION OF HUMAN DIGNITY OF IDPs IN KENYA: A SITUATION REPORT* (UNDP Kenya, OHCHR, September 2011), p. 26; *KNDR MONITORING PROJECT: Review Report For October—December 2009* (South Consulting, January 2010), p. 23; *Gains and Gaps*, supra note 4.

handling of the cash assistance programs as well as the land purchase programs. In its report “Robbing the Homeless”, the Kenyan National Commission on Human Rights detailed allegations of corruption during the IDP Resettlement process.²⁶ IDPs themselves also reported significant problems with the cash assistance program. More than a third reported that their names were not on the lists of those to receive assistance, and 13% reported that they were asked for bribes in order to receive assistance.²⁷

In October 2009, the Kenya Red Cross and UNHCR closed down the IDP camps that they were managing in Kenya at the direction of the President.²⁸ Despite the official closure of camps, reports indicate that 19,000 individuals remained in 76 transit camps and other informal camps.²⁹ During the rainy season of 2009—10, the living conditions for displaced persons in camps deteriorated significantly.³⁰ By the end of 2009, 14,090 houses had been constructed for displaced persons,³¹ but living conditions remained a serious concern for those who had not benefitted from the program.³²

26 *On the Brink of the Precipice*, supra note 2.

27 *Situation Analysis of Post-Election Violence Areas*, supra note 16, p. 15.

28 *Speedy reform needed to deal with past injustices and prevent future displacement* (Internal Displacement Monitoring Centre, June 2010).

29 *KNDR MONITORING PROJECT: Review Report For October—December 2009* (South Consulting, January 2010), p. 21.

30 *Id.*; *Speedy reform needed*, supra note 28.

31 *Review Report For October—December 2009*, supra note 29, p. 23.

32 *Women Paid the Price*, supra note 4, p.

A few months into 2010, close to 4000 households remained in transit camps in the Rift Valley in particular.³³ Government programs for land allocation had targeted “self-help” groups who pooled funds and bought their own land for resettlement and farming. For those who did not have the funds to participate in such self-help groups, they often remained landless. The Government’s programs accordingly seemed to bypass the poorest of the poor who had been displaced.

Moreover, by 2010 no specific programs had been designed to compensate or assist victims of other human rights violations, such as deaths, injuries, or sexual and gender-based violence.

The Government initiated a truth-seeking process through the establishment of the Truth, Justice and Reconciliation Commission in 2008, to examine human rights violations that took place from Kenya’s independence through to the post-election violence period. The commission was granted power to make recommendations for reparations to victims. However, leadership scandals, funding delays, conflicts with civil society and the massive mandate of the commission raised questions as to its ability to effectively address the needs of victims of post-election violence.

In addition, the Government had failed to institute any prosecutorial mechanism to address impunity

8; *DURABLE SOLUTIONS TO INTERNAL DISPLACEMENT*, supra note 25, p. 19—20.

33 *Status of Implementation of Agenda Items 1—4, Progress Report For January—March 2010*, supra note 23.

for post-election violence crimes, from murder, to displacement to sexual violence. This failure led to the intervention of the International Criminal Court and the submission of cases against six prominent Kenyans who allegedly have the greatest responsibility for crimes committed during the 2007—2008 post-election violence period. In January 2012, the International Criminal Court confirmed charges of crimes against humanity against four prominent Kenyans.³⁴

Although the ICC process provides some possibility that a limited number of victims may receive compensation,³⁵ the process excludes the majority of the victims. Also, the ICC process will most certainly last many years, with compensation coming only at the end of a lengthy process. Finally, victim compensation programs in the past have been community-based through the ICC Trust Fund for Victims, as opposed to providing targeted

compensation to individual victims.

The ICC process has also had an unanticipated impact on victims in some respects, in that the attention of the nation and policy makers has sometimes been diverted away from their plight toward the ICC process.³⁶ IDPs also reported that they felt they were being used as political pawns as a result of the ICC process in particular.³⁷

By the beginning of 2012 – four years after the end of the post-election violence – addressing the needs of victims remains a substantial gap in Government policy. As far as cash assistance, the Government had disbursed KSh. 10,000 per household to 161,759 households and KSh. 25,000 to 37,788 heads of households.³⁸ The Ministry of Lands had spent half of the allotted funds on land purchases for resettlement.³⁹ A Government press release admitted that IDPs remain to be resettled and that a special Government task force will work “round the clock including weekends and public holidays . . . so as to ensure that genuine IDPs are settled within the shortest time possible.”⁴⁰

As for victims of crimes other than displacement, reports indicate that little has been done to address their plight. Families who lost loved ones to murder during the violence have yet to be compensated or

34 Prosecutor v. WILLIAM SAMOEI RUTO, HENRY KIPRONO KOSGEY and JOSHUA ARAP SANG, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ICC-01/09-01/11 (Jan. 23, 2012); Prosecutor v. FRANCIS KIRIMI MUTHAURA, UHURU MUIGAI KENYATTA and MOHAMMED HUSSEIN ALI, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ICC 01/09 02/11 (Jan. 23, 2012).

35 The International Criminal Court has the authority to order reparations for victims involved in cases and situations before the ICC. Although this power exists, it has been used in the past to limit only a small number of victims and to provide grants for collective reparations. In addition, reparations are only issued after guilty verdicts have been finalized. Accordingly, the possibility of Kenyan victims receiving reparation through the ICC process is remote both in time and practicality.

36 *Status of Implementation of Agenda Items 1—4, Progress Report For January—March 2010*, supra note 23, p. v.

37 *Id.*

38 Ministry of State for Special Programs, supra note 20.

39 *Id.*

40 *Id.*

assisted by the State. Although a Government report indicated that 94 perpetrators had been brought to justice for post-election violence, a human rights report undermined that assertion. Human Rights Watch found that only a handful of convictions were for serious crimes that were actually related to the election violence.⁴¹ At the time of this report, no member of the police force had been convicted for crimes during the 2007—2008 post-election violence, despite evidence of 962 police shootings as well as sexual violence perpetrated by police.⁴² Financial assistance related to medical costs has been provided for some victims, but the process has not been transparent or comprehensive.⁴³ Despite the fact that 21 victims of post-election violence have sued the Government for compensation and were awarded damages in court, the Government had by the time of publication refused to pay the awards.⁴⁴

Related to sexual violence, the trauma that began during the PEV did not end once victims fled. Sexual violence was also prevalent in many displaced persons camps. Moreover, reports indicate

that Government provision of services for victims and survivors of sexual violence, such as medical care and psychosocial support, was lacking.⁴⁵

Given the reality on the ground four years after the upheaval that created thousands of victims of human rights violations in Kenya, this report focuses on documenting key issues related to victims' current status. The goal is to maintain the visibility of the plight of victims around the nation and to make concrete policy recommendations based on field observations so as to ensure justice, reparation and dignity for those who suffered as a result of the violence.

2. Brief Overview of Methodology

Between July 2011 and September 2011, the ICJ Kenya and KHRC research team visited more than 200 sites across Kenya to interview victims and gather observational data (Figure 1). Researchers used a standardized interview guide (Appendix 1) when interviewing participants. Researchers used purposive and snowball sampling to interact with a broad diversity of individuals. Community contacts from civil society partners and victims groups also assisted with identifying individual participants. Of the 449 individual respondents interviewed, 46% were women and 54% were men. Further, approximately 400 total individuals participated in multiple large group meetings with researchers in Kibera, Mawingu,

41 *"Turning pebbles": evading accountability for post-election violence in Kenya* (Human Rights Watch, 2011), p. 4., at <http://www.hrw.org/reports/2011/12/09/turning-pebbles-0> (last accessed May 1, 2012).

