

ARTICLE 19

# Baseline Report

The right to information for  
internally displaced persons  
in Kenya

The Baring Foundation



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# Acronyms

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Akiwumi Inquiry	Judicial Commission of Inquiry into Tribal Clashes in Kenya
Article 19	Article 19 Eastern Africa
ARVs	Anti-Retroviral Drugs
CDF	Constituency Development Fund
CIPEV	Commission of Inquiry on Post Election Violence
DRC	Danish Refugee Council
GOAL	GOAL Ireland
CJPC	Catholic Justice and Peace Commission
DC	District Commissioner
DO	District Officer
CoK	Constitution of Kenya (2010)
CSO	Civil Society Organization
CBO	Community Based Organization
CRS	Catholic Relief Services
FGD	Focus Group Discussion
GoK	Government of Kenya
HIV/AIDS	Human immunodeficiency virus/Acquired immunodeficiency syndrome
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Person
IOM	International Organization for Migration
JCCP	Japan Centre for Conflict Prevention
KANU	Kenya African National Union
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
KII	Key Informant Interview
MOSSP	Ministry of State for Special Programmes
NARC	National Rainbow Coalition
NRC	Norwegian Refugee Council
ODM	Orange Democratic Party
PC	Provincial Commissioner
PEV	Post-Election Violence
PLWHA	People Living With HIV & AIDs
PIL	Public Interest Litigation
PNU	Party of National Unity
SGBV	Sexual and Gender Based Violations
TJRC	Truth, Justice and Reconciliation Commission
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

# Glossary of Terms

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<b>IDP policy</b>	Draft national policy for the prevention of internal displacement and the protection of Internally Displaced Persons in Kenya
<b>Operation Rudi Nyumbani</b>	Operation Return Home
<b>Operation Tujenge Pamoja</b>	Operation Let's Build Together
<b>Operation Ujirani Mwema</b>	Operation Good Neighbourliness
<b>Ndung'u Commission</b>	Commission of Inquiry into the Illegal/Irregular Allocation of Public Land
<b>Waki Commission</b>	Commission of Inquiry into 2007 Post Election Violence

# Abstract

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The right to access information is codified in Article 19 of the Universal Declaration of Human Rights (UDHR) which was adopted and proclaimed by United Nations General Assembly resolution on 10 December 1948. The International Covenant on Civil and Political Rights (ICCPR) which entered into force on 23 March 1976, and to which Kenya is a signatory, provides in Article 19 that “Everyone shall have the right to hold opinions without interference” and that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

At the regional level, the African Charter on Human and Peoples’ Rights (ACHPR) adopted by the Organization of African Unity and which entered into force on 21 October 1986 also enshrines the right in Article 9. It states that every individual shall have the right to receive information and that every individual shall have the right to express and disseminate his opinions within the law

In Kenya, the right to information was not guaranteed prior to the passage of the new constitution in 2010. It could only be inferred from a general reading of section 79 of the 1963 constitution which was limited by the existence of other retrogressive legal provisions like the Official Secrets Act, a colonial relic that criminalized disclosure of information by public officials. However, following the 2007 elections, and the post election violence that followed, calls for freedom of information intensified, with the Commission of Inquiry into Post Election Violence making recommendations for the enactment of a freedom of information law to allow for more accountability in light of the crimes committed.

The promulgation of Constitution of Kenya 2010 marked a turning point as the right of access information was enshrined in the constitution, giving effect to the international commitments that the Government of Kenya has had through ratification of international instruments, particularly the ICCPR and the African Charter that binds the state to implement its provisions.

The importance of having progressive legislation on the right to information in the society is that it allows citizens, civil society and the media to make demand for information from government thereby promoting transparency and accountability in government.

This is particularly relevant to vulnerable and marginalized groups like IDPs who have not only suffered the indignities of being violently uprooted from their homeland, but to whom information could mean the difference between life and death.

For IDPs in Kenya, their rights to information has been one of the most neglected, throughout the many forms and phases of displacement, even as state and non state actors alike seek lasting solutions to IDPs concerns. . This goes against the provisions

“ Everyone shall have the right to hold opinions without interference ”

of national and international law that recognize the pivotal role of right to information for IDPs, particularly in the finding of durable solutions. The United Nations Guiding Principles on Internal Displacement in particular, obligates national authorities and other relevant actors of their responsibility to ensure that IDPs’ rights are respected and fulfilled, considering the vulnerability generated by their displacement. These include the right of IDPs to enjoy equally all the rights and freedoms as other persons in their country.

Various stakeholders, including the government, civil society organizations and international organizations have identified the need for the enactment of a National IDP policy and IDP bill in Kenya. The draft policy recognizes obligations for the State to seek

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the informed consent from individuals likely to be displaced by development projects, with a positive emphasis on access to information and participation in decision-making. The draft IDP policy further has provisions related to durable solutions – ensuring that the informed consent is sought of individuals in decisions regarding their return, resettlement or integration. It also provides for raising awareness, sensitization, training and education on the causes, impact and consequences of internal displacement. This campaign has the positive outcome that the public is aware about the plight of IDPs and also prepares individuals for the worst case scenario – so that they know their legal rights should they find themselves forced to flee their homes.

This study contributes to the ongoing efforts by state and non-state actors to ensure that the rights of IDPs are realized and a durable solution found on the situation of the displaced persons in Kenya. ARTICLE 19 believes that if IDPs are empowered to claim their information rights, it will go a long way in helping them claim their other economic and social rights including education, health and housing and aid stability for IDPs.



# About Article 19 Eastern Africa

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**ARTICLE 19** Kenya/Eastern Africa is a regional non - governmental organization that works with others for social justice and accountability. Our mission is to promote, protect, develop and fulfill freedom of expression and the free flow of information and ideas in order to strengthen regional and global social justice and empower people to make autonomous and informed choices. This we believe will enable East African Community citizens and those in the neighboring countries to live a life full of dignity and by partnering with reform minded individuals and organizations to be effective agents of social justice and accountability.

**ARTICLE 19** Believes quality information is a right for all and a critical tool for sustainable development. It is because of this that all its strategic approaches recognize and utilize the leverage and transformative role of freedom of expression and right to access information in tackling the complex issue of global justice, democracy, accountability and poverty reduction.

**ARTICLE 19** Eastern Africa is part of an international organization made up of regional offices and campaigns based in Europe (United Kingdom), Western Africa (Senegal), Central America (Mexico), South America (Brazil) and Central Asia (Bangladesh). It works with civil societies, the media, academic, and policy makers in Kenya, Uganda, Tanzania, Rwanda, Burundi, Ethiopia, Eritrea, Sudan, Seychelles, Mauritius, Comoros, Djibouti and Somalia.

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# Executive Summary

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This is a report of a baseline survey on the right to information for internally displaced persons (IDPs) that was conducted by Article 19 Eastern Africa in December 2011 in the Rift valley, Nyanza, Coast and Western provinces in Kenya. The study was conducted within the ARTICLE 19 project - Sharing Vital Information: Empowering the Displaced in Kenya that seeks to empower IDPs to claim their “Right to Information” and to use information to realize their other civil, political, economic and social rights.

The study sought to ascertain to what extent internally displaced persons in Kenya exercised their right of access to information at the different stages of displacement. It seeks to provide comprehensive insight into the situations of the IDPs with regard to their information needs, their involvement in the formulation of policy issues that affect them and to offer a picture of additional issues affecting IDP communities that would enhance targeted interventions.

This report is based on data collected through interviews with 294 IDP respondents at the research areas of the Rift Valley, Nyanza, Western and Coast regions of Kenya. The respondents included displaced victims of the 2007/2008 post election violence, victims of resource based conflicts and internally displaced persons who were evicted to pave way for development projects being implemented by government.

The rights to information and expression are fundamental human rights. They underpin all human rights and are central to human development. In the context of a large-scale disasters, fulfilling these rights takes on particular importance: appropriately targeted information cannot only ensure that assistance is effective and locally relevant, but it can also save lives and preserve human dignity.<sup>1</sup>

The report finds that structures and mechanisms to convey information to IDPs are lacking; and most times, IDPs rely on informal and inconsistent channels

of communication regarding government programs and policies affecting them. The impact of lack of information on IDPs has been far reaching, and has affected the IDPs access to compensation programs that have been initiated by government, created inconsistency with regard to the comprehensive registration and profiling data about IDPs, and hampered IDPs access to justice for victims of sexual violence. The lack of information has also hampered the equitable distribution of humanitarian assistance as lack of transparency has resulted in corruption and infiltration of “fake” IDPs into government data bases, who have unfairly benefited from the programs, and in particular, the resettlement program.

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The survey also reveals that despite the efforts by the government and other stakeholders to develop a national IDP Policy, there is minimal awareness among IDPs regarding the provisions of the policy and how it will benefit displaced persons. During the field research, IDP leaders confirmed participating in some forums seeking IDPs input on the National IDP policy, but they did not in turn share the information with the other IDPs.

In conclusion the study found that there is generally the political will to find lasting solution to the IDP situation in Kenya with billions of shillings being set

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<sup>1</sup> Human Disaster and Information Crisis; Article 19 publication; London 2005; Pg 2

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aside by the government to facilitate the programs initiated. However, IDPs in Kenya are still faced with enormous survival challenges some of them emanating from the lack of information about programs and interventions that have been put in place or are in the process of being developed. Lack of involvement in the formulation of IDP programs and poor information flow has contributed to tensions among IDPs, with their leaders and with the communities.

The report makes a number of recommendations to the Government and nongovernmental actors that should be implemented to ensure that access to information rights for vulnerable groups like IDPs are protected, respected and fulfilled in times of crisis.

## Recommendations to Government

- » Establish legislative, policy and institutional frameworks by adopting the draft National IDP policy and passing the IDP Bill which comprehensively provide for and protect the information and communication needs of IDPs at all stages of displacement.
- » Develop accurate and disaggregated data collection and registration systems which are inclusive of all categories of IDPs.
- » Maintain disaggregated data bases of IDPs detailing numbers and profiles of all IDPs including vulnerable groups including the elderly, children, women and sexually violated to facilitate more targeted interventions by state and non state actors
- » Ratify with immediate effect, the Kampala convention, which is a land mark regional instrument that is the first to impose legal obligations on states in relation to protection and assistance of IDPs . Kenya has signed but not ratified the Convention.

- » Undertake public awareness campaigns, undertake training and education on the causes, impact and consequences of internal displacement targeting IDPs, citizens and other state and non state actors

## Recommendations to CSO's

- » Lobby and continuously engage government to ensure legislative, policy and institutional frameworks that are consistent with regional and international standards are in place.
- » Offer capacity building support to government and other stakeholders on technical issues such as data collection, developing registration systems and maintain national data bases
- » Ensure participation of IDPs in the design and implementation of their relief and assistance programs.

## Recommendations to Media

- » Ensure responsible and unbiased coverage of IDP issues in times of crisis.
- » Collaborate with government and other CSO's to enhance their capacities in responsible reporting of disasters and relief operations.



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# 1

## ■ Introduction

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The right of internally displaced persons to access information is critically important because it acts as leverage for the realization of other individual and collective rights. Access to information takes on particular importance in situations of displacement because appropriately targeted information will not only ensure that assistance is effective and locally relevant, but it can also save lives and preserves human dignity. Access to information in the context of displacement is also important in the sense that it helps to reduce panic, direct people on how and where to get essential services, facilitate contact with relatives and friends, assist in the discovery of the missing and in burying the dead appropriately, provide an outlet for grief and counseling, provide watchdog oversight over assistance activities and help guard against corruption; and ensure two-way communication between assistance providers and the affected communities.

A review of various secondary literatures both domestic and international on the subject reveal that right to information is one of the many rights that IDPs are entitled to but which has not received much attention. Indeed access to information for people faced with displacement can literally make the difference between life and death yet when faced with disaster, international and national responses so far suggest that insufficient weight has been placed on the need to promote and respect freedom of expression and information.

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Access to information takes on particular importance in situations of displacement... it can save lives and preserves human dignity.

