FIVE YEARS ON;

A SURVEY ON THE STATE OF THE INTERNALLY DISPLACED PERSONS AND VICTIMS OF POLICE BRUTALITY IN KENYA &
LEGAL FRAMEWORKS FOR PROTECTING THE RIGHTS OF INTERNALLY DISPLACED PERSONS

RIGHTS PROMOTION & PROTECTION CENTRE

(R FORMERLY RELEASE POLITICAL PRISONERS TRUST)
FIVE YEARS ON;

A SURVEY ON THE STATE OF THE INTERNALLY DISPLACED PERSONS AND VICTIMS OF POLICE BRUTALITY IN KENYA

LEGAL FRAMEWORKS FOR PROTECTING THE RIGHTS OF INTERNALLY DISPLACED PERSONS
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Acknowledgement

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We take note of and appreciate the invaluable support offered by Government representatives; Community Based Organisations; the media; Community and Opinion leaders; families and survivors of 2007 / 2008 Post election violence and all other stakeholders especially in the collection of data.

We are grateful for the contribution received from our Community Human Rights Monitors; Daniel Aol, Eunice Amollo, Timothy Kipnusu, Vincent Sambai, Nathan Chumba and Ann Nyige.

We thank RPP Steering Council led by Stephen Musau for their continued guidance and leadership. Special mention goes to the RPP staff who coordinated and helped in implementation of this project and especially in the production of this report. The team comprised of Eunice Oloo (Ag. Executive Co-ordinator), Mungai Mbuthi (Project Officer), Nelson Mwebi (Finance and Administration Officer), Faith Nchagwa (Volunteer), Kimani Ndegwa (Volunteer) and Grace Mutie (Intern).

Special appreciation goes to UNDP Amkeni Wakenya and the European Union for the financial assistance for this project.

Finally, we strongly believe and hope that the contents of this report will help push for the establishment of local justice mechanisms that will see the perpetrators of the 2007/2008 Post Election Violence brought to justice.

Eunice Oloo

Ag. Executive Co-ordinator, RPP
Foreword

The State of Internally Displaced Persons (IDPs) or Victimhood of Violence is A Political State

From the calm situation the country is enjoying despite the crackdown on terrorism, it is quite easy to say that there are no more IDPs in Kenya. But is this really the state deep within the communities who were incessantly rising against each other?

While we pray that we should not anticipate a situation where people get to be internally displaced, it is very important to remember that no one wants to be called an IDP or to find himself or herself in such conditions. So what causes one to be an IDP? It is the politics within a country. It is the management of public affairs and how effective, strong or weak the institutions of public management are.

As a country, the constitutional dispensation we are in, with devolution and self management of public affairs demands that any remaining IDPs should be resettled soonest to allow their effective participation in technological, social, economic and political development. There is no doubt that the 2007/8 post election violence led to the highest number of IDPs, whether properly enumerated or not. It was because of this that RPP initiated a small study to map out the pattern of rights violations occasioned by the violence, trace different kinds of support that was granted to the victims by relevant actors, trace the state response in defending and protecting the rights of the victims and provide recommendations on how such occurrences can be avoided in future.

This study bring some of these issues and the big agenda forward is how to pick up the issues raised and act on them. The civic engagement should now entail having meetings with concerned County Governments to factor in the social-economic attention to the IDPs for they need services, in their homes or any area they might be, just like any other Kenyans.

With the provided legal mechanisms, it will be important to know how we keep strengthening the preventive mechanisms, and ensure that the country does not slide back. Further the question of justice for the IDPs does not end there and as RPP, we still support the ongoing International Criminal Court (ICC) process to its logical conclusion as we also demand that local processes be enhanced individually and collectively, with the victims leading the path, whether as IDPs or not, for they remain victims of political circumstances.

Further, with neighbours having turned against a neighbour, and this data is also provided in the report, robust efforts towards durable healing and reconciliation are still required. This calls upon all actors to play their role, and especially so the political role of healing. Again on these, the victims ought to lead the way, in their aspirations of healing and reconciliation, and how they would wish to remember never to forget but forgive.

With the underlying causes of IDPs and victims of political violence still being there, including
unemployment of many youths, inequalities across the country and disrespect of rights, RPP remains committed to the Kenyan freedoms, rights and dreams, based on principles of equality and non discrimination, unity, public participation, empowerment, rule of law and social justice. It is on the same lines we shall walk the journey even with the IDPs for a better Kenya, especially on the social, economic and cultural rights.

Stephen Musau
Chairperson, Steering Council
Background

The colonial government in Kenya through various declarations appropriated African land to provide room for British settlers. Most of this land was in Central and the Rift Valley regions in what came to be known as the White Highlands. Local population especially in central region were uprooted from their ancestral lands and resettled on British settler farms either as farm workers or as squatters.

After independence, the Kenyatta government instituted a willing buyer willing seller policy. Under this policy, the land previously appropriated could be gained back by native Kenyans by way of purchase agreement from the settlers. The government organized loans for individuals and groups to purchase land. The first beneficiaries were the squatters and farm workers. This formalized resettlement of Kenyans outside ancestral lands. It so happened that most of the settler activity was in the Rift Valley due to expansive lands and favourable climate. On the other hand, most of the farm workers were sourced from the Central region as a way of stemming agitation for land and independence. The land policy at independence therefore cemented the relocation of large numbers of Kenyan from the central region into the Rift Valley. This group was also joined by relatively smaller number of people from Nyanza and Western provinces.

Within the host communities in the Rift Valley, there developed some feeling of discontent on the basis that this land was initially (at least by geographical location) ancestral to the original Rift Valley communities.

The late 1980s and early 1990s marked a period of intense political pressure for reform in Kenya. At the core of this agitation was the demand for a new constitutional and legislative order that would allow for political competition and stronger state accountability. Though the KANU regime tried to resist this agitation, it gave in partially by allowing for multi-party democracy. The reintroduction of multiparty set-up sharpened the ethnic feelings in the country. The opposition drew most of its support from among the Kikuyus, Luos, Luhya and the Kisii communities. These communities are among the largest immigrant population in the Rift Valley.

The KANU regime used existing land grievances to hang on power. The first full scale ethnic conflict in Kenya was a result of these machinations. There are claims that the 1991/92 ethnic clashes were instigated by the state. These claims remain unsubstantiated but suffice is to note that since the introduction of the multi-party democracy, political violence has become a standing feature of election cycle with the exception of 2002 and 2013.

The 2007/08 political violence was therefore a continuation of a series of flare ups that started as a political strategy based on underlying social economic grievances. Additionally, the use of ethnic mobilization as a political tool provided a rich reservoir for harnessing real and imagined historical grievances. It is imperative to note that the ethnic mobilization started much earlier in 2005 during the failed referendum to pass the constitution.
Introduction

The 2007 general elections seemed to be two horse contest up to the point where Kalonzo Musyoka's Orange Democratic Movement-Kenya broke away from the main Orange Democratic Movement. Even with this realignment, the country remained deeply divided between the opposition and an incumbent. The ethnic framework was enhanced with the decision by the leader of the official opposition and the chairman of KANU, Uhuru Kenyatta to support the incumbent.