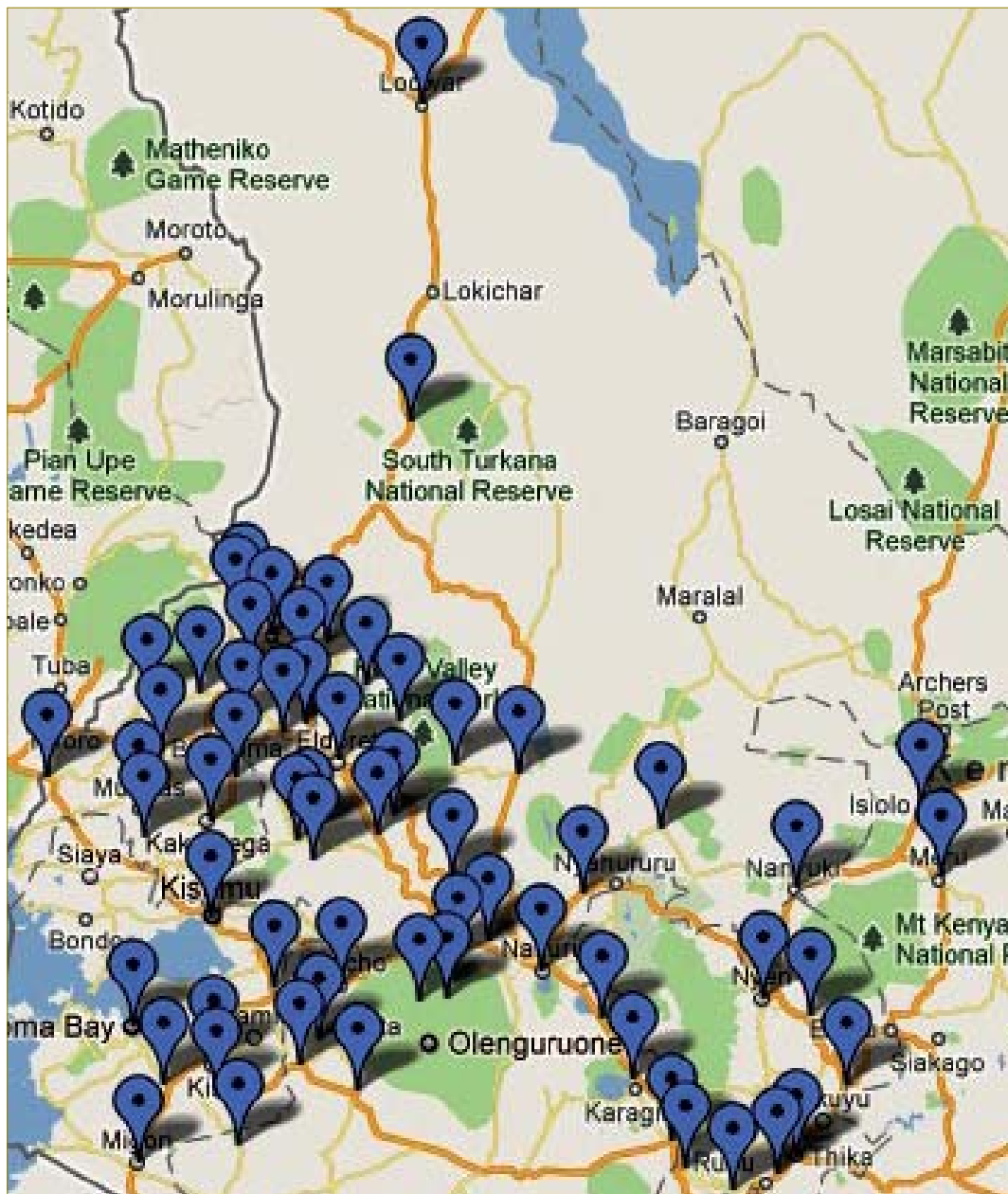
42 *Id.*

43 Some victims of PEV told the field research team that they had received medical care at government expense. See also *id.*; *"To live as other Kenyans do" a study of the reparative demands of Kenyan victims of human rights violations* (International Center for Transitional Justice, 2011).

44 *Turning pebbles*, supra note 41.

45 *Women Paid the Price*, supra note 4, p. 41.

Figure 1. Overview of research sites (Coast and certain other research sites not shown)



Patwaka, Kipkabu, and Nakuru. The study interviewed a total of 849 respondents.

The research team documented important challenges during the research process which are described in detail in Appendix 3. However, some of the challenges bear mentioning here. In particular, victims have been over-researched and demonstrated clear frustration with ongoing interviews and documentation

processes that they viewed as providing few real benefits in their lives. Also, because of many victims' desperate conditions, some requested incentives for participation in the study, which were unavailable. Poor infrastructure, language barriers and ethnic tension also occasionally were serious challenges confronted by the researchers.

C. Overview of Key Findings

- Four years after the post-election violence of 2007—2008, the Kenyan Government has failed to meet the vast majority of its human rights obligations to victims of the violence.
- Families have not received any compensation for the killings of loved ones during the post-election violence.
- Among the victims of post-election violence are a substantial number of female-headed households with children who lost breadwinners in the violence. They are in urgent need of compensation and livelihood assistance.
- Victims who suffered debilitating injuries during the post-election violence have not received compensation. Although some were supported to receive medical care, many remain without treatment for their injuries.
- Victims of SGBV were not afforded sufficient medical and psychosocial care to address the harm they suffered. Many have never reported the crime to authorities.
- Lack of transparency and failure to register substantial numbers of victims makes clear that an additional registration exercise will be necessary.
- The Government has not provided sufficient, or in some cases any, food assistance to displaced and vulnerable victims.
- For victims of displacement who remain in camps, the adequacy of shelter, sanitation, food, and water is an urgent concern.
- Many victims of displacement are still struggling to access education and face serious challenges because of cost, discrimination, interruption in their educational progress, and missing documents.
- Victims of displacement, as well as other crimes, remain in urgent need of assistance to re-establish their livelihoods. Government programs in this regard have reached only a small proportion of victims.
- Host communities who have taken in and integrated IDPs are in need of support so as to minimize resentment and discrimination against displaced persons.

D. What are Kenya's obligations to victims and survivors?

This study was based on international legal principles related to defining victims and gross violations of international human rights and humanitarian law. These include multiple treaties to which Kenya is a State Party, such as the International Covenant on Civil and Political Rights (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Right of the Child (1989), Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984) and the Rome Statute of the International Criminal Court (1998), as well as the African Charter on Human and Peoples' Rights (1981).

During the post-election violence, Kenyans became victims of a multitude of crimes, both as defined under international law and domestic law. Key crimes perpetrated under Kenyan law included murder, rape, assault, defilement, arson, robbery with violence, female genital mutilation, and theft.⁴⁶

46 The Penal Code recognizes the offence of murder in Section 203 while rape is an offence under the Sexual Offences Act. The other noticeable offences observed in the election period are: assault – Section 250 and 251 of the Penal Code; theft – Section 275 of the Penal

Code; robbery with violence – Section 296 of the Penal Code; burglary, housebreaking and similar offences – Section 303 to 307 of Penal Code; arson – Section 332 of Penal Code; grievous harm – Section 234 of the Penal Code; possession of firearms and offensive conduct conducive to breaches of the peace – Section 89 and 94 of the Penal Code respectively.

Because of the systematic, organized nature of the crimes that took place in some regions these crimes also rose to the level of crimes against humanity under international law. These international crimes included murder, forcible transfer of populations, rape, persecution, and other inhumane acts, as defined in the Rome Statute.⁴⁷

Kenya signed the Rome Statute of the International Criminal Court in 1999, indicating the State's intention not to undertake any action that would contravene the treaty. The Rome Statute

47 International crimes as prescribed in the Rome Statute are those crimes that the International Criminal Court considers of most concern. In our Kenyan case, they include crimes against humanity as per Article 5(1) of the Rome Statute. The two cases that have been brought before the ICC are premised on the following charges: murder (Article 7(1) (a)), forcible transfer of population (Article 7(1) (d)), persecution (Article 7(1) (h)), rape (Article 7(1) (g)) and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health (Article 7(1) (k)).

entered into force in 2002 and was ratified by Kenya in 2005. The Rome Statute was domesticated into Kenyan law through the 2008 International Crimes Act.

Victims of gross violations of human rights and humanitarian law have specific rights under international law, regardless of the crime of which they have been a victim. Victims are entitled to:

- know the truth of the circumstances of the violations, through a comprehensive investigation
- justice
- reparations; and
- guarantees of non-repetition.⁴⁸

Victims include both direct and indirect victims of the crimes. For example, in the case of murder, both the deceased victim and the family members of the deceased constitute victims for the purposes of the rights detailed above.

Moreover, in relation to specific crimes, States have specific obligations and victims have particular rights under international treaties to which Kenya is a State party. The most comprehensive document that relates to crimes against humanity in the context of mass displacement in East Africa is the Great Lakes Pact, which codifies the rights in multiple other treaties. The Great Lakes Pact has multiple associated protocols to which States must adhere when they

ratify the Pact; no derogations are permitted. Kenya ratified the Great Lakes Pact and its associated protocols on internally displaced persons and sexual violence – the treaty entered into force in 2008.⁴⁹

Under the Pact's Protocol on Sexual Violence, the Kenyan Government is obligated to:

- Punish any person who, with intent, knowledge, recklessness, or negligence, violates the sexual autonomy and bodily integrity of any woman or child, by committing, aiding or abetting the commission of any of the acts of sexual violence referred to in Article 1(5) (6) of this Protocol.⁵⁰
- Simplify the procedures for lodging complaints of sexual violence by women, children, and other interested parties.⁵¹
- Ensure that criminal procedures for the prosecution of persons accused of crimes of sexual violence shall be sensitive to the emotional state of the victims and survivors of such crimes. Under these procedures, such victims and survivors shall give evidence in camera, or by video links, and they shall neither be compelled nor required to give evidence in open criminal proceedings, nor shall the casting of aspersions on their character and integrity be permitted as part of the defence of any person charged with a crime of sexual violence.⁵²

48 Dianne Orentlicher, *Report of the independent expert to update the Set of principles to combat impunity*, UN Doc. E/CN.4/2005/102/Add.1 (UN Economic and Social Council, 2005).

49 See <http://www.internal-displacement.org/greatlakes>.

50 International Conference on the Great Lakes Region, "Protocol on the Prevention and Suppression of Sexual Violence against Women and Children", 2006, Art. 4.

51 *Id.*, Art. 6(4).

52 *Id.*, Art. 6(5).

- Ensure that no statute of limitations applies to cases of sexual violence.⁵³
- Establish legal and medical procedures for assisting the victims and survivors of sexual violence, and a fund for sensitizing the perpetrators on the wrongfulness of their sexual behaviour.⁵⁴

The Protocol on Internal Displacement establishes multiple obligations on States in relation to protecting and assisting IDPs, whether or not they reside in a camp or have integrated into a local host population.

Kenya is obligated to:

- Assess the needs of internally displaced persons, assist them with registration and maintain a national database for the registration of internally displaced persons.⁵⁵
- Facilitate rapid humanitarian access and assistance to IDPs.⁵⁶
- Provide, at a minimum, and without discrimination, safe access to: Essential food and potable water; Basic shelter and housing; Appropriate clothing; and Essential medical services and sanitation.⁵⁷
- Provide to wounded and sick internally displaced persons as well as those with disabilities to the fullest extent practicable and with the least possible delay, the medical care and attention

they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services. Special attention should be paid to provision of reproductive health care and appropriate counselling for victims of sexual and other abuses.⁵⁸

- Provide special protection for women, children, the vulnerable, and displaced persons with disabilities.⁵⁹
- Extend protection and assistance, according to need, to communities residing in areas hosting internally displaced persons.⁶⁰
- Ensure the safe location of internally displaced persons, in satisfactory conditions of dignity, hygiene, water, food and shelter, away from areas of armed conflict and danger, and having regard to the special needs of women, children, the vulnerable, and persons with disabilities.⁶¹
- Ensure freedom of movement and choice of residence within designated areas of location, except when restrictions on such movement and residence are necessary, justified, and proportionate to the requirements of maintaining public security, public order and public health.⁶²
- Provide special protection for families of mixed

53 *Id.*, Art. 6(6).

54 *Id.*, Art. 6(7).

