



KENYA HUMAN RIGHTS COMMISSION
"struggling for a Kenya without human rights violations"

A Tale of Force, Threats and Lies

'Operation Rudi Nyumbani' in Perspective



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Abbreviations and Acronyms

AP	Administration Police
ASK	Agricultural Society of Kenya
CBO	Community Based Organization
CJPC	Catholic Justice and Peace Commission
COHRE	Centre on Housing Rights and Evictions
CREAW	Centre for Rights Education and Awareness
CSOs	Civil Society Organizations
DC	District Commissioner
DO	District Officer
FIDH	International Federation for Human Rights
GCG	Grand Coalition Government
GHSC	Government Humanitarian Services Committee
GoK	Government of Kenya
IC/GLR	International Conference on the Great Lakes Region
IDPs	Internally Displaced Persons
KANU	Kenya African National Union
KHRC	Kenya Human Rights Commission
KHRI	Kenya Human Rights Institute
KNCHR	Kenya National Commission on Human Rights
KRCS	Kenya Red Cross Society
MSC	Mitigation and Settlement Committee
NAIC	National Accord Implementation Committee
NARA	National Accord and Reconciliation Agreement
NCCCK	National Council of Churches of Kenya
NGO	Non-Governmental Organization
ODM	Orange Democratic Movement
ORN	Operation <i>Rudi Nyumbani</i>
PC	Provincial Commissioner
Peace-Net	Peace and Development Network
PMCT	Prevention of Mother to Child Transmission
PNU	Party of National Unity
TJRC	Truth Justice and Reconciliation Commission
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNOCHA	United Nation Office for the Coordination of Humanitarian Affairs

Glossary of Terms

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

Acknowledgement

The Kenya Human Rights Commission (KHRC) would like to thank two groups of persons: first, 24 monitors, who were drawn from the National Network of Internally Displaced Persons (IDPs), hereinafter the IDPs Network; and second, the Communities' Human Rights Networks (that work with KHRC across the 5 regions across the country). All these were involved in the monitoring of *Operations Rudi Nyumbani*. The following could be cited:

- 1) Keffa Magenyi, the Organizing Secretary of the IDPs Network in Kenya was integral to the mobilization and coordination of the monitors from the IDPs Network;
- 2) We are also thankful to the State and non-State actors who provided essential information and support that led to the development of the report;
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- 7) Finally, the Commission acknowledges Davis M. Malombe for leading and coordinating the entire project.

This Report is dedicated to all IDPs in Kenya especially those who were displaced as a result of the post-election violence that arose just before and after announcement of the bungled 2007 presidential poll of the General elections of 2007.

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

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

About the Organizations

a) KHRC Background

The Kenya Human Rights Commission (KHRC) is a national Non-Governmental Organization (NGO) founded in December 1991 and registered in Kenya in 1994. The KHRC envisions a Kenya that respects, protects and promotes human rights and democratic values. More over, we work towards the respect; protection and promotion of all human rights for all individuals and groups. This work is guided by five strategic objectives, which are:

- 1) Communities organized around specific human rights issues strengthened and developed into powerful people's organizations by 2012
- 2) Accountability and human rights centred governance of selected state and non-state actors improved by 2012.
- 3) The position of KHRC as a leader in human rights discourse and democratic development in Kenya solidified by 2012.
- 4) Selected spheres of public and private life engendered in Kenya by 2012
- 5) Organizational sustainability of KHRC improved by 2012

In terms of our work on IDPs, the KHRC believes that any intervention on IDPs should be multifaceted and based on concrete governance and human rights frameworks, but led by the victims and/or survivors themselves. Thus its interventions on IDPs for the last 10 years fall under 3 interrelated and integrated campaigns:

- Campaign for transitional justice which provides opportunities for redressing historical and contemporary injustices of IDPs among other victims and or survivors of impunity,
- Campaign Against Impunity which undertakes urgent action and remedial response to the ensuing (contemporary) violations of IDPs among other victims of gross human rights violations,
- Campaign for rights centered policies, legal and institutional reforms in order to deal with the governance problems perpetrating internal displacement.

