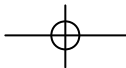


A photograph of a refugee camp in Kenya. In the foreground, several children are standing on a dirt ground. One child on the left is wearing a grey hooded jacket and holding a white bowl. Next to them is a child in a grey shirt and shorts, hugging themselves. In the center, a girl in a white dress is smiling and pointing towards the camera. To her right is another girl in a white dress, and on the far right, a boy in a dark jacket and white pants. In the background, there are several white tents made of fabric, and several people, including women and children, are visible. The sky is blue with some clouds.

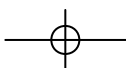
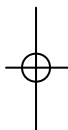
# OUT IN THE COLD

**The Fate of Internally  
Displaced Persons in Kenya  
(2008-2009)**



# OUT IN THE COLD

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Displaced Persons in Kenya  
(2008-2009)





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## ACKNOWLEDGEMENT

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In particular, the KHRC also wishes to further acknowledge Keffa Magenyi, the National Chairperson of the IDPs Network in Kenya, who was integral to the mobilization and coordination of the monitors from the IDPs Network. KHRC also appreciates the support given to this project by Lyn Ossome and Raphael Obonyo in who drafted this report. KHRC wishes to thank its Programme Officers: a) Lilian Kantai and Tabitha Nyambura who were instrumental in coordinating the monitors; and b) Davies Malombe for conceptualizing, leading and coordinating the entire project

This Report was edited by Tom Kagwe and Prisca Kamungi: we acknowledge their efforts as well. Last but not least, we wish to thank some government ministries, departments and agencies for availing information that helped compile this Report.

## DEDICATION

This Report is dedicated to all IDPs in Kenya, who have been displaced due to many political, economic and social factors from 1980s to date. Their resilience and tenacity has always inspired other survivors of impunity and the general citizenry in Kenya in the unrelenting struggle for justice, peace and equity in the society.

In her cry for justice to IDPs who were displaced following the post election violence, Rosemary Machua notes:

*I was not able to visit any Internally Displaced Persons' (IDP) camp. Somehow, their plight weighed too heavily on my heart. It was just too painful for me to watch them suffer, knowing that there was very little I could do for them. It felt like I would be reliving my own past through them as I watch their hurt, their pain, their desperation and isolation. It would hurt to see their expressions of betrayal by their government, which appeared reluctant to address their plight. Their desire for resettlement would painfully resonate with me since my family had at one time nowhere to call home. I would see their despair as the reality that the rest of the country has moved on, leaving them behind to nurse their wounds.<sup>1</sup>*

We wish to state that justice is coming soon: justice is coming soon.

---

1. Rosemary Kariuki Machua, 2008. *I am My Father's Daughter: Over 30 Years Later J. M Kariuki Daughter's Quest for Truth and Justice Revealed*, Nairobi: Flamekeepers, P 47

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## ABBREVIATIONS AND ACRONYMS

AP	Administration Police
ASK	Agricultural Society of Kenya
CBO	Community Based Organization
CJPC	Catholic Justice and Peace Commission
COHRE	Centre on Housing Rights and Evictions
CREAW	Centre for Rights Education and Awareness
CODEF	Community Development and Empowerment Forum
CSOs	Civil Society Organizations
DC	District Commissioner
DO	District Officer
DDC	District Development Committee
FIDH	International Federation for Human Rights
GCG	Grand Coalition Government
GHSC	Government Humanitarian Services Committee
HURINETs	Human Rights Networks
IC/GLR	International Conference on the Great Lakes Region
IDPs	Internally Displaced Persons
KANU	Kenya African National Union
KHRC	Kenya Human Rights Commission
KHRI	Kenya Human Rights Institute
KNCHR	Kenya National Commission on Human Rights
KRCS	Kenya Red Cross Society
MOH	Ministry of Health
MoSSP	Ministry of State for Special Programmes
MP	Member of Parliament
MSC	Mitigation and Settlement Committee
NAIC	National Accord Implementation Committee
NARA	National Accord and Reconciliation Agreement
NCCK	National Council of Churches of Kenya
NGO	Non-Governmental Organization
NSIS	National Security Intelligence Service
ODM	Orange Democratic Movement
PC	Provincial Commissioner
Peace-Net	Peace and Development Network
PMCT	Prevention of Mother to Child Transmission
PNU	Party of National Unity
RPP	Release Political Prisoners
TJRC	Truth Justice and Reconciliation Commission
UN	United Nations
UNGPID	United Nations Guiding Principles on Internal Displacement
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNOCHA	United Nation Office for the Coordination of Humanitarian Affairs
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

### Glossary of Terms

<i>Operation Rudi Nyumbani</i>	Operation Return Home
<i>Operation Tujenge Pamoja</i>	Operation Let's Build Together
<i>Operation Ujirani Muema</i>	Operation Good Neighbourliness



## About KHRC



The KHRC is a national Non-Governmental Organization (NGO) registered in Kenya in 1994. The KHRC envisions a Kenya that respects, protects and promotes human rights and democratic values. In this regard, the organisation works for the respect, protection and promotion of all human rights for all individuals and groups. This work is guided by five strategic objectives:

Civic Action for Human Rights;

Accountability and human rights-centred governance;

Leadership in learning and innovation in human rights and democratic development in Kenya;

Mainstreaming equality, non-discrimination and respect for diversity;

Organisational sustainability of KHRC.

KHRC's interventions are based on concrete governance and human rights frameworks. Its work is informed by partnership with a wide range of stakeholders and participation of target groups. With regard to IDPs, the KHRC pursues protection and assistance interventions in consultation with the IDPs Network and individual IDPs. Advocacy on behalf of IDPs falls within three interrelated and integrated campaigns: the campaign for protection and justice to IDPs; the campaign for transitional justice; and, the campaign for rights-centred policies, legal and institutional reforms.

KHRC has a national mandate but works with local and international partners including the IDPs Network, survivors of historical and contemporary injustices, human rights and humanitarian organisations and academic institutions. KHRC endeavours to keep victim groups on the national agenda while examining the root causes of human rights violations.

### **About the IDPs Network**

The IDPs Network is an advocacy group working across all eight provinces in Kenya. Founded in 2004, it has grown in membership from a small group of victims of the politically-instigated violence of the 1990s to a national network including IDPs that were a result of the 2007 Post-election violence and other victims from other causes of displacement, such as socio-economic. The IDPs Network is managed by an elected leadership comprising of national and regional representatives. The main objective is to advocate for the protection of IDPs and ensure their participation in national matters.<sup>2</sup>

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2. For more details see Appendix 1

## ABSTRACT

Close to two years after the end of the post-election violence, the government has not fulfilled its obligation to resettle and/or find durable solutions to the plight of approximately 500,000 IDPs. Impunity and the land question, which are intricately linked to the crisis of internal displacement, have also not been addressed. Although most of the main camps have been officially closed, sometimes forcefully, many IDPs have been unable to return to their original homes.

Indeed, many IDPs are relocating permanently from known trouble spots to new areas. Some are buying land for settlement in areas that are perceived safer while others have returned to their ancestral districts. In the new locations, IDPs remain vulnerable to discrimination and labour exploitation, political violence and gender-based violence. Many risk losing their investments, especially the collectively-purchased parcels of land due to failure to pay outstanding balance on the land.

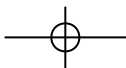
The government use force to remove or disperse IDPs from camps is contrary to international standards which stipulate the voluntary nature of return or resettlement. The United Nations Guiding Principles on Internal Displacement (UNGPID) state that IDPs should voluntarily move out of camps when conditions in areas of habitual residence permit return in safety and dignity. One troubling concern is the plight of 'integrated' IDPs who have not received any facilitation from the government since the commencement of the resettlement programme.<sup>3</sup> This Report examines the protection and assistance given (or lack of the same) to IDPs who are a result of post-election violence in December 2007 to February 2008.

While the resettlement programme received support from different humanitarian and civil society organisations, it faced operational and administrative challenges. Coordination constraints, political manipulation, allegations of corruption, mismanagement of the IDP profiling process and exclusion of genuine IDPs have watered down any positive outcomes of the process. Moreover, insecurity, lack of social cohesion, lack of shelter and inability to re-establish livelihoods stood in the way of return. Finally, child protection concerns, gender-based violence and lack of compensation also hindered the humanitarian and resettlement initiatives. Further still, while the government and Civil Society Organisations (CSOs), especially faith-based institutions, have initiated numerous peace-building efforts, most of these are in vain for without justice, peace is difficult to achieve.

Whereas the government formally recognised the need to substantively redress the IDP problem, as demonstrated in the Kshs.2.2 billion budgetary allocation for the 2009/10 National Budget, it did not spell out clear mechanisms of implementation. The government has taken few deliberate measures to overcome structural impediments to resettlement, as those witnessed during resettlement efforts in the 1990s. Focus on those displaced due to the post-election violence has led to exclusion of other categories of IDPs, including those displaced in the 1990s or even those displaced by factors other than the post-election violence.

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3. The term 'integrated' refers to IDPs hosted by relatives and friends or otherwise mixed with the general population in such a manner that they are not easily visible or identifiable.

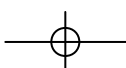
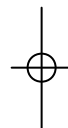
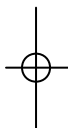


***OUT IN THE COLD***

In summary, the government interventions were not, and have not been, informed by any policy guidelines. Kenya is signatory to regional instruments, which should have guided the resettlement programme but they were not relied on. Indeed, this Report argues that it imperative for the government to domesticate these instruments by developing a comprehensive national policy to address internal displacement.



*Women whiling away time at an IDP camp*



## CONCEPTUAL BACKGROUND

IDPs are people who have been forced, or obliged to flee, and leave their homes or places of habitual residence but who have not crossed an internationally recognized state border.<sup>4</sup> This include two groups: first, those forced to flee as a result of, or in order to, avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters. The second category of IDPs are those people who have been forced or obliged to leave their homes as a result of or in order to avoid the effects of large scale development projects.<sup>5</sup>

The UNGPID were initiated to respond to the magnitude of internal displacement globally, particularly due to the observation that while the number of refugees was declining, that of IDPs was on the rise: in 1982, there were 1.2 million people displaced in 11 countries, and by early 1990s, IDPs had outnumbered refugees. Yet there was no legal framework or institution specifically mandated to address the humanitarian and protection problems they faced. The fact that IDPs have not crossed an internationally recognized state border meant that the existing international law on forced migrants such as refugees could not be applied to respond to IDPs. To respond to this problem, in 1992 the UN Secretary General appointed a Special Representative on Internal Displacement, Francis Deng, to develop a normative framework on internal displacement. Working with a team of legal experts between 1992 and 1998, the Special Representative developed 30 principles, which as contained in UNGPID. Drawn from International Human Rights Law, International Humanitarian Law and analogous International Refugee Law, these principles identify rights and guarantees relevant to the protection of persons from forced displacement; protection and assistance during displacement; and also, during the process of return or resettlement and reintegration.<sup>6</sup>

There are more than 26 million IDPs in the world today.<sup>7</sup> Close to 9 million of these IDPs are in the Great Lakes Region.<sup>8</sup> Yet, only halting steps have been made to build legal and institutional capacity to address the governance, development and human rights challenges they present.<sup>9</sup> Concerned by the social, economic and political consequences of protracted conflicts in the region, some countries met under the auspices of the United Nations and the African Union to consult dialogue and find durable solutions to their common problems. The process, known as the International Conference on the Great Lakes Region (IC/GLR) began in 1999 and culminated in the Pact on Security, Stability and Development in the Great Lakes region in 2006. The Pact comprises of the 2004 Dar es Salaam Declaration having 10 Protocols; 33 Programs of Action and accompanying Projects; the Regional Follow-Up Mechanism; and finally, the Special Fund for Reconstruction and Development. Out of the 10 Protocols, 3 are dedicated to IDPs. These include: a) the Protocol on the Protection and Assistance to IDPs; b) Protocol on the Property Rights of the Returning Persons; and c) Protocol on the Prevention and Suppression of Violence against Women and Children.

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4. Article 1 (4) of the United Nations Guiding Principles on Internal Displacement (UNGPID)

5. Article 1(5) of the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons

6. See Malombe D, 2009. "An Assessment of Government's Responses to IDPs", MA (Political Science and Public Administration), Unpublished Research Paper, University of Nairobi.

7. Holmes, J., 2008. p.3

8. International Refugee Rights Initiative and Internal Displacement Monitoring Centre, 2008, p. 7.

9. Kamungi P., and Klopp, J., 2007, p. 58.

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One of the key objectives of the Protocol on Protection and Assistance to IDPs was to establish a regional framework for ensuring the adoption and implementation by member states who were party to the UNGPID. The IC/GLR Protocol provides a model legislation to help state parties domesticate the IC/GLR.<sup>10</sup> Although the possibility of their implementation has been met with skepticism in some quarters,<sup>11</sup> they provide a handy advocacy tool for civil society organisations to lobby governments to uphold the rights of IDPs.<sup>12</sup>

Internal displacement has been part of all transition moments in Kenya since the onset of multi-party politics in 1992. Although Kenya is signatory to international human rights standards on the protection and assistance to IDPs and the IC/GLR Protocol, the same have been observed largely in breach. For instance, the government has been responsible for causing displacement or tolerating circumstances that result in displacement.<sup>13</sup> IDPs are often from minority groups or ethnic communities associated with the political opposition.<sup>14</sup> At the same time, incumbent regimes perceive IDPs as part of the enemy or supporters of rival political parties. Thus, response to their protection or assistance needs is delayed or denied, and detached from government policy.

Using both UNGPID and the IC/GLR Protocol as the conceptual basis of monitoring IDPs protection and assistance, this Report audits the government's resettlement programme, about 18 months after its inception. From a human rights perspective, this Report examines the management of the humanitarian crisis, as labeled in Agenda 2 of the Kenya National Dialogue and Reconciliation (KNDR) mediations. It examines the extent to which the government has complied (or lack of the same) to its obligations as set put in the UNGPID and the IC/GLR Protocol, with a view to showing the dynamics, lessons, challenges and also ineptitude on part of the government in the protection of and providing assistance to IDPs in Kenya.

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10. Beyani C. 2007, pp. 173-175

11. Kamungi, 2009, pp. 3-4

12. Bernstein, J and Bueno O., 2007. p. 16.

13. Jesuit Refugee Service, 2001, p. 8.

14. Kenya Human Rights Commission (KHRC) 1998, *Kayas of Violence*, p. 9; KHRC, 1998 *Killing the Vote*, p.2

# 1.0. INTRODUCTION AND BACKGROUND

## **Nature of Displacements in Kenya between 1991-2007**

There are numerous causes of internal displacements in Kenya including natural disasters such as floods, drought and mudslides, and human-made causes such as forceful evictions, resource-based conflicts, politically-instigated violence, land and boundary disputes and development projects.<sup>15</sup> Most scholars on Kenya concur that internal displacements is occasioned by the politics of displacement: forced migration is embedded in political strategy and infused with grievances over inequality in land distribution and access to political power and patronage resources.<sup>16</sup> Displacement also results from manipulation of ethnic differences by political class, especially during electoral periods when hostile voters are disenfranchised.

The history of politically-instigated ethnic clashes and internal displacements can be traced to the emergence of multi-party democracy in the early 1990s. During this time, the ruling party Kenya African National Union (KANU) led by the former President Daniel arap Moi, used violence to frighten and suppress individuals, parties and communities perceived to oppose the KANU. As such, State-sponsored ethnic violence targeted opposition-leaning groups such as the Luo, Kikuyu, Luhya and Kisii among others.<sup>17</sup> Most of the violence occurred in the run up to the general elections in 1992 and 1997. It is believed that this was aimed at creating animosity between communities to disenfranchise them or force them to vote for KANU. The events that preceded the general elections of 2007 and the violence that subsequently erupted after the announcement of the Presidential election results affirm that the same tactics, patterns and trends of politically instigated displacements are still practiced.

While the displacements of people after the 2007 post-election violence attracted incomparable national and international attention, it is important to note that electoral violence and its concomitant internal displacement are not new phenomena in Kenya. According to KHRC and FIDH, there were already over 360,000 IDPs in Kenya by May 2004.<sup>18</sup> Other sources indicate that the figure had risen to about 450,000 by 2006.<sup>19</sup> This led Kenya to be ranked 7<sup>th</sup> amongst countries with high numbers of IDPs in Africa. Other reports by the UNOCHA indicate that at the end of 2007, there were still 380,000 IDPs from clashes that had been experienced in the 1990s.

## **The Post-Election Violence and Internal Displacement in Kenya**

The violence sparked by the announcement of the disputed presidential election results in Kenya on 30<sup>th</sup> December 2007 led to massive displacement and loss of lives and livelihoods. Reports provided by local and international organizations indicate that an estimated 500,000 persons were internally displaced in various parts of the country.<sup>20</sup> About 1,300 lost their lives in the violence.<sup>21</sup> The United States Institute of Peace

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15. Jesuit Refugee Service, 2001, p. 7

16. Ibid, p. 14

17. Human Rights Watch, 1996, p. 6.

18. FIDH and KHRC, 2007 p. 17

19. Internal Displacement Monitoring Centre (IDMC), 2007.

20. OCHA Kenya, Humanitarian Update Vol. 6, 2008, p. 4

21. Commission of Inquiry into the Post-Election Violence (Waki Commission), 2008, p. 273

estimated that about 600,000 persons were displaced during the 2007, while the Government Humanitarian Services Committee reported on 19<sup>th</sup> February 2008 that 351,000 were displaced. To harmonize these disparate figures, in July 2008 the Ministry of Special Programs, the National Bureau of Statistics and UNHCR carried out a profiling exercise which found that there were 663,921 IDPs caused by the post-election violence across the country.<sup>22</sup> Nonetheless, the actual figure of IDPs is not certain because there are people who were not hosted in official camps but sought refuge amongst communities and urban areas. The IDP camps were mainly found in Agricultural Society of Kenya (ASK) show grounds, schools, church compounds, police stations, chief's camps, prison compounds and so on. The location of IDPs in invisible settings made it difficult to compile reliable statistics by pertinent authorities and actors.

The post-election violence halted when the rival parties - Orange Democratic Movement (ODM) led by the Prime Minister Raila Odinga and the Party of National Unity (PNU) of President Mwai Kibaki - signed the National Accord and Reconciliation Agreement (hereinafter the National Accord) on 28<sup>th</sup> February 2008. In particular, the two agreed on a political settlement which entailed the formation of a Grand Coalition Government (GCG) through sharing of power. Subsequently, the process of reconstruction and reconciliation began. The National Accord also outlined strategic actions to be taken by the Coalition Government to restore stability and normalcy, including measures to restore fundamental rights and liberties, address the humanitarian crisis and promote healing, reconciliation and reconstruction. The National Accord also outlined measures to address long term issues such as youth unemployment, the land question, marginalisation, constitutional and institutional reform, among others.