55 International Conference on the Great Lakes Region, "Protocol on the Protection and Assistance to Internally Displaced Persons", 2006, Art. 3(4).

56 *Id.*, Art. 3(6).

57 *Id.*, Art. 1(a); UN Guiding Principle 18(1)—(2).

58 *Id.*, Art. 1(a); UN Guiding Principle 19(1)—(3).

59 *Id.*, Art. 4(1)(d).

60 *Id.*, Art. 4(1)(e).

61 *Id.*, Art. 4(1)(f).

62 *Id.*, Art. 4(1)(g).

- ethnic identity.⁶³
- Ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion. Special efforts should be made to ensure the full and equal participation of women and girls in educational programs. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.⁶⁴
 - Establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of Kenya.⁶⁵
 - Assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.⁶⁶

The Constitution of Kenya (2010) also enshrines the State's responsibility to protect the rights of all

Kenyans to fundamental civil and political rights as well as economic, social and cultural rights. Specifically, the Constitution protects the right to a healthy environment (Article 42), the right to the highest attainable standard of health (Article 43(1)(a)), the right to be free from hunger (Article 43(1)(c)) the right to clean water in adequate quantities (Article 43(1)(d)), and the right to education (Article 43(1)(f)). Article 42 also protects the right to emergency medical treatment and the right to social security benefits for those who are unable to support themselves and their dependents. Finally the right to family is protected in Article 45. The data gathered for this documentation project indicate that the Government of Kenya has fallen short in its obligations in all of these areas since the 2010 Constitution came in effect.

Another important Constitutional protection for victims of post-election violence is the right to fair administrative action, protected by Article 47. Many of the narratives in this report suggest that the administrative processes that IDPs interacted with and which were designed to provide them with benefits did not meet the standard of fairness.

63 Id., Art. 4(1)(h).

64 Id. Art. 1 (a); UN Guiding Principle 23.

65 Id. Art. 1 (a); UN Guiding Principle 28.

66 Id. Art. 1 (a); UN Guiding Principle 29.

E. What is the status of victims and survivors four years later?

1. Victims of killings and their families

As highlighted by the UN Independent Expert on Combating Impunity, impunity arises from a failure by States to meet their obligations to investigate violations, to ensure that perpetrators are brought to justice, and to provide victims with effective remedies and reparation, or to ensure the right to know the truth about the violations.⁶⁷

Research conducted for this report and research by other organizations indicates that the Kenyan Government has failed to meet its obligations related to those who were killed during the post-election violence. Our research with family members of individuals who died during the post-election violence indicated that none of their families had received compensation. For instance one interviewee stated that “I lost my son who used to fend for me. In the process, he used to take care of the cattle. Now there is no one to take care of them and they consequently

died. Now I have no cattle.”⁶⁸ Another interviewee whose husband was killed also described her need for financial support. She noted that although the Government paid for emergency medical treatment, she has received no compensation.

*I lived in Kapsaret, Eldoret. They raided my house at 3.00 a.m. and burnt my house, with me and my children in it and my husband. I am the only one that survived. I was taken to Eldoret Referral Hospital where my left hand was amputated below the elbow and my right hand fingers. I am totally handicapped and depend on people to feed and clothe me.*⁶⁹

According to the CIPEV Report, of the more than 1100 deaths, only a small proportion of the dead were women and children.⁷⁰ This statistic has an important consequence for the status of victims’

67 Report of the independent expert to update the Set of principles to combat impunity, supra note 48, Principle 1.

68 SR 4: V004.

69 WE 3: V002.

70 CIPEV Final Report, supra note 1, p. 309—310. A total of 85 women and children were killed.



The grave, in Kisumu, of one of the victims who was transported from Rift Valley by his wife alongside other fleeing IDP.

families now. Given patterns of economic livelihood in Kenya, the fact that the deceased were mostly male indicates many families lost breadwinners. Indeed, it was clear from ICJ Kenya and KHRC's field work that this was the case. Among the victims of post-election violence are a substantial number of female-headed households with children who have been left close to destitute. Without long-term economic assistance to address the loss, these families will be severely impacted. For instance, one woman described the fate of her son, who had helped run her cell phone credit shop:

I lived in Kabarani but I had a business in Chaani, a Safaricom kibanda. My son was inside when they attacked and when they pushed the kibanda over, my son died. It

became tribal...He was almost 18 years old at the time.⁷¹

In virtually every location visited, families of deceased victims also noted that they couldn't obtain death certificates because of either displacement or the fact that they could not trace the body. Such victims also expressed their wish to have closure through prosecutions for the perpetrators or tracing of their loved ones so that they could offer proper burials.

The inability to obtain death certificates further leaves the relatives of the deceased in a dilemma. A death certificate is a mandatory document when one is petitioning the courts for letters of administration over the estate of a deceased. Letters of administration would enable the relatives of deceased persons to

71 CO 5: V005.

sue the State and receive compensation on behalf of the estate of the deceased. This therefore means that the relatives, without letters of administration, may never get to receive compensation.

Apart from compensation, victims also have a right to investigation of the deaths and justice for the crimes that led to the death of their loved ones. Although ICJ Kenya and KHRC researchers did not specifically examine the status of investigations and justice mechanisms for perpetrators of killings, others have done so. The CIPEV report indicated for many of the deceased victims that the medical examiner did record cause of death, information about the victims of killings as well as recording information about their family.⁷² However, this does not amount to sufficient investigation, either for purposes of the right to justice or the right to know. A report by Human Rights Watch makes clear that State investigations of deaths during the post-election violence were entirely insufficient. Police refused to take reports from victims, failed to gather evidence and witness statements, were biased, and mishandled evidence.⁷³ As a result, the majority of legal cases related to killings during the post-election violence have been thrown out of court. Because of this failure to document and maintain evidentiary records, victims' rights to justice and to know the fate of their loved ones may never be vindicated.



Arrow wound in one of the victims at Kwa Kung'u IDP camp Nyahururu.

2. Injured survivors

The more than 3500 victims who suffered injuries are in many ways in a situation similar to families who have lost loved ones. Although some victims were assisted, the Kenyan Government failed in its responsibility to ensure medical assistance to the many victims who needed immediate and long-term care. In Maua Camp,⁷⁴ for instance, the research team was told by an elderly male interviewee that he was just waiting to die because the little money that he had was exhausted and he could not afford to go to the hospital. In addition, the area was flooded and inaccessible so he couldn't reach the hospital even if he could have paid. Another victim reported that after being shot by a police officer during the post-election violence, he had to sell his car to pay the hospital bills.⁷⁵

In other cases, long distances and insecurity negatively impacted on access to medical attention.

⁷² CIPEV *Final Report*, supra note 1, p. 304.

⁷³ *Turning pebbles*, supra note 41, p. 45—50.

⁷⁴ "Maua" is the Kiswahili word for flowers.

⁷⁵ SR 1: V000.

Lack of medical care can have long term impacts on victims, as demonstrated through field visits. Because of the injuries they suffered, many victims cannot perform duties that would enable them to earn a decent living. (See below section on livelihood supports.) Like other victims, they have not received any compensation for the injuries they suffered.

3. Survivors of sexual violence

During the post-election violence, many Kenyans, both men and women suffered sexual violence, including assault, rape, forced circumcision, and other forms of sexual mutilation. As described above, Kenya has specific obligations to victims of sexual violence under domestic law and international treaties. These include generally, facilitating the filing of claims, ensuring punishment for perpetrators, and support to victims in the form of medical and psychosocial care. Results from the field research indicate that the Government of Kenya has not met these obligations.

A primary concern for victims interviewed by the research team was the lack of access to medical care and psychosocial support. For instance, a grandmother described how her thirteen year old grandchild was defiled in Naivasha stadium where they had camped; she conceived and delivered a baby. She currently lives in a camp Uasin Gishu and they rely on menial jobs as a means of livelihood. Due to the trauma suffered she is mentally unstable and

has not received any medical attention or psychosocial support.

Many survivors continue to bear the brunt of the violations years after the violence. They have been left with permanent consequences of the horrific events. During a focus group, one survivor reported that she had been raped by three men during the post-election violence, leading to severe injuries. "I didn't report to police. I wanted to go to court but because of lack of money I terminated the matter. I gave this statement to TJRC. I was really psychologically affected. There was no counselling offered to us as rape victims."⁷⁶ Similar experiences were repeated by many of those interviewed by the research team.

Multiple interviewees told the research team that they had contracted HIV as a result of sexual violence. In Kondele and Nyamasaria areas of Nyanza Province, a group of SGBV survivors living with HIV registered an organization called Kisumu Internally Displaced Women Group to support each other. They lamented that most of their members have since died without receiving any form of support. The group indicated that in addition to lack of psycho-social support, the SGBV survivors have no access to anti-retroviral treatment and the effects of the violence continue to haunt them to date. The chairlady of the group reported that 322 women and girls sought medical treatment in hospital during the period but the majority were reluctant to report. They were concerned that many more victims of SGBV were

displaced and could not seek assistance individually.

Displaced victims who are living with HIV describe that even when they are able to access anti-retroviral treatment from the Government or through NGOs, they often are not able to meet the strict dietary requirements due to financial constraints and their living conditions. Another interviewee described the challenges she faces as a single mother, and HIV positive rape survivor:

It was on the 30th December, 2007 at around 8:00 pm when we heard screams from the neighbouring farm and thereafter, smoke filled the air from houses that had been set ablaze by the attackers. At the time I was five months pregnant. My husband and I carried our three children and joined other neighbours who were on the run for their safety. People went in different directions and on reaching a certain point my husband left me hidden in a bush to go back and see whether he could salvage any of our property. That was the last time I saw him and what happened next was a nightmare to me. I had my three children with me when the attackers found us. They gang raped me and left us in the bushes. We spent the night there. The next morning my children and I walked for almost seven kilometres and got to a centre where other people who had fled were gathering. We were later transported to Mai Mahiu and

camped there. All along I had not sought medical attention until a group of volunteers came to the camp to offer medical care. That is the time I found out that I had been infected with H.I.V. Due to the care given by the social workers I was able to deliver my child who is HIV negative. I am not able to adhere to the strict dietary requirements of the ARVs medication due to the current living condition in the camp and I have to rely on well-wishers for food. I am not able to perform menial jobs as other victims because the side effects of the ARVs have weighed me down. I am the sole bread winner for my four children and I would really like a bright future for my children even when am gone, I do not know who will take care of them. I cannot return where I came from because of the loss of my husband and trauma suffered.⁷⁷

SGBV victims reported that despite the Government's commitment to assist all victims of PEV, some of the victims were left out during profiling of victims and have therefore not received support in the form of start-up funds and reconstruction funds. Without any source of income and, because of their ailing and frail condition, they have been forced to rely on well-wishers to support themselves and their families.