The above realignments created an atmosphere that sharpened ethnic divide with the ruling party NARC bringing in Kikuyu and other central Kenya communities as the bulk of their supporters. The opposition parties founded their support and actually mobilized other communities to respond to this scenario. It was therefore clear that the 2007 contest was bound to be an ethnic contest.

The institutional weaknesses in key bodies like the Electoral Commission of Kenya came to fore with claims of rigging by the opposition. ECK did not seem in a position to provide credible rebuttal to the claims. Actually, the Kliergler Commission which was put into place to review the results concluded the process was so flawed that it could not tell who won the election.

On its part, the judiciary was exposed on two perspectives. First the Chief Justice presided a swearing in ceremony hurriedly at dusk. This was read by observers as an indication of partiality. Secondly, the institution suffered a public confidence crisis when the opposition that had made claims of rigging refused to go to court to challenge the results on the account of apparent partiality.

What started as mass action quickly turned to ethnic violence targeting communities perceived to have supported either of the sides with retaliation action quickly picking pace. Within a few days, hundreds had been killed and thousands displaced.

The state and various non-state actors responded to the dire humanitarian crisis that followed. As a way of deriving deeper understanding to the events that led to and followed the violence, RPP through the support of UNDP AMKENI Wakenya & EU commissioned a field survey in the regions mostly affected.

Objectives of the Survey

i. Map out the pattern of rights violations occasioned by the violence

ii. Trace different kinds of support granted to the victims by relevant actors

iii. Trace state response in defending and protecting the rights of the victims

iv. Provide recommendations on how such occurrences can be avoided in future
Methodology

Sampling

The survey was conducted in three counties on Nakuru, Kisumu and Uasin Gishu. The three were picked on the basis that they were hotspots of the violence. The counties are also focus for RPP work. Any action arising in the survey can then be easily taken up on future programmatic interventions by RPP. The respondents in Nakuru and Uasin Gishu were picked at random from camps for the internally displaced in (IDP camps) and resettlement farms. In Nakuru, the sampling was done in Total camp, sharom, shan marko and Salgaa. In Uasin Gishu, the respondents were sampled from Naka Camp.

Data collection

Data collection was conducted through face to face and observations methods. RPP staff partnered with community human rights officers to form the data collection team. The fieldwork was conducted between April and May 2013.

Data entry and analysis

The field data was captured using SPSS software and analysed in form of graphics to allow for visual understanding.

Fieldwork Challenges

High expectations among the victims- The victims of the violence were dispossessed of most of their property through looting and destruction. They were also dislocated from their land where most of them used to practice agriculture as their only means of earning livelihood. Against such a background, it is expected that any group that interacts with the displaced persons is faced with a lot of expectations. The research team faced such expectations.

Fatigue among the victims- one of the challenges was that so many groups of state and non-state actors had interacted with the victims in pursuit for education before our team went for fieldwork. This created an understandable sense of fatigue and exhaustion among the respondents. This could in a way have affected the quality of the respondents.

Authenticating claims- the research team had some challenges sorting out some claims that did not seem very credible. In such circumstances whole accounts were left out to avoid affecting the credibility of the whole survey.

Problems with timing- the fieldwork was conducted immediately after March 4 general elections. This was a period of heightened political activity and shifting political alliances. The political alignment of some of the victims changed within this period in a way that is
likely to have affected the response rate. Additionally, the issue of the indictment of the President elect and his deputy created a new dynamic in terms of the willingness of the victims to respond appropriately to the survey.

**Report Findings and Analysis**

**Gender**

Slightly more than half of the respondents who were interviewed were male compared to 49.7% of their female counterpart.

![Gender Pie Chart](image)

*Figure 1: Gender of the respondents*

**Age bracket**

Majority of the respondents who were sampled (26.2%) were aged between 18-29 years old followed closely by 24.6% who were aged between 30-39 years old. Further, 19.7% of them were aged between 40-49 years old while 14.2% were aged between 50-59 years old. Slightly more than fifteen percent (15.3%) were over 60 years old.
Figure 2: Age of the respondents

Marital status

It was observed that slightly more than half of the respondents sampled (54.1%) reported that they were married while 34.4% were single. The rest were divorced (2.7), widowed (5.5%), 2.2% unmarried and staying with their parents while 1.1% said that they were separated.

<table>
<thead>
<tr>
<th>Marital status</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>63</td>
<td>34.4</td>
</tr>
<tr>
<td>Married</td>
<td>99</td>
<td>54.1</td>
</tr>
<tr>
<td>Unmarried(living with parents)</td>
<td>4</td>
<td>2.2</td>
</tr>
<tr>
<td>Divorced</td>
<td>5</td>
<td>2.7</td>
</tr>
<tr>
<td>Widowed</td>
<td>10</td>
<td>5.5</td>
</tr>
<tr>
<td>Separated</td>
<td>2</td>
<td>1.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>183</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Table 1: Marital status

Distribution of respondents by County

Majority of the respondents who were sampled (53.0%) were from Eldoret County, 35.5% from Nakuru County while 11.5% were from Kisumu County.
Figure 3: Distribution by county

Where respondents stay

The table below shows the place where respondents reported they stay. About 20.8% of them said that they were staying in the IDP camp by the time of the survey but did not specify the name of the camp. Further, 5.5% of the respondents did not reveal where they stay.

<table>
<thead>
<tr>
<th>Place</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No response</td>
<td>10</td>
<td>5.5</td>
</tr>
<tr>
<td>D.O’s camp</td>
<td>6</td>
<td>3.3</td>
</tr>
<tr>
<td>Giwa IDP camp</td>
<td>5</td>
<td>2.7</td>
</tr>
<tr>
<td>IDP Camp</td>
<td>38</td>
<td>20.8</td>
</tr>
<tr>
<td>Manyatta IDP camp</td>
<td>2</td>
<td>1.1</td>
</tr>
<tr>
<td>Mosque IDP camp</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td>Naka IDP camp</td>
<td>73</td>
<td>39.9</td>
</tr>
<tr>
<td>Nyalenda IDP camp</td>
<td>19</td>
<td>10.4</td>
</tr>
<tr>
<td>SanMarko camp</td>
<td>19</td>
<td>10.4</td>
</tr>
<tr>
<td>Shalom IDP camp</td>
<td>4</td>
<td>2.2</td>
</tr>
<tr>
<td>Totally camp</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td>Yamumbi IDP camp</td>
<td>5</td>
<td>2.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>183</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Table 2: where respondents stay
Security situation

When asked to describe the status of security where they live, majority of the respondents said that it was adequate, 30.1% said it was poor while 13.1% said that it was very secure. It was noted that 2.2% of the internally displaced person were not sure of the status of security where they lived.