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## 1.1. BACKGROUND ON INTERNAL DISPLACEMENT IN KENYA

The definition of Internally Displaced Persons includes not only victims of conflict who are forced or obliged to flee or to leave their homes or places of habitual residence within national boundaries, but also those who move as a result of or in order to avoid the effects of large scale development projects.<sup>2</sup>

Causes of internal displacement in Kenya are many and varied. In areas such as Kano plains, Budalangi and lower parts of Tana River district, floods are a common cause of displacements while in the arid and semi arid lands (ASALs) of North Rift Valley, North Eastern, Upper Eastern and Coast province which cover about 70% of the country, displacements often arise from either drought as people move to areas where they can get food, water and pastures for their animals or conflicts over access to water and pasture. Such conflicts are estimated to have contributed to the displacement of approximately 20,000 persons in Turkana, Baringo, Samburu, Isiolo and Kuria districts in 2009.<sup>3</sup>

Increasingly, a major cause of displacement in Kenya is development based evictions. Some have resulted from infrastructure projects such as road constructions and the expansion of railway and airports while forced evictions are common in urban areas particularly in informal settlements. As the year 2011 came to a close, Kenyans watched in disbelief as evictions and demolitions in Kyangombe, Sinai,

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<sup>2</sup> The UN Guiding principles defines an internally displaced person as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular 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, large-scale development projects and who have not crossed an internationally recognized state border”. The protocol and Pact to the International Conference on Great Lakes Region adds the element of “persons 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 and who have not crossed an internationally recognized border”.

<sup>3</sup> KNDR Monitoring Report, October 2009

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SyoKimau and Eastleigh areas of Nairobi were carried out by the government transforming homeowners into destitution for alleged illegal occupation of private or state owned land, or for security reasons.<sup>4</sup>

The rehabilitation of forest in Kenya has also contributed increased IDP population in Kenya. In the last ten years, a sizeable number of people have been forcefully evicted from forests as environmental concerns were raised about the country's diminishing forest cover and the need to protect its water towers. The process of rehabilitating Mau complex whose 116,000 hectares, that is, more than 27% of the Mau Complex area were destroyed following excisions and massive encroachment added to the population of displaced persons in Kenya. Mau forest evictions had resulted in 3,366 IDP households comprising of largely alleged illegal squatters on the forest land.<sup>5</sup>

Above all, politically and ethnically instigated violence was responsible for majority of displacements that took place post independence. This is described in detail in the following section.

## **1.2. POLITICALLY AND ETHNICALLY INSTIGATED VIOLENCE AND DISPLACEMENT**

While the various factors described above have resulted in significant numbers of people displaced, the leading cause of displacement in Kenya, by a large margin, is political violence or ethnic clashes. These have been embedded in the history of Kenya

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4 See media reports including East African Standard accessed online <http://www.standardmedia.co.ke/business/insidePage.php?id=2000047591&cid=4&>; and 17 December 2011 All Africa online report – *Nairobi Demolitions Resume After Holiday* <http://allafrica.com/stories/201112180077.html>

5 The Regional Commissioner of Central Rift Valley Province informed at the workshop of the Nakuru Protection Working Group in Nakuru on 18 January 2011 that Mau forest evictions had resulted in 3,366 IDP households. See Workshop Report of the Protection Working Group on Internal Displacement – Nakuru held on 18 January 2011. Report by the Secretariat – UNHCR Branch Office, Nairobi What's the page number?

and almost always occur just before, during and immediately after every election. This is particularly the case since the re-introduction of multiparty politics in early 1990s.

### **1.2.1. POLITICAL AND ETHNIC VIOLENCE – 1992-2002**

In 1992, an election year, violence was experienced in parts of Western, Nyanza, Coast and Rift Valley provinces. It was particularly intense in places such as Molo, Narok and Uasin Gishu district of Rift Valley province. By early 1993 when the ethnic clashes ended, over 1,500 people were reported killed and an estimated 300,000 displaced and dispossessed.<sup>6</sup>

Sporadic ethnic related violence continued to be reported between 1992 and 2002 but it was 1997, an election year that saw another major wave of violence and displacement. Kenya Human Rights Commission estimates that state-sponsored or state-condoned violence led to the deaths of 4,000 people and displaced 600,000 others over the period 1991-2001.<sup>7</sup>

### **1.2.2. POLITICAL AND ETHNIC VIOLENCE POST 2002 ELECTIONS**

While the general elections of 2002 in which President Moi's ruling party KANU was dislodged from power by NARC government were generally peaceful, serious political and ethnic divisions, tensions and sporadic violent confrontations among political and ethnic groups started soon after, and continued for a number of years.<sup>8</sup> These culminated into large scale and widespread violence and forced displacement

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6 (Kenya Human Rights Commission, 1998, John Rogge Reports, UNDP, 1993/1994 and IDMC, 2010)

7 Kenya Human Rights Commission 2001. The right to return: The internally displaced persons and the culture of impunity in Kenya, Kenya Human Rights Commission, Nairobi

8 KNCHR Report: Still Behaving Badly – Second Periodic Report of the Election Monitoring Project (December 2007)



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prior to, during and following the disputed results of the 2007 presidential elections. According to the MOSSP, the violence resulted in the displacement of 663,921 people including 350,000 people who sought refuge in 118 camps and 313,921 persons who were integrated within communities countrywide. Further, 640 households fled to Uganda.<sup>9</sup>

### 1.3. GOVERNMENT INTERVENTIONS

Following the massive displacements that were occasioned by post election violence in 2007, unlike past displacements, there was much more political will and coordinated approach by the Government and partners to find durable solution to the challenge of internal displacement.<sup>10</sup> For instance, the two major feuding political groups PNU and ODM signed the Kenya National Dialogue and Reconciliation Agreement that aimed at addressing the political crisis, providing humanitarian support, promoting reconciliation and healing; and addressing the underlying long term issues and historical injustices. This agreement in turn informed the Government and other partners' efforts to support IDPs.<sup>11</sup>

The government through Legal Notice Number 11 of 30 January 2008 established a humanitarian fund for the mitigation of effects and displacement of victims

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9 See Ministry of State for Special Programmes IDP Reports at <http://www.sprogrammes.go.ke/index.php>

10 Prior to the post 2007 election violence, government response to the challenge of displacement in Kenya was uncoordinated and half-hearted with recommendations of various commissions of inquiries set up to address the question of displacement whenever it occurred rarely attracting Government action. This was the case with the Kiliku Commission of Inquiry set up following the 1992 political and ethnic violence that proposed equitable distribution of land; the Akiwumi Commission that proposed that IDPs be identified and resettled in their lands and that perpetrator(s) of the violence be prosecuted. Another commission set up to address the land question in Kenya - The Ndungu Commission - recommended that land be provided to IDPs and squatters. Again, these recommendations were not implemented.

11 See The Kenya National Accord and Reconciliation Act 2008

of post-2007 election violence. The Ministry of State for Special Programmes (MOSSP) submitted funds to the Provincial Administration for profiling operations and maintenance. The affected IDPs who appeared in the approved register received ex-gratia payments of Kenya Shillings (KES) 10,000 each while IDPs whose houses were destroyed or partially burnt received building materials or given ex-gratia payments of KES 25000.<sup>12</sup>

The other projects that the Ministry and relevant government department implemented for IDPs included humanitarian assistance/relief that was provided in the aftermath of displacement and consisting of distribution of food, water, and temporary shelter (tents). The need persisted not only for IDPs living in camps but also the resettled and integrated IDPs because they did not have access to their means of livelihood.

This situation has forced the government to rethink its strategies for finding lasting solution to the problem of internal displacement. New strategies included building shelters for those who returned home, provision of seeds and fertilizer in order for the IDPs to be self sustaining and enhanced security in the areas of return (through deployment of security personnel to areas with concentrations of IDPs, and construction of police posts in IDPs areas). In addition, peacebuilding initiatives were kicked off through District Peace Committees while Special District Officers (DOs) were set up in affected areas to coordinate IDP activities.

The Peace Committees have been active in reconciliation efforts through inter-ethnic meetings and mediation of conflict. However these efforts which were initiated largely by the clergy and some civil society groups have been, to some extent, undermined by partisan and ethnic politics. For example, politicians have continued to mobilize members of their ethnic communities to support individuals from their

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12 In its report, Robbing the Homeless, KNCHR documented cases of corruption during the disbursement of the funds for IDPs by Government officials. See also KHRC Report: Gains and Gaps: A Status Report on IDPs in Kenya 2008-2010

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communities to vie for presidency including those who were indicted by the the “International Criminal Court (ICC) and suspected of playing a leading role in the 2007 post election violence in Kenya).”<sup>13</sup>

Another mechanism established towards reconciliation was the Truth, Justice and Reconciliation Commission (TJRC). However, its ability to address the recurring problem of forced removals and displacement in Kenya has been questioned, firstly because of public controversy surrounding the integrity of its leaders to guide such an important process and secondly, because of concerns that TJRC is not able to adequately address the IDP problem beyond publicizing the plight.

The resettlement programme is another intervention for the IDPs that was intended to improve the livelihoods of the displaced living in deplorable conditions at camps and self help projects by providing 2¼ acres of high agricultural potential land. These, together with two-roomed basic house per family in planned eco-villages provided with social amenities including schools, health, water and security were envisioned in a programme that required 21,000 acres to settle the 6,978 IDP households. While some land was successfully acquired and resettlement process effected in some areas, the process hit a snag in other areas after local communities’ resisted settlement of IDPs. This was the case in Mau Narok where the 2,264 acres E.J Rose Farm that was purchased by the Government to resettle IDPs was converted into an agricultural research station following community resistance.<sup>14</sup>

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13 On 26th November 2009 the chief prosecutor of the International Criminal Court filled a request seeking authorization from trial chamber II to open an investigation in relation to the post-elections violence when the Government of Kenya failed to prosecute anyone for crimes committed during the post-2007 election violence within set timelines. Six Kenyans suspected of bearing the greatest responsibility for PEV in Kenya, known colloquially as the “Ocampo six” were indicted by the ICC’s Pre-Trial Chamber II on 8 March 2011 and summoned to appear before the Court. They attended preliminary hearings in The Hague in April 2011 and hearings to decide whether to confirm the charges against them were concluded in September 2011.

14 See Media reports: capitalfmkenya on Apr 6, 2011 [http://www.youtube.com/watch?v=L\\_n2hOLOLBg](http://www.youtube.com/watch?v=L_n2hOLOLBg) ; NTV News on July 1, 2011 at <http://www.youtube.com/watch?v=of2H97C7eYA&feature=related>

## 1.4. SUCCESS, FAILURES AND CHALLENGES OF THESE INITIATIVES

Following implementation of the various programs (*particularly Operation Rudi Nyumbani*) the government to some extent, reported successful outcomes. In particular the Government claimed success in its return programme arguing that a significant number of IDPs who had sought refuge in over 118 camps country wide had returned home, were resettled or were integrated within communities across the country.

This contention was however questioned by IDPs and various human rights organizations who pointed to the sizeable number of IDPs population who still lived in camps and the large number of intended beneficiaries of government programmes who did not receive the ex-gratia payments by the Government. There was also the growing perceptions of bias and discrimination perpetuated by the Government programmes for IDPs particularly in relation to financial assistance and housing.<sup>15</sup>

This was particularly the case among integrated IDPs living in regions like Central, Western and Nyanza most of who claimed that they did not benefit from the housing project or financial assistance eliciting complaints of exclusion. Other concerns related to poor registration of IDPs which left many people, particularly the integrated IDPs, not profiled. Yet others complained that provisions like food rations were either too few or did not reach genuine IDPs because of corruption.

Allegations of corruption and other malpractices was pointed out by IDPs, civil society organizations and the National Human Rights Commission (KNCHR) as the main reason why a lot of IDPs did not access ex-gratia payments and other IDP assistance. These allegations were confirmed by an internal audit that was conducted by the government which revealed loss of

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15 See for instance IDP Status Brief as at 7th July 2009,

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government funds totaling KES 48,126,782.10<sup>16</sup> This loss was linked to the procurement of IDP materials at inflated prices, payments made to persons who were not appearing in the approved register, double payments and payments to unprofiled persons and other fraudulent payments.<sup>17</sup>

The other critical concern regarding the effectiveness of the various interventions for IDPs was the extent to which the IDPs were involved in these processes. It should be noted that the Guiding Principles on Internal Displacement calls for special efforts to be made “to ensure the full participation of the internally displaced persons in the planning, management of their return, resettlement and integration” (Principle 28(2)). Unfortunately, the case that was referenced earlier in this report in which the community resisted resettlement of IDPs in government farm in Mau Narok is illustrative of lack of information sharing and

community participation in government plans for the internally displaced.