77 CR 22: V0000.

4. Forcibly displaced persons

There has been a strong focus on victims of displacement during the Kenyan crisis, and justifiably so given that more than half a million people were forcibly displaced. Forced displacement creates both refugees⁷⁸ (those who cross an international border in their flight from persecution) and internally displaced persons (those who remain within their country of residence as they flee). The vast majority of Kenyan victims were internally displaced and the following discussion focuses on their plight.

Many of the categories of victims discussed above also suffered displacement. Victims of displacement deal with multiple trauma, often referred to as the “triple trauma paradigm.” They suffer human rights violations that cause them to flee, they suffer

violations during flight, and they suffer violations of their human rights once they reach a place of refuge. In addition, many displaced persons also experience human rights violations during the process of return and reintegration.

The international and regional human rights treaties that Kenya has ratified, in particular the Great Lakes Pact Protocol on Internal Displacement, specify States’ responsibilities throughout these phases of displacement. Research for this report focused specifically on the situation of displaced persons during their time in IDP camps and integrated settlements and during the process of return and reintegration (to habitual places of residence or to new locations).

4.a Assessment and registration

As specified above, the Government of Kenya has an obligation to carry out a registration exercise for displaced persons and to assess their needs effectively. Reports indicated that the Government made a concerted effort to register IDPs, in collaboration with the United Nations High Commissioner for Refugees.⁷⁹ The registration exercise included both displaced persons in camps as well as those who had sought refuge in locations other than camps, such as with family, friends, or host communities. Reports indicate that roughly half of those who were displaced went into camps and the other half integrated into host

78 While not a large number, the post-election violence created a group of refugees in neighboring Uganda. This group fled from the far western Rift Valley across the border and has been accommodated in two separate camps since 2008. As of early 2012, according to the Kenyan government, there remained 216 households in Uganda. Ministry of Special Programs, “Press Release: Progress on resettlement of internally displaced persons (IDPs)” (Republic of Kenya, January 6, 2012). Approximately half of the refugees had returned since 2008. The refugees were offered KSh. 35,000 and transport assistance as a resettlement package, according to press reports. Henry Andanje, “Kenya: 2,500 Poll Chaos Victims Still in Uganda,” *The Nation* (Nairobi), July 7, 2011, <http://allafrica.com/stories/201107071419.html> (last accessed May 1, 2012). ICJ Kenya and KHRC researchers did not specifically interview refugees to assess their current status, but other reports indicate that they share many of the same concerns as the huge numbers of internally displaced persons.

79 *Gains and Gaps*, supra note 4, p. 18.



Embakasi IDP camp in Mt Elgon. Among those unprofiled by the government.

communities.

Breakdowns in the registration process have become clear over time, however. During interviews in the field, victims described the fact that they had been removed from initial registration lists once it came to the time to receive compensation.⁸⁰ “The

80 E.g., “We met at Ndundori division where we got registered by the chief. The chief then asked us to get alternative settlement as the camp lacked amenities. We got food donations from the government. The farm in which we had moved into was closed and we could not farm anymore. A well-wisher gave us KSh. 20,000 each for housing and KSh. 58,000 as medical fees for two children who needed to be operated on. Our leader was appointed by the chief and he was not a PEV victim. We were later informed that we are not in the resettlement list hence we came together as a group (117 people) and each household contributed KSh. 1,500 and bought an acre of land where we are staying now.” CR 21:1; “Our names have been missing from the government records. There was an earlier list that was used by the government to give us fertilizers but our names were missing from the list for provision of shelter. Kondoo 2 Farm is in the middle yet we have been omitted in the provision of shelter. We have now taken to demonstrating

special programmes ministry registered people and left us out. When others were built houses, we were left out whilst others benefit threefold. How can we be resettled if we are not registered?”⁸¹

In addition, field interviews and other reports consistently raise the issue of “false victims,” i.e., those who claim to have been displaced so as to receive benefits. The researchers encountered persons who presented themselves to be PEV victims but, they could not articulate the violations suffered, their places of origin and the chronology of movement to their current areas. Because bona fide victims of trauma often have trouble remembering events, chronology, and the circumstances of their violation it can be difficult to separate genuine victims from those who are claiming to have been victimized

in the hope that the government will address our plight. Our life has changed because we are constantly sick due to lack of proper shelter.” UG 17: V001.

81 CR 11: V005.

simply to receive benefits. The scale of this problem therefore remains unclear.

Other victims told researchers of being asked for bribes in order to be registered:

I invited the media to our IDP camp so that our plight can be highlighted since the Government was insisting that there were no more IDPs. I was arrested for this and later released. The provincial administration insisted that for us to be registered for the KSh. 25,000 Government grant, we had to each pay KSh. 1,000. Only 210 out of 1087 people received the money and the rest of us were asked to wait. The Parliamentary Select Committee on IDPs came and interviewed us in March 2011 on the distribution of funds and shelter. The chief asked us to pay KSh. 200 each for our passport photos so that we are registered. The parliamentary select committee on IDPs later asked for the list of people who had been paid and those who were not paid and we haven't heard from the committee since. The Government has not fulfilled its promise to register us.⁸²

The Government of Kenya also is obligated to maintain a database of displaced persons. It is not clear whether this has been done. A database of

those who received cash assistance was available on the Ministry of State for Special Programs website in late 2011, but has since been removed. Despite efforts to profile a huge number of displacement victims, these types of problems suggest that more transparency about the process is needed and that an additional supplementary registration exercise will be necessary.

4.b Meeting of basic needs

The Government of Kenya has the primary responsibility to ensure that displaced persons can meet their basic needs for food, clean water, shelter, housing, sanitation, and appropriate clothing. Despite the Government's efforts to provide some financial support to some victims of displacement, as described above, many victims told the research team that they had never received any cash support and that as a result, it was virtually impossible to recover their livelihoods. A victim of displacement who had returned home to Kambiya Moto said:

We lost poultry, livestock, stored foodstuffs and all other property in the house that we [were not] able to salvage. The main challenge we are facing currently is lack of jobs. We can't do business as our business premises together with our stock were burnt down. It's also difficult to farm because getting farm inputs is expensive. We have since

82 NR 5:V005.

recorded statements of the property we lost but have not yet been compensated.⁸³

Other interviewees made clear their perception that compensation had been squandered through corruption:

I lost household items of up to KSh. 45,000, and now we have no housing, no blankets, no clothing. If someone dies, we have nowhere to bury them. The chief received compensation money, but gave it to his relatives.⁸⁴

Throughout the four years of displacement, victims consistently reported that access to food was a major challenge. As described above, in 2009, more than a year after the violence had ended, IDPs reported access to food as their most pressing challenge. Three years later during ICJ Kenya and KHRC's field research, access to food and other basic needs remained a concern for a substantial number of IDPs.

Access to food remains a challenge for a number of reasons. With the formal closure of camps in 2009, official streams of aid to the camps were substantially reduced. Integrated IDPs face a similar situation – they reported initially receiving food rations from the Government, but after a short while the exercise was stopped:

Our lives are still bad. Despite having land, our children are not getting proper education. The cost of living is high and we particularly feel the pinch. The Government gives us ten kilograms of maize only for a while. The way in which the rations are being given is also arbitrary as they give per family not considering the number of people per family.⁸⁵

Many interviewees reported that they rely on “well-wishers” for food aid. It is unclear whether these “well-wishers” were primarily private individuals or aid organizations, but what came through clearly is that the Government was not providing sufficient – or in some cases any – food assistance.

Purchasing food is also out of reach for many victims:

I was a Naivasha resident when PEV occurred in 2008. I was involved in a small business of tailoring leather goods. But now life is very difficult for us. A two kilogram tin of maize costs KSh. 130 and we find this to be very expensive.⁸⁶

IDPs have struggled to grow their own food, either in the camp location, on land where they have been resettled, or at their habitual residence. For those who have been resettled and those who returned to

83 CE 5: V001.

84 NY 23: V001.

85 CR 20: V003.

86 CR 27: V001.



Kidipa IDP camp – Maili nne kwa Kung'u Nyahururu.

their farms, lack of farm inputs and the small size of their plots has rendered farming very challenging. For those who attempt to travel between the camp and their habitual residence in order to tend to farms, the situation is dire. For instance, in areas of Cherengany and Mt. Elgon, farmers who return to farm reported they are threatened or attacked by the local communities:

Some of our boys, three total, had returned into their lands in Mt. Elgon to harvest their maize in the farms. The residents of Mt. Elgon then got ahold of the boys and butchered them barbarically. There was nothing we could do or say other than to bury the dead

*and forget about the incident. Now no one goes to their land in Mt. Elgon.*⁸⁷

In addition, in Londiani, landowners' produce reportedly was destroyed by hostile groups while still in the soil, either by residents who brought their cattle to graze on the crops or who cut down the crops as a means of intimidation.

In addition, some camp leaders were accused of misusing their positions to sell relief food while others favoured their friends in the distribution of food aid. For instance, the chairman of Mawingu Camp⁸⁸ (one of the largest remaining camps in Kenya) was alleged to have sold maize and other foodstuffs that had been

87 WE 3: V022.

88 "Mawingu" means clouds in Kiswahili.