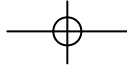
The resettlement of IDPs who were languishing in camps and other places was a key priority of the National Accord. In this respect, the government through the Ministry of State for Special Programmes (MoSSP) launched the IDP resettlement programme dubbed *Operation Rudi Nyumbani* (ORN) on 5<sup>th</sup> May 2008. Before the official launch, there were attempts to encourage voluntary return. For instance, after the signing of the National Accord at the end of February, the government in the following month stopped food distribution to persons living in the communities and began to give one-month ration to IDPs who wanted to return to their farms or former places of habitual residence. However, only a few IDPs chose to leave camps, citing inadequate security and social cohesion in return areas. Most IDPs demanded compensation as a precondition to leave camps, claiming that they were being forced to go home without anything, derogatively terming the resettlement initiative '*Operation Rudi Nyumbani bila Kitu*.'<sup>23</sup> The government's strategy for Emergency Social and Economic Recovery envisaged that all IDPs would return home and re-establish their lives and livelihoods by June 2008.<sup>24</sup>

Two key international instruments could have been used to guide the resettlement exercise: the first is the 1998 UNGPID. As noted above, this instrument, though not legally binding, has 30 principles which oblige State parties to ensure protection of and assistance to IDPs in all phases of displacement. This includes ensuring their well-being and creating conditions for durable solutions to enable their return, resettlement, relocation and reintegration. The second instrument is the IC/GLR Protocol, which reinforces and 'regionalizes' the UNGPID. The Protocol aims to ensure protection, assistance and search for durable solutions for displaced persons and communities that

22. South Consulting, March, 2009, p. 26

23. Literally, 'Operation Return Home empty-handed' or 'without anything'

24. Kamungi and Klopp, Unpublished, March 2009, p. 4.



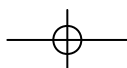
host them. The Protocol on the Property Rights of Returning Persons could provide guidelines on the restitution of lost property or adequate compensation where such restitution was not possible.

Kenya has ratified the IC/GLR Protocol and international human rights and humanitarian instruments from which IDP protection standards are derived. As such, the government has the legal obligation to ensure effective protection of and assistance to IDPs. In this regard, the KHRC and the IDPs Network launched a project to monitor and evaluate the government's implementation of the Resettlement programme. This Report is a compilation of facts and figures gathered by KHRC's during the period May 2008 to May 2009. It forms part of outputs by the KHRC and the IDPs Network in their constructive engagement with the national reconstruction processes.<sup>25</sup>



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25. Other KHRC monitoring and advocacy processes focused on electoral governance during the campaign and balloting period and responses to post election crisis. The KHRC is also engaged in policy, legal and institutional reforms.







### **Project Goal and Objectives**

The overall Goal of this project was to initiate a rights-based monitoring and response to the IDPs' resettlement processes and outcomes. The IDP monitoring was conducted in two phases.<sup>26</sup> First, Phase I between May 2008 and October 2008; and second, Phase II from November 2008 to May 2009. The objectives of the two phases were as follows:

#### *Phase I Objectives:*

- To ensure compliance by government and other state and non-state actors with the minimum human rights and humanitarian standards set by the IC/GLR Protocol and the UNGPID.
- To devise rights-based monitoring and evaluation tools for the resettlement of IDPs.
- To collect and disseminate factual data and information on the situation, needs and concerns of IDPs in the camps, host communities, returnees, and those the old IDP caseload.
- To enhance timely, informed and well coordinated responses to violations against IDPs.
- To equip and empower the IDPs Network and regional advocacy networks to coordinate their activities and monitor government compliance.

#### *Phase II Objectives:*

- To undertake a situational analysis of the status of IDPs and other persons displaced by conflicts instigated after the post election violence.
- To share information and lobby the government and non-governmental organizations to enhance IDP protection.
- To examine the nature of integration and peace-building efforts.

### **Methodology**

#### **1.4.1 Geographical Coverage**

In Phase I, KHRC's monitoring targeted the Rift Valley, Nyanza and Nairobi. The 28 constituencies selected are those that witnessed escalated violence and massive displacement during the Post election violence. In addition, these constituencies, including Eldoret, Kwanza, Mathare and Kibera are predictable flashpoints of violence each election year.

In October 2008, the KHRC shared the findings, in a preliminary report dubbed *A Tale of Force, Threats and Lies: Operation Rudi Nyumbani in Perspective*, with local and national authorities, thereby raising the profile of issues raised by IDPs or observed in the field. KHRC wrote letters to the Ministries of Internal Security and of Special Programs, copied to other pertinent ministries and sent an international petition to Prof. Walter Kalin, representative of the UN Secretary-General on the Human Rights of IDPs on the same. On Nov 8, 2008, KHRC released to the public a press statement on highlighting the findings. The statement provoked a counter-statement, denying the findings, from the Ministry of State for Special Programmes on what the government had achieved. But the KHRC findings also triggered high level field missions by government officials and discussions of the IDP problem in Parliament.

In Phase II, the KHRC sought to broaden the monitoring and engagement beyond the post-election violence to engage with other violations and document responses to

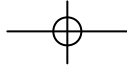
conflict and insecurity in the country. The areas selected are IDPs hosting areas and those experiencing new conflicts in addition to the post-election violence.<sup>27</sup>



*Children at a camp*

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26. For details about the geographical areas covered by the two phases, see appendices 2 and 3 respectively.  
27. For a complete list see Appendix Two.

**Monitoring and Advocacy Process**

Monitors drawn from the IDPs Network and HURINETs were trained on data collection methods and tools.<sup>28</sup> The monitoring tool<sup>29</sup> provided the framework for data collection and compilation of monitoring report. The tool covered four key issues as outlined below:

- a) Provision and enjoyment of basic needs and fundamental human rights by IDPs.
- b) Assess government responses to IDPs under international law.
- c) Assess government's mobilisation and utilisation of resources for IDPs.
- d) Appraise government efforts to create conditions for durable solutions.

Respondents included IDPs, government authorities, Non-Governmental Organizations (NGOs), Community Based Organizations (CBOs), Faith Based Organizations (FBOs) and developmental agencies working on issues related to IDPs. KHRC also relied on secondary data including media reports, academic and research papers and NGO reports.

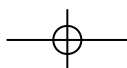
Phase II sought to investigate the progress made by and follow-up to the resettlement programme since its inception in May 2008, and the impact of emerging conflicts and natural disasters. It also examined the nature of peace-building efforts and challenges to reintegration, emerging political issues with regard to the resettlement process. This Report integrates the monitoring findings and makes recommendations to the government and other players.



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28. These HURINETs are community-based institutions that are found across the country, which KHRC has functionally divided into 5 regions that include: Coast; Northern (North Eastern province and Upper Eastern sub-regions); Western (Western and Nyanza province); Rift Valley (North and South Rift); and finally, Eastern (Nairobi, Central and Eastern province).

29. The Monitoring Tool is attached as Appendix 3.



# MAIN FINDINGS

## PHASE I – IDP RESETTLEMENT: FORCE, THREATS AND LIES

### Contextual Background

Following the signing of the National Accord in February 2008, the Coalition Government appointed the National Accord Implementation Committee (NAIC) mandated to *inter alia* identify short, medium and long-term policies for implementation. NAIC developed actions, which were to be carried out from March to June 2008, so as to mitigate the effects of the post-election violence. NAIC's strategy covered five key areas: a) security; b) peace building and reconciliation; c) resettlement of IDPs; d) revitalization of productive sectors; and, e) restoration of damaged infrastructure and positive engagement of the youth.<sup>30</sup>

On the issue of internally displaced persons, a Mitigation and Settlement Committee (MSC) was set up to work with other established and relevant national committees to resettle IDPs. In particular, the MSC was expected to work with the National Steering Committee on Peace Building and Conflict Management in the restoration of peace and normalcy. Consequently, in May 2008 the IDPs resettlement programme dubbed *Operation Rudi Nyumbani* (Return Home) was launched and the government began closing camps. However, camps in Nairobi and surrounding areas had been closed in February and March 2008 amid protests against premature pressure to return.

Two other operations, *Operation Ujirani Mwema* (Good Neighbourliness) and *Operation Tujenge Pamoja* (Let's Build Together) were subsequently implemented to promote reconciliation and reconstruct destroyed homes and infrastructure. These 'operations' aimed to facilitate the reintegration of returning or relocating IDPs and end displacement. In the words of government officials spearheading these initiatives, the aim of *Operation Ujirani Mwema* was to cement and bond different communities together, while that of *Operation Tujenge Pamoja* was to encourage communities to rebuild their lives together and encourage all the IDPs to move out of camps back into their homes. The effectiveness of the subsequent operations is partly examined in this Report.

### Rationale and Assumptions for the Resettlement Programme

According to NAIC's strategy, the resettlement and reintegration of IDPs was meant to enhance development, alleviate suffering, improve Kenya's negative image, ensure security and enhance enjoyment of human rights. The KHRC's analysis of the design and implementation of the resettlement programme over one year later seems to suggest that there were a number of assumptions and motivations that led to the early initiation of resettlement:

- The IDPs in the camps were facing real threats related to health, security, food shortage and disruption of education. The Government had to provide food, shelter, security and basic services to the IDPs with support from other well-wishers, but public

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30. Report of the National Accord Implementation Committee on National Reconciliation and Emergency Social and Economic Recovery Strategy, 2008

goodwill was waning. The Government was also concerned that the humanitarian demands were growing by the day yet it lacked adequate funds and mechanisms to ensure coordination and management of the crisis in a systematic and sustainable manner.<sup>31</sup>

- Further, there were fears that the rainy season would find IDPs in the camps and increase their vulnerability to water-borne diseases. The government hoped to avert the disease burden and the cost of emergency response amid competing reconstruction priorities.
- The country's food security was under threat because some of the areas, such as Trans-Nzoia, Uasin Gishu, Nandi and Molo, which were worst hit by the violence are the country's grain basket districts and there was an urgent need to revert the situation to normal to restart agriculture activities
- Some of the IDPs were alleged to be engaging in criminal activities that had aggravated insecurity within the camps and surrounding neighbourhoods.
- The problem of IDPs was also impacting negatively on other productive sectors like tourism, trade and general investment. The government therefore wanted to impress upon the international development partners, investors and tourists that all was well in Kenya.
- The money that was being used to maintain IDPs in the camp could be used to construct houses and other facilities for those IDPs who had returned. Most of the people in the camps were seen as masqueraders and not genuine IDPs. This argument gained currency when IDPs who were willing to return home were allegedly incited and threatened not to do so by IDPs who had nowhere to return to and some actors who purportedly wanted to use IDPs to get donor funding
- It was assumed the spirit of the National Accord would trickle down to post-election affected areas and resulting peace would encourage IDPs to return.
- The other assumption was that the promise for compensation based on return would entice the IDPs to go back
- The use of state security and administration agencies, especially the Kenya Police Force and Provincial Administration, in the implementation of the resettlement programme would intimidate IDPs to leave the camps

As KHRC and the IDPs Network monitored the resettlement programme, key revelations emerged which invalidated these assumptions. The reality had dawned on both government and its agencies that the resettlement programme was failing because it was not well thought out and was prematurely implemented. Thus, *force, threats and lies* were used to cloud the failures and to ensure successful return.

This section of the Report uncovers violations to the principle of IDPs' right to voluntary return. The discussion is divided into three sub-sections which depict: a) emergence of transit camps; b) reasons given by IDPs for not leaving camps and c) summary of key findings

### **Emergence of Transit Camps**

The government aimed at closing down the main camps that dotted the valleys and hills of Kenya as an indicator of restoration of normalcy. However, such closure was unsuccessful as many more camps emerged. The camps described in this Report fall under five categories, divided in the context of KHRC's monitoring exercise. These are:

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31. The Government enlisted the Kenya Red Cross as its main implementing partner in the field. The UN and other humanitarian actors also responded through the Cluster Approach, but given the protracted nature of the emergency and shortage of funding, most organisations were overwhelmed and prematurely ended their field presence. This stretched the capacity of the Kenya Red Cross and the few remaining actors.

*Main camps:* These are the 'original' camps to which IDPs fled to when the violence broke out. These were managed by the Kenya Red Cross and UNHCR, and most of have been officially closed except one in Eldoret Show Ground

*Transit camps:* These camps were set up by IDPs themselves after leaving the main camps. They are located close to their farms in pre-displacement areas. IDPs are able to commute from these camps to their farms by day and return in the evenings. They have also been referred to as 'satellite' camps.

*Main/Transit camps:* There are times when the main camp was closed but IDPs did not move out and new ones from other closed main camps joined them. The main camp thus doubled as a transit camp for some.

*Self Settlement/Self-help camps:* These were created by IDPs who collectively bought land and subdivided it amongst themselves. Others moved with their tents to donated land. Such sites are often remote and under-serviced.

*Integrated IDPs:* These are those IDPs who did not return to their homes but did not stay in camps. Instead, they took up residence with friends and families, or rented accommodation in urban areas. Their presence in an area is not obvious because they are mixed with the general population.

Monitors from the KHRC and IDP Network reported that a large number of IDPs who left the main camps to return to their homes ended up in make-shift or transit camps for lack of resources to rebuild their homes or due to fear of hostile local communities. Most people in the temporary camps could not access any humanitarian services. In other areas, organizations were offering aid to IDPs who remained behind in main camps and ignoring those who had been forcefully repatriated. Box 1 below depicts some of the transit camps that exist in Kuresoi and Eldoret, as examples of such camps that exist in Kenya to date.

#### **Box 1: Transit Camps** <sup>32</sup>

##### **Kuresoi**

In Kuresoi there were over 40 transit camps that resulted from the ORN Programme. These include, Githima, Mwaragania, Tegea, Murinduko, Mawingu Center, Mawingu Rafiki, Baringo, Gacharage, Kamuli, Temoyetta 3, Kenjoketty, Sundu River Centre, Umoja Primary School, Mutukanio and Arimi. Others are, Cheptagum, Sitoito, Kamwaura Police Station, Kamwaura Chiefs Office, Matunda Catholic Church, Kamwaura A, Geticha, Langwenda, Glassland/Marindas, Wila Center, Karirikana Center, Mwahe, Gosemia, Nyagachu, Keringet D.Os Office, Ministry of Works, Muchorwi, Jogoo, Total, Mau Summit, Baraka (Kasino), Haraka, Nyakinyua, Ngenia and Kangawa.

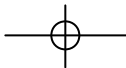
##### **Eldoret**

In Eldoret the transit camps include Ainaptich, Chepkanga, Moiben, Raio Farm, Chebororwa, Kaptagat, Tarobi, Jasho, Kiambaa and Yamumbi, Rehema, Outspan, Iruha, Kimori, Langas, Huruma, Maili Inne. Others went to Soi, Turbo, Lelmorok and Sogi.

#### **Reasons for Remaining in the Camps**

During the monitoring exercise, the following were the main reasons that IDPs gave as to why they had refused to leave camps:

32. These transit camps were recorded during the first monitoring phase, between May-October 2008.



**Landlessness:** A number of IDPs are landless and have nowhere to return. They hoped that the government would settle them to some other locations.

**Business people:** Other IDPs were business people and had rented business premises, which were vandalized and robbed during the post-election violence

**Insecurity:** Some IDPs were afraid of returning to their farms for fear of attacks. Some of the affected farms in Kuresoi constituency include Ndeffo, Mwahe, Kio and Chemanel.

**Education:** IDPs in some camps, including transit sites, could access their farms but their children had joined schools around the camps and they did not want to disrupt their learning process.

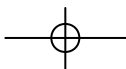
**Inaccessible Farms:** Some IDPs in some of the main camp had no access to their farms, others had their boundaries altered and trees cut down and sold by neighbours or unknown people. Some farms had also been taken over by local communities which are using them as grazing fields.

**Poverty:** Some IDPs lost all they had and therefore could not sustain their livelihoods in their homes if they returned

**Shelter:** some IDPs expressed the wish to return to their farms but said they were unable to do so because they did not have shelter on their farms.



*Are these reporters the bearer of good tidings?*



The above reasons explain why many IDPs had not been able to leave the camps by the time this study was done. To some, moving out would cause more displacement. Below are the major findings of this monitoring exercise.

### **Summary of key Findings**

According to the reports filed by the field monitors, information gathered by KHRC's fact-finding missions and secondary data, the implementation of the ORN Programme flouted the internationally and regionally accepted standards and principles that govern resettlement of IDPs. The government failed to provide the requisite protection and assistance to IDPs as outlined in international instruments.

Consequently, most IDPs found themselves in precarious and deplorable conditions that stripped them of their human rights and dignity. Majority lacked security, adequate food, decent shelter, quality health care, safe drinking water and proper educational services and facilities. Most families continue to languish in worn-out tents in tens of transit camps that emerged after the closure of the main camps.

Moreover, IDPs were exposed to sexual violence and harassment amongst other human rights violations. Attempts by the IDPs to organize and demand their rights are always thwarted by police who use force, threats and blackmail to suppress them. IDPs are hardly consulted in decision-making processes during the ORN Programme. Although the IDPs were to be offered the option of returning to their homes or being relocated elsewhere, the latter was never considered. Some of the IDPs reported that the Kenya Police and officials of the Provincial Administration used force, threats, false promises and blatant lies to remove them from the camps.

The implementation of ORN was hampered by inadequate coordination between government ministries, particularly with regard to reporting mechanisms and accountability. As a result, there were many allegation of corruption in the disbursement of monies allocated to IDPs. Findings from Phase I indicate seven (7) key areas that touch on gross human rights violations, poor governance and humanitarian crisis. These are:

- Poor Co-ordination and Corruption
- Mismanagement of IDP Profiling Process
- Exclusion and Suppression of IDPs
- Insecurity and Poor Inter-communal Relations
- Child and Gender-based Violations
- Inadequate Shelter
- Compensation

### **Poor Co-ordination and Corruption**

The UN Guiding Principles on Internal Displacement places the primary responsibility on the Government to provide protection and humanitarian assistance to IDPs within their jurisdiction.<sup>33</sup> Similarly, Article 3 of the Great Lakes Protocol on IDPs obligates the Government to lead the coordination, protection and assistance of IDPs.