Although the mandate of the KHRC is mainly national, its campaigns and interventions on IDPs are informed by the following approaches and paradigms: a) ensuring partnership/s and leadership on IDPs concerns within the affected communities and national, regional and international actors and obligations; b) enhancing progressive campaigns which takes IDPs issues and interventions from one level to another; c) fostering a logical partnership between our civic action and research and advocacy teams at all times and levels; and, d) conceptualizing and implementing interventions that address both the human rights and humanitarian situation of IDPs. Further, the latter interventions are designed to deal with all the roots causes, manifestations and the attendant responses. Towards this end, the KHRC supports and works with the IDPs Network, among other victims of historical and contemporary injustices in Kenya.

b) The National Network for IDPs in Kenya

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

The IDPs Network was conceptualized in June 2003 and formally launched in May 2004. Initially the network started as an advocacy group for IDPs displaced by the politically instigated violence between the 1991-1998 elections in the Rift Valley, Central, Coast and Nyanza provinces. Since then the network has expanded its mandate and reach to include IDPs displaced from November 2007 to February 2008 as a result of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, large scale development projects.

Focus, Structure, Approaches and Major Achievements of the Network

The network deals with issues related to resettlement and transitional justice in order to ensure that that the genuine IDPs benefit from the emerging resettlement or compensation programmes. They also deal with issues of governance and conflict resolution, which has been the root cause of their displacement. The network partners with other stakeholders to respond to other injustices afflicting them and the country in general. The KHRC is one of the most strategic partners of the network. The IDPs Network is governed by a vibrant committee with structures running from the National to community levels. Currently, as shown in Table 1 below, the network has memberships in the following areas:

Table 1: Membership of IDPs Network

•	Mt Elgon	•	Kuria/ Transmara
•	Kitale	•	Kisii/ Erekenyo
•	Eldoret	•	Nyeri
•	Kericho/ Kipkelion	•	Nairobi
•	Molo	•	Busia
•	Nakuru	•	Bungoma
•	Naivasha	•	Kitale
•	Laikipia	•	Narok
•	Baringo	•	Kwale
•	Turkana	•	Kilifi
•	Marsabit	•	Malindi
•	Kieni		
•	Ngong/Kajiado		
•	Likoni		
•	Kisumu		
•	Muhoroni		
•	Tana River		

(Source: IDPs Network)

Approaches of the IDPs Network

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

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

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

Executive Summary

One 4th May 2008, the Government of Kenya (GoK), also referred herein as Grand Coalition Government (GCG), embarked on the resettlement of IDPs. These IDPs had been displaced as a result of the post-election violence that rocked the country in December 2007 and the early part of 2008. The resettlement programme, dubbed *Operation Rudi Nyumbani* (also referred herein as ORN programme) was launched amid high anticipation among the IDPs for compensation and permanent solutions to their problem.

However, there have been concerns over the manner in which the Government has been implementing the programme. Report findings indicate that the implementation of the ORN Programme failed to meet the human rights standards stipulated in both the UN Guiding Principles on IDPs and the IDPs Protocols in the International Conference Great Lakes Region (IC/GLR). It is worth noting that the IDPs protocol in the IC/GLR 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. It is on this basis that the Kenya Human Rights Commission (KHRC) has been monitoring the resettlement programme since it was launched in May 2008.

This Report is titled: *A Tale of Force, Threats and Lies: Operation Rudi Nyumbani in Perspective*. It depicts the unfulfilled human rights obligations by the government in the resettlement of IDPs during the 'Operation Rudi Nyumbani' Programme. It presents the key findings and recommendations from the monitoring exercise. The report affirms the view that the *Operation Rudi Nyumbani* Programme has failed to conform to the above mentioned instruments meant to safeguard IDPs human rights, security and development.

As a consequence of the unsuccessful ORN programme, most IDPs now find themselves in precarious and deplorable conditions, stripped of their human rights and dignity. Most of the IDPs still lack security, adequate food, decent shelter, quality health care, safe drinking water and proper educational services and facilities. Most families are still languishing in inhabitable tents in hundreds of *transit* camps that emerged after the closure of the *main* camps at the onset of the ORN programme.¹

Moreover IDPs, particularly women and girls, are exposed to sexual violence and harassment amongst other gender based injustices as a result of the social and economic distress in which they now find themselves. In addition, attempts by the IDPs to organize and demand their rights are being suppressed by the state security and administration agencies through the use of force and threats. Though the two options that should have been available to the IDPs were either voluntary return to their habitual homes and/or relocation elsewhere, the latter was never considered. This Report therefore exposes the reality of the IDP resettlement exercise, in the process highlighting its limitations, and offering recommendations in line with best practices as espoused by the UN guiding principles and the IC/GLR protocol.