Kikopey Unrecognized IDP camp.

intended for the victims living at the camp.⁸⁹

As regards other basic needs such as shelter and sanitation, field visits made clear that the Kenyan Government is failing in its obligations to assist displaced persons. In Kirathimo⁹⁰ for instance, our researchers saw families using rain water collected from ditches because there is no piped water and no tanks.

Many victims described never receiving the housing assistance they believed they were entitled to:

We stayed [in Endebes camp] for six months in tents, and then came Operation Rudi Nyumbani. We were 256 households in the camp at that time. We then came back at that time after receiving KSh.10,000. We were promised KSh.25,000 and a piece of land but to date nothing has been said or done. We settled at Katatha and made a camp and we were again removed by the police and the local administration. We now live in people's homesteads and by the riverbanks.⁹¹

Shelter is accordingly a major concern. This is particularly the case for those who remain in

89 See, e.g., Mosoku Geoffrey, "Mututho Says He Has Dossier On Officials Embezzling Funds for IDPs", *The Star*, 5 January 2012.

90 A word in the Kikuyu language that means "a blessing".

91 NR 7:V001.

camp-settings. A 12-year-old girl whose family was displaced from Eldoret and who now resides in an IDP camp in Nyandarua said:

Today I walk to school without shoes and have to watch my parents and other siblings suffer just because my parents exercised their democratic right to vote. We live in a water logged house and lost everything that we had. I ask myself, am I a Kenyan like other children and what did I do to deserve all this?⁹²

In situations in which victims are still living in tents, such as Sakasaka in Eldoret, Teldet in Mt. Elgon, or Maua Camp in Nyandarua living conditions are deplorable. Tents are worn-out and the thatched shelters are small and prone to exposing the occupants to extreme cold. Consequently, children and elderly women are affected by pneumonia, which has led to deaths. In the Camp of Good Hope in Mbaruk, researchers were informed by community members (who were coming from the burial) that a nine-month-old child had died from treatable pneumonia two days before the team arrived.

Tents also are too small to accommodate entire families, and there is no shelter for livestock. “We have lots of problems, this place is cold as we have no tents, furniture and sleep on the wet floor. We have no money and cannot afford to buy charcoal

for cooking our food.”⁹³ In Mau Summit, victims in Mosque Camp live in a makeshift camp because the camp is located in the market grounds. The location is very cold and those with little children request their neighbours to allow their children to sleep over in their houses to shelter them from the extremely cold nights on the peak of the Mau ranges. Extreme weather conditions have led to loss of lives for the people living in the camps.

Congestion at camps like Mawingu and Maua in Nyandarua, Teldet and Patwaka in Mt. Elgon and Pipeline in Nakuru also deny victims privacy. “The violence has broken down many families. We have to live in the same house with our children. We cannot sleep in the same house with my husband with the children around and he is forced to look for alternative accommodation.”⁹⁴

Lack of proper sanitation also leads to the outbreak of illness. In Naivasha (Gilgil and Mai Mahiu) victims reported that they have to either purchase clean water at high prices or resort to using unclean water that exposes them to water-borne disease.

92 CE 02: V0000.

93 CR 11: V005.

94 CR 6: V004.

Box 1. Child-headed households

In circumstances where the victims of PEV live in camps or have been relocated by the Government to remote areas where they cannot access work, some parents narrated how they are forced to leave their children behind in the camps so that they can look for any employment. In other scenarios, one parent or both have to leave the children in the camps so that they can go back to where they had been displaced from and tend their farms. This was because they cannot relocate back to their farms due to the insecurity that still exists. They therefore, live in local trading centres near the farm which offers some relative safety and also saves them the expense of commuting from the camps that are far. Parents in this situation only visit their children over the weekend or when they gather enough money to buy food for their children and travel to the camps. The PEV victims cannot afford to pay for help to take care of the children so they have to leave the very young children in custody of their older siblings who often have not attained the age of majority.

In a camp in Nyandarua, for example, the research team found six siblings who had been left in the custody of their seven-year-old brother because their mother had to work at some distance away. The son had therefore been left with the responsibility of feeding the young ones and taking general care of the shelter. The oldest boy was found feeding his seven-month-old brother on his lap while the other siblings were washing dishes with very little, unclean water. These children are forced to assume the role of heads of households due to the effects of the PEV. They suffer innocently yet are expected to excel in future. They lack parental guidance and assume huge responsibilities as caregivers.



An elderly and sick Maua IDP in Nyandarua.

4.c Healthcare and psychosocial support

The Kenyan Government has an obligation to provide basic primary health care to those who have been displaced. Moreover, failure to provide sufficient sanitation and healthcare for displaced persons, whether in camps or whether integrated into communities has led to preventable deaths. For instance in Kirathimo Camp in Laikipia East, there is no access to healthcare either because the victims cannot afford treatment or because the victims are located away from the health centres.

Due to lack of healthcare in some camps, women cannot access maternal healthcare leading to high child mortality at camps. For instance a Kikuyu interviewee in a camp near Kisumu reported that after being displaced she went to the hospital in labour. The physician attending to her asked her why

she hadn't gone to hospital in Central Province, were there no doctors there? She reported that the doctor then left her without assisting, which she believes led to subsequent negative health consequences.⁹⁵

Deaths of infants in the camps were also attributed to extreme weather conditions, lack of food to feed the mother, and lack of vaccination for children.

Reproductive health services are also a significant challenge, despite Kenya's obligation under the Great Lakes Pact to assure special attention to these types of services. Camp residents informed the research team that they are not able to access birth control, and a high prevalence of HIV/AIDS at camps was also reported.

As a result of failing to provide basic services

95 NY 08: V0000.



Mitoni IDPs in Molo Resettled area.

to Kenyans who were displaced, the Government now has the responsibility to provide compensation to victims for an entirely new class of human rights violations, those that took place while Kenyans were in camps or other residence as a result of displacement.

4.d Education

All people have a right to education under the Constitution of Kenya as well as under multiple international human rights instruments. The Kenyan Government asserts that it has reconstructed 138 of the schools that were destroyed during the post-election violence, at a cost of KSh. 242,000,000.⁹⁶ In addition, the Government reports that 16 schools were constructed in Molo and Uasin-Gishu at a

cost of KSh. 123,000,000 disbursed to the Kenya Defence Forces.⁹⁷ Despite these assertions by the Government, the research team found that many victims are struggling to access education, because of cost, discrimination, interruption in their educational progress, and because of missing documents.

Interviewees reported that because of massive property losses they no longer had the means to send their children to school. Displacement also led to other educational challenges. As one victim who had been displaced from the Rift Valley and had resettled in Muranga narrated:

My children have been forced to repeat classes due to displacement. The reason for this is the fact that the teaching is done in Kikuyu, a language unknown to them for

⁹⁶ Ministry of State for Special Programs, *supra* note20.

⁹⁷ *Id.*

*they were more familiar with English and Kalenjin.*⁹⁸

Another group of victims who had suffered periodic attacks during post-election period shared with the team:

*Our future is in tatters. Our children cannot access Government jobs such as police positions because they failed in their exams. The failure was not because our children are not bright but it's because of this nomadism that we are subject to every time there is election related violence.*⁹⁹

Another victim shared with the team how his family was targeted because of his support for a political party that was unpopular in his community. His house was burnt down, and they were displaced for a year. In relation to his children's education he told the team "My child has dropped in performance in school, he used to make the top five in his class but now he becomes bottom five. He is also constantly ridiculed in school which has affected his self-esteem."¹⁰⁰

In addition, children who lost documents, in particular birth certificates, find it difficult to sit for national examinations for which the documents are required:

*I had my child in Form 1. I didn't have fees to take her to school. She was lucky to get a school through a well-wisher. She did her Form 4 but now she cannot proceed. She has no certificates or ID and thus cannot be employed in any way. All this has given me high blood pressure and other diseases, in addition to the stress of having my husband die and I was left with nine children.*¹⁰¹

As a result of these educational challenges, many children have entered the informal labour sector in order to earn money to help support their families. The research team found young girls who were supposed to be in school having sought employment as housemaids and waitresses to be able to contribute to the family income. In particular in Kimilili in Bungoma and Chebilat in Sotik, for example, the research team was informed that young girls have also resorted to prostitution to earn money. Their work, apart from being dangerous and a violation of their human rights, keeps them out of school.

Victims also noted that they were unable to access bursary funds, as a result of discrimination due to their displacement.¹⁰² Discrimination against displaced persons is a violation of their human rights and highlights the need for the Government of Kenya to provide additional assistance to ensure that victims can access education.

98 CE 5: V005.

99 CR 20: V001.

100 CR 6: V001.

101 CR 30: V0000.

102 E.g., NR5: V005.



IDP returnees in Kuresoi.

4.e Livelihood supports

The Constitution provides that all Kenyans have socio-economic rights, including the right to social security for those who are unable to support themselves.¹⁰³ At all the sites visited, the fact-finding team met with victims who had been actively engaged in different types of economic activities prior to PEV. These included business persons, farmers who were either landowners or had leased land, civil servants and casual labourers during PEV. Their economic activities and livelihoods were totally disrupted. Some respondents were overwhelmed by emotion when they remembered what they previously owned. “I was a businessman with a Bata shop, it was all razed. I lost about three million shillings. I also had a supermarket

and rental houses and they were all lost.”¹⁰⁴

The destruction of their property has rendered many displaced survivors very poor and they have resorted to engaging in odd jobs to survive and sustain a livelihood. One survivor from Gilgil stated that “Life has changed as we lost everything and are living in tents. Before the violence, I relied on selling milk from my cattle but I can’t do that anymore since my cattle were stolen.”¹⁰⁵

Interviewees also reported that high stress levels because of the change in life circumstances have led to death of PEV victims¹⁰⁶ while others have committed suicide. One interviewee living in Eldama Ravine noted that:

104 CR 30: V003.

105 CR 03: V002.

106 E.g., NA 5: V0000, noting that many elderly women had died as a result of stress after the PEV.

103 Constitution of Kenya (2010), Art. 43(1)(e).

*The Government has only given us KSh. 25,000 as compensation while our plot with six rental houses on it were burnt together with our home. We are still psychologically distressed from the violence and people live on the lookout.*¹⁰⁷

The Government reported that it has worked to provide vocational training for victims. With a UNDP grant of KSh. 132,000,000, the Government stated that it has provided four business solution centres in Kisumu, Kitale, Eldoret and Nakuru to provide entrepreneurial skills to women and youth. The Government notes that as of the beginning of 2012, 1,459 people had benefited from the training.¹⁰⁸ While this effort is laudable, training for slightly more than 1400 people in a period of four years, when the number of displaced persons amounts to more than half a million, seems a scant effort.