The KHRC and IDP Network monitoring exercise established that the implementation of the ORN Programme lacked proper governance and effective accountability mechanisms. This caused confusion that resulted in a host of human rights violations and suffering of IDPs. In particular, there are concerns that the Ministry of State for

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33. Principle 3



Special Programmes did not work in a concerted manner with other key Ministries, which could have increased the efficiency of the implementation of ORN. At the Word of Faith camp in Limuru, for instance, IDPs claimed that there was no coordination between the Ministry of State for Special Programmes and local Provincial Administration. On the other hand, officials from the Provincial Administration Ministry observed that senior officials in various ministries issued directives without taking into consideration local realities. In Naivasha main camp, IDPs also claimed that they were not included in decision making on matters that concern them, and they lacked information on which ministry was dealing with particular issues.

Some of the Local Administration officials interviewed on condition of anonymity acknowledged that resettlement programme was hindered by poor coordination between the Ministry of State for Special Programmes and other government departments. Senior government officials observed the lack of coordination during a tour of main and transit camps in the Rift Valley, and they urged the MoSSP and the Provincial Administration to expedite measures to meet the original targets for resettlement<sup>34</sup> In addition, the National Humanitarian Fund Advisory Board blocked the disbursement of Kshs.330 million (US\$ 4.8 million) slated for procurement of building materials when they noticed the lack of functional accountability systems or authentic registers.<sup>35</sup> Within the Ministry of State for Special Programmes, several cases of lack of accountability were reported in the press.<sup>36</sup>

#### **Mismanagement of the IDP Profiling Process**

The IC/GLR Protocol is emphatic on the requirement for needs assessment and registration of IDPs. In particular, the Protocol states that Member States are responsible for assessing the needs of IDPs, and shall to the extent necessary assist the IDPs with registration and maintain a national data base.<sup>37</sup> Although proper profiling is central to the success of any resettlement or return programme, there is evidence that registration of IDPs in Kenya was haphazard, incoherent and marred with corruption. This is evident given the absence of reliable figures and details of IDPs in key government ministries and departments.

The lack of reliable data is compounded by re-labelling of IDPs by the government. When the government launched the ORN Programme, it christened the IDPs as 'dislocated', 'returnees', 'internal refugees' and so on. Those who refused to leave the camps were termed 'remainees'. Such categorization led to confusion with conventional meaning of some of the terms, criminalization, stigmatization and mismanagement of IDPs.<sup>38</sup> In some areas the Provincial Administration was accused of mistreating and handling IDPs like criminals. Some of the IDPs interviewed claimed that the confusion was a Government's tactic to frustrate them and evade the compensating them.<sup>39</sup>

Reports by field monitors in Kuresoi and Molo indicated that a number of IDPs had not been registered. In Kuresoi, there were allegations that there were inadequate government personnel and lack of political will to assist IDPs in the area. In addition,

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34. Deputy Prime Minister, Uhuru Kenyatta, as reported in the Daily Nation, September 5, 2008.

35. Part of the payment was also stuck with the Cooperative Bank of Kenya when the bank experienced difficulties processing payments because vouchers and relevant documents were not forthcoming from MOSSP.

36. The Standard, Monday September 1, 2008.

37. Article 3

38. The DC Molo and DO Dundori were reported to have claimed that the government has dealt with the real IDPs and that those who now purported to be IDPs were in fact criminals.

39. When the Government organized a funds drive to raise money to resettle IDPs, only Ksh1.46 billion of the targeted Ksh 30 billion was raised. Perhaps this perception by IDPs is founded on such reality.

the exercise of profiling IDPs was carried out in two uncoordinated sets: one was carried out by the Ministry of State for Special Programmes while the second was conducted by the Ministry of State for Internal Security and Provincial Administration. In Molo, there were complaints of shortage of registration forms throughout the process. In addition, there were claims that insecurity in the area had made it impossible for the IDPs to access the registration centres where the profiling officers had been stationed. Most IDPs could not afford the charges that were being levied for registration. The IDPs alleged that they had been subjected to numerous registration exercises and in every case were being asked to contribute some money ranging from Kshs.10 to Kshs.50.

Indeed, as time progressed, it became even more difficult to verify who among the IDPs had been paid, and how much. For example, in Muchorwe transit camp (in Kuresoi), allegations of double registration of some IDPs were recorded and as such, the Government preferred to ignore the whole camp instead of sorting out the problem. IDPs in Lelu farm (Kipkelion) alleged confusion in the registration exercise and corruption by officials of the Provincial Administration. In this camp, IDPs claimed that they only received Kshs.8, 000 instead of the Kshs.10, 000. They said some of the locals received even though they were not genuine IDPs. In Burnt Forest main camp, there were claims that camp leaders deliberately excluded the names of IDPs from certain ethnic communities from lists. In Eldoret main camp, IDPs whose names were excluded from lists were not given regular food distribution but only received emergency rations.

#### **Exclusion and Suppression of IDPs**

Principle 25 of the UNGPID is emphatic on the need for involvement of organizations in the provision of necessary assistance to IDPs with the consent of the State. The government has the primary responsibility of providing protection and assistance to IDPs at all times. Article 3 of the IC/GLR Protocol states that where the government lacks the capacity to protect and assist IDPs, it shall accept the collaboration of the international community. Some of the principal actors involved in the resettlement programme and reintegration programme included the government, IDPs, CSOs and international humanitarian organizations, multilateral and bilateral agencies, corporate organizations and individuals. Failure to adhere to these principles and obligations has led to the following consequences and violations:

- Exclusion from participating in key decision-making processes;
- Deepening humanitarian crisis as a result of withdrawal of social services;
- Threats and intimidation by government agents
- Increased crime and insecurity; and,
- Congestion and poor housing.

The fact-finding mission revealed that IDPs were not adequately involved in the resettlement programme; many complained that they were not meaningfully consulted on its implementation. In most camps, the Government had abdicated its responsibility through premature closure of camps and withdrawal of humanitarian assistance to those unable to leave. The government also compelled international humanitarian organizations that were serving the IDPs to withdraw services to camps because such support was seen to deter return of IDPs. For instance, IDPs at Word of Faith camp (Limuru) claimed that the Administration had been threatening them and making life in the camp unbearable in order to force them out of the camp.

Government officials ostensibly labeled the IDPs criminals and militia. IDPs said that they were required to get approval from the DC in order to get treatment from hospital. They said the tents were leaking and needed replacement, while many needed psychological and trauma healing, such as the witnesses to the Kiambaa Church arson in Eldoret.<sup>40</sup> At Naivasha camp the Administration had been threatening and coercing IDPs to leave through push factors such as withdrawal of medical services, reduction of food ration or delay in food distribution. The Government also cut water supply to the camp, withdrew mobile clinics and destroyed early childhood education facilities in the camp. In addition, the Provincial Administration warned IDPs that they would be forcefully evicted if they failed to move out peacefully by the set deadline, a threat that was carried out in several parts of the Rift Valley.<sup>41</sup> The DC Nandi South allegedly warned IDPs against returning to the area, claiming it would fuel tension. In other areas IDPs were allowed to return but were warned against operating any business.

In Ruringu camp in Nyeri, IDPs faced harassment from the local communities – some IDPs were thrown out of the houses they were renting over the belief by land owners that they (integrated IDPs) were paid the Kshs.10, 000 which they should use to return to their home areas. In addition, the Administration denied the IDPs letters recognizing them as IDPs, subjecting them to constant harassment and suspicion of perpetrating crime in the area.

Officials of the Provincial Administration are alleged to have used force to coerce IDPs at Noigam, Kitale Showground and Endebess to disperse IDPs from camps. In Noigam and Cherangani Hills for instance, the DC allegedly denied NGOs access to provide basic services to over 700 IDPs remaining in the camp. The Government also resorted to use of force and intimidation to curtail their freedom of assembly and association. Reports received by KHRC indicate that IDPs' rights to life and dignity were violated in cases where the state security apparatus used excessive force either to force IDPs out of camps or disrupt their protests against arbitrary relocation.<sup>42</sup>

The Kenya Police Force was also complicit in such harassment of IDPs. For example, police officers in Nakuru allegedly shot and killed a peaceful demonstrator, Peter Kamau and seriously injured another, John Kamau Mugo on June 21, 2008.<sup>43</sup> This is contrary to the UN Guiding Principles on IDPs, which provides that "IDPs have the right to request and to receive protection and humanitarian assistance from these authorities, and shall not be persecuted or punished for making such a request".<sup>44</sup>

Many CSOs complained of exclusion from the IDP resettlement programme. Although the government has an obligation to provide overall leadership on IDPs issues, its tendency to monopolize the resettlement programme contradicted the requirements of the 'Cluster Approach' which was the *modus operandi* for the humanitarian response. The approach is designed to ensure inclusion of key partners in delivery of humanitarian services and in the process of resettlement and reintegration.<sup>45</sup>

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40. These IDPs came from Kiambaa, Eldoret, where the grotesque act of burning down a Church took place.

41. The last deadline given for closure of most camps September 30, 2008, although several other deadlines were announced, including April 2009.

42. Press Release by KHRC on June 17, 2008. See various media reports

43. The demonstration was organized by IDPs to express their concern over the disappearance of one, Mr. Kariuki, and their dissatisfaction with the ORN programme. See various media reports

44. Principle 3(2), 8 and 12

45. The cluster approach is aimed at ensuring more coherent and effective response by mobilizing groups of agencies, organizations and NGOs to respond in a strategic manner across all key sectors or areas of activities. Each sector is supposed to have a clearly designated leader. However, the clusters are supposed to be in consultation with the Government as the authority with the primary responsibility to protect and assist IDPs, and as such must always work towards phasing out or handing over their delegate responsibility to the Government. There were 11 clusters, some of which include Nutrition, Health, Water Sanitation and Environment (WES), Camp Coordination & Management, Early Recovery, Logistics, Shelter, Communications etc.

The 'cluster approach' worked well in Kenya though it was largely dominated by humanitarian and development organizations and resettlement programme could have benefited from the networks established by the clusters on protection and governance issues.

### **Insecurity and Inadequate Inter-communal Relations**

According to UNGPID, the government has the primary duty to guarantee security of IDPs to enable them return to their home in safety and with dignity.<sup>46</sup> The government is required to put up adequate security measures to enable return and enjoyment of human rights. It is also supposed to facilitate peace, reconciliation and reintegration of IDPs in return areas. The reports filed by the field monitors show that the government contravened the above principle by using force and threats to compel IDPs to return to their homes even after it emerged that many IDPs were unwilling or unable to return due to fear of harm by their neighbours.

In addition, the government failed to involve local communities and to launch effective peace and reconciliation initiatives. Reports indicate that members of some hostile communities had complained of being forced to co-exist with their neighbours instead of being given a chance to discuss their differences and find a common ground for co-existence. Consequently, the resettlement programme faced serious impediments that cannot be attributed to ordinary 'teething problems' as suggested by the government.

According to the reports by field monitors, most IDPs especially those who returned to their homes or to farms adjacent to their homes were forced back to the temporary camps due to threats on their lives, which they received mostly through hate leaflets. Others were forced back to the camps by fresh attacks launched in areas where they were meant to return. There were reports from Kamwaura (Kuresoi) that leaflets were being circulated warning non-Kalenjins to vacate the area. The leaflets warned that if Government dared implement the Mau eviction, then Kikuyus and Kisiis should vacate their farms.<sup>47</sup>

Other areas with cases of insecurity for IDPs outside Molo district included Timboroa, Londiani, Rongai, Mukinyai and Endebbes. Tension was high at the entire belt of Mau Complex forest, including all farms that boarder the Forest. There were allegations that some Kalenjin politicians from the region were inciting residents to resist the government initiative to evict Mau forest occupiers. It is feared that such tension could degenerate to politically-instigated violence in the area. In Kuresoi, there were reports to the effect that leaflets were circulated especially in parts of Kamwaura and Geticha warning non-Kalenjin to vacate the area unless the Government granted amnesty to the youths who were arrested during the post-election violence.

At Sirikwa in Kuresoi, it was alleged that people believed to be from the Kalenjin community issued threats to Kikuyu warning them to advice the Government to deal with historical injustices before resettling IDPs. No peace and reconciliation programmes were initiated in Sirikwa and Kamwaura which are in Kamara and Keringet divisions of Kuresoi respectively. In some of the most volatile and inaccessible farms such as Ndeffo, Nguirubi, Kariba and Chebonde, IDPs were unable to return. Similar threats were reported in Kamwaura, Giticha and Githima within Molo District. In Molo, IDPs who returned to their homes were living in fear; they were unable to work on their farms. Some IDPs who returned to their homes were robbed of household

46. Principle 28

47. There are controversies surrounding the eviction of people from Mau forest, and politicians hailing from this region are politicizing the matter and inflaming people once again against government and/or those who support it. See various media reports



items and livestock. In Cherangany, a primary school teacher was attacked and killed on 4<sup>th</sup> July 2008. It was reported that the local community had not been disarmed. There were also reports that some IDPs had been killed, maimed or harassed by the neighboring Pokot. The capacity of the new police posts to enhance the protection of the population was hindered by lack of personnel in regions such as Munyaka, Sokomoko, Aruba junction and Kesogon which are believed to be susceptible to attacks.

Cases of cattle-rustling were also on the rise in the area. In one incident, raiders invaded Kamwaura and took away three cows within a police station. The cows belonged to a Mr. Gikonge and Councillor Moturi of Chemaner ward. Similar cases were also reported in Kitale where leaflets were being circulated warning the IDPs not to return to the farms from which they had been uprooted. Further still, IDPs drawn from Kisumu, Muhoroni, Kopere and Chemilil camps demanded alternative land from the Government. They claimed that the local communities had been threatening them with fresh attacks in case the Coalition Government splintered.

In Marakwet, increased cases of cattle rustling were reported. For instance, on the 27<sup>th</sup> July 2008 over 200 heads of cattle belonging to people said to be from the Kikuyu community were recovered in the middle of Kabolet forest which had become a dangerous hideout for cattle rustlers. Tension was also high at Rironi camp, Kuresoi, where there were cases of theft and cattle-rustling. IDPs at Jogoo transit camp also claimed that high tension in the area had barred them from accessing or returning to their farms. There was similar tension at Karirikania camp, where some local community members grazed their animals in the farms belonging to IDPs.

In Subukia, some IDPs who had opted to return to their farms in Ampiva (Solai location) were shocked to find that all their crops had been harvested or uprooted and the farms turned into grazing land. The high insecurity was compounded by lack of adequate security personnel. For instance, police at Bahati camp were expected to provide security to people in Ampiva which is more than ten miles away. In Burnt Forest, many IDPs were scared of returning home because of fear of fresh attacks. Many had also not overcome the trauma occasioned by the post-election violence.

According to residents of Seguton (Kuresoi), tension remained high and things could get worse if durable solutions were not sought and ethnic polarization halted. In particular, the residents accused the Government and development agencies of positive discrimination of IDPs in provision of food and resources. They claimed too much was given to the 'non-locals' whereas the locals were also affected by the violence and deserved attention. According to them, building of police stations in the area only served to worsen the situation as it created an impression that the 'non-locals' received special attention. The residents proposed the strengthening and expansion of peace committees instead of construction of police stations. In other places, IDPs established the self-help camps in places they felt were secure for them such as Naivasha.

### **Child Protection Concerns**

Both the UNGPID and the IC/GLR Protocol on IDP Protection have specific clauses that seek to ensure protection and assistance of children. The massive displacement following the post-election violence of 2007 affected many children and women. Reports from the field indicate that *Operation Rudi Nyumbani* worsened the plight of children, particularly those who suffered trauma as a result of the post-election violence. Many female headed households were further burdened with taking care of



*Children at a camp: Quite oblivious to the gravity of their situation*

abandoned or orphaned children. The rights children have been affected in terms of food security, education and Sexual and Gender-based Violence (SGBV).

#### *2.5.5.1. Food Security, Health and Nutrition*

The UNGPID state that all IDPs have a right to an adequate standard of living. The State is obligated to provide IDPs with safe access to essential food and potable water at the minimum without discrimination.<sup>48</sup> The introduction of the resettlement programme led to the reduction of assistance as most humanitarian organizations scaled down or terminated their services by the end of June 2008. It is reported that some of them redirected their efforts to IDPs who were leaving camps. This created a scenario where those who unable to leave camps were abandoned without any means of survival. Consequently, many IDPs especially women and children were forced to seek alternative means of survival. This could explain the rise of reported incidences of women forced into sex to get food.<sup>49</sup> According to reports by Centre for Rights Education and Awareness (CREAW), food shortage led to cases of sexual violence in IDP camps. Single mothers were forced to make sexual favours for food in what was described as 'transactional sex'.<sup>50</sup>

In Subukia, IDPs began to look for casual work within the neighbourhoods to find money for food. Other IDPs were forced to sell part of the ration food they got from Kenya Red Cross to buy complementary foods such as vegetables and salt as well as soap which was not provided. They also sold the ration for money for grinding the maize into flour, which was then used to make porridge for children. In Endebess, the Provincial Administration allegedly refused to recognize over 108 households who had been left in the camps. These were not given any food or basic services. At the Word of Faith camp (Limuru), IDPs got food only once per week. Generally, the amounts of ration were reduced, resulting in inadequate dietary needs of children and invalids. At Naivasha stadium camp, pregnant mothers gave birth in the camp

48. Principle 18

49. Saturday Nation, 26th July 2008

50. Documentary aired on local TV stations in August 2008

since the Government withdrew mobile clinics from the camp, making emergency medical cases impossible.

At Rironi transit camp, women pointed out the lack of clean drinking water and filled up latrines, which exposed them to the risk of water-borne diseases. An old woman posed to the KHRC, “*Does the government want us to die in these camps?*” The women and girls said they had not been provided with sanitary towels since for more than five months. At Jogoo camp, the women requested for underpants in addition to the sanitary towels. The IDPs were forced to go long distances to get medical attention in Molo, and many were unable to afford transport costs. IDPs at majority of the camps had to pay for medical treatment, although medical services in Kenya are free according to government policy. This requirement applied in private health facilities after organizations which provided free medical services or funded hospitals pulled out. IDPs in Eldoret showground camp said they are required to produce their National Hospital Insurance Fund (NHIF) card before treatment at the district and referral hospital in Eldoret, a requirement that affected women and children’s access to medical care because they did not have them.<sup>51</sup>

Further, IDPs shelters became dilapidated and precarious health hazards. Majority IDPs use cooking stones, *jikos* and paraffin stoves to heat and cook inside the tents, exposing them to respiratory infections. Besides, they are exposed to dampness and cold owing to harsh weather conditions. IDPs interviewed in Eldoret Showground Camp and Burnt Forest reported high prevalence of diseases such as pneumonia, joint pains from past injuries, ulcers, malaria and typhoid. Among children, mumps and chickenpox were prevalent. There was malnourishment and increased child mortality in these camps. Pregnant women were sickly ostensibly due to poor diets and lack of access to medical care, including Prevention of Mother to Child Transmission (PMCT) care.<sup>52</sup>

At all main, transit and settlement camps, food was inadequate. Women, children and men’s access to food items distributed by the humanitarian agencies was inequitable in many camps. IDPs in Muchorwe camp and Eldoret showground reported skewed distribution of food as women, who were normally away from the camps during the day (mostly working part-time in surrounding farms or in the town when food rations were brought) were passed over. Women in Burnt Forest camp reported that IDP camp leaders took the food and distributed it unfairly, favouring their relatives or ethnic kinsmen. Non-registered IDPs did not get food.