KNCHR has observed that while there was political will to address the needs of the displaced persons in Kenya especially with regard to the provision of food, medical aid and financial assistance to some of the displaced, the poor substantive involvement of IDPs in their resettlement not only weakens the application of the UN’s Guiding Principles<sup>18</sup> but also the success of the overall program. In particular, there was little or no participation of IDPs in seeking solutions to their problem, gaps in the dissemination of information to IDPs on their rights, on what was available to them and on what they were entitled to and the lack of information by the returnees on the resettlement process which affected their preparedness.

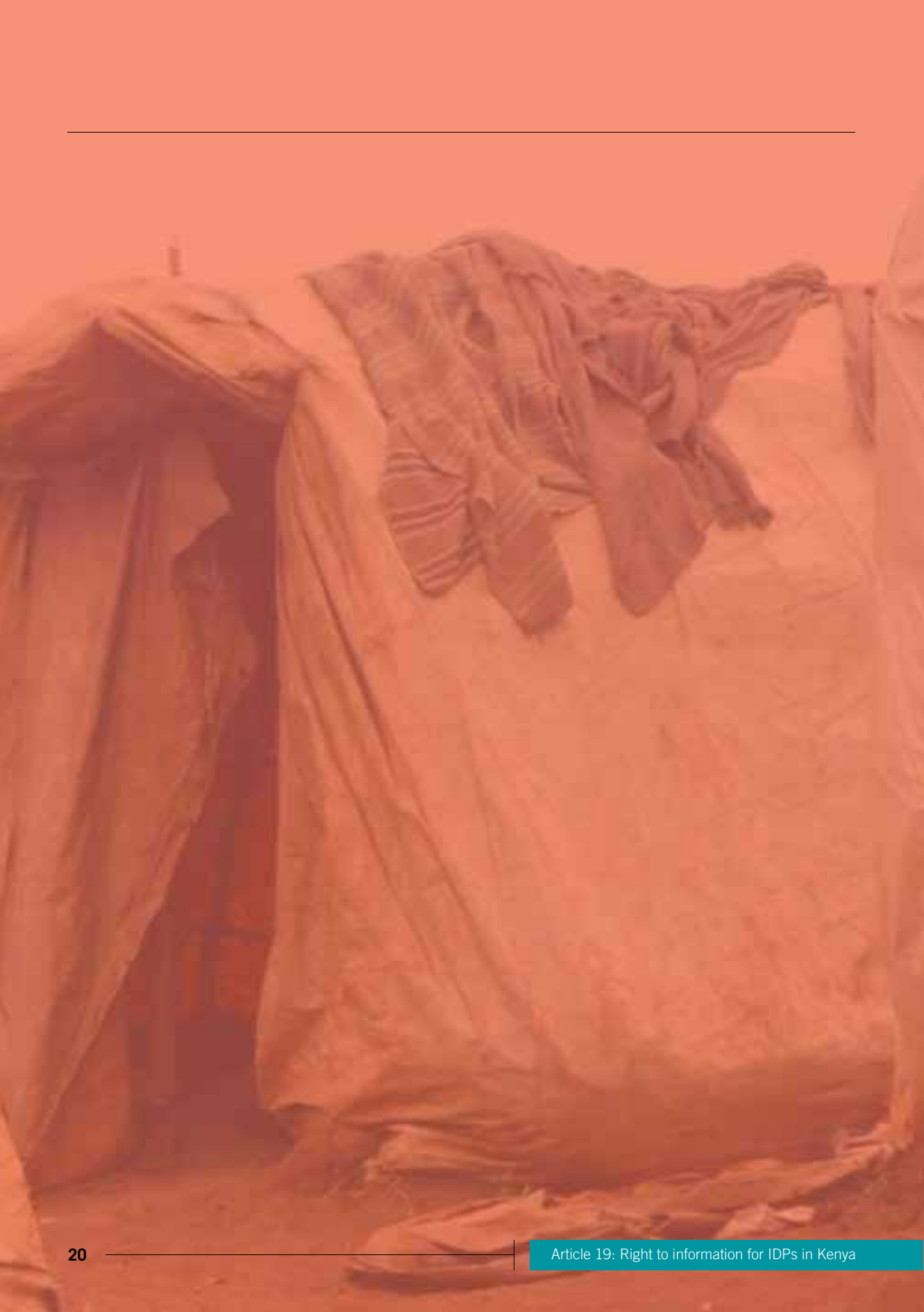
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16 The audit was commissioned by Permanent Secretary Treasury in April 2009 to audit IDP funds disbursed in twenty two districts in the Rift Valley during the period of January 2008 and June 2009. It was carried out at Molo, Kipkelion, Sotik, Buret and Kericho districts; Nakuru town in Nakuru district; Transzoia East and West, Turkana, Pokot and Lodwar districts; and Uasin Gichu, Marakwet, three Nandi districts and Koibatek

17 Report of the Office of the Prime Minister and Ministry of Finance on Audit of Internally Displaced Persons (IDPs) Payments in the Rift Valley province by Internal Audit Department. May to June 2009.

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18 KNCHR assessment of GoK resettlement program of internally displaced persons (IDPs) and corruption allegations- December 2nd 2009



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# 2. ■ Legal and Policy Environment for Internal Displacement

## 2.1. LEGAL AND POLICY FRAMEWORK ON THE RIGHT TO INFORMATION IN KENYA

Access to information is often described as a 'fundamental human right', and is thus located firmly within the universalizing discourse of broader human rights claims. States have a duty to provide information to those who seek it.<sup>19</sup>

The Constitution of Kenya (2010) guarantees fundamental rights of all citizens including civil, political, economic social and cultural rights. Regarding the guarantees of the Right to Information, Article 35 provides that

1. Every citizen has the right of access to –
  - » Information held by the state; and
  - » Any information that is held by another person and that is required for the exercise or protection of any right or freedom.
2. Every person has the right to demand the correction or deletion of untrue or misleading information which affects the person.
3. The state has the obligation to publish and publicize any important information affecting the life of the nation
4. Parliament shall enact legislation to provide for access to information

This right applies to all citizens including the marginalized and vulnerable groups like IDPs. Other rights that are enshrined in the Bill of Rights that are key to the protection and assistance to IDPs include the right to own property, freedom of movement, right to recognition as a person before the law, and social and economic rights like the right to highest attainable standard of health, the right to adequate housing, freedom from hunger, and social security among others. The rights are to be enjoyed without discrimination.

<sup>19</sup> Colin Darch. Access to Information and Concepts of Citizenship in Africa: Can ATI take Root in the Post-Colonial State?

“ It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights. ”

The Constitution has also provided for special protection of vulnerable groups including women, children, the elderly, the youth, minorities and marginalized communities. Article 21 (1) explicitly indicates that: “it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.” Victims of Post-Election Violence (PEV) and other IDPs who, because of their displacement are prone to continuous and massive human rights violations fall in this category.

**ARTICLE 19** holds that the right to access information held by public authorities should be guided by the principle of maximum disclosure, which establishes a presumption that all information will be disclosed, subject only to narrowly drawn exceptions to protect overriding public and private interests. A restriction on the right to information is justified only if:

- (a) Disclosure of the information would, or would be

likely to, cause harm to a legitimate interest and  
(b) The harm caused by the disclosure of the information outweighs the public interest in the disclosure.

While the right to information is most commonly understood as an obligation to respond to requests for information, a broader interpretation suggests that it includes an obligation to disseminate, proactively and in the absence of a request, information of key public interest. ARTICLE 19 also notes that the right to information imposes on officials the obligation to create, compile or collect information.

## 2.2. INTERNATIONAL AND REGIONAL MECHANISMS FOR IDPS

The right to information is also guaranteed under a raft of other regional and international instruments. Article 19 of the Universal Declaration on Human Rights for example provides that everyone has the right to freedom of opinion and expression and that this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The International Covenant on Civil and Political Rights (ICCPR) which Kenya has ratified guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR. The right is also guaranteed under Article 9 of the African Charter on Human and Peoples' Rights.

The African Commission on Human and Peoples Rights further underlined the importance of Freedom of Information in the preamble to the Declaration of Principles on Freedom of Expression in Africa, adopted in October 2002, which states that Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy. The Declaration further states:



Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law



*“Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law”.*

The UN Guiding Principles, the Great Lakes Protocol and the Kampala Convention place primary responsibility for protecting IDPs and their property on States during flight, in places of displacement and upon return, resettlement or local reintegration.<sup>20</sup> It calls upon States to prevent or avoid conditions that might lead to displacement.<sup>21</sup>

<sup>20</sup> Principles 3, 25, 28 UN Guiding Principles, Art.3.3 Great Lakes Protocol, Art 5.1, 9.1 and 11.1 Kampala Convention

<sup>21</sup> Principles 5 – 9 UN Guiding Principles, Art 3.1 Great Lakes Protocol and Art 4 Kampala Convention

States are urged to establish conditions and provide means that allow IDPs to return voluntarily, in safety and dignity to their homes or places of habitual residence or to resettle voluntarily in another part of the country.<sup>22</sup> They are also required to facilitate the reintegration of the returnees or those who have resettled.<sup>23</sup> Upon return or resettlement, the IDPs are not expected to suffer discrimination either as a result of them being displaced or for any other reason that may have led to their displacement.<sup>24</sup>

The instruments contain elaborate provisions relating to the IDPs' rights to have any housing, land and property that they were arbitrarily denied or unlawfully deprived restored to them. Provisions also prohibit threats and incitement to commit acts that violate the right to life, right to dignity and physical, mental and moral integrity<sup>25</sup> The instruments also provide that IDPs are also entitled all other rights including the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health is at risk,<sup>26</sup> right to know the fate and whereabouts of missing relatives,<sup>27</sup> right to respect of his or her family life,<sup>28</sup> right to an adequate standard of living,<sup>29</sup> right to recognition everywhere as a person before the law,<sup>30</sup> right not to be arbitrarily deprived of property and possessions,<sup>31</sup> political and

civic rights,<sup>32</sup> right to education<sup>33</sup> and the right to non-discrimination.<sup>34</sup>

The most vulnerable or groups with special needs such as children, persons with disabilities, person living with HIV/AIDS, the elderly, pregnant mothers and women generally are specifically protected and States are called upon to pay special attention to these groups.<sup>35</sup> Women and girls are expected to enjoy these rights on an equal basis with men and boys.<sup>36</sup>

These international mechanisms obligate Kenya to ensure effective protection of and assistance to IDPs in their present locations, during and following return, resettlement, relocation and reintegration.<sup>37</sup> Principle 3 of the Guiding Principles on internal displacement particularly prescribes to the state the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction. It also states that the IDPs have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be prosecuted or punished for making such requests.<sup>38</sup>

In October 2009, the African Union adopted the Convention for the Protection and Assistance of Internally Displaced Persons in Africa, also known as the Kampala Convention. This Convention builds on the United Nations Guiding Principles on Internal

22 Principle 28.1, UN Guiding Principles, Art 11.1 and 11.2 Kampala Convention

23 Principle 28.1, UN Guiding Principles

24 Principle 29.1, UN Guiding Principles

25 Principles 10 and 11, UN Guiding Principles, Art 9.1.(b) and (c) and Art 9.2.(a) Kampala Convention

26 Principle 15 para (d) UN Guiding Principles, Art 9.2.(e) Kampala Convention

27 Principle 16 UN Guiding Principles

28 Principle 17 UN Guiding Principles, Art 4(h) Great Lakes Protocol, Art 9.2.(h) Kampala Convention

29 Principle 18 UN Guiding Principles, Art 4(f) Great Lakes Protocol, Art 9.2.(b) Kampala Convention

30 Principle 20 UN Guiding Principles

31 Principle 21 UN Guiding Principles, Art 9.2. (i) and Art 12 Kampala Convention

32 Principle 22 UN Guiding Principles, Art 9.2.(l) Kampala Convention

33 Principle 21 UN Guiding Principles

34 Art 9.1.a Kampala Convention

35 Principle 19 UN Guiding Principles, Art 4 para (d) and (f) Great Lakes Protocol, Art 9.2.(c) Kampala Convention

36 See for instance UN Guiding Principles, Principle 11.2 against gender-specific violence, Principle 18.3 on full participation of women in the planning and distribution of basic supplies, principle 20.3 on equal right of women and men to obtain relevant identification or registration documents and also to have them issued in their own names, and Principle 23.3 on full and equal participation of women and girls in educational programmes

37 Article 2 (6) of the Constitution of Kenya (2010) states that treaties and conventions ratified by Kenya are part of the law of Kenya.