The Kenyan Government also reported at the beginning of 2012 that through a livelihood support grant from UNDP it had provided some assistance to victims. According to the Ministry of State for Special Programs, 350 fishermen have been provided with fishing gear and construction of fishing ponds. An additional 54 households have received fishing nets in Kisumu while 1,600 households have been provided with farm inputs. In addition 50 breeding cows have been distributed to post election victims

in Kisumu, Kitale, Eldoret and Nakuru. Again, given the scale of victimization these efforts seem minimal in comparison.¹⁰⁹

4.f Discrimination

It is a violation of human rights to discriminate, and this applies equally to victims of displacement. During the field research many interviewees expressed concerns about discrimination because of their displacement. PEV victims noted that in terms of employment in the area where they currently reside, they are unable to access jobs because their identity cards state that they come from different regions.

One victim from Nairobi described the following experience:

The area [District Commissioner] was transferred here, so follow up from the PEV had to start afresh and the process was cumbersome. Not all names of people affected were submitted to the list for compensation – only nine names made the list. The administration and political class was mainly composed of officers from the Luo community, which made the follow-up process almost impossible. Integrated IDPs suffered more losses, but were not even considered, and people without identity

¹⁰⁷ CR 15: V0000.

¹⁰⁸ Ministry of State for Special Programs, *supra* note20.

¹⁰⁹ Ministry of State for Special Programs, *supra* note20.



Shops vandalized and burnt down – Ndeffo, Njoro.

cards did not receive the 10,000 shillings that was distributed as compensation.¹¹⁰

In some parts of Kenya such as Isiolo, Nyahururu Town, Kirathimo in Laikipia West, Ndagara, Nyandarua South, victims reported that they suffered discrimination mostly by the provincial administration when seeking to access Constituency Development Funds to secure bursaries for their children's education. They also reported that they were discriminated against with respect to distribution of relief food.

In most of these areas the victims stated that the discrimination suffered was mostly perpetrated by the provincial administration. One displaced interviewee told the team that "our camp was not given any assistance by the Government. Other IDPs

were being assisted with food and money, but we were left out. It looked like the Government was only assisting one tribe."¹¹¹

International principles on displacement recognize that, often, individuals who are in mixed-ethnicity relationships are particularly vulnerable to discrimination and violence. Victims who were or are in mixed-ethnicity marriages were often targeted from all sides and had relatively few safe options. Providing assistance to these families may take extra measures to enhance security and re-establish residence.

110 NA 7: V0000.

111 UG 8: V001.



Shell of a house burnt in Burnt Forest.

4.g Restoration of, or compensation for, lost property

The Great Lakes Pact Protocol on the Property Rights of Returning Persons specifies that Kenya has an obligation to assist internally displaced persons and refugees and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement.¹¹² When recovery of such property and possessions is not possible, Kenya has the obligation to provide or assist victims in obtaining appropriate compensation.¹¹³

The Kenyan State seems to have taken virtually

no action in this regard, based on KHRC's and ICJ Kenya's field research. With the exception of minimal funds distributed through Operation Rudi Nyumbani, and the livelihood assistance that has been provided to some farmers, fishermen, and others, as described above, the research team heard of no attempt by the Government to register property losses, to provide a comprehensive program of recovery of property, or to provide any compensation to victims.

Property losses included homes, livestock, farming implements, business assets, educational certificates, title and identification documents, household items, personal items, and much more. The cash assistance program is not a substitute for equitable, fairly-valued compensation for lost property.

The experiences narrated below are typical and were repeated at almost every research location:

112 International Conference on the Great Lakes Region, "Protocol on the Property Rights of Returning Persons", 2006, Art. 4(1).

113 *Id.*, Art. 4(2).

I owned a hostel that hosted close to 400 students. They burnt it. I had established a hospital here and most of the machines there were destroyed. My wife had commercial stores in the town and they were also burnt. Further, I had shops which were also burnt. I lost 158 million [shillings] because of PEV and I have even instituted a suit in court to recover my losses. I hosted many other victims and gave them money to start off, but they never repaid me. I had bank loans and other debts. I am now forced to sell my properties to offset my debts.¹¹⁴

I had a house with six rooms. Now am homeless and I live in a shack. I also lost my business and have had to start from scratch. I don't have money as before.¹¹⁵

I was in Timboroa town. I had rented a house and two acres of land and was doing maize and potato farming. I kept some livestock as well. I lost about KSh. 250,000. My life has changed as now I have regressed and have to start from scratch. I cannot even pay fees and I am desperately searching for a bursary.¹¹⁶

114 WE 1:V002.

115 SR 13:V006.

116 CR 21:V003.

4.h Right to voluntarily return in dignity

Assisting IDPs to return to their habitual residence or to be resettled in another area has been the main focus of the Kenyan Government's response to victims of displacement. At the beginning of 2012 the Government reported that 350,000 individuals had returned to their homes as a result of government programs.¹¹⁷ The Government also noted that the Ministry of State for Special Programs had spent KSh. 3.3 billion towards financing various IDP resettlement activities and that the Ministry of Lands had spent KSh. 1,476,186,660 to purchase land for resettlement.¹¹⁸ Also, according to the Government, for those who owned farms in the larger Uasin-Gishu and Molo Districts, the Government has constructed houses for them using a KSh. 1.5 billion loan from the African Development Bank. By the beginning of 2012, a total of 14,269 houses had been constructed. The Government reportedly plans to construct 4,738 more houses. The Government also reports that an additional 30,953 houses were constructed by individuals in Kipkelion and Trans-Nzoia using the Ksh 25,000 cash assistance program for destroyed or burnt houses.¹¹⁹ Other reports have indicated that the Government provided transportation assistance for IDPs who had purchased land under self-help

117 Ministry of State for Special Programs, *supra* note20.

118 Ministry of State for Special Programs, *supra* note20.

119 *Id.*

groups, but who could not afford transport to get to the new land.¹²⁰

ICJ Kenya and KHRC's field research revealed that while some victims of PEV have been resettled by the Government, others are still waiting. There are some victims living in the camps who are not willing to return in their farms because of insecurity or due to traumatic memories. A victim who now lives in Nyeri told the research team that:

At the Teachers College, a politician came and told the Luo's that if they killed the Kikuyus and took away their property, there would be no consequences. Some people are returning back to their land and are being killed and the Government is doing nothing. At the moment, we cannot go back to where we came from. We want the Government to compensate us and only when our wounds have fully healed shall we return.¹²¹

An interviewee from Eldoret said:

I was a victim of the 1992 and 1997 clashes where my house was burnt down but each time I rebuilt it. During the 2007/8 PEV, my house together with all my livestock and crops were burnt down and our neighbours wanted to kill my family and me. I did not

know where my wife escaped to until July when some of my friends who had gone to Thika informed her that I was still alive. I shall never go back there and neither shall any Kikuyu that we were living with before the PEV. I have lived in Eldoret all my life and don't know any Kikuyu or have land in Central Province.¹²²

Our field work and several other human rights reports indicate that although resettlement has been the primary focus of the Kenyan Government, the flagship program, known as Operation Rudi Nyumbani, was carried out in an uncoordinated, non-participatory, and inequitable manner. Reports indicate that the cash assistance and resettlement scheme was unevenly distributed and subject to fraud, with some victims getting KSh. 10,000, some getting both KSh. 10,000 and KSh.25,000, some getting none, and some getting multiple payments by registering in multiple locations.¹²³ Integrated IDPs in particular reported being left out and to date have not been included in any resettlement plan. In addition, some host communities have rejected resettlement in their area, despite the fact that land has already been bought by the Government.

In addition, those IDPs who have been resettled and even those who were able to return to their original homes have found it difficult to sustain

120 DURABLE SOLUTIONS TO INTERNAL DISPLACEMENT, supra note 25.

121 CE 1:V009.

122 CR 5:V000.

123 DURABLE SOLUTIONS TO INTERNAL DISPLACEMENT, supra note 25.

themselves given the low level of reintegration support. Accordingly, many have relocated again to slums in larger urban areas.

Despite a substantial expenditure on this aspect of its obligations to victims, the Government does not appear to have been able to effectively ensure that victims could return or resettle with dignity as required under international and regional human rights treaties.

Box 2. Discrimination against female returnees

Some of female victims of PEV have faced numerous challenges particularly at the hands of their kinsmen who cite customary beliefs and practices for their actions.

One woman from near Nyeri described her experience when she sought refuge in her maternal home. She was initially welcomed by her grandmother and the other villagers when she survived the mayhem in the Rift Valley and brought home her children. Well-wishers donated food, clothing and shelter. All was well except that as an orphan herself, her maternal male relatives were unhappy with her return home. They started threatening her and asked her to leave. They were concerned that their mother was likely to bequeath her land. On a number of occasions, to force her to leave, the relatives destroyed food that she was preparing. With nowhere to go, she remains there with her children, living in fear but with assurance from the local administration that they would caution her family members.¹²⁴

Other women who did not marry or were separated from their spouses also described to the researcher team that they were unwelcome at home following forcible displacements. Researchers met a group of widows in Nyamasaria, Kisumu who all narrated how difficult it was for them to get refuge at home when the violence broke out. Before PEV they had settled in Kisumu and when they went to their ancestral homes seeking refuge, they were considered outsiders. For those who were married to men from the host community, only their children were taken in, leaving them out in the cold and separated from their children.