#### *Education*

During the post-election violence, schools were destroyed or vandalised. This had adverse impact on the right to education as most learning institutions were closed down, while some lost essential facilities. Principle 23 of the UN Guiding Principles on IDPs provides that:

“The State is obligated to ensure that IDPs and in particular internally displaced children receive education which shall be free and compulsory at the primary level. The State is also required to ensure availability of education and training facilities to all IDPs in particular adolescents and women whether or not they are living in camps”.

Reports from the field indicated that in some areas IDPs had not gone back to the farms with their children because of fear. Besides, in most schools non-Kalenjins pupils were

51. In camps like Muchorwe, Karirikani and Eldoret, where water supply has been cut since beginning of ORN, children are especially vulnerable to water borne diseases from the unhygienic conditions and poor sanitation.

few. For instance, in Kuresoi, most of the schools reopened but few students and fewer teachers reported back. At Sondu River, for example, high community hostility and mistrust were reported. A head teacher at Umoja Primary School was forced to hold staff meetings at the local market centre because he could not access his school. Due to insecurity, he was monitoring the school from a distance, as advised by the Ministry of Education. At the same school, no single teacher/student from non-Kalenjin communities had returned. The head teacher had not stepped in this school since the post-election violence. Further north, in Subukia, not all children went back to school. Majority of the most adversely affected were secondary school students and those who had just completed their primary education but had not collected their examination results when violence erupted.

In Molo, the ORN Programme had major effects on the lives of IDPs as far as education was concerned. For instance, children who had enrolled in camp schools were not willing to leave the camps and return home. In Jogoo and Mlima Primary school camps, for instance, IDPs were living in the school compound while learning was ongoing. This interfered with the learning. At Rironi camp in Kuresoi, IDPs who did not have tents<sup>52</sup> were forced to reside in the classrooms of Koigi Secondary School, as a result of which the school remained closed. In Mt Elgon, most IDPs camped in learning institutions, such as the 2,000 IDPs at Kebee primary school in Kopsiro Division. Elgon Bible School near Kapkirwok Primary school had 1,500 IDPs in its compound while Kobura Primary school had 1,200. At Nakuru Show ground, the Government had to rescind its decision to pull down tents meant for Early Childhood Development classes after IDPs protested, claiming it was a plot to force them out of the camp.

After ORN, children in camp schools were admitted in host schools in return areas. However, such host schools reported lack of adequate resources to meet the needs of increased student population. Reports show that lack of facilities and increased teacher-to-pupil ratio affected the quality of education. Although learning was ongoing in majority of the transit camps surveyed, the quality of education for IDP children was seriously affected by the following factors:

- 1) In areas such as Rironi and Jogoo, IDPs were staying in classrooms thus preventing re-opening of some school.
- 2) IDPs were expected to pay school fees despite lack of income and inadequacy of compensation from the government. Some used the Kshs.10, 000 given by the government as 'start-up funds' to pay school fees.
- 3) Termination of early childhood education in IDP camps had an adverse effect on children. Idleness predisposed many to child labour in the camps.
- 4) Many local schools were seriously affected by failure of government (TSC) teachers to return to work. Although youths volunteered as teachers
- 5) in some areas, most were untrained and received no incentives or amounts that de-motivated them, e.g. some got only Kshs.1, 000
- 6) There were claims that IDP children from certain communities were not being considered for bursaries, a claim that made some parents use the relief and assistance funds from government to pay fees.
- 7) There was additional financial burden for women who took in orphans affected by the post-election violence – majority could not afford the extra fees
- 8) In Karirikania (Kuresoi) and Eldoret showground camp, secondary school IDP children sent home for school fees

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52. Prevention of Mother to Child Transmission of HIV/AIDS



9) In Eldoret town, hundreds of school-aged children ended up begging on the streets. Girls on the street were particularly at risk of sexual violence.

Education was cited by the IDPs as one of the reasons for not leaving the camps, as most children were attending school and others about to sit for their national examinations. Majority of the problems experienced with education in the IDP camps are not a factor of gender; they affected both boys and girls in similar ways. Lack of adequate resources, high student population, lack of teaching materials and teachers are some of the challenges that affected the education sector.

These problems, however, introduced elements of discrimination based on gender, whereby boys were given priority in accessing and completing their primary and secondary school education over girls. In addition, the makeshift, overcrowded classrooms (like those found in Eldoret showground camp) where boys and girls were



*A consultative meeting at a camp*

forced to squeeze together on a few desks created conditions that increase vulnerability of young girls to sexual abuse. In addition, lack of proper sanitation and unavailability of sanitary pads was distressful for girls, and some remained at home during the days of their menses. This affected their performance.

### **Sexual and Gender-based Violence**

The monitors filed reports with specific cases of sexual violence. In particular, it was reported that incidences of rape were rife within the camps and for the IDPs who had returned to their homes. It is said that some of the violations were perpetrated by civilians and security personnel. In Endebbes, it was reported that women were being raped mostly by police deployed in the area to maintain peace. Although the fact-finding mission did not find much evidence of rape and sexual violence within the camps, the circumstances surrounding the living arrangements of the IDPs, their dire

financial situation, and lack of access to sexual and reproductive health care were factors that contributed to the increased vulnerability of IDP women and girls (as well as men and boys) to sexually transmitted diseases and HIV/AIDS, unwanted pregnancies and rape.

Many women said 'transactional sex' was as traumatic as acts of sexual violence. Both types have generated limited response from humanitarian agencies and government departments besides records of reported cases. At the same time, dominant narratives of displaced women's victimhood obscured the urgency of their claims to broader economic, political and social rights. Such narratives had the effect of silencing and ignoring aspects of the IDP women's livelihood and survival choices, one of which was transactional sex. Others such as brewing illicit alcohol not only created conditions for sexual abuse, but also presented considerable challenges to their safety and security, including poor relationships with law enforcement agents.

### Shelter

The UNGPID State that all IDPs have a right to an adequate standard of living<sup>53</sup> The State is obligated to provide the IDPs with safe access to basic shelter and housing at the minimum regardless of circumstances and without discrimination. Similarly, Article 5 (5) of the IC/GLR Protocol places responsibility for provision of adequate and habitable sites on the Government.

Reports from the field found that IDPs are subject to pathetic living conditions, exposed to harsh weather and crowded accommodation. Poor housing was a feature of all IDP camps. At Word of Faith camp in Limuru, IDPs' tents were torn and leaking, and had not been replaced since inception of the camp in January 2008. This was also the case in many other camps including Eldoret Showground Camp, where old people and children were in deplorable conditions. IDPs in Muniu camp had to put up with makeshift shelter made from polythene bags and torn tents, without poles to support the shelters.

Moreover, some IDPs in Rironi and Jogoo (both in Kuresoi) were living in classrooms as they had no tents, and were sleeping on the floor without blankets or mattresses. Others were hosted by relatives and friends in crowded tents of up to 12 people, a phenomenon which prevented the host family from returning because they would have had to leave their guests without shelter. By July 2008, 54 families from Kirathimo camp were still camping under a tree near the DC's office in Narok North.

In camps where construction of houses had begun, IDPs lamented the poor quality of housing. At Karirikania camp, 50 IDPs were given construction materials (20 iron sheets, 14 posts and roofing timber, 3 kg nails and black polythene paper). They were required to find complementary building materials such as rafters, doors and windows. Whereas the Danish Refugee Council (DRC) and United National High Commissioner for Refugees (UNHCR) promised to build 299 houses for the IDPs, they had only supplied materials for 50 houses. In addition, the quality samples that were erected by the DRC were different from those provided for construction. At Reru farm, the IDPs were only given 20 iron sheets and frames by GOAL Ireland and left to construct their own houses using polythene bags. IDPs in Burnt Forest said the houses were of poor quality. The model houses should have been 14x14 ft but the ones later constructed measured only 11x14 ft. 15 houses had been constructed in Timboroa.

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53. Principle 1 (8)

### Compensation

The IC/GLR Protocol places responsibility on the State to compensate IDPs for loss and destruction of property. The State is not only obligated to compensate the IDPs but is also required to develop an elaborate framework to determine an appropriate compensation package for the IDPs.<sup>54</sup>

Closely linked to the poor coordination and corruption described above was the question of compensation. The government did not compensate IDPs and other groups affected by the post-election violence; rather, it pledged to give 'relief and assistance' or 'start up funds' of Ksh. 10,000 (USD 150) to help IDPs buy basic items after moving from the camps. It also promised to build over 40,000 houses destroyed during the violence or to give some IDPs Ksh. 25,000 (USD 350) to reconstruct their houses. It also promised to freely transport those who were willing to return to their homes, and army trucks were provided for this purpose.

To many IDPs, the language of compensation soon entered the discourse on monies disbursed to them. Some were told they would be given more money as compensation when they reached their farms. Others were told to go calculate how much they had lost and wait to be compensated as soon as every IDP had received the Ksh. 10,000. Many said the perception created was that there would be compensation at some point in future. With hindsight, the pledge to compensate was a cruel way of enticing them to leave the camps and return home. The monetary provisions were grossly inadequate given the needs of the IDPs and the losses they suffered in the course of displacement. Some IDPs had not received the Kshs.10, 000, or Kshs.25, 000 or both, while others got only a fraction of it.

On 10<sup>th</sup> May 2008 the DC in Molo held a public Baraza at Sawmill Camp and promised that all the IDPs who returned to their farms would be compensated and accorded assistance such as construction of houses. In Kamara Division in Molo, the Government had promised to give the IDPs seeds, fertilizers and other farm inputs but that had not happened by the time of this research. Consequently, many IDPs defied the orders to return home without proper compensation. Although the displaced people in some of the IDP camps welcomed the monetary assistance, most were concerned about their safety and access to basic necessities (food, shelter, health, education and sources of livelihoods) once they returned to their farms.

Reports from the field indicated that only a small percentage of IDPs had received the relief and assistance funds (Kshs. 10,000) from the Government and fewer still the Kshs. 25,000 shelter reconstruction funds. The Government made promises of compensation to help IDPs meet their needs, including assistance to purchase land, reconstruct shelter and resuscitate livelihoods. In Word of Faith camp (Limuru), the IDPs appealed to the Government for assistance to help them purchase land and settle those who previously did not own land.<sup>55</sup> This latter demand was also expressed by IDPs in Nakuru showground and Burnt Forest camps. The IDPs also sought legitimization through letters of official recognition from the Government to enable them benefit from financial and other forms of assistance extended to IDPs.<sup>56</sup>

54. Article 8. Moreover, the UN Basic Principles and Guidelines on the Right to Remedy(2005) provides that reparations to victims of gross violation of human rights and humanitarian law should foster satisfactory compensation, restitution and rehabilitation; and ensure guarantee for non-repetition.

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55 The IDPs organised a fund raising event on 9<sup>th</sup> November 2008 and appealed to the government to help them raise the Kshs. 98.4 million need to purchase 328 acres of land for settlement in Lanet.

56 In addition to financial assistance, the government also pledged to supply IDPs with farm input, seeds, fertilizer and building materials.

In a move to help IDPs revive their livelihoods, the Government pledged financial to IDPs to start businesses.<sup>57</sup> The acting Vice-Chairperson of the IDPs Advisory Board stated that loans would be given to those still in camps and those who have resettled, and that any IDP who needed financial assistance to start a business would benefit. Speaking at Nakuru Showground camp, he urged the IDPs to explore businesses they wished to start. He commended those at the camp who had used the relief and assistance funds to buy land.<sup>58</sup>

The Rift Valley Provincial Commissioner acknowledged that many IDPs still remained in camps and that some may not be able to return to their homes or farms because they did not own land; majority lived in urban areas where they rented houses. Many urban poor also moved into camps in order to access humanitarian assistance. The Government encouraged those who could pool resources to buy land to do so and urged the United Nations and charitable groups to help such IDPs to put up required infrastructure in relocation sites. The PC also said the Government was looking at the issue of IDPs who had bank loans and could not service them during displacement and exploring ways of assisting them.<sup>59</sup>

### **3.0. PHASE II – OPERATION RUDI NYUMBANI: ONE YEAR LATER**

This section of the report discusses findings from the second monitoring phase, conducted between November 2008 and May 2009. As noted in the previous section, the objective of this phase of research was to produce a situational analysis of the status of IDPs, share information and lobby the government and NGOs to enhance IDP protection. Thus, this section looks at: IDP profiling and facilitation; insecurity and new displacements; settlement camps/self-help groups; the humanitarian imperative; peace and reconciliation; the right to justice and reparations; and finally, the forgotten IDPs.

#### **3.1. IDP Profiling and Facilitation**

In November 2008 the Government issued a statement from the Office of the President to the effect that the number of IDPs in camps had gone down and that a total of Kshs.650 million has been spent on humanitarian response.<sup>60</sup> In March 2009, the Ministry of State for Special Programmes issued figures for remaining IDP as follows: 1,100 IDPs remain in the Eldoret showground camp; 21,299 households are hosted in 63 transit camps in the Rift Valley province; 347,418 people have so far been resettled. In addition, the Ministry released figures of IDP transit camps as shown in the following table:

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57. The Standard, Monday October 13, 2008

58. Some of the IDPs, like those in Muniu camp who received the Kshs. 10,000 resettlement aid have pooled together to purchase land in areas other than their place of origin.

59. IRIN, 30 September, 2008.

60. Daily Nation, Thursday, March 13, 2008, p.4

**Table 1: IDP Transit Camps**

<b>Breakdown of Transit Camps as of 1 April 2009</b>		
<b>North Rift</b>	<b>Number of camps</b>	<b>Number of households</b>
Uasin Gishu		
•Wareng	17 camp	6,183 households
•Eldoret East	16 camps	4,046 households
•Eldoret West	1 camp	12 households
•Trans Nzoia West	8 camps	895 households
•Trans Nzoia East	1 camp	40 households
•Turkana Central	2 camps	698 households
•Turkana South	1 camp	1,579 households
<b>South Rift</b>		
•Molo	21 camps	923 households
<b>Total</b>	<b>67 camps</b>	<b>14,376 households</b>

Source: Ministry of State for Special Programmes

KHRC and the National IDP Network through their own survey and monitoring exercise profiled the following transit and settlement camps:

**Table 2: IDP Transit Camps**

<b>Area</b>	<b>Name of Transit Camp</b>	<b>IDPs population</b>	<b>No. of IDPs Facilitated</b>	
			<b>10,000<sup>61</sup></b>	<b>25,000<sup>62</sup></b>
Eldoret South	Boror	350	-	-
	Kitingia	525	12	76
	Timboroa		1	-
Burnt Forest	Kondoo 9	750	128	-
Tarakwa	Rukuini	1,425	948	-
Uasin Gishu	Kamuyu	2,100	600	600
	Lelmolok	600	346	-
Eldoret East	Ngarua Kipnyigei	425	193	-
Tinderet	Kosabei	806	-	-
	Maraba	219	-	-
	Ngatip-Kong	1,500	-	-
	Likoni	280	-	-
Mombasa	Changamwe	300	-	-
	Kisauni	322	-	-
	Kapsabet	Kapsabet showground	4,133	283
Kapsabet	Kapsasur	400	150	57
	Kaptiret	800		
	Kamoi	1,018		
	Nandi South	Cherobon	1,468	-
Cheptiret	Kabongwa	158	-	-
Nandi Hills	Nandi Hills	1,500	300	40
	Katithine	100	-	-
	Gatatha Estate	1,500	-	-
	Kwanza District	Endebess Center	648	-
Kwanza District	Salama	1,614	-	168
	Kalaha		-	-
	Mauche	20	-	-

61. This is the amount to be paid to all IDPs during the resettlement programme

62. This is the amount to be paid to all IDPs who were being resettled back to their land for construction of houses

	Kapkembu village	125	-	-
	Tuiyotich village	75	-	-
	Teret village	56	3	-
	Ndeffo	3,526	356	-
	Ndundori	326	282	-
Nyandarua	Mawingu	14,000	-	-
Eldoret town	Eldoret showground	3,000	-	-
Gilgil	Emmanuel	61	-	9
Kikohey	Vumilia	1,680	-	-
	Ebenezer	1,050	-	-
Maai Mahiu	Jikaze	823	792	806
	Vumilia	1,313	285	1,206
Tana River	Maramtu	88 (households)	-	-
Nakuru	ALKO	729	-	-
<b>Total</b>		<b>49, 725 IDPs + 88 Households</b>	<b>4,394</b>	<b>2,962</b>

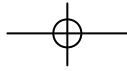
Source: KHRC Data, March 2009

It is important to note that many IDPs who left camps or returned from host communities have relocated to transit sites, which are often in close proximity to their pre-displacement areas. While it is difficult to generalise about the nature and function of the transit sites –they are unique to each return area - the sites have some similarities, which include.

Transit sites are often located in the centre of a farm area, which is comprised of many family plots (*shambas*) and may cover several hundred acres. Many sites are located at police posts or at a location near the chief's office. In many cases, IDPs are close enough



*Some humour to brighten up their lives*



to farm their plots of land during the day. However, variable security in areas of return has hindered accessibility of farms in some areas.<sup>63</sup>

Many of the transit sites lack basic services, including adequate sanitation and hygiene facilities as well as access to schools, water points and health facilities. Food assistance is sometimes provided by the World Food Programme and the Kenya Red Cross Society through established food distribution points. The continuous movement of IDPs and the dispersed nature of the transit sites present challenges to adequate service provision. The humanitarian community has shifted focus to conflict sensitive investment in areas of return to help ensure that returns are sustainable.<sup>64</sup>

Table 2 above demonstrates the unsystematic nature of facilitation of IDP resettlement by the government. Following rampant allegations of misappropriation of the Humanitarian Fund, the Kenya Anti-Corruption Commission was asked to investigate the disbursement of the multi-million shilling IDP resettlement kitty.<sup>65</sup> Special Programmes Minister Naomi Shaaban said those found to have misused the funds would be arrested and charged. The Minister conceded that the disbursement was marred by corruption and that millions of shillings landed in the wrong hands.<sup>66</sup>

Reportedly, corrupt Provincial Administration officials who embezzled the money earmarked for IDPs. They ostensibly used overlapping and fake lists and to confuse the process. IDPs in many areas did not benefit from the Fund.