38 Principle 3 UN Guiding Principles



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Displacement (1998) and the experiences, laws and policies of African states. It is the first regional instrument in the world to impose legal obligations on states in relation to the protection and assistance of IDPs although the Convention will come into force once it has been ratified by 15 of the 53 AU member states. Kenya is yet to ratify the Convention and domesticate it.

Kenya is however a signatory to the IDPs protocol of the International Conference on the Great Lakes Region (IC/GLR) that reinforces and ‘sub-regionalizes’ the UN Guiding Principles in order to ensure protection, assistance and search for durable solutions for displaced persons and communities that host them. The country is also signatory to the respective international human rights and humanitarian law instruments from which both the UN Guiding Principles and the IDPs protocols in the IC/GLR are derived.

### **2.3. TOWARDS A NATIONAL POLICY OF IDPS IN KENYA**

Kenya still does not have a policy and legislative framework on internal displacement despite international expectations that Kenya should domesticate the various international commitments respecting IDPs, in light of the fact that Kenya continues to deal with recurrent displacements triggered by flooding, conflict over resources and politically instigated and inter-ethnic conflicts.

On 17th March 2010, a draft National Policy on the Prevention of Internal Displacement and the protection and Assistance to the Internally Displaced Persons in Kenya, commonly known as the draft National IDP Policy was unveiled<sup>39</sup> The draft IDP policy emphasizes the criminality of arbitrary displacement and calls for the enactment of laws to address historical injustices, design early warning systems, deal with all aspects of displacement whether induced by political upheaval,

natural disaster or development initiatives. When passed by parliament, this will go a long way to establishing effective policy platform towards realizing the rights of IDPs.

The policy proposes a national framework for addressing all situations of internal displacement in Kenya – whether current and future – in compliance with the UN Guiding Principles on Internal Displacement and the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Person as well as other relevant regional and international treaties including the Africa Union Convention for the Protection and Assistance of Internally Persons in Africa.

The draft policy emphasizes that the Government shall respect and protect the right to freedom of opinion, expression and to information of all internally displaced persons in accordance with the Constitution, regional and international human rights and humanitarian law standards without discrimination. This includes the right to freedom of opinion and expression; the right to information including the right to seek, impart and receive information in an understandable language; and the right to communicate in one’s own language or an understandable language. The draft policy also recognizes the need for the strengthening of the rights of internally displaced persons and raising awareness of their rights.

With respect to access to information for the internally displaced, the draft policy proposes the following measures to be put in place:

- » Providing internally displaced persons with regularly updated information on their situation, their rights and obligations in a language they understand and effectively including them in decision-making processes in matters affecting them;
- » Introducing mechanisms to place complaints and to express grievances;
- » Ensuring that language or illiteracy is not an obstacle to registering for humanitarian assistance and support;

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<sup>39</sup> The draft policy, was unveiled in Nairobi on 17 March 2010. See the following link to the IRIN news for details <http://www.irinnews.org/Report/88485/KENYA-Draft-policy-offers-new-hope-for-IDPs> :

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- » Recognizing documents irrespective of the language they were issued in;
  - » Ensuring non-exclusion of internally displaced persons from informed participation in electoral processes due to language barriers.

The Draft National Policy for IDPs further emphasizes the importance of the involvement of IDPs throughout the process of finding durable solution.. It calls for IDPs to be allowed to “make voluntary and informed decisions and give consent to the process”. Access to information is critical in situations of displacement to enable those internally displaced to access basic needs, participate fully and equally in public affairs and in the planning and management of their return or resettlement and in ensuring that sustainable and durable outcomes are achieved.

In 2011, the draft Internally Displaced Persons Bill was prepared for an Act of Parliament to make provision for the protection and assistance to internally displaced persons.<sup>40</sup> When passed by parliament, any public body, State officer or public officer and private body or individual involved in the protection and assistance to IPDs in Kenya would be expected to act in accordance with Bill.

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<sup>40</sup> The Internally Displaced Persons Bill, 2011. Part 4 of the Act discusses in detail the role of the national government to promote public awareness about the causes, effects, means of prevention, protection and assistance to IDPs through a comprehensive nation-wide education and information campaign conducted by the national government through the relevant departments, authorities and other agencies.



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# 3

## ■ Methodology of Study

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The purpose of the study was to gather adequate data that provide a clear picture of the information gaps and needs of IDPs with a view to enhancing effort to assist and protect them.

In this regard, the study adopted both qualitative and quantitative methods of data collection. This entailed first, a review of published reports on the right to information for internally displaced persons in Kenya to provide insights on what has been done previously and how it informs the current situation of the IDPs in Kenya. Most of the literature was drawn from reports from Non Governmental Organizations, government reports, the media and web based review of reports by various regional and international mechanisms focusing on rights IDPs.

While there are few academic reports discussing displacement in Kenya, national human rights organizations that have monitored the situation of IDPs in Kenya particularly after 2007 generated a wealth of knowledge on the topic some of which are not published.<sup>41</sup> The survey also included a review of government reports focusing on what had been done with respect to meeting the needs of IDPs and implementing its commitments to the international and regional legal instruments governing IDPs in the world which the government of Kenya is a signatory to.

The second component of the study consisted of a field survey in which questionnaires were developed, pretested and administered to the respondents on face to face basis.

The baseline survey involved making contacts with and interviewing a diverse sample of 294 respondents to provide insight into the experiences of IDPs particularly with regard to the realization of their right to information. The respondents were identified for the study by networks of civil society organizations. On few occasions the team sought out the help of provincial

administration officials who were of great help in some circumstances. In addition, snowballing method was applicable where a respondent introduced other people to the researchers.

**Individual Interviews:** Sampling of the respondents to this exercise was adequately representative with regard to parameters of gender, geography and awareness of IDP issues. A total of seventy eight (78) questionnaires were administered on key informants comprising of 42 men and 36 women (that is 54% and 36%) across four regions of the country, namely the Rift valley, Western, Nyanza and Coast provinces. Key informants consisted of camp and IDP leaders at each site visited as well as individual IDPs randomly selected.

**Focus group interviews:** these were also conducted particularly for IDPs in camps and self help areas, those resettled by the government, those who have returned to their homes and on IDPs who are resettled in other areas away from their original homes. In total, twelve (12) focus groups were held consisting of a minimum of five persons each, although some had ten to fifteen participants. These were mixed groups of men, women and youth. In some cases, women only focus groups were organized particularly to discuss issues relating to sexual and gender based violence. There were 216 participants at focus groups consisting of 130 men and 86 women.

### 3.1. SAMPLED REGIONS

The study selected four regions because of their importance in bringing out regional perspectives of the displaced persons. The four regions were the Rift Valley, Western, Nyanza and Coast. This included IDP camps Mawingu in Nyandarua that hosted IDPs from many parts of the Rift Valley who bought land through a self help welfare initiative<sup>42</sup>

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41 KNCHR has for instance created a database that is regularly updated by field monitors on the status of IDPs in Kenya that is accessible through KNCHR library.

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42 Majority of IDPs from Mawingu IDP camp were resettled by the government in March 2012 a few months following the study in December 2011.

In the regions surveyed, Rift Valley which has relatively high IDP population had the highest number of respondents. This was followed by Nyanza as illustrated below.

The rationale for selecting research sites within the four areas is provided below:

**Table 1: Respondents per region**

PROVINCE	RESPONDENTS	PERCENTAGE
Rift valley	172	59.2%
Nyanza	75	25.0%
Western	16	5.3%
Coast	31	10.5%
	294	100.0%

### 3.1.1. WESTERN REGION

In this region, the survey was conducted in Mt. Elgon and Bungoma areas. Mt. Elgon area was selected because it hosts a huge population of displaced persons living in IDP camps. A majority of the displaced were victims of militarized armed groups particularly the Sabaot Land Defence Force (SLDF) and counter-militia formations such as the Moorland Defence Force (MDF) during the intra community clashes that pitted the Mosop and Soy clans against each other over land allocations in the Chebyuk III settlement scheme between 2004 and 2008. Others were victims of violence that took place after the 2007 election. In Bungoma and Migori areas, persons displaced from various parts of the country following the 2007 post election violence lived with family or rented houses in urban towns, unable to return to the areas where they were displaced.

### 3.1.2. COAST REGION

In this region, interviews with key informants and focus group discussions were conducted among integrated IDPs in Kilifi, Kwale and Mombasa. Some of the displaced were victims of 2007 post election violence while other people were displaced to give way to salt mining.

### 3.1.3. NYANZA REGION

In this region, the fieldwork targeted the Gucha-Transmara border area that was a confluence of conflict that mainly involved the Kuria and Kisii on one side and the Kipsigis and Maasai on the other. Respondents were also drawn from Migori, Kisumu, Siaya, and Homa Bay in South Nyanza region. In these areas, IDPs who were affected by post election violence in 2007 are integrated within the communities where they live with family, friends, well wishers or as tenants.

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### 3.1.4. RIFT VALLEY REGION

The expansive Rift Valley has been the epicenter of recurrent ethnic and political violence since early 1990s. The study was conducted in the North, South and Central Rift Valley. Among the respondents were IDPs at camps in Nyandarua, those living in self help areas at Mai Mahiu, integrated IDPs in Nakuru town, and returnees in Molo, Kuresoi, Burnt Forest, Nandi, Kericho and Kitale. This region also hosts IDPs who were resettled by the government. These were interviewed at Kitale and Rongai areas in the North and Central Rift Valley.

Throughout the study, effort was made to include the diverse community of IDPs particularly men, women, children, the elderly and people living with disability.

## 3.2. TECHNIQUES OF DATA ANALYSIS

The data was entered into a database by appropriating columns for each question and by further creating individual columns for questions with more than one available choice. The data was coded and subjected to analysis using simple statistical analysis to determine trends. Secondary data was reviewed and compared with the findings to determine concurrence and divergence.

## 3.3. LIMITATIONS OF STUDY

There was no major limitation in achieving the study objectives. Being a baseline survey, a representative sample of respondents was sufficient to interrogate the experiences and perceptions of respondents with respect to exercise their right to information. Nevertheless, a more comprehensive study on a large population of IDPs would be necessary in the future to further explore this topic. In research, “Sampling”

has the inherent limitation that it cannot adequately represent all voices in the target population, in this case, of IDPs, by itself. However, due diligence was exercised to ensure that various categories of IDPs were involved in this exercise and they were able to bring out key issues. All informants are victims of displacement who were conversant with the area of study as well as the issues which touch on their daily existence and hence they were able to relate their experiences and perspectives in a free flowing manner.

A notable concern in the study was prevailing fatigue among the respondents. Informants were reluctant to be interviewed citing lack of tangible benefits arising from similar studies. Furthermore IDPs narrated about unfulfilled promises by the government and NGOs to find a lasting solution to their situation. However, an explanation by the researchers on the importance of this and other studies to inform future interventions for IDPs was reassuring.

During data collection process researchers were conscious of the protection and security needs of displaced person who may be fearful of making themselves known. In such situations researchers conducted interviews at safe locations. They were also briefed, prior to the study, on the possible challenge of keeping up with different expectations of the IDPs and how to manage it. This proved useful in the field as research were able to explain the purpose of the study.

This section describes responses provided by informants regarding their right to access information. Key informant interviews and focus groups were moderated using structured questions. The findings are presented as first, general findings consisting of key observations and emerging themes across the regions, and second, region specific findings. For ease of presentation charts and figures are included.





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# 4. Findings

## 4.1. GENERAL FINDINGS

### 4.1.1. HOUSEHOLD PROFILES

Participants in the study consisted of men (52%) and women (48%). Respondents were from four regions of the country, namely, Rift Valley, Western, Nyanza and Coast provinces. Among them were IDPs living at camps, returnees, resettled and those integrated in the community. Their ages ranged from eighteen (18) years to sixty (60) years, with a few being above sixty years.

The majority of the IDP households are male headed (69.6%). Women household heads comprised of 30.2% of the respondents while 0.2% of the households were headed by children. Heads of households were largely responsible for the daily upkeep of their members irrespective of the family sizes.