During IDP resettlement programs, those allocated land were mostly male heads of family. In Giwa Farm, for example, researchers were told about a typical example. A married man with children was allocated 2 ¼ acres of land during resettlement. Instead of building a home for his family, he sold the construction material that had been allocated and left for an unknown location, abandoning his family. As a punitive measure the provincial administration decided to take away the land from this beneficiary, leaving the wife and children landless.¹²⁵

124 CE 26: V001.

125 VCR 20: V004.



IDP returnees in Rukuini Burnt Forest.

4.i Integrated IDPs and assistance to host communities

The Kenyan Government also has an obligation to support host communities who take in victims of displacement. During the post-election violence and the massive displacement that accompanied it, many individuals and communities took in those who fled and assisted them. The individuals who were displaced into these “host” communities are considered integrated IDPs. Many integrated IDPs interviewed for this field research indicated that as a result of the long-term displacement, tensions have been steadily rising between those who were displaced and the host communities. This also is an issue for resettled IDPs who have been placed

on land with little consultation with either the host community or the IDPs.

Integrated PEV victims reported that they are stigmatized and are considered a burden by those hosting them. They stated that some host communities viewed the ‘newcomers’ as competitors and are sometimes hostile towards them:

During the Operation Rudi Nyumbani, we returned to the farm. The host community was hostile towards us and a well-wisher... donated a piece of his farm to us to pitch our tents. In August 2009, a woman was beaten by a gang from the host community while in her farm. The host community complains that the resettlement is what has

*increased the price of basic commodities. Our children are constantly being threatened in schools by other students from the host community.*¹²⁶

Host community resentment develops over time in the vast majority of displacement situations. It is for this reason that international and regional principles specify that the Kenyan Government has an obligation to provide assistance to host communities in dealing with the challenges that arise from displacement. It does not appear that this has been a part of Kenyan Government policy. A key component of this type of assistance can be reconciliation efforts. However, there is broad agreement that the Government has done little in this regard. District peace committees and faith-based organizations have made concerted efforts to reconcile communities, but there remains need for a comprehensive program of assistance to conflict-affected communities to deal with the consequences of displacement and to enhance reconciliation.

Box 3. PEV Victims' Desire for Justice

Victims repeatedly told the research team that they support efforts to bring perpetrators of PEV crimes to justice. There was near consensus among the victims that anyone who was involved in the violence should be made to account for the crimes they committed, however, some of the victims, particularly victims of recurrent violence in 1992, 1997, 2005 and 2007 did not believe that any judicial process would have a positive outcome.

The victims proposed two ways of dealing with the suspects; the so called 'big fish', who organised and financed the violence should be dealt with by a different court and not the local judicial mechanisms, whilst a special court could be created to deal with the 'small fish' who were the foot soldiers carrying out the actual destruction. They suggested that as for the 'Big Fish', they should be strictly dealt with by the International Criminal Court (ICC). One victim put it as follows:

*The Kenyan judiciary lacks the maturity to deal with the magnitude of cases such as those of the PEV. Therefore, let the 'big fish' be dealt with by the ICC, at least then we can be assured of justice being served to us (victims).*¹²⁷

126 UG 9: V001.

127 NR 12: V0000.

Victims also noted that the Kenyan courts are slow in dispensing justice and are suffering a huge backlog of cases. They believe that the PEV cases will end up being shelved just like many cases touching on the rich and influential and that justice may never be done to the victims. In addition, they argued, the judiciary is under staffed, which is a major contributor to the current backlog. The following comment by one of the victims summarized it as follows:

*I do not personally have faith in the Kenyan judicial system. Reason being that, the courts are laden with a huge back log of cases and constantly claim of being under staffed. Taking the PEV cases to the same courts means that justice will never be achieved in our life time. Also, our MPs (political class) don't believe in the courts and that is what led to the predicament we find ourselves in today as victims/IDPs in the first place. It is better the ICC handles the PEV matter at this stage.*¹²⁸

Victims that support the ICC process appeared to have a very grim perception of the judiciary. The majority of the respondents were of the opinion that the courts are among the most corrupt institutions in Kenya and that 'justice' only applies to the wealthy and influential. This is exemplified by this comment from one informant:

*I would rather that the ICC handles the PEV cases at The Hague. If the cases are at any one time brought back to the country, the suspects will bribe their way to freedom. Our judiciary is rotten and corrupt. But as regards the small fish, let them be tried locally. Once these mechanisms are put in place, justice will be seen to have been done.*¹²⁹

Our field visits suggested that most of the victims were in favour of the ICC process for as long as it would deal with the 'big fish' who they felt could influence any local judicial process.

128 WE 03: V0000.

129 NY 16: V0000.

F. Conclusion

Kenyan victims of post-election violence are still suffering the direct and indirect consequences of the violence more than four years later. Field visits by ICJ Kenya and KHRC documented the fact that in large measure, the Kenyan Government has failed to meet its obligations to victims of post-election violence – victims have received neither sufficient investigation of crimes, adequate justice, or reparation for the harms suffered. As a result, the Kenya Government has set the stage for a continuing cycle of violations in the coming elections, currently set for 2013.

Although the Government has allocated significant resources and energy toward registering

displaced persons, providing resettlement assistance, this effort has been flawed and incomplete. In addition, the strong focus on addressing displacement has disregarded the other types of human rights violations that victims suffered, including killings, injuries, and sexual and gender-based violence. Although some victims reported receiving medical assistance this effort, like the others, was ad hoc and uncoordinated and left many victims without any assistance.

As Kenya looks toward the next elections, the needs of victims of previous election violence must be addressed to ensure that the thousands who were affected can claim their rights as citizens of Kenya and participate effectively in Kenya's democracy.

G. Recommendations

The following recommendations are made to various actors with regard to PEV victims. These recommendations come directly from field research and reflect the Government of Kenya's obligations under the Constitution and international treaties to which it is a State Party. In general, the Government of Kenya should comply with its current obligations under international treaties with relation to the rights of victims. To meet these obligations the Government should:

- Initiate a new registration process for victims, drawing on lessons learned from the initial registration exercise and on data gathered by the TJRC related to PEV victims specifically. This registration process should be adequately funded, totally transparent, and extensively audited and monitored to ensure that any problems are corrected during the exercise. The registration exercise should ensure that violations other than displacement are recorded. The registration exercise should lead to the creation of a database of victims, including information about what benefits have been received by particular individuals to date.
- Immediately provide displaced persons with adequate shelter, food, water, and sanitation.
- As soon as possible ensure access to basic primary care services, reproductive health services, and maternal and child health services that are accessible to all displaced persons. If this requires establishing mobile health care units that should be facilitated and fully-funded.
- Deploy SBGV monitoring and rapid-response teams to areas where IDPs remain at risk of being victimized, particularly in informal camps and in locations where unaccompanied children reside.
- Carry out an assessment of educational service available to displaced persons to ensure that schools are accessible, that students can access education in a language that they understand, and that teachers and staff receive on the Constitutional obligation not to discriminate.
- Facilitate the issuance of death certificates to those families who lost loved ones through a credible and administratively fair process, taking into account the lapse of time and the possible lack of evidence in some cases.
- Design a comprehensive program to provide compensation and social security support to families whose loved ones were killed, and to individuals who suffered grievous injury. This process should be coordinated with any proposed TJRC reparations process. This process should

be transparent, regularly audited, and conducted through a fair administrative process.

- Ensure that all victims who suffered injury and SGBV are provided with free medical services to address their medical needs.
- Ensure that psychosocial support is available to victims of SGBV in places where women can access these services. If this requires establishing mobile programs to visit rural areas, that should be facilitated and fully funded.
- Expand livelihood support programs beyond the small number of individuals reached so far.
- To specifically address the long term needs of victims of SGBV, the Government of Kenya should:
- Establish rescue centres for victims of SGBV. The centres will offer immediate support and treatment to victims thus prevent further damage or death. The treatment will protect against infection of communicable diseases. They will also help to report and document the violations immediately thus assist in profiling during emergencies.
- Improve the response of the police and legal system to SGBV. This may entail creation of

mechanisms that will ensure there is sufficient evidence collected that can be used to prosecute the perpetrators. Training the investigators and prosecutors on how to handle sexual offences case especially for violations committed during conflict situations.

- To address longer term need for national unity, the Government of Kenya should:
- Continue to plan and implement peace building and reconciliation programs across Kenya in a manner that respects victims' right to participate in the planning and implementation of these programs.
- In addition to the Government, other actors also have a responsibility to victims of the post-election violence. Civil society, faith, and professional groups should:
- Engage victims in civic education programs on different issues of development such as human rights, technology, agriculture and business. This will empower victims sustain better livelihoods.
- Monitor the Government of Kenya to ensure that all rights and fundamental freedoms are respected, promoted and protected for all Kenyans without discrimination.

Annexes

Annex 1. Data Collection Instruments

Group Interview/FGD Response Form

Please try and capture the responses from each participant during the FGD. Use a good legible hand writing and utilize the space well. If the responses exceed the available space, staple a similar form to this one and continue to capture the responses under the same number on the new form.