Figure 4: security status at the place of residence

Security provider

A vast majority of internally displaced persons said that where they stay security was provided by the Administration police, 26.5% said regular police while 7.1% said that security was provided by the community.

Figure 5: security provider
Source of livelihood

A vast majority of internally displaced persons (93.0%) reported to engage in casual jobs whenever they get one like digging in others farms earn a livelihood. 2.9% said that they only depend on donations from NGO’s for livelihood. The implication here is the dire economic situation that the IDPs find themselves. The violations related to physical rights abuse are therefore exacerbated by the arising poverty.

<table>
<thead>
<tr>
<th>Source of livelihood</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Casual jobs</td>
<td>160</td>
<td>93.0</td>
</tr>
<tr>
<td>None/Am disabled</td>
<td>5</td>
<td>2.9</td>
</tr>
<tr>
<td>Small business</td>
<td>1</td>
<td>.6</td>
</tr>
<tr>
<td>Boda boda</td>
<td>1</td>
<td>.6</td>
</tr>
<tr>
<td>Donations from Government/NGOs</td>
<td>5</td>
<td>2.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>172</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

*Table 3: Source of livelihood*

Action taken

A vast majority of the respondents (82.5%) said that they reported the incident while 17.5% said that they did not report. This is a very high rate of reporting implying every four in five violations were actually reported. The foundational issue that should accompany this assessment is the proportion of cases that were effectively investigated and appropriate action taken. Though the survey did not dwell on this issue, the media reports elsewhere do not reflect much on this perspective.

*Figure 7: Action taken*
Where the incident was reported

The study revealed that majority of the internally displaced persons (85.4%) reported the incident in police station, 7.0% in chief’s office while 6.4% said that they reported in churches or religious organizations. Only 1.3% of them said that they reported in hospitals. The implication on this is that though the police were seen as violators in Kisumu and somehow non-committal in the two other areas, the victims still found faith to report to the institution. The senior management in the police can draw on this to boost public confidence.

![Figure 8: Where incident was reported](image)

Place where violation took place

Majority of the respondents (76.3%) said that the violation took place at victim’s home, 20.3% said at perpetrator’s home while 0.6% said on the road. Further, 2.8% of the respondents said that it took place at an unknown place. The site of the violation greatly indicates the extent to which the perpetrator went to seek out the victim and commit the violation. It is also a message to the security agencies on the hotspots to check out for to forestall or mitigate such occurrences.

![Figure 9: Where violation took place](image)
Nature of report

The table below shows that 40.2% of the internally displaced persons said that they reported destruction/looting of their properties, 26.8% said they reported injury/burns and killings, 19.6% reported ailments whereas 13.4% said that they reported displacement. Going by this analysis, almost 30% of the reports made were on physical violations. The ailment as captured here most likely represents cases directly relate to physical violation, displacement and psychological abuse. Assuming that the reporting was done exclusively (those who reported on a certain aspect did not report on any other), the implication is that most victims suffered economically through displacement and destruction of property. However in the real world, this is most unlikely.

<table>
<thead>
<tr>
<th>Nature of report</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Injury/burns/killings</td>
<td>30</td>
<td>26.8</td>
</tr>
<tr>
<td>Destruction/looting of properties</td>
<td>45</td>
<td>40.2</td>
</tr>
<tr>
<td>Displacement</td>
<td>15</td>
<td>13.4</td>
</tr>
<tr>
<td>Ailment</td>
<td>22</td>
<td>19.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>112</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

*Table 6: Nature of report

Relationship between the victims and the perpetrator

Majority of the victims said that the perpetrator were their neighbors (40.3%), 28.7% said from another community while 11.6% said the perpetrator was a police. The pattern of the identity of the perpetrator clearly shows that the violations were done by people well known to the victims (neighbors). This has two implications, first if the government wanted to respond, then 40% of the cases could have been easy to resolve. Another component that stands out is the identity attached to persons from another community. The implication here could be where persons were ferried from other areas to commit the offences but their ethnic identity could be established by the victims. This may indicate some level of organization and planning of the political violence. It is worth noting that 11% suffered under the hands of the police. The implication is that the state failed to protect the already vulnerable populations in a situation of political violence or perhaps even took sides.

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Friends</td>
<td>8</td>
<td>4.4</td>
</tr>
<tr>
<td>Neighbour</td>
<td>73</td>
<td>40.3</td>
</tr>
<tr>
<td>Relative</td>
<td>4</td>
<td>2.2</td>
</tr>
<tr>
<td>Another community</td>
<td>52</td>
<td>28.7</td>
</tr>
<tr>
<td>Police</td>
<td>21</td>
<td>11.6</td>
</tr>
<tr>
<td>Gang</td>
<td>5</td>
<td>2.8</td>
</tr>
<tr>
<td>Don’t know</td>
<td>18</td>
<td>9.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>181</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

*Table 7: relationship between the victims and the perpetrators
Reception of support

The study observed that majority of the internally displaced persons (72.7%) received support with only 27.3% who did not receive any support. This is a good reflection on the various agencies involved in supporting the victims.

![Figure 10: support reception](image)

Support provider

Slightly more than half of the internally displaced persons (51.7%) reported that the received the service from the government, 31.7% from Non-governmental organizations, and 13.3% from churches whereas 3.3% said that they received the support from the support groups. The survey points to a positive view of government response on humanitarian aid with more than half of the respondents having received it from the state. This assertion however needs to be read alongside two caveats. First, the survey did not record the timeliness of the assistance granted by the various agencies. It is therefore not clear how soon the support was granted after the violation. Secondly, the survey did not venture into to the adequacy of that support. When this second caveat is read against media reports on claims of inadequacy, it implies a separate mapping need to be done to better illuminate on this issue.

![Figure 11: support provider](image)
Kind of support given

The table below shows the kind of support that internally displaced persons received. It is clear from the survey that a wide range of support was granted to the victims. Most of the support was economic save for counseling and Medicare.

<table>
<thead>
<tr>
<th>Support</th>
<th>N</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial</td>
<td>39</td>
<td>11.5%</td>
</tr>
<tr>
<td>Counseling</td>
<td>48</td>
<td>14.2%</td>
</tr>
<tr>
<td>Food</td>
<td>114</td>
<td>33.6%</td>
</tr>
<tr>
<td>Clothing</td>
<td>65</td>
<td>19.2%</td>
</tr>
<tr>
<td>Housing</td>
<td>24</td>
<td>7.1%</td>
</tr>
<tr>
<td>Relocation</td>
<td>16</td>
<td>4.7%</td>
</tr>
<tr>
<td>Land</td>
<td>16</td>
<td>4.7%</td>
</tr>
<tr>
<td>Healthcare</td>
<td>14</td>
<td>4.1%</td>
</tr>
<tr>
<td>Education</td>
<td>3</td>
<td>0.9%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>339</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

Table 8: Kind of support given

Challenges faced by the victims

Majority of the internally displaced persons said that one of the challenges they faced was lack of basic needs like food, housing, clothing and water. 26.5% reported that they lacked medications while another 26.5% said that they were faced by financial problems hence not even able to pay school fees for their children among other uses.