In areas like Migori and Rongo districts where there are no visible camps but hundreds of displaced persons living within the community, no form of financial assistance was given. Since they did not live in camps, these integrated IDPs felt neglected by the government. IDPs in Kibera whose property was vandalized, destroyed in fire, those injured or evicted from their own houses have also not been compensated.<sup>67</sup> Integrated IDPs in Nakuru town are yet to receive the government funds.

At Ndundori IDP camp, only 282 of the 326 IDPs had received the Kshs. 10, 000. The remaining 44 were excluded on grounds that they were 'not genuine', a claim denied by the IDP leadership. On 17<sup>th</sup> March 2009, the area chief and District Officer 1 at around 11pm descended upon this camp, destroying tents and beating everyone in sight. They alleged that the IDPs were thugs and who did not warrant being in camps. However, the IDPs suspected the real reason (and timing) of the forced eviction a day before compensation was to embezzle the money.

### 3.2. Insecurity and New Displacement

This section provides an update on the new waves of displacement as a result of emerging trends of violence in other parts of the country. It deflects focus from the post-election violence to different forms of violence and the plight of those affected in parts of the county not affected by the post-election violence. Most of the new displacements are emerging as a result of conflicts among other factors in other parts of the country.

This section also discusses the security concerns expressed by IDPs. For instance, perceived insecurity in areas of return has compelled IDPs to sell their land and relocate

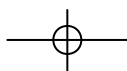
63. OCHA Kenya, Frequently Asked Questions on IDPs, 17 April 2009

64. *Ibid.*, p. 3

65. Saturday Nation, March 14, 2009, p. 9

66. *Ibid.*

67. On 30th March 2009, over 200 IDPs and structure owners marched along Ngong road peacefully from Kibera District Officer's grounds to the Ministry of State for Special Programmes (MoSSP) to demand compensation. Their leaders met with ministry officials including the Permanent Secretary and the Minister, Dr. Naomi Shaaban. After a 3-hour meeting with the IDPs, the Permanent Secretary said issues of compensation were closed long ago and the government does not recognize any group of people as IDPs. However, having failed to find Kibera IDPs in the Nairobi register, the PS requested two more weeks for consultations with other government offices and departments such as District Officer (DO), District Commissioner (DC) and the Provincial Commissioner (PC) to locate their register.



to safer areas. Reports from IDPs in Kimumu, Irura, Chepkanga and Ray farm camps show that they found themselves in bondage because of injustices and difficult life. Some therefore sold off parts of their land and property to buy land elsewhere. In Muchorwi region of Molo district, IDPs were able to till their land during the day and return to the camps in the evening. Sometimes they organised security escort.

Squatters have increased following sustained cattle rustling and banditry attacks against the Marakwet people by the Pokots. Over the last 20 years, victims of cattle rustling and other landless population have encroached on forests and destroyed the forest cover through massive logging and clearing of wetlands for agriculture. This has resulted in negative impacts on environment conservation, agriculture and livestock production, water resources and human health in the Cherang'any hills region. To address these concerns the government evicted more 45,000 people from Embobut forest between March and August 2008. Those evicted were not compensated.

Hundreds have been internally displaced following long-term traditional cattle-rustling activities between the Pokot and Marakwet communities.<sup>68</sup> Afraid of further attacks by the Pokots, thousands of Marakwets have fled their homes and sought refuge in the neighbouring districts of Uasin Gishu and Trans Nzoia. Thousands of them are IDPs in government settlement schemes like Milimani farm in Trans Nzoia district. Displacement because of cattle rustling and banditry along Kerio Valley region is frequent and worsened by the involvement of combatants in small arms trafficking and raiding animals for sale. The government has not responded to the assistance and protection needs of IDPs resulting from cattle rustling and banditry in North Rift. Some have integrated into social networks while others have migrated to trading centres where they are faced with starvation.<sup>69</sup>

New threats of displacement are also evident in the emergence of an illegal militia group called 'Balalget Land Defence Force' which is ostensibly training inside Mau forest at a place called Balalget forest to defend their community against eviction. According to the area intelligence (NSIS) a discreet operation was undertaken to flush out the group. However, systematic disarmament of the group was not undertaken, increasing the risk of recurrence of conflict.

Insecurity has also hindered the return and resettlement of IDPs in Nairobi's Kibera informal settlement, where structure owners have been living under threat. They reported the matter to the Provincial Commissioner, a move believed to have aggravated tensions between them and villagers. Elders, youths, chiefs and the area District Officer were drawn into the conflict, leading to the eventual transfer of the Kibera DO<sup>70</sup> who was allegedly colluding with outlawed groups such as "Kamukunji", "Siafu" and "Taliban" which illegally collected rent and shared with him and the area Chiefs. Residents said the D.O and other government authorities are afraid of arresting illegal tenants or taking action against illegal groups as this may result in fresh confrontation and conflict.

At Kamuri camp, Kesses Division, the relationship between the Kalenjin community and IDPs was reportedly tense. The IDPs were unable to go to their farms to prepare for planting and complained of people invading their farms to loot trees, posts, and barbed fencing wire. They also claimed the local administration was aware of the problem but had chosen to remain silent.

68. The cattle rustlers/bandits carry out raids against the people of Marakwet particularly in Kamoi and Kapterit areas, steal their livestock and other property then retreat to the Kabolet forest.

69. 1,327 families evicted from a public forest in Marakwet District in the ongoing operation to eject squatters from Embobut forest recently received relief supplies worth more than Kshs.7 million from the Kenya Red Cross Society. Daily Nation, May 18, 2009, p. 6

70. He was transferred to Westlands



Cattle-rustling is also a cause of new displacements in East Pokot district. East Pokot is a new district carved out of Baringo District. The most affected divisions are Mukutani and parts of Mochongoi.<sup>71</sup> During the research period, the Pokot community were believed to be behind the skirmishes and cattle rustling which had rocked Mukutani Division and Arabel region. These events had affected the Ilchamus and Tugen Communities,<sup>72</sup> as the Pokot Community was reportedly determined to expand its grazing land by dispossessing these neighbouring communities.

Since 2005, there has been widespread displacement in the area resulting in loss of livestock, which is the lifeline of the community. Displaced families have been forced to start life afresh in other areas, without food, shelter or basic services. The KHRC and IDP Network observed high school dropout rates as a result of indefinite closure of schools due to insecurity.<sup>73</sup> People in the region said they lived in constant fear of attack, which impedes development. As a result, the Ilchamus community members scattered across Laikipia District (Kinamba) and live in Mochongoi as IDPs. Majority of the community live in Marigat town as urban IDPs. The displaced people lack medical services as a result of the closure of the two health institutions, Kiserian dispensary and Mukutani dispensary. The entire administrative division (Makutani) and location (Arabel Location) are vacated.

**Table 3: Displacement by cattle rustling**

DISPLACED VILLAGES	HOUSEHOLDS AFFECTED	POPULATION DISPLACED
Partallo	56	392
Ramacha	43	301
Sokonin	26	252
Laramoru	28	476
<b>Total</b>	<b>203</b>	<b>1,421</b>

Source: KHRC Data, March 2009

Cattle-rustling has also been a major threat to the people of Kuria, Trans-Mara and Tarime, the neighbouring districts of Tanzania where many lives have been lost and many displaced from their homes. Many villagers fled their homes seeking refuge in Tanzania while those who remained were starving because they fear venturing out to look for food.

Cattle-rustling is also a major issue between the two communities of Tigania and Tharaka in Eastern province. Cattle stolen from Tigania cannot be traced beyond a place called Makupa because a number of people have been killed at that place. During the clashes, the women from Tigania married in Tharaka were forced to return to their homes to give space for oathing in Tharaka and guard against secrets leaking out to the Tigania people. Such enforced separation led to suffering of the children in these families.

71. The raids in Mukutani location have had the following impacts: vandalism of schools (Rugus primary school, Noosukuro primary school and Marat pre-school); closure of the public (Mukutani) dispensary; closure of schools and difficulty to access the schools by children and teachers; destruction of water pipes and catchments areas; eviction of the Area Chief; eviction of the area DO; avoidance of area by development agencies due to insecurity of their staff; reduction of the income-generating activities; illegal grazing by the Pokot in the entire division, loss of life and property; and high poverty level.

72. Meeting between CODEF officials and leaders of Arabel location on 17th March 2009 at Kapindasum Primary School and meeting with leaders of Ilchamus community on 18th March 2009 in Marigat.

73. Three primary schools - Mukutani Primary, Rukus Primary and Noosukuro Primary Schools - have been closed and pupils are out of school. Three pre-schools - Partallo, Ramacha and Loromoru - have also been closed.

Fresh ethnic chaos was said to be brewing at Salama IDP camp at the slopes of Mt. Elgon. According to press reports,<sup>74</sup> threats of revenge from remnants of the Sabao Land Defense Force (SLDF) in Mt. Elgon District cause fear and trepidation amongst local people. The provincial administration led by Western Provincial Commissioner Abdul Mwasera assured the locals that the government would monitor the situation and guarantee security. The militia which caused havoc in the region after killing over 1,000 persons had sent leaflets warning that they were back 'in a big way'. The threats prompted residents in Kapsiro division to hold a demonstration to the District Officer's office accusing the administrators of laxity. The local people believed the warnings and threats were sent by SLDF suspects released from prison due to lack of evidence or on cash bail.



*A dog's life ...literally*

IDPs who sought refuge in neighbouring districts are yet to be resettled. The local administrators assured the locals that government was in full control and will deal with the group 'with the force it deserves'. The locals appealed to the government to deploy

army personnel to the region to deal with the group saying failure to act in good time may cause the locals to bandon their farms and seek refuge in neighbouring districts.

New ethnic clashes also erupted in Kabolet forest and Cherangany, characterised by cattle rustling, killings, rape and abduction of young girls and women. Reportedly, abductees were held captive for 3 – 5 days, returning in very weak and sickly state. A number died at the Kitale District Hospital. These human rights violations continue to occur despite the presence of GSU personnel, regular police and Administration police patrolling the area. No arrests had been made by the time of this research, nor had the stolen animals been recovered.

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74. 'New Scare in Mt. Elgon as SLDF remnants send threats' Weekly Citizen March 30 - April 5, 2009, Vol 12 No. 13

Insecurity in Tana River District also hampered the process of IDP return and reintegration. On 30 December 2008, the Minister of State for Internal Security and Provincial Administration visited Bura and held a meeting with elders from both Wardei and Orma communities before addressing a rally at Bura stadium. None of the resolutions reached were implemented by the time of the KHRC visit to the area.<sup>75</sup>

Consequently, IDPs are not willing to go back to their original homes because of fear. The public administration office in Hola claimed there were no IDPs in Tana River, a claim that made the lives of IDPs more precarious as a result of exclusion from assistance programs.<sup>76</sup>

In Meru, internal displacement results from disputed constituency boundaries. There were various causes of the clashes that took place on the border of the two sub-tribes of Meru, the main one being land disputes arising from the boundary of Tigania and



*IDP'S arriving at a camp*

Tharaka.<sup>77</sup> A protracted dispute over the land between Tigania, Tharaka and Imenti has fostered hostility between the communities for many years. The construction of a police post in 2008 on the border triggered inter-can fighting because people of Tigania felt the post should have been built on their side and Tharaka felt the same. People from Tigania claimed that the Tharaka wanted to grab their land because it was fertile. Each sub tribe also felt that the name to be given to the post should come from them, intensifying the dispute. Politicians further incited the people.

75. As a result of this failure: attacks from both communities continued at a lower scale. Illegal weapons were not surrendered to the government and promised forcible disarmament was not undertaken. The government did not send security reinforcement. According to the local people, the government had failed to establish police posts or patrol bases in far flung areas.

76. In actual fact there are 88 IDP households in Maramtu IDP camp in Tana River. These IDPs have received no compensation at all, and it is only the Kenya Red Cross Tana River that has assisted them with food and kitchen utensils.

77. In this area the land is not tenured hence making it easier to grab land. Ownership is traditional and everyone draws his/her own boundary hence resulting in disputes.

Although the hostility not new, cattle-rustling hampered efforts to resolve it. The Meru Council of Elders *Njuri Ncheke*,<sup>78</sup> District Commissioners from Tigania, Igembe, Tharaka and Imenti and the Provincial Commissioner tried to find lasting solutions to the problem with little success.<sup>79</sup> 41 houses were torched in Tigania, 33 in Igembe, and 21 in Imenti, leading to the death of more than 50 people and displacement of hundreds from the three sub-tribes. The displaced had not received any government aid or assistance from humanitarian organisation by the time of the research. The IDPs were afraid of going back to their farms.

In Tinderet forest, 98 Ogiek families had received official notice to vacate. They had been living and utilizing part of Tinderet forest for a long time and protected it. They had never requested for land settlement and were content with their way of life, but in future they may join the long list of unsettled forest evictees. A group of 129 families evicted from Kipkurere forest in March 2006 were camping in one part of that forest and had received assistance from the Kenya Red Cross.

Finally, the Government's decision to remove more than 15,000 families from the Mau Forest could lead to further displacement and destitution of persons without alternative land.

### 3.3. Settlement Camps and Self-Help Groups<sup>80</sup>

The closure of camps within Nakuru, Molo and Naivasha Districts led to the emergence of self-help groups composed of IDPs unable or unwilling to return to areas of origin. They pooled resources, often the Ksh. 10,000 received from the government, to purchase land in areas they considered more secure. UNHCR undertook a survey of such relocation sites with a view to identifying assistance gaps.<sup>81</sup> The monitoring exercise found 17,451 IDPs in 3410 households living in 17 Self-Help sites. The households came from different regions of the country but were from the Rift Valley Province. Most of the self-help groups were composed of families that met IDP camps. Their similar security, land and shelter needs bonded them to seek common solutions in new areas.

Return was not considered by many as a viable alternative, particularly in relation to access to land in the post PEV context. Among the self-help groups are tenants and squatters, for whom return is not considered due to perceived unwillingness by local communities to lease land or business premises to them. Related to this are concerns about the lack of capital by IDPs who lost their stock and work tools in the violence. Land and property issues rank high among the concerns expressed by this category of IDPs.

#### 3.3.1 Socio Economic Profile of the IDPs in the Self-Help Groups

The majority of IDPs in the self-help groups intend to pursue farming livelihoods. Although many were farmers before displacement, they did not own land; they rented their land from members of other ethnic groups. During the PEV, their main loss was personal belongings and capital held in stock, rather than dispossession of land. Lack of security and the refusal by land owners to rent them land motivated them to acquire their own parcels of land.

Other IDPs were businesspersons who found themselves in similar circumstances as the landless tenants. They also lost their belongings and capital. For them, the reasons

78. Meru Council of Elders

79. One resolution was to name the police post Kaboto, a (Kamba) name that comes from neither sub-tribe.

80. For this section the report referred extensively to data and analysis done by UNHCR on the existing IDP self-help groups. See UNHCR (2009), UNHCR Survey of Self-Help Groups: Nakuru, Molo, Naivasha and Nyandarua Districts, Draft report as of 03/05/09

81. This exercise was undertaken by UNHCR between 3rd and 5th March, 2009

for not resuming their previous livelihood are similar to those of the land tenants, namely a combination of security concerns and a lack of capital to continue or restart their small businesses. However, observers point out that it is likely that a significant number of those declared tenants or squatters were in fact land owners. Some of them sold off exchanged their land with no intention of going back. The expectation of assistance by UNHCR, humanitarian NGOs and the government could have motivated some to provide inaccurate information with regard to land ownership. Some representatives of local authorities were of the view that a good number of the persons forming self-help groups to collectively buy land were not displaced by the PEV but were positioning themselves to receive money from the Government. While this may be true of some cases, the characteristic cannot be generalised to the entire population of IDPs in self-help groups.

### *3.3.2 Settlement in the new areas*

The 17 self-help groups affirmed that relocation was motivated by security considerations. IDPs pooled together resources to acquire land on which to settle, build houses and undertake economic activities. Security at the settlement sites and social relations with neighbouring communities was reported to be good. All self-help groups were reportedly in the process of acquiring land using their own means, with varying degrees of success. Two groups had planned to buy land from private owners or businesspersons, another two groups from farmers and one group from a local chief. Well-wishers had donated land to two groups. Purchase was complete in over half of the cases, while at least four were yet to complete the payment.

There seemed to be a significant lack of knowledge and clarity among members of the self-help groups as to the legal processes of land purchase and transfer. Majority of the self-help groups did not have access to legal advice,<sup>82</sup> yet completion of the legal land process is essential to avoid future eviction or displacement.

The self-help groups also need advice from surveyors to divide the land that has been or is being bought. In most of the cases (5 out of 17) the land has not yet been subdivided or allocated to each family because of the lack of a surveyor. The size of the plots ranges from 23 X 70 sq ft to 50 X 100 sq ft. However, most groups intend to buy additional land, which would result in the increase in the size of the plots. Their capacity to do so, or to pay the due balance, depends on the disbursement of government funds.

In some cases, the self-help groups are settling in land that is not suitable for habitation, with difficult access to social amenities. Given that the vast majority of the IDPs are farmers, the purchase of non-arable land, as is the case in several of the sites, does not seem a good alternative for durable settlement. Water sources are often up to ten kilometres away from the sites and in at least three cases are not of good quality. In some sites, the water needs to be purchased at a standard price of Kshs.2 per 20 litres. Sanitation is poor with inadequate number of latrines and bathrooms for the number of persons living in the sites. Health and education services are also a cause of concern since the nearest clinics and schools are up to 20 kilometres from the sites. Land purchase by IDPs is further complicated by wide variations between market price and sale price of land. People sell land to IDPs at inflated prices.

The government's efforts to permanently settle IDPs are compromised by high levels of

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82. UNHCR has referred them to the Kenya Land Alliance that provides free legal services.

corruption. Solio Ranch is one such attempt, where the land was to be divided into 4 1/2-acre plots to 3,062 households. Currently all household heads have only got 1/2-acre plots each. The real beneficiaries of the Solio Ranch appear to be those close to powerful individuals in government offices. The allocations were done in a questionable manner and it was alleged that some government officials at the district level were beneficiaries, a claim that should be investigated.