Over 75% of the household consisted of nuclear families with the rest being extended families. The household sizes ranged from 1 to more than 12 members, with the majority having 4-6 members as illustrated in the table below:

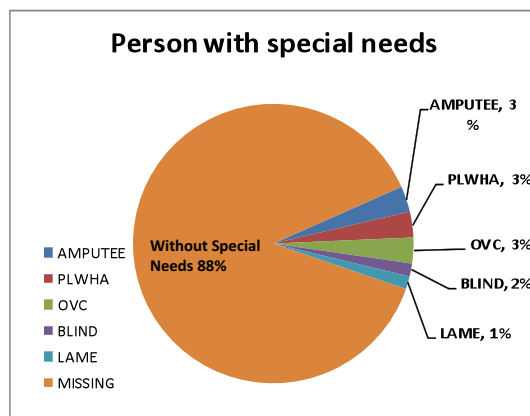
Respondents stated that their households included people with various categories of needs. This was because of such factors as disabilities, persons living within HIV, the elderly, orphans and pregnant women.

Among the people interviewed, only three percent (3%) described themselves as persons with disability, although they claimed to know members in the IDP community who were either elderly, orphaned, living with HIV or persons with disability as illustrated in the table below:

### Chart 1: Persons with special needs

#### 4.1.2. CAUSES OF DISPLACEMENT

Respondents stated that they were dispersed from various parts of the country before they moved to their present locations. Majority were displaced from Rift Valley (65%) followed by Nyanza (28%) and Western (6%). Only 1% of respondents indicated that they were displaced from Coast region.



### Table 2: Household size

HOUSEHOLD SIZE (PERSONS)	PERCENTAGE (%)
1-3	14.7
4-6	42.6
7-9	27.9
10-12	8.8
12+	5.9

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Cause of displacement varied, including development based eviction and ethnic and political violence. Over 90% of respondents stated that they were victims of political and ethnic violence that took place in 2007-2008. Violence was again cited by many respondents as the reason for their displacement prior to the 2007 election. Only 10% said that they were displaced to pave way for development.

Persons displaced during the 2007 PEV included a respondent from Mau Summit, Molo, Kuresoi, and Nakuru town in Nakuru County who sought refuge at Nakuru Show Ground. One female respondent indicated that she had stayed at the camp for close to one year before she was facilitated to return home by the government through “Operation Rudi Nyumbani”. Another displaced person victim of 2007 PEV was a single mother residing in Kiminini, Bungoma County who stated:

*“During PEV there was so much tension. People belonging to my ethnic community (Luhya) were given two days to move out from Mt. Elgon Region. Then my house was burnt and some people were killed. My husband also fled and has never returned.”*

A female respondent, resident of Busia and who was married to a kikuyu landowner in the area was not spared either. She stated that she was kicked out of Busia by members of her community for allegedly “bringing Kikuyus to Busia”. Her husband was killed during PEV in 2007/2008. She has been unable to return to her native home.

Similar fate befell a male respondent from Kendu Bay, Homa Bay County who not only lost his property but also his entire family which forced him to permanently relocate from Naivasha where he resided with his family:

*“I lost my whole family in early 2008” he stated, “because I am a Luo and was perceived as ODM supporter” he added.*

“ I lost my whole family in early 2008” he stated, “because I am a Luo and was perceived as ODM supporter” he added. ”

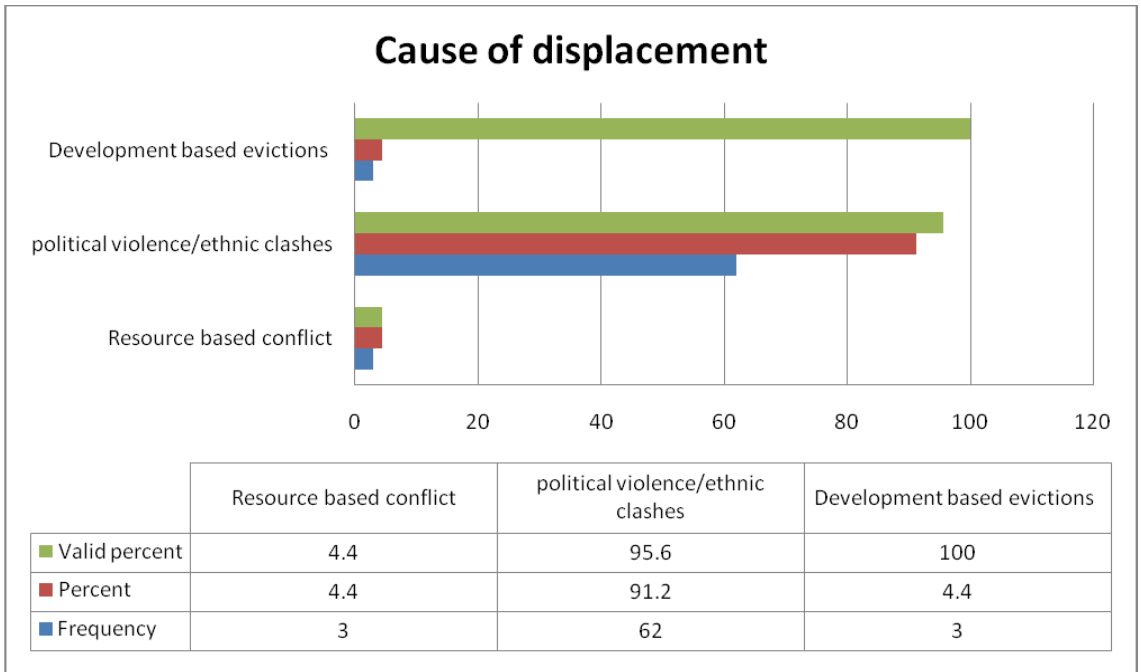
Apart from victims of ethnic and politically induced displacements, there were people affected by development related displacements. This was the case in Magarini, Kilifi County where participants in a focus group discussion stated that they were evicted in 1984 from their land by a salt producing firm who extended their mining activities into their farms and in the process evicted the residents.

Other respondents from the same County stated that they were displaced by a different salt mining company – Krystalline in 1984 when the firm in collaboration with the government encroached on their community land.

Respondents at Yantimaro, Migori County stated that they were displaced by inter-ethnic confrontation over communal land. They said that they were evicted because the land they owned and cultivated was said to belong to the Maasai community. They were therefore evicted in 1989.

The table below illustrates the cause of displacement

### Graph 1: Causes of Displacement



#### 4.1.3. ACCESS TO INFORMATION: OVERVIEW

The inquiry on access to information covered three broad areas:

1. IDPs general awareness of their right to information;
2. IDP awareness of and availability of information on various programmes and facilities aimed at assisting IDPs at various levels of displacement;
3. IDPs involvement in the development of the draft National Policy.

The survey found that IDPs were generally anxious to know about Government plans to address their issues. They were inquisitive but they did not consider getting the information as a right. They stated that their leaders had sought audience with the provincial

administration on broader issues, but individual respondents did not know where to get information or know where to find assistance

Respondents explained that during the forcible displacement family members died, disappeared or were separated; there was loss of property as well as loss of crucial documents. In addition, they described loss of their sources of livelihood which had left them destitute and reliant on humanitarian assistance yet they lacked information on where to find alternative sources of income like jobs or loans to restart their lives. They were concerned with where to find information on what to do following their losses, particularly how to get compensation or recover some of the losses that they suffered.

When asked whether at any time they had sought information regarding resettlement programs, schools, employment or where to replace their documents,

over 84% responded in the affirmative and described their frustration when such information was not forthcoming. Their inquiries focussed on how to find source of livelihood (employment or land to cultivate), where to take their children to school and above all, how to regain lost dignity by being self sufficient.

#### 4.1.4. LOSS OF DOCUMENT AND ACCESS TO INFORMATION

Lack of information on how to recover identity documents like the identity card and birth certificates, land ownership documents and school certificates was highlighted at all areas. A significant number of respondents indicated that they did not know how or where to start the process of recovery of lost items particularly identity documents which directly affected their ability to be profiled, receive government payments, food rations or resettlement. Seventy one percent (71.7%) of all respondents reported having lost property, some or all of their documents following forcible displacement. The following documents were reported lost all of which are critical in enabling IDPs claim the rights to property as well as in exercising their right to participation in political processes:

“ My wife and children were killed in Naivasha....why should you search for property when you lost all that was important to you, a family? ”

As much as they hoped to recover some if not all of the documents, there was simply no awareness on what to do beyond reporting the loss to the police and provincial administration. One respondent from Kisumu East, Kisumu County vividly described helplessness of IDPs on this matter as follows:

**Table 3: Lost documents**

LOST DOCUMENT	RESPONDENTS
Birth certificates	24.6%
Death certificates	2.9%
Education certificates	22.6%
Immunization cards	6.6%
Marriage certificates	2.5%
National Identity cards	26.8%
Land ownership documents like titles deed and allotment letters	9.2%
Other (log book, business licenses, drivers licenses)	4.7%

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*“After losing my documents and property, I reported the loss to the police. Now apart from reporting to the police there is nothing else we can do, and after all most properties were looted and burnt making it impossible to recover”*

Another respondent from Kendu bay, Homabay County did not find the value of seeking for lost items or documents, that were insignificant compared to loss of family. He reasoned:

*My wife and children were killed in Naivasha....why should you search for property when you lost all what was important to you, a family?*

In other cases, efforts to seek information and assistance from the government to replace or recover crucial documents were fruitless. A respondent from Ol’Kalou, Nyandarua county described his frustration with replacing an identity card, which he believed was not supposed to be complicated. This concern was shared by an informant from Kesses Uasin-Gishu who said that they visited the provincial administration regularly for updates on how to replace their lost documents without success.

In Mombasa County a key informant who is also a community leader from Mshomoroni and who works with the government explained that they advice people who inquire about lost documents particularly identity cards on how to replace them. They direct them to the relevant authorities and write them recommendation letters.

While the majority or 85% of respondents indicated having reported the loss of documents to relevant authorities by the time of the survey, 68.3 % of them had not been able to replace their documents.

The main challenges faced by IDPs in replacing documents or reclaiming property lost included the following: Poor feedback from authorities (36%), Financial constraint (22%), Being asked to go

back where they originated from to seek supporting documents or proof of loss, and lack of proof of lost, stolen or burn documents (11%). Other respondents pointed at the process of replacing documents which they found to be hard and costly (14%).

Only in 10% of the cases had respondents made efforts to regularly seek information on progress of replacing of lost documents with the rest reporting that they sought this information on need basis. Distance, costs, frustration and lack of information on the process affected them.

#### 4.1.5. IDP REGISTRATION AND PROFILING

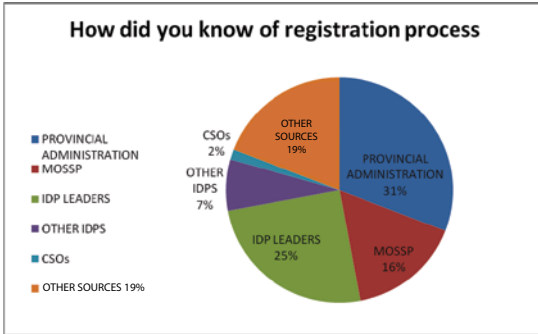
Inquiry into IDP profiling process elicited mixed reactions, with some respondents, comprising of about 7% of respondents being uncertain over whether they were officially profiled. This was because many organizations had approached them and asked them to fill forms and they were not certain whether these were part of the government registration exercise. The majority of respondents (62%) however stated that they were profiled while 26% were not. This is reflected in the chart below on IDP registration.

Registration of IDPs was crucial for accessing government programmes for IDPs. IDPs who did not have a structured network, particularly those integrated in the community did not receive information regarding profiling on time while others have never received any communication regarding registration of IDPs.

Respondents learned of the profiling exercise from different sources like government officials, chiefs, DO, DC and village leaders, while other people were informed by IDP leaders and non government sources like Kenya Red Cross, and other organizations that provided relief.

This is shown on the table below.

## Chart 2: Awareness by IDPs on profiling



Respondents explained that the registration process was shrouded in secrecy in some places or information was not well communicated with the result that a significant proportion of IDP population was not profiled. In addition, there was no structured way of communicating such important information. Indeed, although the majority of respondents reported receiving reports regarding profiling of IDPs from provincial administration (31%), it is the combination of fellow IDPs (7%) and their leaders (25) that provided them with information. Sixteen percent (16%) of respondents were not aware of the exercise, or learned about it after the registration of IDPs had

“ I did not benefit because the process was marred with corruption by the provincial administration and the MOSSP ”

expired. This had negative implication with regard to access to government programmes like food rations, resettlement or compensation.