<table>
<thead>
<tr>
<th>Challenges</th>
<th>N</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of medication</td>
<td>94</td>
<td>26.5%</td>
</tr>
<tr>
<td>Lack of basic needs</td>
<td>139</td>
<td>39.2%</td>
</tr>
<tr>
<td>Unemployment</td>
<td>13</td>
<td>3.7%</td>
</tr>
<tr>
<td>Financial problems</td>
<td>93</td>
<td>26.2%</td>
</tr>
<tr>
<td>School dropout</td>
<td>4</td>
<td>1.1%</td>
</tr>
<tr>
<td>Insecurity</td>
<td>12</td>
<td>3.4%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>355</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

Table 9: Challenges faced

What needs to be done to improve the welfare of the victims

Slightly more than half of the internally displaced persons (52.4%) reported that they would like to be resettled so as to improve their livelihood, 29.5% said that they would like to be given financial support e.g. school fees for their children while 9.1% said that they would like to be provided with basic needs.

The high percentage of the victims that mention they require resettlement is an indicator of
the dire situation in which they live. Consequently a notable proportion also needs support on related issues like school fees and other financial support. It would have been interesting to check whether by resettlement the victims meant their desire to reclaim their land or to be settled elsewhere. An answer to this would have been an indicator to existing perceptions on their safety in their former settlements.

<table>
<thead>
<tr>
<th>Ways of improvements</th>
<th>N</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resettlement</td>
<td>144</td>
<td>52.4%</td>
</tr>
<tr>
<td>Financial support</td>
<td>81</td>
<td>29.5%</td>
</tr>
<tr>
<td>Basic needs</td>
<td>25</td>
<td>9.1%</td>
</tr>
<tr>
<td>Efficient health facilities</td>
<td>5</td>
<td>1.8%</td>
</tr>
<tr>
<td>Job opportunities</td>
<td>8</td>
<td>2.9%</td>
</tr>
<tr>
<td>Provide security</td>
<td>10</td>
<td>3.6%</td>
</tr>
<tr>
<td>Counseling</td>
<td>2</td>
<td>.7%</td>
</tr>
<tr>
<td>Total</td>
<td>275</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Table 12: What internally displaced persons think should be done to improve their livelihood

Issues related to Compensation

A vast majority of the respondents (76.4%) reported that they were not compensated for what they had lost with only 23.6% reporting in the positive.

Figure 12: Compensation

Explanation by internally displaced persons on compensation

Majority of the internally displaced persons who were not compensated reported that they only received unfulfilled promises from the government or that the government ignored them. The issue of compensation needs to be seen from a wide array of contexts. First, the legal duty of the state to compensate in such circumstances need to have been established.
This could best have been done through a legislative framework by Parliament or a petition by the victims to a court of law arguing on state neglect of duty to provide security to citizens and their property. The second context was the amount/comprehensiveness of compensation. This could best be defined through a legal mechanism. In the absence of such, the state adopted a humanitarian intervention rather than a legal duty to offer support. This informs the claims of the victims on the inadequacy of the compensation. The provision by the Rome Statute for convicts to compensate victims also provides a different perspective. This however has not been fully integrated into public discourse on this issue.

<table>
<thead>
<tr>
<th>Explanations</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfulfilled promises by the government</td>
<td>94</td>
<td>93.1</td>
</tr>
<tr>
<td>He was underage</td>
<td>2</td>
<td>2.0</td>
</tr>
<tr>
<td>Was a tenant and only owners were compensated</td>
<td>2</td>
<td>2.0</td>
</tr>
<tr>
<td>Only land was given without construction materials</td>
<td>2</td>
<td>3.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>101</td>
<td>100.0</td>
</tr>
</tbody>
</table>

*Table 13: Explanation why internally displaced persons were not compensated*

### Action taken

The study revealed that majority of the internally displaced persons (43.3%) carried out a demonstration when they were not compensated, 23.7% said that they petitioned while 16.5% said that they took a legal action.

<table>
<thead>
<tr>
<th>Action</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal</td>
<td>16</td>
<td>16.5</td>
</tr>
<tr>
<td>Court</td>
<td>14</td>
<td>14.4</td>
</tr>
<tr>
<td>Demonstration</td>
<td>42</td>
<td>43.3</td>
</tr>
<tr>
<td>Petition</td>
<td>23</td>
<td>23.7</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>2.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>97</td>
<td>100.0</td>
</tr>
</tbody>
</table>

*Table 14: Action taken*

### Rating of support given by the following agencies

The table below shows how internally displaced persons rated the support they were given by the agencies mentioned below. Religious organizations and Red Cross were rated a little bit high compared to the rest of the agencies. A vast majority of internally displaced persons (88.2%) rated the support they were given by politicians as poor with a mean of 4.82 indicating that they had a negative perception towards the support they were given.
by the politicians. This is to be expected given that politicians would most likely have been interested in focusing on political interests.

<table>
<thead>
<tr>
<th>Agencies</th>
<th>N</th>
<th>Mean</th>
<th>Excellent</th>
<th>Very good</th>
<th>Good</th>
<th>Average</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration police</td>
<td>174</td>
<td>3.64</td>
<td>4.0%</td>
<td>10.9%</td>
<td>31.0%</td>
<td>24.7%</td>
<td>29.3%</td>
</tr>
<tr>
<td>Other security</td>
<td>158</td>
<td>3.68</td>
<td>3.8%</td>
<td>7.6%</td>
<td>36.7%</td>
<td>20.9%</td>
<td>31.0%</td>
</tr>
<tr>
<td>agencies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religious organization</td>
<td>170</td>
<td>3.11</td>
<td>7.1%</td>
<td>22.4%</td>
<td>35.9%</td>
<td>21.8%</td>
<td>12.9%</td>
</tr>
<tr>
<td>Red cross</td>
<td>153</td>
<td>3.1</td>
<td>19.6%</td>
<td>6.5%</td>
<td>32.0%</td>
<td>27.5%</td>
<td>14.4%</td>
</tr>
<tr>
<td>NGO’s</td>
<td>167</td>
<td>3.62</td>
<td>7.2%</td>
<td>11.4%</td>
<td>28.1%</td>
<td>19.2%</td>
<td>34.1%</td>
</tr>
<tr>
<td>Politicians</td>
<td>170</td>
<td>4.82</td>
<td>1.2%</td>
<td>0.6%</td>
<td>1.2%</td>
<td>8.8%</td>
<td>88.2%</td>
</tr>
</tbody>
</table>

*Table 15: rating of support given by the mentioned agencies*

**Conclusions and Recommendations**

The survey documented wide range of violations arising from the post-election violence. The human suffering registered is akin to a situation of full breakdown of law and order. It can be safely concluded that the governance institutions mandated to forestall this breakdown failed in their central roles. Even more damning is where such institutions were expected to respond appropriately through investigations, prosecutions and restitution, this was not appropriately done.