Another attempt by Government to settle IDPs was made in Kivurini farm in Molo where people from Kasarani in Elburgon were settling. The farms, including Kivurini, Katikati, Kabala and Highlands farms totalling to 920 acres<sup>83</sup> were bought through funds allocated to IDP resettlement in the 2004/05 financial. A total of 300 people benefited, each getting 2 acres. Those allocated received allotment letters while allegedly there are people with title deeds that were issued early in 2006 before the farm was subdivided. The 'genuine' IDPs have not benefited. At the same time, the exercise has created animosity between the communities living in Molo, as local communities feel cheated because they were excluded during the allocation.



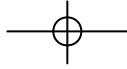
*Something to celebrate. Food arrives*

There were positive outcomes of the resettlement programme as demonstrated at the Solio Ranch settlement scheme, where government supported those who were moving by transporting buildings materials from their former places of residence. In addition, access roads were built and water provided by the government. The Ministry of State for Special Programmes started building schools, hospitals and other social facilities in and around the ranch. As remarked by one resident, "This government is very good when pushed to the wall".

### **3.4. The Humanitarian Imperative**

The humanitarian situation of most IDPs was wanting, even among those that had purchased and settled on their own land through self-help groups. Most families

83. Kivurini and Katikati were ADC farms and were transferred to a prominent politician during the Kenyatta regime, who later sold it to the government of the day. Kambala and Highlands also belong to the same politician.



reported that they were struggling to earn a living. Some relied on casual labour around camps or nearby towns, undertaking different tasks according to the local needs and their own skills. Others were able to rent small plots of land for farming, which in some cases were only enough for the household. Others worked in farms owned by local people while some engaged in petty trade within the camp or in the host community.

Majority of the tents distributed to IDPs were in poor condition and unfit to adequately shelter the families during the rainy season. Given that the families in the self-help groups devoted their resources to the acquisition of land, many said it would be difficult to build houses without external assistance. Many appealed for the provision of tents or tarpaulins to replace the damaged to be prioritised.

Except for food rations from the Kenya Red Cross, there was little humanitarian support to dwellers in the self-help sites. Most sites received food although the rations had been reduced by half as part of phasing out planned for the end of March 2009 and September 2009. IDPs requested that food distribution be continued for the sake of children.<sup>84</sup>

In Boror camp, Eldoret, problems include poor health services, poor sanitary facilities and torn tents. In Inabutich, Chepkanga, Irura, Moiben and Rayfarm camps, the IDPs lack food, medical treatment, clothing and beddings. There were no health centres and it took up to two weeks to access treatment. Due to lack of mattresses, many IDPs slept on the damp ground in tents with few blankets. During the rainy season the floors became muddy and nursing mothers found the cold nights difficult. It was reported some children had died in the camp.

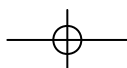
In Eldoret East: Chepkanga, Irura, Kimumu, Moiben, Eldoret Showground and Maili-Nne, food had not been distributed since January 2009. In most IDP camps in Eldoret East, chiefs and their assistants informed IDPs that according to the government announcement, IDPs who had received Kshs.10,000 and Kshs.25,000 would not receive houses from NGOs. They warned that the government would take drastic measures against 'bogus' IDPs. In Marakwet district, IDPs were faced with challenges such as food security, housing and school fees for their children.

Ineptitude and corruption greatly compromised the ability of the IDP leadership to mobilise and deliver humanitarian assistance to IDPs. The leaders used their proximity to well-wishers and provincial leaders to amass for themselves what would otherwise benefit the general IDP population. In Nyeri municipality there was discontent with the IDP leadership, as people said they had moved into larger houses and taken their children to high cost schools. They allegedly used the names of IDPs with chronic illnesses, those caring for orphans or hospitalized to acquire food and financial support by IDP from government offices and churches but divert such assistance to their own use.<sup>85</sup>

The administration, that is DOs, DCs, and chiefs across the (Mt. Kenya) region reportedly used sabotage to cause disunity among the IDPs, including giving IDP leaders food at any time and in large quantities; giving them cash handouts; complimentary notes to head teachers or favours for their children. The IDP leaders allegedly ran errands for the administrators, who promised them goodies and access to business opportunities and jobs. The IDPs complained that the IDP leaders got easy access to administrators unlike ordinary IDPs.

84. See UNHCR report, Survey of Self-Help Groups: Nakuru, Molo, Naivasha and Nyandarua Districts, Draft as of 03/05/09, p.6

85. Reports from the Kenya Red Cross office and municipal council office in charge of squatters resettlement revealed that among the 2007 IDPs, all the former leaders; Chairperson, Secretary, Treasurer and Vice-Secretary, got land of 4 ¼ acres, yet the resettlement was meant for squatters evicted from Mt. Kenya and Aberdare forest.



In Naromoru, most of the children did not get the opportunity for the counselling offered by the Kenya Red Cross in camps or open forums during food distribution. More than one year down the line most parents complained that their children sleep walk during the night, wail and cry in their sleep, have unusual behaviour i.e. tantrums, anger and are delinquent. Many of the IDP children showed symptoms of various forms of post-traumatic stress disorder, manifesting in disorientation, complaints of headaches; poor performance at school; poor appetite; stunted growth; sleep walking, aggression, defensiveness and truancy. In addition, all across the area most IDP children were labelled 'IDPs' or '*wakimbizi*' and other derogatory or stigmatizing words.

Special categories of IDPs were, however, not being accounted for. Those with HIV/AIDS did not receive their medication as required their health deteriorated as noted in most camps. There was a high incidence of threats and attacks by hosting communities and social relationships between hosts and IDPs were tense. At Sirikwa farm, for instance, host communities complained that IDPs would kill them with HIV/AIDS contracted when they were in camps and demanded that IDPs be tested to verify their status before welcoming them back.

Almost all humanitarian agencies had stopped responding to the needs of IDPs during the period of this research. Sparse distribution by the Danish Refugee Council and the KRCS were reported. The DRC had various projects like, shelter construction,<sup>86</sup> rehabilitation of wells for individual households, rehabilitation of water sources such as dams and extensive piping to pump water, especially in areas like Temoyetta 2, 3 and 5 villages. The water project facilitated income generating projects for IDPs. For instance, where they had supplied water, they constructed water kiosks, issued IDPs members with diesel to pump water. The money collected from the water kiosk was used to help the community as a revolving fund. DRC also rehabilitated toilets and bathrooms and supplied seeds like beans, peas, cabbages, kales, carrots, fertilizers and hoes.

**Table 4: Shelter construction by DRC**

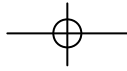
<b>Farm/ Area</b>	<b>No. of Houses completed</b>
Karirikania	299
Rironi	357
Sirikwa	43
Gossema	95
Mwahe	100
Kiambogo	159
Mawingu	288
Murinduko	131
Ng'arua	100
Rwang'onde	24
Temoyetta 3	193
Mlima	311
Jogoo	259
Kamuri	46
<b>Total</b>	<b>2,405</b>

Source: KHRC Data, March 2009

In areas where IDPs are integrated such as Kibera in Nairobi, the DO and chiefs do not recognize anyone as being an IDP, claiming that all internally displaced persons in

86. DRC Shelter Kit includes providing materials to build one house per IDP with the following items: nails, saw, hammer, tape measure, twins, 20 Iron sheets of 2meters and 30 gauge, 14 poles, roofing timbers, doors, windows, padlocks, hinges and Kshs.1500 cash for the labour to each house provided.



**OUT IN THE COLD****48**

Kibera were settled and compensated. A chief in Kibera said they were distributing food as part of government's initiative to serve needy *wananchi* with food and was not meant for IDPs. Integrated IDPs have challenges accessing humanitarian assistance. In Mathare, the local administration said they give food once a month to the people affected by famine.

In Taita Taveta district, IDPs were applying their own survival tactics that do not yield enough to cater for the upkeep of their families. The lack of adequate food occasioned by drought increased poverty for most households. Majority were unwilling to go back to their homes due to fear of fresh outbreak of violence. Some claimed that they had received threats from unknown people and were disturbed by how their assailants learnt about their presence in the district, which was far away from where they were living before the violence. The IDPs were living in deplorable conditions, exposing them to malaria which is common in the coastal malarial belt. Inadequate supply of insecticide treated bed nets exposed them further.

In some locations, IDPs live in difficult environmental conditions. In Kikopey and Gilgil, the land is semi-arid with no water,<sup>87</sup> no food, no trees and extremely windy and dusty conditions. The days are hot and nights frosty. IDP children frequently suffer pneumonia and common colds. Hospitals or clinics are far and IDPs avoid them due to unaffordable medical fees. Some IDPs go without food for days, taking soup prepared from discarded lamb hooves.<sup>88</sup> Drop-out among IDP children is high, and street children are seen to be increasing.

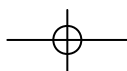
Pregnant women deliver their babies through traditional methods, assisted by midwife in the tents sometimes in unhygienic conditions. The tools used are not sterilized. Girls use old blankets during their menses, which if not kept clean predisposes them to health risks. Youths, with no jobs and no farms to work on were most affected by the Sachangwan fire incident where a petrol tanker exploded killing more than 120 people. Many of the victims were from Kibunja IDP camp and had rushed to the scene to fetch fuel to sell.

In Tharaka and Tigania, the Kenya Red Cross initially provided tents for IDPs, in which they live to date, overcrowded with several families sharing a single tent. They also provided sanitary pads and blankets, offered counselling to the clash victims. The government on its part provided relief food up until December 2008. However, no other aid has been availed since then and food remains a major crisis. The Provincial Commissioner Eastern Province and the *Njuri Ncheke* met with the people to look for a solution to the boarder problem. They agreed to resolve the problem by March 2009, now passed before any follow-up action was taken.

The case is no different in Laikipia East district where IDPs have received food rations only four times since their displacement i.e. March, June, September and November 2008. They received humanitarian assistance from the Kenya Red Cross Nanyuki Branch from January until March 2008, including food and non-food assistance. Laikipia IDPs have, however, demonstrated remarkable resilience and been able to organise among themselves to mitigate the extreme impacts of displacement, as illustrated by the case study below:

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87. IDPs that have bought land and settled in these areas have not been connected to existing water lines, and have to go long distances, sometimes up to 5 km in search of water that is often not suitable for human consumption.  
88. The last time some camps were supplied with food was in January 2009.



**Case Study 1: Stories of Hope – LEIDP CBO**

*Laikipia East Internally Displaced Person (LEIDP) CBO was founded in February 2008 by a group of IDPs who came to seek refuge in Laikipia East District during the post-election violence. The group, then meeting at the Kenya Red Cross offices Laikipia branch, elected a regional representative committee whose terms of reference included:*

- *Lobby and follow up on food and non-food items assistance from government and humanitarian agencies and ensure the same reaches all IDPs on time and that none of them misses out*
- *Follow up on matters of education to ensure that IDP children do not miss out on education*
- *Ensure the welfare of IDPs in terms of health, shelter and socio-economic status*
- *Engage the government to ensure that their future is secure*
- *Network with other IDPs countrywide to ensure that they are kept informed and do not miss out on any new initiatives*

*The group embarked on a mission to ensure their presence was recognised and incorporated at all levels of policymaking and development. In March 2009 ethnic clashes erupted in Laikipia West, causing displacement. Those who entered Laikipia East were incorporated into the group. Some notable achievements of the group since its formation include the following:*

- *The IDP children were accepted into all schools within the district unconditionally*
- *Most members accessed healthcare services from the district hospital free of charge*
- *The surrounding community has accepted the IDPs, creating in them a sense of belonging*
- *The response of the humanitarian agencies and the larger Laikipia community was good in terms of food and non-food assistance in the first quarter of 2008*
- *The local administration assisted the IDPs with letters of introduction that greatly assisted them in their ventures*
- *The group was formally registered in October 2008 under the Ministry of Culture and Social Services*

In Kisii district, the Catholic diocese built 171 houses for IDPs along Borabu-Sotik boundary under its shelter programme.<sup>89</sup> 90 of the houses were constructed for the

89. "Catholic Diocese builds 171 houses for IDPs", The People Daily, Thursday March 19, 2009 p.4



IDPs in Magwagwa and Etago parishes while the rest were built along the common boundary where houses were torched during the post-election violence. 47 victims benefited at Magwagwa and 34 at Etago. The rest of the houses were built along the border, with the local community contributing building materials to support the victims. The Catholic Agency for Development (CAFOD) which funded the project collaborated with the church. The church also embarked on a livelihood project to support 800 IDPs with fertilisers and planting seeds to make them self-reliant. 200 IDPs were to get Kshs.10,000 to start small businesses, and the church trains them on business skills before the money is released.

IDPs in other areas are not as fortunate. More than 14,000 IDPs camping at Mawingu in Nyandarua Central District were facing starvation at the time of the research. They had not received relief from the government for more than two months. The chairperson of the IDPs in the area, Mr. Peter Kariuki said their last relief supply was early March 2009, and efforts to get more food from the Ministry of State for Special Programmes and the Kenya Red Cross had failed. The children and the elderly were most affected.<sup>90</sup>

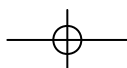


*Preparing a meal outside their humble abode*

The humanitarian situation and state of desperation at the Eldoret Showground camp was more devastating. According to a special press report, a family watched anxiously as IDPs in the camp refused to hand over to the police the body of a dead woman as a strategy to draw attention to their plight. Inside the couple's six-by-three tent lay a terrible secret. Their two-year-old child had died two days before and they had hidden the body on top of firewood, covered by a sack and then some charcoal. They just could not afford the mortuary fees. As the police retreated, leaving the IDPs to ferry the woman's body, the couple were finalizing plans to sneak their child's body to the municipal cemetery for last respects.<sup>91</sup>

90. The Standard, April 22, 2009, p. 12

91. Daily Nation, "Dishonesty on IDPs hurts reconciliation", April 25, 2009, p. 16



Similar challenges were reported by IDPs in the new settlement camps in Gilgil, Kikopey and Maai Mahiu. The land that the IDPs have occupied is arid and semi-arid, windy and dusty. The temperatures are extremely hot during the day and cold at night. IDPs' tents are worn out, unable to keep out rainwater and the cold draught. IDP children and pregnant women are therefore vulnerable to common colds and pneumonia. At Emmanuel, Ebenezer and Vumilia (Kikopey) camps, food distribution is irregular<sup>92</sup> as the Kenya Red Cross Society's intervention phases out. Jikaze Camp has been described as a model settlement, as described below:

### **Case Study 2: Stories of Hope – Jikaze IDP Camp**

*The IDPs at Jikaze site arrived on 27 July 2008 directly from Naivasha camp. There are 145 families comprised of 300 women, 78 men and 445 children. All but 17 households are yet to receive the Kshs .25,000 and 31 IDPs the Kshs.10,000. They pooled together and purchased the land using the Kshs.10,000 start-up funds. They initially bought 2 ½ acres and later added another 15 acres. The land was sold at Kshs.100,000 per acre. The Jikaze IDPs were among the first to accept the Kshs.10,000 from the government. They formed a group upon realising they would be unable, due to insecurity and landlessness, to return to their areas of habitual residence. They began to save money to purchase land while at the Naivasha main camp. The Government assisted them to transport their belongings to the settlement camp, strategically located along the main highway. The IDPs say the choice of this plot was deliberate: to attract attention and assistance.*

*They subdivided the land into 50x100 plots per family, and though the climatic condition is arid, they till the land and plant trees and grass. The camp has two large water tanks which they built upon arrival, and the Kenya Red Cross helped connect them to main water supply at Kijabe. The IDPs have an organized system of fetching water for their needs, and are strict about fetching hours. A well wisher built a classroom within the camp, while nursery school children learn in a tent provided by UNICEF. Other students go to Muniu Secondary School a few kilometres from the camp.*

*This camp is unique in that it is the only settlement camp in the area in which IDPs are living in semi-permanent mud-walled houses with doors and windows. The houses are an initiative undertaken by government in conjunction with a corporate partner, Mabati Rolling Mills (MRM). So far the government has supplied materials for 55 houses, while MRM have constructed 51 houses. 18 families are yet to receive the building material. Despite the lack of food and access to free medical treatment, the, determination, organization and resilience showed by the IDPs illustrate the potential for alleviating the problem of displacement in Kenya. They demand access to services afforded to other Kenyans – free treatment at public hospitals, bursaries for their children, and basic needs like food, water and proper shelter. The camp is a picturesque model of the settlement camps.*

### **3.5. Peace and Reconciliation**

Through the National Steering Committee on Peace-building and Conflict Management, the Early Recovery Cluster provides training on conflict management and peace building for Provincial Administration officials. This is done in partnership with the Ministry of Provincial Administration and Internal Security. The training targeted District Officers, District Commissioners, Law Enforcement Officers, Chiefs, Assistant

92. Maize, beans and ndengu

Chiefs and members of the District Peace Committees. It is anticipated that the training will be integrated into the regular administrative training so as to enhance national capacity to maintain peace and security.

The National Dialogue and Reconciliation Committee operationalised District Peace Committees (DPCs) in all districts. Drawing on both traditional conflict resolution mechanisms and modern formal dispute resolution processes, the Committees are mandated to prevent, manage or transform inter-ethnic or intra-ethnic conflicts. The model institutionalizes and legitimizes traditional conflict resolution mechanisms while also ensuring sensitivity to gender and age. A survey of 25 DPCs was undertaken in order to analyse the level of their functionality. The aim of the analysis was to strengthen the institutions within the National Steering Committee dealing with Peace Building and Conflict Management.<sup>93</sup>

Initiatives towards peace building and reconciliation have been organised in many parts of the country, some with more success than others. One success story is that of Kesses Division in Uasin Gishu District, where the residents vowed to live in peace and harmony.<sup>94</sup> After a long, bumpy and torturous journey, a new chapter was opened when the youth, the Provincial Administration and facilitators lit a candle of peace. Kesses was the epicentre of post-election violence where several people were killed and property destroyed by gangs during the mayhem. Kesses location Chief William Tarus said it was difficult to bring the youth and elders together due to suspicion and mistrust among them, adding that some young people thought the meetings were a decoy to have them arrested while those from the other community did not want to have anything to do with the aggressors. Marriages collapsed while friendships and any interaction were frowned upon. The peace initiatives hope to bridge these differences.