¹ *Main camps* are the original camps to which IDPs went from the time of displacement to date. *Transit camp* – these camps were set up when IDPs were moving from main camps to areas near homes of habitual residence. *Main/Transit camp* – there are times when the main camp doubles as a transit camp. *Settlement camp* – camps created by IDPs unwilling to stay in main or transit camps, and are unable to return to their homes of habitual residence due to factors outlined in this report.

The Key Findings:

- 1) Government and development partners have totally neglected the IDPs and therefore exposed them to deplorable living conditions bordering on gross human rights violations; poor housing, lack of food, lack of safe water and insecurity.
- 2) The Government is using force and threats to force IDPs out of the camps.
- 3) IDPs are unable and unwilling to return due to several factors including: trauma, insecurity, poverty and lack of basic services to assist them in their areas of habitual residence.
- 4) There is gross violation of human rights of women and children; sexual and gender based violence, lack of maternal healthcare, lack of basic reproductive health services/facilities, poor sanitary status, exposure of children and pregnant mothers to extreme weather conditions.
- 5) IDPs are highly traumatized due to the kind of violations and harassment they are facing.
- 6) There are areas where IDPs are lacking very basic agricultural inputs which they need to pick up their livelihoods.
- 7) There lacks of authentic inventory and data about status and conditions of IDPs in all the camps.
- 8) There is controversy surrounding the houses being built for the IDPs, with significant variations from the camps visited.
- 9) There lacks accountability and consistency in allocation of the Kshs.10, 000 and Kshs.25, 000 to IDPs. The government is not even sure whether it is compensating or merely facilitating IDPs - some IDPs have received nothing at all. The whole process is seriously murky.
- 10) There is a lot of blame game between the beneficiary communities, for example accusations of victims benefiting at the expense of local communities, and vice versa.
- 11) Perpetrators of post-election displacement have not been held to account.
- 12) There is poor coordination among stakeholders, and failure to involve IDPs in decision making.

The Key Recommendations:

- 1) The Government should formulate a system to ensure accountable and comprehensive facilitation and compensation to IDPs.
- 2) The Government should ensure close consultations with IDPs and other stakeholders in decision making at all levels. The Government should stop harassing and intimidating IDPs within and outside the camps.
- 3) The Government should put in place mechanisms for protection of IDPs with special needs and interests. This includes support to women and girls, children, persons with disability, the sick, among other interests.
- 4) The Government should provide facilities for psycho-social support through provision of counseling, affordable education, clean water, adequate food, healthcare and sanitation, adequate security and better housing for all IDPs.
- 5) Government should assist IDPs in buying land for settlement of landless IDPs as part of the durable solutions to the displacement problem.
- 6) The Government should put in place measures for remedy, better infrastructure, inter-communal relations and reconciliation, among other durable solutions.

1.0. INTRODUCTION AND BACKGROUND

1.1. Background to the 2007 Internal Displacements in Kenya

The skirmishes that ensued after the announcement of the disputed presidential election results in Kenya on the 30th December 2007 led to massive displacement and loss of innocent lives and of course, livelihoods. Reports provided by local and international organizations indicate that an estimated 400,000 persons were internally displaced in various parts of the country while about 1,200 lost their lives in the violence.² Moreover, scores of people were injured and property worth billions of shillings destroyed in the violence.

The flurry of the post-election violence only settled when the rivaling parties Orange Democratic Movement (ODM) and Party of National Unity (PNU) led by the Prime Minister Raila Odinga and President Mwai Kibaki respectively signed the National Accord and Reconciliation Act (hereinafter the Accord) on 28th February 2008. In particular, the two agreed on a political settlement which entailed the formation of a Grand Coalition Government (GCG) through sharing of power. Subsequently, the process of reconstruction and reconciliation began in earnest, among the many other initiatives contained in the mediation talk's agendas one to four.