By the time the survey was conducted, it was more than five years since the post-election violence. The fact that the situation of the victims was still bad is an indicator of lassitude of the state in resolving the issue. Even after passage of five years, the victims still did not feel state assurances on security to reclaim their former homes. This speaks a lot on the ability of the state to fully and convincingly exercise its power to provide security. Much has happened in this area in the months following the survey. Such responses fall outside the scope of the survey and can only be captured in subsequent surveys.

The involvement of the police in extra judicial killings is a serious indictment to an institution whose core duty is to guarantee citizens security. Of all the cases of police brutality reported, only one case is reported to have gone through the courts. The case was eventually closed with an acquittal. This goes a long way to demonstrate state connivance in the violations. It would have been expected that since the police were exercising state authority, it would have been easier to hold them to account as compared to the marauding thugs who committed
offenses in the other counties.

The reconciliation talks that halted to slip into full scale state breakdown formulated a raft of reform initiatives as contained under Agenda IV. The passage of the Constitution of Kenya 2010 served to reinforce such initiatives. However, not much has happened to reflect a fundamental change. The government ought to move with speed to complete reforms in the police force. The situation now is in limbo with different institutions charged with this blowing hot and cold on critical issues.

The apparent low confidence in the judiciary is what put Kenya on the path of the violence. It is therefore critical that the journey to reform be finalized in a sustainable way. The current claims of power jostling and corruption in the institution can only derail the efforts and put Kenya in a similar situation in future.

The reform process in the electoral commission also needs to be strengthened to boost Kenyans’ confidence in the institution. Full automation of the voting process may be a perfect starting point.

As the ICC cases progress, the government needs to institute a local mechanism to hold to account the rank and file perpetrators. Such a response would send clear signals that the state does not condone mass political violence whether emanating from state agents like the police or ethnic militia. The same would also be an indicator that Kenya is in a position to handle its internal affairs as variously claimed as a way to justify relocation of ICC cases to Kenya.

The government needs to put more efforts in ethnic relations and nation building. The establishment of National Cohesion and Integration Commission was a good response. There have been claims that the commission has not been up to the task. This is a serious threat to the nation building agenda. The threats by some section of parliamentarians to disband the commission need to be properly scrutinized to avoid creating a gap.
LEGAL FRAMEWORKS PROTECTING THE RIGHTS OF INTERNALLY DISPLACED PERSONS

Background

RPP has been involved in a project to provide justice to the victims of Post Election Violence following the disputed elections of 2007/2008 which threatened to tear the nation down the middle and which resulted in 1,133 deaths and the displacement of more than 600,000 Kenyans according to the Commission of Inquiry into Post Election Violence (CIPEV). Through funding and support from Amkeni, activities were carried out under this programme in three counties namely Kisumu, Nakuru and Uasin Gishu.

The overall objective of this project is to contribute towards ending impunity and bringing long term accountability in Kenya through a victim centred approach. This is done by working with direct victims of the 2007 / 2008 post – election violence to facilitate them to participate effectively in the processes geared towards bringing justice, lasting peace and closure on the issue of the PEV.

The activities carried out in this project include the following:

- Lobbying and advocacy
- Conducting inter-ethnic dialogue meetings
- Monitoring electoral process, political primaries and hate speech
- Voter education
- Media visibility

Introduction

During the implementation of the first phase of the project, it became apparent that various basic rights of the Internally Displaced Persons (IDPs) and other victims of Post-Election Violence were being blatantly infringed upon. Over the last five years since 2008, the government has failed to honour numerous IDP resettlement pledges and deadlines, despite the fact that large financial allocations were made to the Ministry of Special Programmes to conclude the process. Displaced persons from the 2007/2008 Post Election Violence have continued to live in deplorable living conditions in makeshift camps. The IDPs face various challenges including the following:

1. Lack of access to basic rights and services such as food and water, sanitation, healthcare and so on;
2. Lack of compensation for lost property and livelihoods;

3. Limited or no access to land for agricultural activities;

4. Lack of transparency and corruption in the IDP profiling and resettlement process;

5. Inadequate peace and reconciliation efforts across the country;


There are various legal frameworks that provide for the protection of their rights generally and specifically as IDPs. These frameworks range from international legal instruments, regional instruments as well as local provisions. Kenya is a signatory to most of the core international human rights instruments. At the regional level, Kenya has also ratified key human rights instruments including the African Charter on Human and Peoples’ Rights and the 2006 Pact on Security, Stability and Development in the Great Lakes Region. The following is a summary of the various international, regional and local legal instruments guiding the protection of IDPs as well as a summary of the mechanisms available today for the protection of the PEV victims.

**International Legal Framework**

**Universal Declaration of Human Rights**

UN General Assembly adopted it on 10th December 1948. The UDHR for the first time spelled out the basic rights that every human being should enjoy. Article 1 states that all human beings are born free and equal in dignity and rights; and are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. It provides for the right to life, liberty and security of person; freedom from torture or cruel, inhuman or degrading treatment or punishment; right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law; freedom of movement and residence within the borders of each state, right to a standard of living adequate for the health and well-being of himself and his family including clothing, housing, and medical care and necessary social services; right to education; protection from arbitrary arrest, detention and exile; right to privacy; right to property and so on.

This declaration provided the basis and reference point for the various international, regional and national human rights instruments.

**United Nations Guiding Principles on Internal Displacement**

The UN Guiding Principles on Internal Displacement were adopted by the UN in 1998 to provide guidance to states and relevant actors on the protection assistance of IDPs. They are not binding on the UN member states but uphold the provisions of other human rights laws and conventions relating to refugees and IDPs. They restate and interpret the existing human
rights and humanitarian law applicable to IDPs and also refer to refugee law standards. The principles articulate the guarantees against arbitrary displacement in the first instance, the rights of persons once they have been displaced, rights and obligations connected with humanitarian assistance, and the rights of IDPs to voluntary, safe and dignified solutions to displacement.

United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (The Pinheiro Principles)

These Principles were adopted by the UN Sub Commission for the Protection and Promotion of Human Rights in 2005. They are also not binding on states but provide guidance to member states, UN agencies and other actors on the issue of housing, land and property restitution. They support the emerging right to housing and property restitution as a core remedy to displaced persons.