Some of the respondents who confirmed receiving IDP payments of Ksh.10,000 and Ksh. 25, 000 were first registered and later called to receive the payments. Although not all IDPs who were profiled received the payments, those who were not profiled by the government were not eligible at all. One respondent from South Coast, Kwale County described his predicament as follows:

*I was not aware of the registration process and by the time I knew I was told that it was too late to register as the names had already been taken to the DC. I therefore did not benefit from the government money.”*

Respondents who were profiled but did not receive payments attributed this to corruption, as was observed a respondent at Mau Summit, Nakuru County who stated:

*“I did not benefit because the process was marred with corruption by the provincial administration and the MOSSP”*

IDPs in Karemo, South Nyanza complained of discrimination against IDPs in the region. They stated that IDPs at Kogelo and indeed in the wider South Nyanza have never received any assistance from the government as compensation. They were of the opinion that the government favoured other regions – while IDPs in other regions assumed that assistance for IDPs was distributed elsewhere.

### 4.1.6. INFORMATION ON GOVERNMENT RETURN, RESETTLEMENT AND REINTEGRATION PROGRAMMES

With regard to government efforts to find durable solutions to IDPs through return, resettlement and reintegration initiatives, the majority of the respondents indicated that they were aware of the existence of such

programmes. Indeed 85% of respondents stated that they had received information about the programmes while 15% consisting of people displaced by mining companies in the Coast region, responded that they were not aware of such programmes.

Respondents were particularly aware of the government return package under Operation Rudi Nyumbani with 87% saying “yes” and 13% “No”. Of those who received information 62% respondents stated that they had benefitted from Kshs. 10,000 return package and 40% confirming that they were beneficiaries of Kshs. 25,000 reconstruction package from the Government.

Their sources of information regarding the Operation Rudi Nyumbani ranged from Radio (37.6%), IDP leaders (28%), and Provincial administration (19.5) while Newspapers accounted for 6.2%) and TV (6.4%).

With respect to frequency of information flow the majority of respondents indicated that although they were aware of government programmes through the

above stated information sources, the information flow was not always regular or reliable. Less than fifty percent (50%) reported receiving information on a regular basis. This indicates that there is no dependable channel of communication. The table below show how regularly information was communicated to IDP.

### Regularity of Information flow

The majority of the respondents were of the view that the information that they accessed was either not sufficient or was inadequate to enable them to adequately engage with the proposed government action.

Close to sixty five (64.8%) of them under the Government resettlement programme stated that the information provided was not adequate to enable them to prepare and plan properly for their return, resettlement or integration. They further noted that some programmes like Operation Rudi Nyumbani was forced on them without adequate notice. They noted that armed police officers tore their tents

**Table 4: Sources of information regarding government programs for IDPs**

PROGRAMS	SOURCES					
	Media	Local Admin	NGO	Never heard	IDP leaders	Total
Operation Rudi Nyumbani	25.4	55.2	10.4	9	0	100
Resettlement	26.9	31.3	7.5	34.3	0	100
Shelter	11.9	35.8	4.5	47.8	0	100
Relief Supply	7.5	40.3	10.4	37.3	4.5	100
Cash Payments	9.1	50	0	37.9	3	100
IDP Policy	1.5	1.5	6	89.6	1.5	100
Psychosocial support	1.5	0	4.5	67.2	26.9	100
Judicial processes (ICC, TJRC)	56.1	0	1.5	37.9	4.5	100



and forced them to return home without sufficient preparations or facilitation with adequate food, utensils, farming equipment and security. Some respondents, mostly returnees noted that they were forced to return to their home before effort was made to reconcile them with the local community. As a result, some reported receiving threats upon return, and their crops and animals stolen without intervention of the security personnel.

IDPs who were resettled by the government reported that they were consulted through their leaders regarding the resettlement process. In Kitale, for example, respondents indicated that their leaders had visited and approved the land on which they were resettled. They however noted that they were ambushed with the date on which to travel. No adequate preparations were made regarding schooling or provision for sick people who required regular medication.

One respondent in Kanduyi, Bungoma County was of the view that IDPs should be more consulted regarding finding durable solutions. She felt that IDPs should be given money to plan about where they want to settle. Another respondent in Kisii felt that because the government did not consult IDPs, it preoccupied itself with finding land while some IDPs who were business people would have preferred to engage in business.

A respondent from Kwale county also wondered:

*“how would you know it is safe to return to your home yet you do not even have information to guarantee you of any security?”*

#### 4.1.7. INVOLVEMENT OF IDPS ON POLICY MAKING/ RETURN AND RESETTLEMENT

The majority of respondents stated that they were not consulted in the formulation of government policies that affect them. Only less than 2% of the respondents, mostly leaders indicated that they were involved in the process of developing the Draft IDP policy while 85.3 % of the respondents reported that

“ How would you know it is safe to return to your home yet you do not even have information to guarantee you of any security? ”

they were not aware of policy guidelines or directives in the form of circulars, regulation or directives from the ministry and other governmental bodies for IDPs. When asked if she was involved in the development of policy for IDPs one respondent from Kikopey, Nakuru County stated as follows:

*“I have never heard of any IDP policy or anything of the sort. I do not know who drafts it and it doesn't bother me at all.”*

These sentiments were echoed by majority informants from all regions although key informants who were IDP leaders stated that they had either participated in meetings where the draft policy was discussed or their views were sought.

#### 4.1.8. INVOLVEMENT OF VULNERABLE GROUPS

It was observed throughout the study that IDPs lived in pathetic conditions. Even where efforts were made to provide food, housing and other projects for the IDPs, not all deserving IDPs benefitted as supply often outstripped demand. In this environment of scarcity, there were no special provisions meant to cater for the needs of vulnerable groups including women, child-headed households, elderly, people with disabilities and people living with HIV and AIDs.

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Among the people interviewed, only three percent (3%) described themselves as persons with disability, although they claimed to know members in the IDP community who were either elderly, orphaned, living with HIV or persons with disability. Respondents observed that the needs of this group were largely not addressed and if it happened then it was minimal. Most of the respondents said that no one was given any special attention whether during the distribution of the relief food or any other help that came their way.

Some respondents noted that there were organizations that had promised to support people with special needs when they visited the IDPs but they did not keep their promises. An example was given by a respondent at Kanduyi, Bungoma county who said that the TJRC visited them and promised to cater for the needs of the people. She added “we have waited and we have not heard from them since then.”

“ I was raped and am now HIV positive and I have never been supported by any one even on counseling. The only support I have gotten is the ARVs and nothing more. My last child whom I got out of the rape incident is also HIV positive.”

#### 4.1.9. INFORMATION AND SERVICES AVAILABLE TO VICTIMS OF VIOLENCE

Respondents at Mau Summit, Nakuru county indicated that a lot of people who were injured as a result of the 2007 post election violence in the area continued to suffer long after the government encouraged them to return home. They lacked information on whether the government and other organizations were in a position to offer any form of assistance for such people who cannot fend for themselves or needed treatment because of the effects of the violence.

Victims of sexual and gender based violence described challenges accessing facilities for assistance like counseling or specialized treatment. Even where such services existed, lack of information negatively impacted on ability of the victims to access treatment and psycho-social support. One survivor of rape in Kanduyi, Bungoma County described her experience as follows:

*“I was raped and am now HIV positive and I have never been supported by any one even on counseling. The only support I have gotten is the ARVs and nothing more. My last child whom I got out of rape incident is also HIV positive.”*

In Kiminini, Kitale county, however victims of sexual violence who had contracted HIV reported that because of the information that they received from local churches and community based organizations, they were able to access ARVs that were provided at the general hospital. However, without other assistance like counseling and support with special diet, they suffered a lot.

#### 4.1.10 ACCESS TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Participants in the survey commented on how displacement affected their sources of livelihood and access to economic, social and cultural rights. A majority of respondents engaged in various activities

to help meet their basic needs. These included doing hawking wares, menial jobs like farming and cleaning clothes, prostitution or relying on well-wishers. Very few had heard of government programmes aimed at facilitating access to their economic, social and cultural needs. Such information was passed on largely by their fellow IDPs and IDP leaders.

**Water:** In some areas like Bungoma, Kikopey and Mai Mahiu, IDPs purchased water from water vendors, who charged exorbitantly. In other areas, the only available water was from a source that was not clean. This was the case in where they relied on water from a dam. Supply of purifying pellets was unreliable forcing the IDPs to consume the untreated water.

**Education:** Access to education was another challenge that IDPs with school going children had to contend with. IDPs observed that affording school uniforms and other basic costs was a challenge. The most affected were secondary school age children since the parents could not afford fees. IDPs complained that bursaries were not availed to them as politicians in charge of the fund considered them outsiders in the constituency. For those who completed secondary school, rampant unemployment confined them at home unable to advance to tertiary institutions.

**Health:** Respondents noted that in 2008, the government facilitated access to health by allowing IDPs to access free health care and medication at designated government facilities and attempts were made to reach out to victims of SGBV to access counseling and treatment. As respondent from Sabot in Transzoia County noted, these services were withdrawn, affecting on the health of IDPs.

**Food:** At the time of the survey, majority of the respondents indicated that they purchased food, grew crops on farms that they had rented or begged for food. Some respondents indicated that they used to receive, though irregularly, food assistance from the government through the provincial administration. At Endebes camp in Transzoia County, one respondent indicated that food was distributed every three months while at Kesses in Uasin Gishu district, no such provisions were given. Where supply was ongoing, reliable information was not available regarding the next supply, and no explanation was provided as to why supplies were cut.

The table below provides a summary of responses by respondents when asked if they were aware and sources of information of programmes to facilitate access to economic, social and cultural rights.

**Table 5: Awareness of ECOSOC Rights Programs**

ECOSOC RIGHTS PROGRAMS	SOURCE OF INFORMATION					
	Media	Local Admin	NGO	Never Heard	IDP Leaders	Total
<b>Food</b>	4.5	6	34.3	19.4	0	100
<b>Housing</b>	0	26.9	49.3	11.9	9	100
<b>Education</b>	0	40.3	49.3	7.5	3	100
<b>Health</b>	0	29.9	6	49.3	3	100

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## 4.2. KEY OBSERVATIONS AT EACH RESEARCH SITE VISITED

### 4.2.1. CENTRAL RIFT VALLEY

Among the locations visited included Jikaze, Naivasha, Mai Mahiu, and Ebenezer camp in Kikopey, Gilgil. At these areas, IDPs formed self-help groups, pooled resources and collectively purchased the piece of land where they were able to or were assisted by well wishers to put up camps. Other areas visited included Pipeline IDP camp in Nakuru, Casino transit camp in Mau summit and Gacharage transit camp in Kuresoi; Sanmako which is a government resettlement site in Rongai and Barut integrated internally displaced persons some of which are still staying with well wishers and relatives to date despite being displaced during the 2007/08 Post Election Violence.

The other areas in the Central Rift Valley studied included Kindipa IDP camp in Kirathimo location, Kasuku camp in Kasuku and Mawingu-Sharom camp near Tumaini town. These camps, although hosting people mostly from the Rift Valley, are located at the border of Rift Valley but fall administratively in Nyandarua in Central province.

#### The following were observed:

Respondents described that information flow from the Ministry of Special Programs always goes through the DC's office, then the DO, chiefs and regional coordinators, who pass it on to the IDP leaders before finally reaching the IDP on the ground. The reverse rarely happened. Respondents further stated that the information flow from the provincial administration to the individual IDP was often inadequate, censored and usually reached them when late or distorted.

The IDP leaders interviewed stated that they were relied upon by other IDPs to convey to them information although they often had no adequate information from the authorities to share. They cited lack of a system of sharing crucial information on issues affecting their

fellow IDPs like the date of the next food distribution and amount of food rations that each family should expect to receive.

They also argued that they were unable to advise IDPs on crucial programs related to education such as school feeding projects and access to bursary and other funds because they themselves were in the dark.

During focus group discussions, Rift Valley IDPs stated that while their IDP leaders occasionally shared with them information from the local administration, they often relied on friends in the IDP community to inform them on any plans or projects for IDPs. They added that such information was at times unreliable. IDPs at Pipeline camp in Nakuru for example, stated at a focus group discussion that lack of reliable information regarding anticipated resettlement had contributed to tensions and conflicts in the IDP community. The IDP leadership was at times blamed for not doing enough to pressure the government to fasten the process. The leaders themselves described their helplessness in the issue. They stated that there were no adequate consultations between the government and IDPs on who should be prioritized for resettlement or where to be resettled.