1. Where were you living before the Post Election Violence(PEV)? *(try establish if the participants in the group came from the same place, if not probe and document the different areas of origin)*
2. Source of livelihood before the PEV?
3. How did they end up in the current area?
4. What losses were suffered as a result of the PEV? *(Quantify for each respondent)*
5. How has their life changed since the 07/08 PEV?
6. Ever heard of the Hague/ ICC
7. Do you support the process? *(probe for their reasons for or against the process)*
8. What is your definition of 'participation' in the ICC (what do you think 'participation' means and what would you expect from it)
9. What is your definition of 'justice' and do you

think you have received 'justice' as you define it (if so, how, to what extent, with what results)

10. Any other comments from the group/ observations made by the researcher

Group Interview/FGD Guide

At the beginning of the interview, before getting into the questions, the Moderator should:

- A. Thank the participants for their participation, welcome them and introduce him/herself, the note taker (and what he/she will be doing) and the organizations they represent i.e. ICJ Kenya and KHRC.
- B. Explain to the group the purpose of the study
- C. Ask respondents to introduce themselves as the note taker writes them and assigns them numbers
- D. Assure respondents that they (researchers) are not looking for any particular responses and that everyone's view and narration is accepted and all should feel free to contribute.
- E. Assure them that no names will be mentioned and whatever information they give is confidential.
 1. Where were you living before the Post Election Violence(PEV)? *(try establish if the*

participants in the group came from the same place, if not probe and document the different areas of origin)

2. What was your source of livelihood before the PEV?
 3. How did they end up in the current area?
 4. What losses did you suffer as a result of the PEV? (*Quantify for each respondent*)
 5. How has their life changed since the 07/08 PEV? (How the person, her/his family, her/his property continue to experience the effects of what happened during the PEV (post-traumatic stress; educational, health, housing, livelihood concerns; security concerns);
 6. Have you ever heard of The Hague/ ICC?
 7. Do you support the process? (*probe for their reasons for or against the process*)
 8. What is your definition of 'participation' in the ICC (what do you think 'participation' means and what would you expect from it);
 9. What is your definition of 'justice' and do you think you have received 'justice' as you define it (if so, how, to what extent, with what results)
 10. Any other comments or observations by the researcher?
- F. Thank participants and ask them if they have any questions or comments to make?

KII Response Form

CODE _____

LOCATION _____

Please try and capture the responses from the key Informant(KI). Use a good legible hand writing and utilize the space well. If the responses exceed the available space, staple a similar form to this one and continue to capture the responses under the same number on the new form.

1. How is the respondent (KEY INFORMANT) affiliated to the particular group?
2. How many households are in this camp?
3. How did they end up in the current area?
4. Where did the inhabitants come from before PEV? (*probe for the process and movement to get there*)
5. What are the needs/ challenges of the group?
6. Is he/ she aware of the Hague/ ICC and do they support it?
7. What should be done for the group/ Victims? (*probe for the action and by whom?*)
8. What is your definition of 'participation' in the ICC (what do you think 'participation' means and what would you expect from it)
9. What is your definition of 'justice' and do you think you have received 'justice' as you define it (if so, how, to what extent, with what results)
10. Any other comments from the KI/ observations made by the researcher

Annex 2. Overview of Data Collection Sites

Table 1. Areas visited during the victim mapping exercise between July—September 2011

Date	Areas where victims were located
12/07/11	Ngeteti Camp
12/07/11	Nawamu camp
12/7/11	Kihoto Camp
12/7/11	Wanaruana (Baraka) Kikopey
12/7/11	Vumilia
13/07/11	Pipeline – New Canaan
13/7/11	Gathioro Integrated Group
13/07/11	Ndeffo Camp
13/07/11	MitoniTuinuane Camp
13/07/11	Camp of Good Hope
14/07/11	Ndaraga
14/07/11	Rumuruti Camp (Marumanet Melua IDP Camp)
14/07/11	Rumuruti Township
14/07/11	Giwa Farm
14/07/11	Giwa Farm – Shalom A
15/07/11	Solai Area
16/7/11	Kuresoi (Soliat Location)
16/7/11	Githima area in Kuresoi
16/7/11	Nyakinywa Farm
16/7/11	Lagwenda Transit Camp (50households)
18/7/11	Athinai-Rongai(Makongeni Village)
18/7/11	Marigat
18/7/11	Marigat Market
18/7/11	Kabarnet
18/7/11	Molo River – Mahinga Farm(Kambiya Moto)
18/7/11	Eldama Ravine Town
18/7/11	Ravine – MajiMazuri
18/7/11	Timboroa – Gilgil Farm
18/7/11	Tambach
19/7/11	Ngárua
19/7/11	Rurigi
19/7/11	Lelmolok
19/7/11	Kondoo Farm 2(152 Families)
19/7/11	Lorian Farm
20/7/11	Sugutek Farm-Sergoit Location

Date	Areas where victims were located
21/7/11	Yamumbi (Camp with 512 members)
21/7/11	Naka IDP Camp
21/7/11	Kamwingi / Gwatangiro IDP Camp
21/7/11	Kiambaa Village
22/7/11	Maraba
22/7/11	Kosoiwa – Mchanganyiko
22/7/11	Mosoriot
22/7/11	Kapsabet Town
23/7/11	Kipkabus
27/7/11	Ngasha Langas Slums
27/7/11	Kapsabet
28/7/11	Kachibora
28/7/11	Geta
28/7/11	Makutano
28/7/11	Makutano-Kapenguria
29/ 7/11	Teldet Camp
29/7/11	Patwaka
29/7/11	Nasianda IDP Camp
29/7/11	Kinyoro
29/7/11	Embakasi – (Simita Farm)
29/7/11	Kiminiini – Integrated
29/07/11	Bungoma IDPs
30/07/11	Kimilili
31/7/11	Kaptama
31/7/11	Moding
01/8/11	Busia Town
1/8/11	Marachi Slums
1/8/11	Mukhobola – Budalang’i
3/8/11	Kakamega Town
4/8/11	Butere
4/8/11	Malaha – Bunyala
5/8/11	Majengo
6/8/11	Kondele/ Manyatta
6/8/11	Nyalenda
6/8/11	Nyamasaria
6/8/11	Awasi
6/8/11	Migori (about 400 Households)
8/8/11	Ayweyo
8/8/11	Awasi
10/8/11	Kokwanyo
11/8/11	Kiogoro
11/8/11	Kilgoris
11/8/11	Nyamarambe
17 /8/11	Kipkebe Village
17/8/11	Tumoiyot

Date	Areas where victims were located
17/8/11	Kisabei Village
17/8/11	Kiptuna Village
17/8/11	Siroin Village
17/8/11	Kipronyit Village
17/8/11	Litein
17/8/11	Chebigen
17/8/11	Kapkukerwet – Brooke
17/8/11	Kahurura – Nyakinyua Farm
17/8/11	Bomet Town
19/8/11	Kiambi Self Help Group (Camp with 281 members)
19/08/11	Maua Camp
20/08/11	Mirangini
20/8/11	Mawingu Camp
21/8/11	Lari
22/8/11	Kikuyu (About 240 households)
29/8/11	Thika (390 integrated IDPs) – Madaraka Market
29/8/11	Kiganjo (About 300 integrated families)
30/8/11	Gatanga
30/8/11	KihioMwiri – Gatanga
31/8/11	Kahuro District – Muranga
31/8/11	Muranga
31/8/11	Kangema
31/8/11	Ichagachumi Village
31/8/11	Gikoe Market
1/9/11	Mukurweini
2/9/11	Kigumo
6/9/11	Babadogo-Kasarani
6/9/11	Kosovo-Mathare
7/9/11	Makina – Kibera
7/9/11	Toi Market – Kibera
7/9/11	Kianda – Kibera
8/9/11	Mathare North
8/9/11	Embakasi
9/9/11	Kibera

Annex 3. Research Challenges during Field Work

- In the course of the study, the research team encountered a number of challenges that made more difficult the collection of information. These included:
- **Time constraints:** This research project aimed to reach every part of Kenya where PEV victims reside within a stipulated time frame. This included regions which have poor infrastructure and are difficult to access. Considering the kind of information of personal experiences of victims, researchers felt that they needed to spend more time with the victims than was practically possible. Researchers were equally fatigued as they criss-crossed Kenya, travelling long distances in rough terrain. However simple explanations about the time constraints were sufficient to assure the victims of the researchers' empathy and commitment to their plight.
- **Security concerns:** This challenge was experienced on two facets: on one hand some of the victims were weary of giving information for fear of threats from the host communities; on the other hand, the research team visited areas that are volatile and prone to violence. This compelled the teams to hasten their work and to be more cautious. The teams were consistently conscious of the likelihood of exposing informants to danger by participating in the study or by disclosing their identity in the published report. The teams, in such circumstances ensured that interviews were carried out in areas that the respondents considered secure, usually off-site and were assured of strict confidentiality. KHRC and ICJ Kenya have assured that names and other identity markers of informants would not be included in the final report.
- **Suspicion:** At some of the areas visited, the researchers were viewed with suspicion. They were perceived to be agents of the Government or spies. The likely effect was that crucial information was withheld by respondents. This may be attributed to the fact that the study coincided with the confirmation of charges hearings at The Hague for six suspected high level perpetrators for PEV. However, by speaking to more than one informant, it was possible to get adequate information.
- **Prevailing political environment:** This field research took place prior to and during the confirmation of charges at the ICC for individuals considered bearing the greatest responsibility for the serious crimes against humanity committed during PEV in 2007/2008. In some instances key informants refused to divulge

crucial information for fear of retaliation from incriminating members of their community.

- **Anger and frustration of “over-researched” victims:** Since the PEV in 2007/2008 both state and non-state actors have reached out to victims in a bid to know about their status and find out appropriate interventions that can alleviate their plight. However, some victims felt that many organizations have undertaken researches on them without consequent feedback, follow-up and providing solutions. They therefore saw no need to engage with other research initiatives.
 - The research team committed to build a trusting relationship with the informants through follow up visits. They however communicated to them of their limitation of time and resources.
 - **Victims’ expectations:** It is worthy to note that PEV victims now live in deplorable conditions and destitution is an inevitable phenomenon. As a consequence, some respondents expected money, food and other aid in exchange for information while others had the perception
- that the research teams were distributing funds from the Government of Kenya and other donor agencies and were quite disappointed to realize that was not the case.
- **Language barrier:** The researchers visited some areas where some inhabitants affected by PEV could only communicate in their mother tongue. This meant that there was need to work with local guides who assisted with interpretation. Further, some people could better and more accurately express themselves in their mother tongue.
 - **Ethnicity:** In striking a rapport with the respondents, researchers would introduce themselves at the beginning of focus group discussions or key informant interviews thus revealing their ethnic backgrounds. Some PEV victims who experienced atrocities perceived to have been initiated by certain ethnic groups would turn hostile to team members and even refuse to divulge information. However, in most of the cases, other informants in the area who saw the value of such a study intervened.