International Covenant on Economic Social and Cultural Rights (ICESCR)

Kenya acceded to this Covenant in 1972. ICESCR guarantees the right to privacy and the right of everyone to social security, including social insurance. Article 11 provides for the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

International Covenant on Civil and Political Rights (ICCPR)

This Covenant guarantees the right to life, protection from torture, cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, protection from discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

This Convention came into force in 1987 and aims to prevent torture and cruel, inhuman and degrading treatment around the world. Article one defines ‘torture’ as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in official capacity.” Ratification of the Convention obligates governments to assert responsibility for the prevention of torture and the redress for victims of torture.

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1 Named after Sergio Pinheiro, a former Special Rapporteur on Housing and Property Restitution for Refugees and Internally Displaced Persons.
The Geneva Conventions

Article 3 of the four Geneva Conventions and article 17 of the Additional Protocol II to the Geneva Convention protect civilians caught up in a non-international armed conflict against arbitrary displacement unless it is necessary to evacuate them for safety or imperative military reasons.

The Rome Statute

The Rome Statute is the international treaty that established the International Criminal Court (ICC). It was adopted by The United Nations Diplomatic Conference of Plenipotentiaries in Rome on 17th July, 1998. The Statute gives the ICC power to exercise its jurisdiction over persons for the most serious crimes of international concern set out in Part 2 of the treaty. These include the following crimes:

a) The crime of genocide
b) Crimes against humanity
c) War crimes
d) The crime of aggression

Article 8 (2)(e)(viii) of the Statute defines war crimes to include “ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;”

Regional Legal Framework

African Charter on Human and Peoples’ Rights


Through this Charter, to which Kenya is a State Party, signatories reaffirm their commitment to uphold the rights and freedoms of their citizens. Some of the rights protected under the Charter include: the right to life, the right to the respect of the inherent dignity in a human being and the recognition of his legal status, right to liberty and security of person, right to property, equality, right to national and international peace and security, protection from discrimination and the duty to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect.
The AU Convention on the Protection and Assistance of IDPs in Africa-Kampala Convention

This is the first international treaty for the protection and assistance of IDPs within their own counties and across the continent. It was adopted by a Special Summit of the African Union, held in Kampala, Uganda, on 22 October 2009 and entered into force on 6 Dec 2012. However, Kenya has NOT ratified to the Convention. It builds on the Guiding Principles and other laws and is the first regional instrument in the world to impose legal obligations on states in relation to the protection and assistance of IDPs. The convention places the primary responsibility of the protection of IDPs on the state.³ Where “available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organizations and humanitarian agencies, civil society organizations and other relevant actors.”⁴ It recognizes different causes of internal displacement including conflict, generalised violence, human-caused or natural disasters, and development projects such as the construction of dams or clearing land for large-scale agriculture. It also recognises new important actors in displacement such as multination corporations and private security forces.

Article 9 (1) obligates State Parties to protect the rights of IDPs and from the following:

a. Discrimination against such persons in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons;

b. Genocide, crimes against humanity, war crimes and other violations of international humanitarian law against internally displaced persons;

c. Arbitrary killing, summary execution, arbitrary detention, abduction, enforced disappearance or torture and other forms of cruel, inhuman or degrading treatment or punishment;

d. Sexual and gender based violence in all its forms, notably rape, enforced prostitution, sexual exploitation and harmful practices, slavery, recruitment of children and their use in hostilities, forced labour and human trafficking and smuggling; and

e. Starvation.

The Convention recognises the critical role that civil society organisations and the communities which take them in play in assisting IDPs and obliges governments to assess the needs and vulnerabilities of the forcibly displaced, and the host communities, in order to address the plight of people uprooted within their borders. It strengthens the prohibition on arbitrary displacement and the right to a remedy for IDPs. It addresses IDPs rights and needs, but also directs states to take action to prevent displacement.

The Convention also places an obligation on states to “seek lasting solution to the problem of

³ Kampala Convention, Article 5 (1)
⁴ Kampala Convention, Article 5 (6)
IDPs by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis”\(^5\) and also to establish appropriate mechanisms for resolving disputes relating to the property of IDPs.\(^6\)

**The Great Lakes Pact**

“The 11 states of the Great Lakes region continue to host more than half of Africa’s displaced – more than one million refugees and over nine million IDPs.”\(^7\) In light of this situation and the conflicts in the region which have resulted in mass movements of populations within the region and the IDP crisis, states participated in the International Conference and Great Lakes Region initiated by the UN and AU. This resulted in the signing of the Pact on Security, Stability and Development in the Great Lakes Region (Great Lakes Pact) on 15 December 2006. It came into force on 21 June 2008 and has been ratified by the 11 member states.

The pact provides a legal framework governing the relations between the member states which are: Angola, Burundi, Central African Republic, Congo Brazzaville, the Democratic Republic of Congo (DRC), Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia. It consists of 10 protocols two of which are directly related to IDPs. These are:

- Article 11: Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children
- Article 12: Protocol on the Protection and Assistance to Internally Displaced Persons

“The adoption of these two protocols was a significant recognition by the ICGLR member states of the crucial link between protecting the rights of forcibly displaced people and achieving peace, security and development in the region.”\(^8\) The objectives of the Protocol on the Protection and Assistance of Internally Displaced Persons (the IDP Protocol) are threefold, namely to:

- Establish a legal framework for the adoption of the Guiding Principles on Internal Displacement (the Guiding Principles) and a legal basis for their implementation in national law;
- Ensure legal protection of the physical and material needs of IDPs;
- Reinforce member states’ commitment to prevent and eliminate the root causes of displacement.\(^9\)

The Protocol requires member states to “adhere to the principles of international humanitarian law and human rights applicable to the protection of internally displaced

\(^5\) Ibid., Art 11 (1)
\(^6\) Ibid., Art 11 (4)
\(^7\) UNHCR’s most recent Global Report for 2007, available at www.unhcr.org/gr07/index.html
\(^8\) International Refugee Rights Initiative Director Dismas Nkunda. Available at http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/
persons in general, and as reflected in the Guiding Principles in Particular.”

It also places an obligation to member states to enact national legislations in line with the Guiding Principles. It acknowledges that states have the primary responsibility of protecting IDPs, but where states “lack the capacity to protect and assist IDPs, such Governments shall accept and respect the obligation of the organs of the international community to provide protection and assistance to IDPs.”

It also calls on member states to “provide for the channels of engagement and cooperation between the organs of Government, organs of the United Nations, the African Union, and civil society.”

States are also required to consult with the affected populations and explore alternatives to displacement as well as provide compensation in cases where displacements are justified. It also deals with a number of challenges for IDPs including security, freedom of movement, issuance of documentation, resettlement and the provision of humanitarian assistance.

The Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children provides protection to populations including IDPs from sexual and gender based violence. It aims to prevent sexual violence, and to support and compensate survivors and punish offenders.

**National Legal Framework**

At the national level, the legal and policy frameworks that address the IDP issue include the Constitution of Kenya 2010, general laws such as the Penal Code and Sexual Offences Act, and more recently the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (IDP Act), which was enacted to specifically address the IDP situation within the country.

**The Constitution**

The Constitution of Kenya 2010, through the Bill of Rights guarantees fundamental human rights for all Kenyan citizens including IDPs. The various rights secured in the Bill of rights in relation to IDPs include the following:

**Civil and Political Rights:**

  i. **Right to life**

Every person has the right to life.

  ii. **Respect of human dignity**

Every person has inherent dignity and the right to have that dignity respected and protected.

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10 IDP Protocol, Article 4 (1) (a)
11 Ibid, Article 3 (10)
12 Ibid Article 6 (4) (c)
iii. **Right to equality and freedom from discrimination**

Every person is equal before the law and has the right to equal protection and equal benefit of the law.

iv. **Right to freedom and security of the person**

Every person has the right to freedom and security of the person, and shall not be arbitrarily deprived of freedom or subjected to any form of violence, torture or treated or punished in a cruel, inhuman or degrading manner.

v. **Right to property**

Every person has the right, either individually or in association with others, to acquire and own property, and shall not be arbitrarily deprived of their property or in any way be restricted in the enjoyment of their property.

vi. **Right to a clean and healthy environment**

Every person has the right to a clean and healthy environment.

Economic and social rights

This includes access to the highest attainable standard of health, adequate housing and reasonable standards of sanitation, adequate food, clean and safe water, education.

All these rights are to be enjoyed by all persons without discrimination on any grounds including “race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.” The Constitution further provides for the specific protection of the rights of children, women, persons living with disabilities, marginalised groups, and older members of the society.

**The National Accord and Reconciliation Act**

Following the violence that plagued the country during the 2007 elections, the AU established the Panel of Eminent Persons to help in the mediation process between the incumbent president Mwai Kibaki PNU and Raila Odinga of ODM. The mediation process was formally initiated on 29th January 2008, with four main agenda items:

- Immediate action to stop the violence and restore fundamental rights and liberties,
- Addressing the humanitarian crisis, promoting reconciliation, healing and restoration of calm. This resulted in the passing of the National Accord and Reconciliation Act.
- Overcoming the political crisis,
- Addressing long-term issues and the root causes of the conflict, including
constitutional, legal and institutional reforms. This resulted in the formation of the Truth Justice and Reconciliation Commission (TJRC).

The mediation process resulted in the signing of the National Accord on 28th February 2008, with the National Accord and Reconciliation Bill being assented on March 20th 2008. The Act gave effect to the Agreement on the Principles of Partnership of the Coalition Government, to foster national accord and reconciliation and provide for the formation of a coalition of the coalition government, and the establishment of the offices of the Prime Minister and Deputy Prime Minister among other provisions.

The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (IDP Act)

This act came into force in 2012 and was an attempt by the government to domesticate its international obligations. It plays a significant role in assisting the government and other stakeholders in dealing with the IDP situation in the country. It provides a rights-based approach to dealing with IDPs and sets a fund for their resettlement. It provides for a comprehensive approach to addressing internal displacement caused by conflict, other forms of violence, natural disasters and development projects, irrespective of IDPs’ location and tribal affiliation. It outlines the institutional framework, roles and responsibilities for state and non-state parties in all phases of displacement, and articulates measures to prevent, manage and mitigate against it, to assist and protect IDPs and to find durable solutions.

Further, the Act defines offences related to IDPs and imposes a fine not exceeding five million shillings or imprisonment for a term not exceeding 10 years or both to anyone who commits an offence defined under section 23(2).

MECHANISMS AVAILABLE FOR REDRESS

In Kenya, those uprooted from their homes as a result of the 2007/2008 Post Election Violence are subject to human rights violations, both during and after displacement. They often suffer discrimination on account of their status as displaced persons, ethnic and gender grounds. So where can these IDPs turn to for justice when their own government fails to provide for their security and well-being? Where do they turn to to access justice for the atrocities they went through, and to get compensation for their lost property and livelihoods? In light of the various legal frameworks touching on the rights of displaced persons, international and regional human rights mechanisms may be used to bring attention to their plight and where possible to secure redress.

One such mechanism is petitions. Petitions may be made to the UN Human Rights Council, human rights treaty bodies e.g. the Committee on Economic, Social and Cultural Rights, Committee on the Rights of the Child, the Committee against Torture, the Commission on the Status of Women the Human Rights Committee and the Committee on the Elimination of Discrimination against Women which all receive and comment on periodic reports from the state parties and give general comments relating to the treaty provisions and the state
of the particular rights in that country. Additional international bodies e.g. United Nations Educational, Scientific and Cultural Organisation (UNESCO), the ICC, International Labour Organizations (ILO) also have important human rights functions including the capacity to accept complaints of violations. At the regional level the main bodies are African Commission on Human and Peoples’ Rights, the African Court of Human and Peoples’ Rights, and the African Committee of Experts on the Welfare of the Child. The Commission considers state reports, addresses individual complaints and issues interpretive guidelines.

It is important to note that the national government and not international institutions have the primary responsibility for implementing human rights. “Domestic institutions, if willing to confront human rights issues, are commonly much more powerful and efficient than international mechanisms, nearly all of which lack true enforcement power. Most international mechanisms can do little more than provide recommendations and suggestions to domestic authorities and, in many cases, rely mainly on the power of publicity to persuade them to comply.”

It is possible to bring a case involving violation of the provisions of a human rights treaty directly to the domestic courts. The Constitution of Kenya and other statutes lay out rights that are the same as, or are at least similar to many of those enshrined in international treaties and these can be enforced through our local courts and administrative bodies.

Where there are no domestic laws or policies in place covering specific rights, advocacy can be used to push for their development. For instance, the fact that Kenya has not signed or ratified the Kampala Convention can be grounds for legislative advocacy to push for the country to be a signatory of the treaty.

The Kenya National Commission on Human Rights is also a means by which IDPs can seek redress. This body is enshrined in the Constitution and can accept and act upon individual complaints of human rights violations, and also plays a role in encouraging the development of policy and law. It is therefore a crucial body in bridging the IDPs, civil society and the government.