#### The main issues confronted by IDPs in these camps included:

- » **Health concerns:** The IDPs described living in squalid conditions that exposed them to poor health. The rainy season was described as their main source of misery as cold related ailments and fear of outbreak of typhoid, other waterborne diseases as well as communicable diseases like tuberculosis loomed.
- » **Access to water:** IDPs living at Kindipa stated that they relied on water from a nearby dam for their domestic water needs. Although the water was not clean, district health officers had not educated them on how best to purify the water although they occasionally distributed water purification pellets to make the water less harmful.

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- » **Food Aid:** The IDPs who also relied on food aid from the government and well-wishers stated that food flow was irregular. They further complained about the poor storage of maize grain which they said had gone bad and was not fit for human consumption.
  - » **Housing:** Respondents living in camps described deplorable condition., Insect bites were common at the Kasuku camp as houses were infested by fleas and the chilly weather was particularly biting as the tents and blankets were torn. They stated that during the rainy season, the floors were regularly flooded or soaked with water as the camp is located in a swampy area.
  - » **Distance:** The other major challenge observed at these camps was distance from the nearest towns. From Sharom camp for example, there was only one reliable motor vehicle that plied the route to Nyahururu. Transport was mostly available early in the morning or late in the evening. This affected the ability of IDPs to access government services like hospitals and other offices or finding employment at an urban setting.
  - » **Self Help Initiatives:** IDPs who formed self help groups and bought the land where they elected tents had a leadership structure that transmitted information to its members. Unfortunately, some of them were not recognized by the government and members were not profiled and therefore did not qualify for government assistance like food aid and resettlement. Furthermore, the government had not used the leadership structures to convey government policy and information about its programmes to IDPs.
  - » **Poor living conditions:** While some IDPs have returned, others lived in rental houses while others were living at Kambi ya Mwangi transitional camp. The living conditions in this camp are deplorable, with residents complaining of overcrowding, exposure to extreme weather conditions, poor health and breakdown of morality.
  - » **Shelters:** The government and other actors facilitated the building of shelters for the displaced. Some respondents were of the view that the shelter programme was a good initiative but some other genuine IDPs were left out. At Nungulu for example, there was bad blood between IDPs whose houses were reconstructed and those that have not. Tensions were fuelled by speculations that IDP leaders had favoured some people in the exercise. This was made worse by the lack of information on why some people had been left out while others had benefitted from more than one housing project.
  - » In areas like Kesses, there was an attempt by some IDPs to inquire from the provincial administration the reason for disparities in the provision of housing to IDPs. Such persons were branded as activists and troublesome persons. They were often excluded from any meetings or information was deliberately withheld from them by the provincial administration and sometimes by IDP leaders.
  - » **Fear and insecurity:** IDPs complained of fear and insecurity. They described recurring displacements ever since 1992 and were concerned of likely attacks in the future. They were hopeful that the government should consider relocating them to alternative safer areas.
  - » **Resettlement:** They pointed out that information concerning the criteria used in selecting persons to be resettled was not clear to the IDPs. They described it as some form of lottery where only names of very lucky persons appear on the list of persons selected for resettlement.

#### 4.2.2. NORTH RIFT

The locations where data was collected in the North Rift region include Nungulu in Burnt forest, Kesses, and Lelmolok, Eldoret and Kitale. The main issues raised by IDPs in these areas included:

- » **Resettlement:** They pointed out that information concerning the criteria used in selecting persons to be resettled was not clear to the IDPs. They described it as some form of lottery where only names of very lucky persons appear on the list of persons selected for resettlement.

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### 4.2.3. NYANZA

The locations visited included Kogelo in Siaya district where IDPs displaced from various parts of the country returned to their ancestral home. The other integrated IDPs interviewed are those living at Nyamasaria and Kondele in Kisumu East district where they rented houses and integrated in the city. The other area visited in the region was Kendu bay in Homa bay district. In the region, the main issues highlighted by IDPs included:

- » **Isolated and forgotten:** The IDPs contacted at Kogelo described very little contact with the government and civil society concerned with the IDPs. As integrated IDPs who returned home following the post election violence in 2007, they were either not properly profiled or never profiled at all. They had limited access to information regarding programs for IDPs although rumours had reached them that in other regions, the government had compensated IDPs, reconstructed their homes or found them alternative land to settle. Based on such information that they heard from friends or scanty information from the radio, they concluded that the government had discriminated against IDPs in Nyanza.
- » **Similar feelings were expressed by IDPs In Homa bay and Kondele:** IDPs were bitter that the government had discriminated against them noting that they had heard about shelter programmes for IDPs, financial facilitation by the state, school feeding programs by NGOs in other areas but there was no information on how or when they can benefit. Information concerning these projects is scarce and the state officials had promised to inquire for them but there was no action.
- » **Access to Justice:** In Nyamasaria, respondents described their experience with SGBV during the 2007/08 PEV. This was sometimes perpetrated by individuals known to them although they were not held accountable. One challenge they highlighted was lack of awareness on how to access justice including through the International Criminal Court Process, which they argued had not provided them with opportunity to relate their stories.

- » **Access to health and support for SGBV:** The same group described how lack of information on where to seek medical and counseling assistance had affected their ability to heal from the trauma. Some were not aware of available medical assistance and free anti-retroviral for People Living with HIV and AIDs. They failed to seek treatment because they perceived such treatment to be expensive and therefore chose to forego it.

The field survey was also conducted at Migori, Kehancha and Borabu-Sotik. This region is shared by at least six (6) communities with a history of social tensions every now and then. As a result, it becomes even more difficult for IDPs residing in this region and hence a majority expressed their concerns with security.

- » **Security:** The main challenge for the IDPs in these areas was limited access to information pertaining to security and safety return upon return. Once reintegrated, the IDPs could not stay in the areas of reintegration because the host communities proved hostile. IDPs in these areas were engaged in farming on leased portions of land while others were engaged in casual work to earn a living. They stated that although the area was conducive for rearing animals, regular threats and rampant theft prevented them from doing so.

Some of the integrated IDPs had received ex-gratia payments while others had not. They stated that they no longer received information on IDP programmes from local administration as was the case after the 2007 displacement.

### 4.2.4. WESTERN REGION

The locations visited by the researchers were Bungoma and Kiminini. The IDPs in these areas had fled from areas like Mt. Elgon following land while others returned home following post election violence. Key issues raised there included:

At Kiminini, a group of women gathered at a local church where they got assistance with food, clothing

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and counseling. A majority in the group were women with children whose husbands disappeared during land clashes at Mt. Elgon prior to the 2007 post election violence. Among them were IDPs living with HIV/AIDS and victims of sexual and gender based violence but who have no access to regular counseling services. Because of their condition, they were unable to find work as casual workers and hence relied on donations for food and clothing. They were also unable to afford rent and were regularly locked out of their homes. They also were unable to pay modest expenses required for their children to attend schools. They lacked information on how to address these issues and have become more vulnerable. PLWHA have no access to basic facilitation like anti retroviral drugs and basic nutritional supplements.

#### 4.2.5. COAST REGION

In the coast region the survey was carried out in Kisauni, Likoni, Ukunda and Malindi.

It was observed that within the coast region most IDPs relied on opinion holders and their leaders for information and guidance. Some of the IDPs stated that they had been informed of the profiling exercise while others were not aware of any registration process that took place. In Likoni and Ukunda it was observed that media played a big role as source of information. Radio Rahma was a trusted source of information for the locals.

There are no IDP camps in the region and most IDPs lived in urban slums and makeshift homes. They relied on well wishers for food and clothing donations while at the same time, they looked forward to the government providing them with any assistance to enable them acquire a place that they can refer as home.





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# 5. Summary of Findings

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## 5.1 GENERAL FINDINGS

Kenyans have experienced various forms of displacements at different times although the events of the 2007-2008 post election violence resulted in huge internally displaced in Kenya (estimated at 650,000 Kenyans).

### **A history of violence:**

The survey found that the vast majority of IDPs left their places of residence because their life and safety were threatened or when conditions in their locations were not conducive enough to living in safety. Concerned about personal safety, IDPs were compelled to leave their homelands for safe havens or where family and friends could provide for their upkeep.

Some families displaced by the violence have not yet returned home, whilst those that have are concerned about their safety due to looming insecurity. Their experiences add to the population of IDPs resulting from earlier ethnic and political violence, conflict over natural resources as well and displacements caused by natural forces like flooding.

The concerns of security and lack of genuine reconciliation efforts were echoed by respondent who had returned or were resettled.

### **Poor living conditions:**

IDPs described ongoing challenges like unemployment, poor conditions of living, anxiety over when a lasting solution would be found and frustrations with ongoing programmes that barely meet their needs. Whether in camps or in self-help shelters, they spoke of described overcrowding, exposure to extreme weather, torn tents, insufficient food and lack of reliable information about when they would be resettled.

The feeling of neglect by the government and civil society particularly due to lack of profiling, and support with any programmes was relayed by integrated IDPs. These sentiments were consistent

with findings by various studies on IDPs.<sup>43</sup> IDPs faced many challenges including lack of access to various programmes like health and counseling support for victims of SGBV, ongoing tensions and threats against returning or resettled IDPs by the host communities due to lack of effective reconciliation programmes, and resistance by host communities to resettle IDPs in alleged traditional land of the host community. In addition, some IDPs had refused to settle on land purchased by the government illustrating how the interventions were forced on the IDPs without taking into consideration their concerns such as security and their willingness to return home.

### **Government initiatives contested:**

The Government in conjunction with local and international partners launched several initiatives in response to mass displacement related to the PEV. These included resettlement of IDPs living in various camps, provision of humanitarian assistance consisting of food, clothing and tents, providing compensation for shelter and supporting livelihoods and reconciliation.<sup>44</sup>

The success of these initiatives is contested although the government proclaims success particularly of Operation Rudi Nyumbani.

A July 7 2009 status update by the government after one year of the project indicated significant progress in the resettlement of about 350 000 IDPs who had

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43 See "Robbing the Homeless: A KNCHR Report on Assessment of Corruption Allegation During IDP Resettlement; Out in the Cold – The Fate of Internally Displaced Person in Kenya (2008 – 2009), KHRC, November 2009; Kenya Times, OI Kalou IDPs languish in wet, cold weather, Friday March 12 2010; The Standard, Displaced persons begin 200km March to petition Kibaki, February 17th 2010; Daily Nation, IDPs protest march halted, February 18th 2010; and The Standard, IDPs vow to walk to State House, again, February 19th 2010

44 IDPs Status Brief as of July 30th 2010 – Office of the President – Ministry of State for Special Programmes; also see presentation by Regional Commissioner of Central Rift Valley Province at a workshop of the Nakuru Protection Working Group in Nakuru on 18 January 2011: Workshop Report of the Protection Working Group on Internal Displacement – Nakuru held on 18 January 2011. Report by the Secretariat – UNHCR Branch Office, Nairobi

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sought refuge in over 118 camps country-wide. The update also indicated that an additional 313 921 IDPs were integrated within communities across the country.

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However, it is worth noting that some four after the largest wave of displacement in early 2008, some people are still living in IDP camps— whether transit or self-help initiatives, living in deplorable conditions and dependent on humanitarian assistance. Other IDPs live in poverty in urban slums and rural areas without the capacity to be productive. So-called integrated IDPs, have not accessed government programmes that have largely benefitted returnees and IDPs at camps who were considered for resettlement.

While respondents in the study appreciated the various initiatives that the government has designed for IDPs, their responses highlight many concerns with the design and implementations of these programs that put into question the implementation of Article 36 of the Constitution of Kenya 2010, and international mechanisms, particularly the Guiding Principles on internally displaced population.

## 5.2 INVOLVEMENT OF IDPS IN DECISION MAKING

The engagement with project beneficiaries throughout the project cycle is important as it affect the ownership of the process by the people directly affected. The survey observed and concluded that IDPs were

not involved in the design of the various interventions that were implemented.

This could be attributed to lack of sensitization of the officials implementing the programmes although in the majority of cases, respondents described secrecy and lack of a structured way to communicate or make available information that was important to the IDPs.

While the lack of involvement of IDPs in decision making and lack of information during the early stages of the displacement could be attributed to hasty implementation of the programmes because of massive humanitarian needs, the same cannot be said regarding subsequent programmes for return, resettlement or integration where respondents described information dissemination regarding these programmes as poor.