At the beginning of the peace efforts, meetings were hardly attended by warring communities. However, the entry of Rural Women Peace Link (RWPL) thawed the ice and local youth agreed to meet. 15 peace meetings led to the birth of Wareng Youth for Peace and Development, made of members from various communities. The government provided an office for the group and promised to provide the group whichever form of help they needed. The group's objective is to ensure peaceful co-existence regardless of political and tribal affiliation. Apart from peace initiatives, the group engages in economic activities to empower the youth and ensure they do not fall prey to politicians. The youth visit IDP camps and the villages to preach peace and reconciliation. They eat together and share their experiences.<sup>95</sup>

In Molo, the Kenya Red Cross Society launched a campaign to bring together communities affected by post-election violence. Through the Molo sub-branch health department, KRCS organised a major clean-up of the town. The exercise was aimed at building cohesiveness among affected communities. The programme brought the communities together through similar exercises. In mid June, the local community converged for a humanity 'power walk' to raise funds to build a resource centre in Molo town. The programme also encompassed psychological support for those affected directly or indirectly by the violence and the Sachang'wan fire tragedy.<sup>96</sup>

Efforts towards peace in Matharo and Timboroa saw the Kalenjin agree to lease their parcels of land to the Kikuyu. In Marakwet district, tribal-based politics and incitement remain a major threat to peace-building, cohesion and reintegration. IDPs in

93. OCHA Kenya, Frequently Asked Questions on IDPs, 17 April, 2009

94. See The Standard, Friday May 1, 2009, p. 3

95. Ibid

96. The Standard, Thursday April 30, 2009, p. 25

Marakwet district particularly in Getha, Kapterit, Milimani, Kamoi and Kapcherop areas were peacefully welcomed back to their farms by their neighbours. However, serious security challenges created by cattle rustlers and armed bandits operating from Kabolet forest West Pokot district threatened the reintegration process.

Peace-building meetings dubbed *Karibu Nyumbani* were held in areas affected by the post-election violence in the North Rift region. Spearheading the programme were both Rift Valley and Central province politicians led by Agriculture Minister Hon. William Ruto and Special Programmes minister Hon. Naomi Shaaban. They used the meetings to preach peaceful co-existence between Kenya communities living in the region particularly the Kalenjin and the Kikuyu. Following public *barazas*, post-election IDPs in Marakwet district integrated in their farms were welcomed by their neighbours. IDPs were also welcomed to their homes/farms in Ngetha, Kapcherop, Kapterit, Kamoi and Kapcherop. The government supplied them with necessary farm inputs such as seeds and fertilizers.<sup>97</sup>

Community-led initiatives towards peace and reconciliation are beginning to bear fruit in some areas. In Kondoo 9 farm, Boror and Rukuini progress has been made by church leaders and 'Wazee Wa Amani Burnt Forest.' As a result, Kikuyu and Kalenjin can trade together peacefully and children learn together in school. Police posts in the areas keep the area peaceful and incidents of cattle-rustling have reduced.

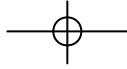
In Kibera, community based organizations (CBOs) are trying to make sure that there is calm in the villages and people are living together in peace. Through the Catholic Justice Peace and Commission (CJPC) and the Human Rights Department, Christ the King Catholic Church came up with a strategy for bringing calm in five identified villages in Kibera. Their main activities included training on good governance and leadership, conflict management, mobilizing other Faith Based Organization (FBO) working in Kibera to champion for peace in the community. They also empower community members by offering skills training e.g. soap making. In addition to training, priests give peace talks to congregations during Sunday services. Those trained signed a pact to spread peace messages to the small Christian communities (*Jumuiya*) and to give peace talks whenever there is a *Jumuiya* meeting. Several NGOs have started sensitization programs on the Truth Justice and Reconciliation Commission (TJRC).

The situation in Burnt Forest remains peaceful following the meeting held at Timboroa location on 09/04/09 concerning allocation of bursaries between both communities. In Mataru and Kipkorosio, Kalenjin IDPs are back to their farms while some are still camping at Timboroa trading centre. In Ngarua and Kipnyingei, returnees prepared their *shambas* for planting. Kitingia camp remains peaceful although IDPs need tents, food, school fees and support for about 50 orphans living in the IDP camp.

The Mt. Elgon Cross Boarder Peace Building Forum criss-crossed Kapchorwa, Sebeii and Bukwa Districts to facilitate cross-border peace initiatives for people in Kenya and Uganda. The Forum carries out joint activities including evangelistic missions and exchange programmes to promote and preserve peace in the two countries.

At Ndeffo, the Kikuyu and Kalenjin two communities have not mingled since the post-election violence. A forum facilitated by CREAM at the beginning of May brought

97. However, the returnees are still faced with some serious challenges in terms of housing since most of them are still living in torn tents, and food supplies from the government and relief organization take long to arrive and in most cases is insufficient, while most IDPs have no money to pay school/college fees for their children.



together representatives from both communities. The representative from the Kalenjin community talked about the rampant cattle rustling and boldly told the community that it also harboured some thieves who were collaborating with those from Maasai Community to steal animals. In 2008, Release Political Prisoners (RPP) held a workshop at Maucho and as a sign of good neighbourliness the community formed a 15-member committee to deal with cattle rustling. They pledged to collaborate with committee from the other community to arrest the situation.

The Ogiek community members reported that peace has been fully restored in most parts of Mau forest. However, they feared the government would evict them from their cultural home. In addition, tensions over the eviction of squatters from the Mau call for measures to beef up security and create awareness of the ecological importance of Mau Forest to both communities.

### 3.6. Right to Justice and Reparations

IDPs in Coast province seeking compensation from the government over the post-election violence filed a case in court.<sup>98</sup> The IDPs, led by Alexander Mwova sued the government for compensation for loss of livelihood occasioned by the violence. They blame the government for failing to provide adequate security resulting in their businesses being attacked and looted. Before filing the case, the IDPs had attempted to have their plight addressed by both the provincial administration and the MoSSP without success.<sup>99</sup>

In Nakuru, four suspects charged with killing seven people at Kiambaa Church in Eldoret were released.<sup>100</sup> Nakuru High Court Judge David Maraga acquitted Mr. Stephen Kiprotich Leting, Mr. Emmanuel Kiptoo Lamai, Mr. Clement Kipkemei Lamai and Mr. Julius Nyogio Rono for lack of evidence.<sup>101</sup>

#### Case Summary<sup>102</sup>

*The High Court sitting in Nakuru acquitted all the four accused persons in a historic case whose charges arose from the post-election violence. In acquitting Mr. Stephen Kiprotich Leting and the three co-accused, the judge noted with dismay that the shoddy investigations carried out by the police could not sustain a conviction. Further, Mr. Justice D. K. Maraga said the courts cannot convict accused persons without sufficient evidence.*

*The accused Stephen Kiprotich Leting (the first accused), Emanuel Kiptoo Lamai (second accused), Clement Kipkemei Lamai (third accused and Julius Nyogio Rono (fourth accused) were jointly charged with seven counts of murder. The charges against them were than on January 1, 2008, at Kenya Assemblies of God Church, Kiambaa in Uasin Gishu District within Rift Valley province, jointly with others not before the court, they murdered Joseph Kimani Karugu, Mitati Rubia, George Miriu, James Mwirigi Mbugua, Peter Mwangi, Margaret Wanjiru Mburu and Simon Gatimba Mburu.*

*The prosecution called 31 witnesses to support its case. The thrust of the prosecution's case was that the accused persons, with the common intention of committing murder with others not in court, razed the KAG Church in Kiambaa, killing more than 30 people.*

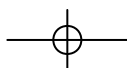
98. Weekly Citizen, May 4-10, 2009, p. 1598.

99. They are represented by Mombasa lawyer Joseph Munyithya.

100. See The Standard, Friday May 1 2009, p. 12

101. The four were charged with killing the seven on January 1, 2008 at the Kenya Assemblies of God Church in Kiambaa, Eldoret, jointly with others not before the court. They allegedly murdered Joseph Kimani, Mitati Rubia, George Miriu, James Mwicigi, Peter Mwangi, Margaret Wanjiru, Simon Gathimba and Samuel Kiongo.

102. See full case digest in Daily Nation, Monday May 18, 2009, p. 14, or at [www.kenyalaw.org](http://www.kenyalaw.org)



*The court noted that for the prosecution to prove its case, it had to establish certain elements for the offence of murder; the death of the deceased and the cause of the death, that the accused committed the unlawful act and that the accused had the malice aforethought. Further, the court observed that the prosecution, having charged the accused jointly, had to prove the crime was done with a common intention among them.*

*In their defence, the first and fourth accused denied being involved in the murder of any deceased persons. They raised alibis, which were corroborated by the evidence from the defence witnesses. The judge noted that the law is clear that where an accused person raises an alibi defence, the burden is on the prosecution to rebut the claim. The prosecution did not call any evidence to rebut the alibis of the first and fourth accused.*

*With regard to the second accused, the court acquitted him of all charges based on his own admission that he was at the scene of crime to try and rescue the victims. In fact, two prosecution witnesses testified that the second accused was heard pleading with the raiders to open the church doors for the women and children to get out. On the third accused, the court noted that none of the 31 prosecution witnesses mentioned him. Further, the State also conceded that there was no evidence connecting the third accused with the crime. The judge also wondered why, if the church was raided by a gang of about 4,000 armed people, only four suspects were in court.*

Further, FIDA-Kenya and the KHRC received instructions from the National IDP Network to sue the government on behalf of female IDPs seeking resettlement and redress for gender-based violence during the post-election violence. In this regard, FIDA and KHRC will partner to highlight the plight of the female IDPs and all persons affected by the poll violence. The case will be used to highlight the plight of IDPs and bring out the government's failure to protect and to provide for its citizens as provided under the constitution. The case will incorporate other stakeholders who will be invited to join the suit as interested parties. The following are the constitutional issues that the case will raise:

1. Governments failure to afford its citizens the various protections such as right to life, liberty, security of persons and the protection of the law, protection for the privacy of his home and other property and from deprivation of property without compensation as provided under section 70 of the Constitution.
2. Section 74 will be the anchor section as the case will be that Government has contributed to or made its own citizens live in degrading and inhuman conditions and has refused to take action to resettle affected families in better conditions.
3. The case shall also rely on section 81 to argue that affected families are forced to live in squalid conditions without freedom of movement as they cannot go back to where they were forcefully evicted from and as such do not have access to their properties.

The case will refer to relevant regional and international legal documents. A mock tribunal was conducted in March 6, 2009<sup>103</sup> to highlight the case and to give Government notice of FIDA and KHRC's intention to sue. It also served as a call to interested parties especially IDPs and organizations representing IDPs to join in the case.

103. The date chosen for the mock tribunal coincided with the period which international women's day is celebrated and was used as a reminder that in as much as we want to celebrate the day, many Kenyan women are suffering and there is nothing really to celebrate as Kenyan women and the Government has to take action to ensure their rights as citizens of Kenya are realized.



Moreover, a Legal Aid Working Groups (LAWG) has been established by the civil society, UN agencies and government agencies working on IDPs issues under the Protection Working Group on Internal Displacement (PWGID). The overall objective of the LAWG is to support and strengthen advocacy and other interventions undertaken by the PWGID through the provision of legal aid. The need for the establishment of the sub-working group was informed by the PWGID's recognition of the glaring legal gaps on internal displacement in Kenya. LAWG is also concerned about the emerging legal concerns on land and property rights of IDPs, as well as questions of access to justice and reparations. The LAWG will undertake the following activities:

*Legal Advocacy*

- The LAWG will support efforts geared towards the development of policies and legislation on protection of internally displaced persons by providing technical guidance on the drafting and enactment of sound laws and policies. This will be done in accordance with the Protocols of the International Conference on the Great Lakes Region and Guiding Principles on Internal Displacement. The LAWG will make reference to best practices and similar legislation in other jurisdictions including the Colombian "Law of IDP Rights" of 1997.
- The LAWG will provide advice and build the capacity of IDPs on the key processes and issues related to the purchase and registration of land and other immovable property. This intervention is aimed at forestalling cases of IDPs being swindled by fraudulent dealers who have emerged at various transit sites and will greatly aid other protection efforts towards ensuring resettlement, social and economic recovery of IDPs.
- The LAWG will also raise the awareness of the IDPs on the legal aspects of other human rights issues and concerns whenever the need arises.

*Legal support and assistance to victims of human rights violations*

Legal support and assistance to survivors of human rights violations will be given through:

- Facilitation of pro-bono representation of IDPs in matters requiring legal and/or judicial intervention;
- Institution of class action or test cases on behalf of IDPs, seeking for judicial declarations on the government's obligations on internal displacement based on existing international, regional and domestic protection instruments;
- Training or coaching IDPs as an identified group of victims of historical injustices to participate in the Truth Justice and Reconciliation Commission and the proposed Special Tribunal on the post election violence;
- Provide legal advice and direct support to IDPs claiming compensation under various assistance programmes.

In carrying out these interventions, the legal aid working group will give due regard to vulnerable groups such as women and children. A particular case in point is the ongoing sexual exploitation of displaced children in Mount Elgon.

**3.7 The Forgotten IDPs**

A number of IDPs have been forgotten or become neglected owing to poor profiling. Their access to assistance from the government and NGOs has therefore been reduced. Categories

of 'forgotten IDPs' include those in the urban slums, squatters and business people.

#### *IDPs in the Informal Settlements*

*Kibera* – IDPs from Kibera fled to Jamhuri show ground camp where they stayed for about four weeks before the camp was officially closed. Those who could not return to their homes were relocated to Waithaka District Officer's camp. When the government introduced the resettlement programme, those who could access their homes went back and others returned to their rural homes. However, most of the IDPs were unable and unwilling to go back because they feared renewed attacks. Those who were land lords returned to find their houses and business premises razed, vandalized or occupied by illegal tenants. Some IDPs migrated to other Nairobi slums including Mukuru and Mathare.

*Korogocho* – The post-election violence revived animosity between owners of the structures and tenants. Most IDPs were Kikuyu landowners from Ngomongo. The problem between the landlords and tenants remain unaddressed as some tenants who invaded property refused to move out while others refused to pay rent arrears. According to the Kasarani DO, the authorities found themselves in a dilemma over ways to reclaim property invaded by illegal tenants without collapsing the fragile peace.<sup>104</sup> It is worth noting that Article (4) of the Great Lakes protocol obligates the State to assist the IDPs to recover to the extent possible their property and possessions left behind or dispossessed during displacement.

#### *Landless IDPs*

Most of the IDPs remaining in main camps are mostly those who do not own land. The resettlement process gave priority to those who owned land. *Operation Rudi Nyumbani* focused on people who fled their farms and ignored landless IDPs. Traders who were internally displaced claimed that their businesses were razed, looted and vandalized. They have demanded compensation from the Government to enable them rebuild their businesses. According to the National Accord Implementing Committee, the Government set aside Kshs.10 billion to assist displaced business people to rebuild their premises.

#### *IDPs Displaced between 1991 and 2007*

For many years, the problem of internal displacement in Kenya has been ignored or given lip service. IDPs resulting from natural disasters or affecting marginalized communities and regions are often ignored, as those in camps are believed to eventually 'fizzle out'. While many are displaced by major causes such as floods, famine, conflicts over resources and development projects, political violence has been the major cause of displacement in Kenya. Politically-instigated displacement rose to national and international attention during the transition to democracy in the 1990s. The Government glossed over the protection and assistance needs of those displaced by 'land clashes' and focused on the 'unprecedented' caseload following the 2007 post-election violence in January and February 2008.

#### *IDPs in other regions*

The humanitarian intervention by the government and non-governmental organisations focused almost exclusively on the IDPs in the Rift Valley province. The Government seems to have forgotten IDPs displaced in other regions as a result of other

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104. Daily Nation, July 2008: Interviews and findings by Centre for Rights Education and Awareness (CREAW).



forms of violence besides the post-election violence. The plight of those displaced in other provinces since the 1980s has not been addressed. In particular, official neglect of the situation in Tana River, Turkana and Marsabit has compounded the effects of conflict and adverse climatic conditions, increasing the regions' marginalisation.

#### **4.0. KEY RECOMMENDATIONS**

The KHRC and the IDPs Network recommend the following:

**Humanitarian Response and Human Rights Protection to IDPs:** The Government of Kenya must ensure that the resettlement programme is carried out according to the UN Guiding Principles and the IC/GLR protocols. These standards place the primary obligation to provide humanitarian assistance and human rights protection on the Government. The Government must therefore establish appropriate strategies and plans for effective mobilization and utilization of resources in order to provide assistance and protection in a responsive and accountable manner.

This should involve provision of psychosocial services like counselling, affordable education, clean water, healthcare and sanitation, adequate security, better housing and enjoyment of all civil liberties without threats or repression. For IDPs to enjoy these services, the Government must safeguard their rights to own, control, access and use land. This requires proper mechanisms for resettlement, return and/or relocation. It also demands supporting IDPs who are pooling their resources together to buy alternative land for themselves.

**Profiling IDPs:** There is need to take proper and accurate census of IDPs in view of the specific causes of displacement, time of displacement, type of needs amongst other essential concerns. In addition, IDPs must be incorporated in decision making at all levels and their concerns about what the government should prioritize in the resettlement process taken into account.

**Security and inter-communal relations with IDPs:** The Government must guarantee security to IDPs who are willing to go back to their homes. In this respect, the government must step up peace building and reconciliation initiatives as a precondition for the sustainable return of IDPs. The Government should also address the issues of landless tenants and squatters, who constitute the largest number of IDPs unable to find durable solutions. Moreover, the Government needs to identify and eliminate the root causes of internal displacements and to develop effective early warning systems to curb eruption of conflicts and violence.

**Coordination and leadership:** the government should be at the forefront in providing leadership on all the short, medium and long-term interventions on IDPs. In cases where other development partners offer to coordinate different initiatives individually or collectively, the partners should put in place appropriate measures to ensure sustainable and systematic transition to allow the relevant Government departments to continue. Nevertheless, the partners should sustain their support, monitoring and evaluation initiatives. The Government should effectively involve other stakeholders e.g. CBOs and NGOs

in the Resettlement Programme, and consider making the composition and operations of the Advisory Board more participatory, independent, accountable and effective.