**National Responses and Relief Programmes**

The second agenda item of the National Accord signed on February 28 2008 resulted in the government and other partners initiating support to IDPs within four main operations including: *Operation for voluntary return* which involved food rations only was initiated in February 2008. The second phase was *Operation Rudi Nyumbani* whereby IDPs received Ksh. 10,000 and Ksh. 25,000 as start-up fund and reconstruction fund respectively; along with food, tents and other provisions. Next were the *Operation Ujirani Mwema* and *Operation Tujenge Pamoja* which were implemented to promote reconciliation and peaceful co-existence as well as reconstruct destroyed homes and infrastructure. These operations were enforced within the government strategy for Emergency Social and Economic Recovery which had

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17 Provision of humanitarian support to IDPs and restoration of fundamental rights.
envisaged that all IDPs would have returned home and been resettled by June 2008. The government was engaged in several activities in relation to the IDP situation including the following:

- Provision of food
- Provision of farm inputs
- IDP profiling to ascertain the correct number of those displaced
- Provision of psychological counselling to IDPs
- Peace building and reconciliation programmes to promote harmony among communities
- Provision of Kshs. 10,000 start-up fund to each IDP household
- Provision of Kshs. 25,000 reconstruction fund
- Assistance to IDPs to return to their homes
- Provision of water and sanitation services
- Provision of health facilities

The Protection Working Group on Internal Displacement (PWGID) was established in 2009 by the transformation of the IDP Protection Cluster formed a year earlier to respond to the post-election situation. It was chaired by the Ministry of Justice, National Cohesion and Constitutional Affairs and the Kenya National Commission for Human Rights. Members included national and international organisations in the protection, human rights and legal aid fields and other civil society agencies.

The PWGID was mandated to enhance the capacity of actors to address the protection needs of IDPs throughout Kenya through training on the Guiding Principles, advocating for the implementation of the Great Lakes Protocol, developing a national legal and policy framework for the protection of IDPs, establishing a monitoring mechanism to ensure compliance with regional and international commitments, and identifying the protection needs of IDPs by highlighting the human rights context, gaps and specific government obligations. A key result of the group was the National Policy on the Prevention and Assistance to Internally Displaced Persons in Kenya which is based on international and regional human rights standards relating to IDPs. This complimented the IDP Bill which was passed by Parliament and assented by the President in 2012.

There were also a number of government initiatives aimed at preventing and minimizing the extent and impact of internal displacement. These include the Evictions and Resettlement Guidelines (2009), the draft National Policy on Peace building and Conflict Management

According to the report of the Parliamentary Select Committee on the Resettlement of Internally Displaced Persons 2012, the government was ill-prepared to handle the humanitarian crisis and it also failed to meet its own set deadlines on resettlement of IDPs. Out of 9,571 IDPs in camps only 2,287 had been resettled since 2008 and the government response was reported to be very slow with only 24% resettled within the four year period. The report further stated that provision of food, security and other supplies were haphazard and uncoordinated, while profiling of IDPs was flawed with fake IDPs being registered and benefitting from the resettlement fund. The report also states that IDPs in camps were given more attention by the Government while integrated IDPs e.g. those in Kisumu and other historical IDPS were largely ignored. According to the report, the Ministry of Lands was allocated a total of about Kshs. 2.9 billion by the end of the 2010/2011 fiscal year to meet its responsibilities towards IDPs.

The total amount of land required for resettling the 9,571 displaced households was 27,000 acres (2 ¾ per IDP). Of the total required, 8,831 had been purchased at the time of the report at a cost (including inspection, planning, survey and purchase) of Kshs. 1.34 billion.

President Uhuru Kenyatta and his Deputy William Ruto on September 7th 2013, launched a Kshs. 3.2 billion Cash Payment Programme for IDPs aimed at ensuring the closure of all IDP camps in the country. This is the final leg in the resettlement of IDPs where each household was to receive Kshs. 400,000 to rebuild their lives. This programme has raised concerns over discrimination as those IDPs from Nyanza and Western feel that they have been totally ignored while their Rift Valley and Central counterparts received the compensation. Majority of the IDPs in Nyanza were integrated into their families and as such did not remain in camps. IDPs who have received the funds have also complained that they are insufficient to purchase fertile lands, as the price of land is high.
Recommendations

From the findings of this project, it is evident that Kenya has a long way to go in securing the rights of IDPs and other victims of Post-Election Violence, despite making considerable strides towards their compensation and resettlement recently. Despite Kenya being a signatory to a majority of legal instruments protecting the rights of IDPs, and enacting local legislations in line with the said instruments, there is still a lack of institutional framework that is hindering the protection and promotion of their rights. The following are some recommendations to address the promotion and protection of the rights of displaced post-election violence victims.

- It is crucial that concerted efforts are made to encourage Kenya to ratify the Kampala Convention as soon as possible. The IDPs in Kenya would undoubtedly benefit from the provisions of the Convention.

- It is also important that awareness is raised so that the government, civil society actors and other stakeholders across the board can learn about the various international, regional and local legal instruments on the protection and assistance of IDPs and their implications for their work.

- Strong domestic laws should be enacted to back up the international agreements to ensure that these instruments do not only exist on paper, but translate into improved practice on the protection and assistance of IDPs. It is crucial that comprehensive implementation of international and regional instruments is carried out.

- The government must strengthen its institutional capacity in dealing with matters relating to IDPs. The relevant Ministry should be provided with adequate finances and competent human resource.

- The TJRC recommendations on issues surrounding IDPs and the victims of police shootings and killings need to be implemented promptly.

- Continuous lobbying of the county government officials and other authorities to look into the plight of the IDPs.

- The government must recognize all IDPs including integrated IDPs and provide them with compensation as well.

- The IDPs themselves in conjunction with NGOs can mobilize public opinion, reach out to media outlets and create pressure for domestic authorities to comply with their human rights obligations and provisions of the local legislations on IDPs.

- Fake IDPs and those found to be taking advantage of resettlement programmes should be arrested and prosecuted.
About RPP

The Rights Promotion and Protection Centre (RPP) is a membership human rights organization, which was formed in 1991 as Release Political Prisoners Pressure Group. RPP was formed through fearless advocacy by the Mothers of political prisoners, whose sons and daughters were imprisoned by KANU regime for agitating entrenchment of democracy, accountability and justice in our beloved country. The said mothers camped at the freedom Corner (Uhuru Park) and staged a hunger strike which was meant to pressure the government to release their children. Their determination bore fruits as by early 1993 all 51 political prisoners had been released save for Apiny Odhiambo who was set free in 1997.

In 2010, RPP changed her name to Rights Promotion and Protection Centre and was duly registered as a Non – Governmental organisation in February 2012.

RPP works with the under privileged in the society in seeking justice and accountability in order to end culture of impunity in kenya.

Currently RPP Strategic Framework are as follows;

Vision : A Just and Democratic Society

Mission: To empower individuals and communities to protect and realize their rights through knowledge based advocacy and other related interventions.

Core values
• Solidarity with the oppressed in society
• Democracy
• Patriotism
• Human dignity

Strategic Thematic Focus
1. Justice and Accountability
2. Haki Mashinani
3. Learning and Knowledge management