The disbursement of ex-gratia payments to affected IDPs was one of the few government programmes which respondents were aware of. However, even in this case, there was clear lack of information on who were the targeted beneficiaries of the programme, with the prevailing view being that the ex-gratia payment of Kshs 10,000 and 25,000 was mandatory compensation for all IDPs. Those who did not benefit attributed their failure to a wider government plan to marginalize certain regions, particularly Nyanza. A few correctly observed that they had missed the profiling deadline or that their money has been corruptly obtained by those who managed the fund.

The responses expose a number of challenges that affect similar government programmes, namely: **lack of information, misinformation and corruption** – which all result into the prevailing and well founded view amongst IDPs of a **secretive** implementation of IDP programmes.

Lack of information for IDPs on government programmes and plans affected the ability of IDPs to plan for their lives. Although there was occasional communication from the ministry and leaders through the media, local administration and IDP

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45 IDP Status Brief as at 7th July 2009, Office of the President

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leaders, reliability of such communication was often questioned. This was because of the many unfulfilled promises by the government and local leaders. On a number of occasions, IDPs received short notices to either fold their tents to move to their homes, transition camps or at resettlement areas. These affected the personal plans of many but particularly families with children at school and those receiving regular support.

### **5.3 ENGAGING IN GAINFUL ECONOMIC ACTIVITIES**

The affected population had also suffered loss of property and livelihood and was not adequately compensated. This denied them an opportunity to become economically independent therefore exerting more pressure on the same government to provide them with relief for sustenance. The various government initiatives paid lip service to the need to go beyond small scale farming. Business persons victims of forcible displaced lost hundreds of thousands of cash and property, yet the government preoccupation has been with provision of shelter support, farm inputs and land for cultivation.

### **5.4 HEALTH NEEDS**

Psycho-social issues were not addressed effectively. Many women and girls were subjected to rape, at times by people that were well known to victims and whom they had lived with and therefore trusted. The required access to health and medicines, including for family planning purposes, support and assurance of their security were never adequately provided.

### **5.5 RESETTLEMENT, RETURN AND INTEGRATION**

Government efforts failed to effectively address the concerns and wishes of the displaced persons and in some cases only served to re-victimize the IDPs by forcing them to return to the areas of their original

violation without credible security guarantees. Further, resettlement exercises have been executed in manner likely to create dangerous exclusive ethnic enclaves in complete disregard of the Constitution guarantees of owning property and residing anywhere in the country.

### **5.6 PROFILING OF AFFECTED PERSONS**

Beneficiaries of the various government programmes are largely those who were profiled and approved by the government. This exercise was marred with lack of clear policy guidelines, information to IDPs and monitoring. Majority of genuine IDPs particularly those living within the community as integrated IDPs were not considered for the exercise or information regarding registration was not communicated to them.

The government initiative to provide each household returning from the IDP camps Kshs. 25,000 for reconstruction of houses and Kshs. 10,000 as start-up funds was a good gesture, but with serious failures. To begin with it was administered like a compensation programme that assumed that all IDPs were small scale farmers and did not consider the actual losses of the individual households. Poor profiling of IDPs coupled with corruption excluded a huge population of the displaced, particularly integrated IDPs from benefitting from this programme

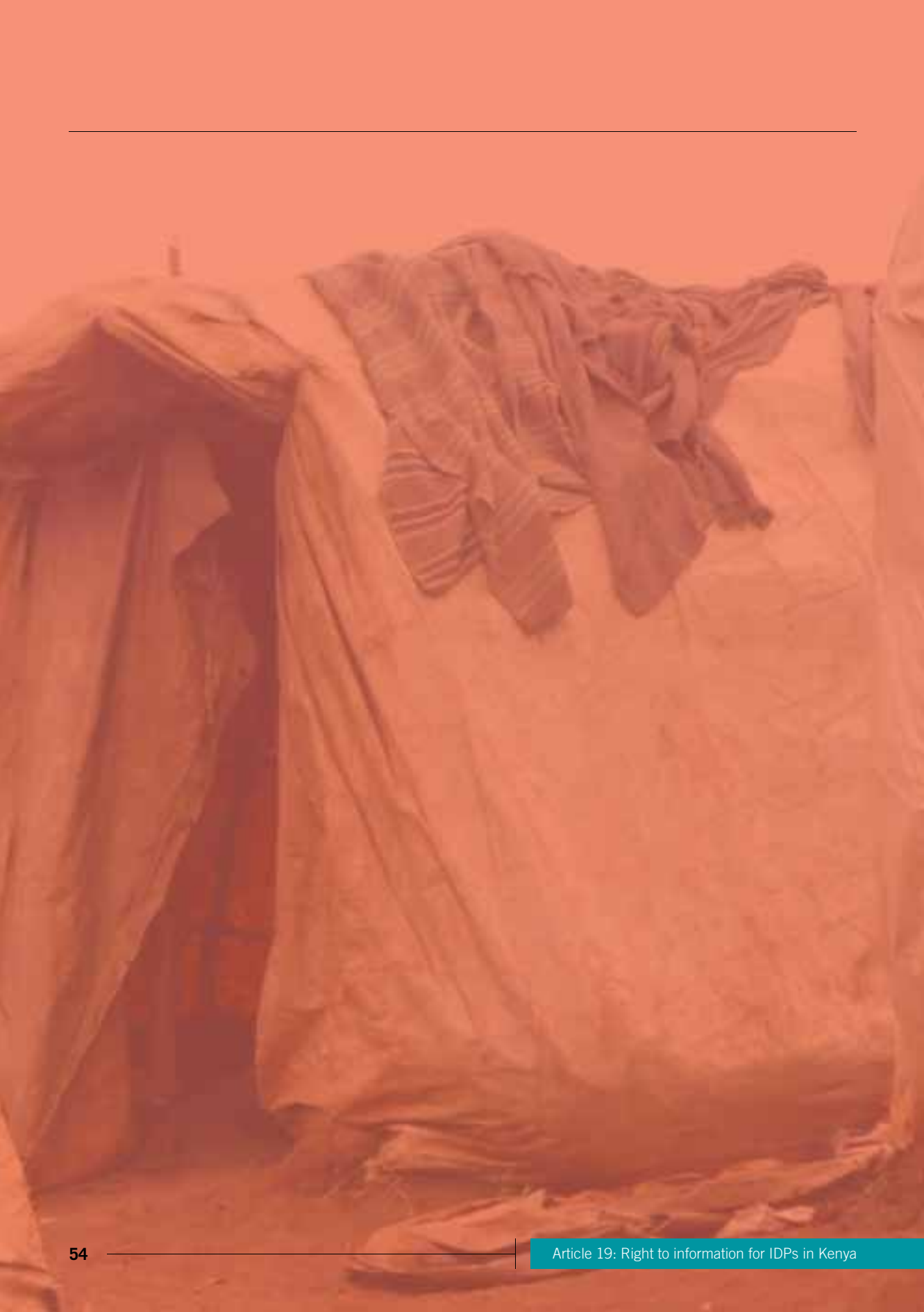
The following challenges and failures have also been attributed to the management of internally displaced persons:

- » Most of the humanitarian and psycho-social concerns of the IDPs remain unaddressed as they continue to operate without adequate food, water, clothing and/or housing.
- » The resettlement of IDPs has been met with resistance by some host communities who are often not consulted in the planning process – a crucial misstep.
- » A larger number of IDPs continue to live under deplorable conditions in transit or satellite camps

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requiring much humanitarian aid in terms of food, shelter and health services.

- » Poor coordination between the relevant state and public offices in the application of resettlement programmes has impacted negatively on the resettlement and reintegration of the IDPs.



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# 6

## ■ Recommendations

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The baseline survey covered four regions( Rift Valley, Nyanza, Western and Coast provinces ) in Kenya and consisted of interviews with a representative sample of IDPs. The survey identified gaps in access to information for IDPs and how it affects their ability to find solutions in the short and long term.

The following specific recommendations come directly from the field research and reflect the obligations of various actors in the fulfillment and protection of access to information rights of IDPs.:

- » The government must maintain a regular and systematic line of communication with IDPs to provide them with updates on Government plans aimed at finding durable solutions. . In doing so, they should effectively make use of existing IDP leadership structures. Additionally, the government should work closely with CSOs and other stakeholders providing services to IDPs to facilitate information flow.
- » The Government must engage with IDP leaders and consult with IDPs and other stakeholders on any matter pertaining to IDPs. This will ensure that decisions arrived at are better informed and aimed at finding desirable solutions for this group of persons. Participation by IDPS will also ensure their ownership of policies and programs that affect them.
- » CSOs should engage more with IDP leaders and other IDPs to organize sensitization forums particularly to ensure IDPs are enabled of their rights to make demands on the state as the duty bearer. IDPs should be informed about their rights, including the principle of voluntary return, the right to settle in any part of the country, the right to participate in community or public affairs, freedom of association, religion, thought and conscience – all without being subject to discrimination.
- » CSOs, the National Commission on Human Rights as well as partners in the government and international organizations that have been at the forefront of developing a draft National IDP policy and Draft IDP Bill must engage in public education, particularly targeting IDPs to sensitize them on the Draft IDP policy and Draft IDP Bill. Unfortunately, few IDPs are aware of the content of the policy. International best practices require that the public is proactively involved in legislative processes. A participatory National IDP Policy-making process can be a major factor in laying a strong foundation for effective systems of dealing with displacement presently and in the future.
- » CSOs should continue to lobby for the adoption of the adoption of the draft National IDP Policy and draft IDP Bill which would institutionalize the IDP interventions. The Draft IDP policy contains progressive provisions on information and communication to persons in situations of displacement. IDPs, civil society and IDP leaders must come up with strategies of engaging parliamentarians and lobby their members of parliament regarding IDPs right to information and the adoption of the IDP policy.
- » Researchers and other organizations have conducted a number of studies and fact-finding missions on internally displaced persons. These studies and recommendations are crucial in informing interventions by various stakeholders including the Government. IDPs have raised concern regarding being over-researched and not having clarity on what the information that they shared was used for. It is imperative that individuals and organizations that have conducted studies on IDPs to disseminate widely the information on the outcomes of the study. There is equally a critical need to provide feedback to IDP respondents regarding the studies conducted.
- » Information can prevent or mitigate the effects of arbitrary displacement. The sharing of knowledge and information on the dynamics of conflict and the security situation in relevant areas may help groups and individuals without regular access to such information save their lives by fleeing elsewhere or taking other protection measures.
- » IDPs should be provided with timely information



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regarding resettlement programs. Such information should include relocation plans and other decisions that affect them. They should be provided with information on the general conditions in the areas of return/settlement, including security, availability of food, housing, water, work, health and education, the state of infrastructure, the condition of housing, and land and property ownership and use. Providing information to IDPS about relocation plans and other decisions that affect them allows them to devise their own survival and protection strategies once resettled. .

- » Government and NGOs should ensure that IDPs from all parts of the country are at the same levels of information on the various IDP programmes and in benefits and integration assistance. Where differences are inevitable, this should be communicated clearly and in timely way. In addition, all stakeholders should undertake sensitization of the diverse ethnic communities in all districts having the IDPs.



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# 7



## Conclusion

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The right to seek, receive and impart information has considerable protection value for IDPs. Access to accurate, reliable and timely information helps individuals and communities to make sound decisions, develop sustainable survival strategies, seek a durable solution to displacement and it also helps to safeguard against manipulation and abuse.

The study found that though there is political will to find lasting solution to the IDP situation in Kenya with billions of shillings being set aside by the government to facilitate various programmes initiated, it is clear from the survey that the internally displaced persons in Kenya are faced with enormous survival challenges, which are worsened by their lack of access to information. The IDPs have failed to access information on programmes and interventions that have been put in place or are in the process of being developed. This has contributed to tensions among IDPs, with their leaders and with the communities.

The survey further revealed that the implementation processes of the government programmes rarely engaged the IDPs who are the beneficiaries of the programme. This contravenes not only the national constitution which guarantees the right to information but also the international obligation to involve IDPs at all stages of the displacement as contained in the Guiding Principle on Internal Displacement.

State and non-state actors must deliberately incorporate access to timely and accurate information in the design and implementation of programs targeting IDPs. Good information flow not only facilitates the ability of IDPs to benefit from the various programs for IDPs but also the extent to which they accessed facilities, food, water and promote access to such rights as owning property or ability to gain employment or attend school. A crucial starting point is the enactment and implementation of the draft National IDP policy and IDP bill that both of which recognize the importance of access to information and the participation of IDPs in finding durable solution.



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## DEFENDING FREEDOM OF EXPRESSION AND INFORMATION

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