**Reparations:** According to the UN Basic Principles and Guidelines on the Right to Remedy, the Government of Kenya must develop an elaborate and accountable framework for the payment of reparations to IDPs who suffered loss of lives, property and livelihoods. The Government must also appreciate the difference between the current facilitation of Kshs.10,000 and Kshs.25,000 and the legitimate claims of IDPs for comprehensive reparations, including financial compensation.<sup>105</sup>

**Protection of women, children and other especially vulnerable groups:** The Government should put in place mechanisms for the protection of IDPs with special needs and interests. This includes protection and assistance to women and girls, children, persons with disability, the sick, among vulnerable persons such as HIV/AIDS patients.

**Redress all categories of IDPs:** The government should put in place measures to ensure expeditious protection and assistance to IDPs displaced before and after the 2007 post-election violence.

**Support durable solutions:** The government should develop effective structures for supporting early recovery and durable solutions.<sup>106</sup> It should put in place necessary legal and policy measures to deal with the root causes and the manifestations of injustices facing IDPs. Actions towards this end include but are not limited to:

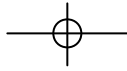
*a) Disaster Policy:* A disaster policy is required to provide a mechanism for disaster preparedness in order to deal with humanitarian crises and other emergencies related to internal displacement. The Ministry of State for Special Programmes' Strategic Plan must include specific benchmarks and performance indicators on IDP-related issues.

*b) National security, peace and conflict transformation policies:* Consultative formulation and effective implementation of these policies can help the Government deal with insecurity and conflict in a sustainable and coordinated manner. Security components should be added to the draft Peace and Conflict Transformation Policy to avoid duplication of governance frameworks on related issues.

*c) Transitional justice, constitutional and institutional Reforms:* An effective and victim-centred TJRC, a people-centred human rights plan of action, democratic constitution and progressive judicial and electoral reforms are essential to pre-empt displacement. They are also important mechanisms for providing remedy to victims.

105. In International Law, the right to remedy and reparations entails restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition. Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights and international humanitarian law (Basic principles on the right to a remedy and reparation) was adopted and proclaimed by UN General Assembly resolution 60 / 147 of 16 December 2005, UN Doc. A/RES/60/147. For details, see Appendix 3.

106. The IDP phenomenon, though shaped around the 4 agendas of the National Accord, is outlined in agenda number 2. The 4 agendas of the National Negotiation and Dialogue Process are Agenda No. 1 (Measures to stop violence and restore fundamental rights and liberties); Agenda No. 2 (Measures to address the humanitarian crisis and promote reconciliation, healing and restoration); Agenda No. 3 (Ending the political crisis) and Agenda No. 4 (addressing long term issues). For details about the current status of IDPs, see South Consulting, Status of Implementation of Agenda Two, op cit



*d) Justice and accountability concerns:* Action should be taken against persons who use hate speech and incite communities against each other. Perpetrators of violence and internal displacement should be held accountable. The Government must implement the recommendations of the Commission of Inquiry into the Post-election Violence (CIPEV), the Independent Review Commission (IREC) and of the 1999 Commission of Inquiry into Ethnic Violence in Kenya.

*e) Land Policy:* there is need to expedite the formulation and implementation of the draft national land policy in order to deal with historical land injustices and repugnant land governance systems. These injustices and systems are the basis for conflicts and displacements in many parts of the country.

*f) Policy on IDPs:* The Government should hasten the process of formulation, enactment and implementation of a policy to deal with matters related to protection and assistance to IDPs, as well as their property rights. The policy should be elaborate and progressive in view of the centrality of politics and the land question in Kenya.

## 5.0. CONCLUSION

In seeking to address the problem of internal displacement in Kenya, an ideal policy should envision the preservation and realization of the human dignity and human development for all IDPs. This vision should be realized with a mission to provide a comprehensive prevention and response framework for protection, assistance and remedy for IDPs. This mission should be guided by the following principles and objectives:

- *The Right to Protection* – responding to all the human rights concerns of IDPs in all phases of displacement in line with international human rights law.
- *The Right to Assistance* – ensuring timely and sustainable response to humanitarian needs of IDPs in line with international humanitarian law.
- *The Right to Remedy* – putting in place legal and policy measures for reparations to IDPs in line with international law.

This approach in policy making can set a progressive precedent in the way political institutions and structures make decisions and respond to issues related to internal displacement in a sustainable manner. While advocating for a comprehensive National Policy on IDPs, KHRC and the IDPs Network caution other stakeholders to be wary of challenges which have hindered implementation in other African countries where such policies exist - Angola, Rwanda and Uganda. Governance and financial challenges continue to attenuate the effective implementation of good policies. However, the existence of a policy is instrumental to ensuring compliance with international standards in local contexts. For 'to find a durable solution to IDPs is a human rights obligation as well as a way to address past violations.'<sup>107</sup>

It is evident the government's interventions through the Resettlement Programme failed to meet the basic standards for mitigation and resettlement of IDPs. As mentioned elsewhere, the programme was based on the wrong premises and assumptions, and lacked the requisite resources and coordination mechanisms.

<sup>107</sup> See "Key Note Address by Prof. Walter Kalin during the National Consultations on IDPs and Durable Solutions in Colombo Sri-Lanka, 23, September 2008". P.4. Prof Kalin is the Representative of the UN-Secretary General on the Human Rights of IDPs and Co-Director, Brookings-Bern Project on IDPs.

Thirdly, the programme was skewed in targeting, understanding and responding to diverse needs and demands of different categories of IDPs. This is partly due to lack of a comprehensive policy framework to deal with the phenomenon of internal displacement.

The government must consider the recommendations proposed in this report, and include in its response framework all categories of IDPs, including those displaced and disenfranchised during the 1990s transitional period, and those forced out of their homes by factors other than the post-election violence. All humanitarian and early recovery interventions must be expanded beyond the flashpoints of violence in the Rift Valley, Nyanza and Western provinces, to other regions of the country that host IDPs.

Indeed, in July 2009, KHRC and IDPs Network held a stakeholders forum to build consensus on the national frameworks for durable solutions to IDPs in Kenya. The main objective was to create a forum for agencies (State, UN-agencies, NGOs and survivors of displacement) to dialogue about the progress made in protection and assistance to IDPs during the last twenty years and develop mechanisms for collective actions and durable solutions. Participants reflected on gains made and challenges faced in protection of and assistance to IDPs after the post-election violence. Further, there was analysis of the situation of IDPs displaced by other factors before and after the post election violence in the Kenya. There was review of the existing and anticipated policy, legal and institutional frameworks at the national and international levels.

KHRC and the IDPs Network, working with like-minded organizations, shall continually ensure that the voices of IDPs, displaced by different factors, will strengthen their involvement in all the decision making processes. For future advocacy, KHRC shall continually push for the formulation of the National Policy on IDPs followed by necessary legislation to ensure the protection of and assistance to IDPs, now and in the future.

## 6.0 APPENDICES

### 6.1 Appendix 1 on IDPs Network in Kenya

The National Network for IDPs is an independent movement of IDPs displaced between 1991 and 2008. The Network's vision is to influence the resettlement, justice and compensation initiatives by the Government and other stakeholders to IDPs. Its objective is to enhance the involvement of IDPs in the Government's resettlement, transitional justice and policy programmes on IDPs

The IDPs Network was conceptualized in June 2003 and formally launched in May 2004. Initially the network started as a self-advocacy group of IDPs displaced by the politically instigated violence between 1991 and 1998 from the Rift Valley, Central, Coast and Nyanza provinces. Since then the network has expanded its mandate and scope to include IDPs displaced the 2007 post-election violence, as a result of armed conflict, violations of human rights or natural or human-made disasters and large scale development projects.

#### Structure and geographical coverage of the Network

The Network deals with issues related to resettlement and transitional justice in order to ensure that the genuine IDPs benefit from the emerging resettlement or compensation programmes. They also deal with issues of governance and conflict resolution, which have been the root cause of their displacement. The network partners with other stakeholders to respond to other injustices afflicting them and the country in general. The KHRC is one of the most strategic partners of the network. The IDPs Network is governed by a vibrant committee with structures running from the national to community levels. Currently the Network has memberships in the following areas:

Rift Valley	Kitale, Eldoret, Kericho, Kipkelion, Molo, Nakuru, Naivasha, Laikipia, Baringo, Turkana, Narok, Kajiado, Ngong,
Western	Bungoma, Busia, Kakamega
Nyanza	Kisumu, Muhoroni, Kuria, Transmara, Kisii, Nyamira
Central	Thika (Kieni), Nyeri, Kiambu (Limuru),
Coast	Tana River, Kwale, Kilifi, Malindi, Likoni
Eastern	Isiolo, Marsabit
Nairobi	Dandora, Huruma, Mathare

#### Activities of the IDPs Network

- Organizing and supporting IDPs on issues pertinent to their cause; Researching, documenting and disseminating information and data on IDPs and impunity issues;
- Engaging in advocacy on IDPs and other issues of national interest;
- Enhancing continuous planning and reflections with its members and stakeholders; and finally,
- Capacity building and networking at all levels with state and non state actors.

**The IDPs Network has made several gains which include among others:**

- Creating a national movement that has legitimized the cause for justice and resettlement for IDPs in Kenya
- Keeping the concerns of IDPs alive at the grassroots, national and international levels; and
- Enabling IDPs to engage effectively with the governance on issues affecting them and the country in general.

**6.2. Appendix 2 on Geographical Coverage of Phase I Monitoring**

Province	Constituency	Specific Area
Rift Valley	Mt Elgon	Kopsiro, Cheptais
	Subukia	Bahati, Kabazi, Ndondori,
	Cherangan,	Cherangan, Kaplamai, Chera,
	Saboti	Saboti
	Kwanza	Kwanza, Endebess
	Kipkelion	Kipkelion
	Ainamoi	Kericho,
	Kuresoi	Kuresoi, Kamara, Keringet, Olenguruine
	Molo	Molo, Njoro, Mauche Elbulgon, Lale
	Tinderet	Nandi South
	Eldoret East, Eldoret South, Eldoret North and Eldoret Town	Burnt forest, Timboroa, Langas, Kondoo, Nyakinyua, Ngarua, Usalama, Geiti, Lorian, Nyakio, Turbo, Maili Inne, Kiamba, langas, Cheplanga
	Nakuru Town	Barut, Lanet, Ngata, Solai, Mbogoini, Rongai
	Narok North, Narok South and Transmara,	Ildamai, Narok Town, Ntulele, Ololonga, Jogoo, Mulot, Lolgorian, Kilgoris, Kirianganyi
Marakwet East and West	Tirap, Tot, Kapyego, Tunyo, Kapcherip, Chebiemit, Kapsiriar	
Nyanza	Muhoroni	Muhoroni, Tinderet,
	Nyakach	Sondu, Katitu & Pap Onditi,
	Nyando,	Ahero and Awasi,
Nairobi	Kisumu	Kondele
	Kasarani	Mathare, Huruma & Korogocho
	Embakasi,	Dandora and Baba Dogo,
	Langata	Kibera
	Starehe	Huruma

The KHRC also monitored the status of IDPs who were forcefully repatriated from Ruring'u Stadium in Nyeri to Rift Valley, Nyanza and Western provinces.



### 6.3. Appendix 3 on the Geographical Coverage of Phase II Monitoring

Province	Specific Area
Rift Valley (11 monitors)	Baringo Central/ E. Pokot/ Laikipia West/ Nakuru/ Mauche/ Subukia/ Naivasha/Gilgil/Nyandarua/Ol Kamau/ Kinangop/ Boomed /Burette/Kilgoris/ Kericho/ Kipkelion/ Molo/Njoro/ Kuresoi/ Kamara/Timboroa/ Eldoret town/ Ya Mumbi/ Kiambaa/ Maili Nne/Munyaka/ Tinderet/Cingaro/Kitingia/ Mutharu/Ngarua/ Kondoo farms /Burnt Forest/ Cheranganyi /Kwanza/ Ogiek/ Kitale/ Endebbes
Nyanza (3)	Kisumu/Muhoroni/ Kuria/ Migori
Eastern (4)	Marsabit /Isiolo /Meru/Tharaka/ Katoteni
Coast (3)	Tana River/ Taveta/ Mombasa
Nairobi (2)	Mathare/Ruai/ Kibera
Central (2)	Nyeri/Othaya/ Nanyuki

### 6.4. Appendix 4 on the Human Rights Monitoring Framework

#### Introduction

This tool is meant to guide human rights monitors and advocates in identifying, reporting and advocating for protection of and assistance to IDPs in regards to their rights, guarantees and needs<sup>108</sup> during the so called *Operation Rudi Nyumbani* among other repatriation and response mechanisms.

The tool is based on the basis that ALL IDPs are entitled to the protection and assistance of their government. This obligation extends to all phases of displacement. It includes preventing arbitrary displacement, ensuring the well being of the persons once they are displaced, and creating the conditions for durable solutions to their plight during return or resettlement and reintegration.

#### Key issues during the monitoring and advocacy processes:

*i) Addressing the basic needs/ fundamental rights of IDPs in all aspects so as to ensure the dignity and well being of the displaced. This includes but not limited to provision of :*

- Adequate food, clean water and habitable shelter,
- Good medical care(to all) and education for children,
- Adequate liberty and security,
- Non-discrimination and or equal treatment,
- Protection of and assistance to other rights and needs (mention them).

<sup>108</sup>. As stipulated by the UN Guiding Principles and other governance frameworks on IDPs.

*ii) Creating conditions for durable solutions which includes but not limited to:*

- Involving the IDPs in decision making-planning and management of their return and or relocation
- Ensuring voluntary, safe and dignified return and or settlement and reintegration,
- Rebuilding infrastructure and providing facilities to regain livelihoods,
- Fostering inter-personal and community relations, peace, conflict transformation and reconciliation
- Providing adequate security and enhancing access to land for better/sustainable livelihoods,
- Analyzing the process and impact of resettlement in regards to special protection and assistance to different categories of IDPs, vulnerable groups and family situations. For instance IDPs from single female and or male parents; orphans, women, children(boys and girls), aged, sick, persons living with HIV/AIDS, persons with disabilities; and those from within and outside the camps, farmers, traders, pastoralists among others,
- Addressing the roots causes of displacement and initiating mechanisms for effective remedy and accountability to the victims and perpetrators of the displacement and related violations respectively,
- Participating fully in the public affairs within the area of residence,
- Deciding on how and when internal displacement ends-on the basis of objective criteria that ensures the respect for the human rights of the IDPs.

*iii) Responding to other key obligations and expectations*

- Involving all the relevant state and non-state actors at all levels and interventions,
- Collecting and disseminating factual data and information about the numbers, location and needs of IDPs,
- Creating national awareness on the rights and needs of IDPs and obligations of the State,
- Building a national consensus around the issues/ problem and making efforts to address the crisis as a national priority,
- Supporting and responding to the monitoring and advocacy roles of independent state and non-state actors,
- Developing a national and sustainable response-legal and policy framework and plan of action, national and regional institutional focal point.

*iv) Mobilizing and availing resources to support ALL the above-mentioned obligations on IDPs.*

### 6.5 Appendix 5 on the Fact-Finding Questions and Schedule – Phase I

**a) Compliance:** Is the Government complying with its human rights obligations as envisaged in the UN Guiding Principles on IDPs and the IDPs protocol in the International Conference Great Lakes Region in the *Operation Rudi Nyumbani*?

**b) Success of the Operation Rudi Nyumbani programme:** is the insistence by the Government that the *Operation Rudi Nyumbani* has been a great success the truth or is it a public relations statement? Is it true that there are less than 20,000 people in the camps? How many IDPs are in the main and satellite camps?

**c) Coordination:** How effective is the coordination by the State and Non-State actors working on IDPs issues?

**d) Reparations:** How many IDPs have received the Kshs. 10,000 and 25,000 that was being awarded by Government? Has the government put in place necessary framework for other forms of reparations as envisaged in international law?(see below on reparations).

**e) Durable solutions:** What are some of the mechanisms that have been put in place to address the root causes of displacement and to ensure durable solutions? And what do we need to do in terms of formulation and engagement.

#### Areas covered during the fact finding mission:

Date	Location	Teams	Day
Mon 29 <sup>th</sup> Sept 2008	Limuru and Naivasha	KHRC and National IDPs network	Day 1
Tue 30 <sup>th</sup> Sept 2008	Molo and Kuresoi areas	KHRC and National IDPs network	Day 2
Wed 1 <sup>st</sup> Oct 2008	Burnt Forest and Eldoret	KHRC and National IDPs network	Day 3
Thurs 2 <sup>nd</sup> Oct 2008	Eldoret, Nakuru Town and travel back to Nairobi	KHRC and National IDPs network	Day 4

### 6.6. Appendix 6 on the Fact-Finding Questions and Schedule – Phase II

- What is the progress with regards to the *Operation Rudi Nyumbani* programme launched by government to resettle IDPs last year?
- What, if any, is the impact of emerging conflicts and natural disasters causing internal displacement?
- What is the progress of peace building, cohesion and reconciliation in these areas and what are the factors affecting reintegration?
- What are the emerging political issues in these areas with regards to land, resettlement of IDPs and access to resources?

Date	Location	Team
Wed, 22/04/09	Naivasha, Kinangop, Gilgil, Limuru	KHRC and the IDPs Network

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**OUT IN THE COLD**

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The violence sparked by the announcement of the disputed presidential election results in Kenya on 30th December 2007 led to massive displacement and loss of lives and livelihoods. Reports provided by local and international organizations indicate that an estimated 500,000 persons were internally displaced in various parts of the country. About 1,300 lost their lives in the violence. The United States Institute of Peace estimated that about 600,000 persons were displaced during the 2007, while the Government Humanitarian Services Committee reported on 19th February 2008 that 351,000 were displaced. To harmonize these disparate figures, in July 2008 the Ministry of Special Programs, the National Bureau of Statistics and UNHCR carried out a profiling exercise which found that there were 663,921 IDPs caused by the post-election violence across the country. Nonetheless, the actual figure of IDPs is not certain because there are people who were not hosted in official camps but sought refuge amongst communities and urban areas.

Kenya has ratified the IC/GLR Protocol and international human rights and humanitarian instruments from which IDP protection standards are derived. As such, the government has the legal obligation to ensure effective protection of and assistance to IDPs. In this regard, the KHRC and the IDPs Network launched a project to monitor and evaluate the government's implementation of the Resettlement programme. This Report is a compilation of facts and figures gathered by KHRC during the period May 2008 to May 2009. It forms part of outputs by the KHRC and the IDPs Network in their constructive engagement with the national reconstruction processes.

This Report is dedicated to all IDPs in Kenya, who have been displaced due to many political, economic and social factors from 1980s to date. Their resilience and tenacity has always inspired other survivors of impunity and the general citizenry in Kenya in the unrelenting struggle for justice, peace and equity in the society.