Of priority was the resettlement of IDPs who were languishing in the camps and other places where they had sought refuge after the eruption of the post election violence. Worth noting is that the negotiations that led to the peace deal were based on four principal agendas namely cessation of violence, humanitarian assistance and restoration of basic rights, restoration of the political crisis and the resolution of long-term underlying issues.

In this respect, the GCG through the Ministry of State for Special Programmes launched the IDPs resettlement programme dubbed *Operation Rudi Nyumbani* (ORN) on 4th May 2008; albeit there were attempts before then to have people return back.³ It was expected that the ORN programme would see all those people displaced internally during the 2007 post election violence return home and continue their lives by June 2008.

Two key instruments are meant to guide the resettlement of IDPs. The first one is the 1998 UN-Guiding on IDPs which has 30 principles which oblige State parties to ensure protection of and assistance to IDPs in all phases of displacement. This includes preventing arbitrary displacement, ensuring the well-being of IDPs, and creating the conditions for durable solutions to enable their return, resettlement/relocation and reintegration. The second instrument is the IDPs protocol in the International Conference Great Lakes Region (IC/GLR).⁴ This protocol reinforces and 'sub-regionalizes' the UN Guiding Principles in order

² The actual number of the IDPs is not known with certainty by any institution, due to lack of profiling the many types of IDPs that exist as explained in the second part of this Report.

³ In March 2008, the GoK was implementing an amorphous programme of forcefully 'repatriating' IDPs back to their homes of habitual residence. This is what IDPs in Naivasha camp referred to as '*Operation Rudi Nyumbani Bila Kitu*' (Operation Return Home without anything). This is because most IDPs were sent home only with food ration but without cash facilitation.

⁴ In November 2004, eleven Heads of State and Government including Angola, Burundi, Central African Republic, Congo (Republic of), Democratic Republic of Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia unanimously adopted the Dar Es Salaam Declaration on Peace, Security and Development in the Great Lakes region in Dar Es Salaam, Tanzania. Subsequently, the Great Lakes Pact on Security, Stability and Development was signed in December 2006.

to ensure protection, assistance and search for durable solutions for displaced persons and communities that host them. The IC/GLR agreement has ten (10) protocols and/or legal instruments, three (3) of which are directly related to IDPs concerns as follows:

- The protocol on the protection and assistance to IDPs which obligates state parties to adopt and implement the UN Guiding Principles on IDPs;
- The protocol on the property rights of the returning persons addressing the land and property rights of returnees; and,
- The protocol on the prevention and suppression of violence against women and children.

Kenya is a signatory to the IC/GLR Pact and also 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 derived⁵. As such Kenya has national and international obligations to ensure effective protection of and assistance to IDPs in their return, resettlement, relocation and reintegration.

Recognizing this, the KHRC launched the project to monitor and examine the fulfillment of human rights obligations by the Government of Kenya in the implementation of the ORN programme. Therefore, this Report is a compilation of facts and figures gathered by KHRC's during the period May to October 2008. It forms part of the KHRC's outputs in its constructive engagement with the national reconstruction processes.⁶ The programme was still ongoing as this Report was compiled.

1.2. Project Goal

The overall goal is to initiate a rights-based monitoring and response to the IDPs' resettlement processes and outcomes.

1.3. Project Objectives

The following are the specific objectives of this monitoring exercise:

- 1.3.1.** To ensure compliance by Government and other State and non-State actors to the minimum human rights and humanitarian standards set by the UN Guiding Principles and the IDPs protocols in the IC/GLR.
- 1.3.2.** To devise an integrated and rights-based monitoring and evaluation tools on the resettlement of IDPs among other pertinent issues.
- 1.3.3.** To collect and disseminate factual data and information on the situation, needs and concerns of IDPs in the camps, host communities, 'returnees' and those displaced between 1991 to 2008.
- 1.3.4.** To enhance timely, informed and well coordinated responses to the violations and complaints of IDPs.

⁵ Indeed the IC/GLR is an improvement of the UN Guiding Principles. The African Union is also working on an IDPs Convention which expected to be the best improvement of both the previous two. Once a State Party signs the IC/GLR pact, it automatically ratifies all the ten(10) protocols whose mode of domestication is provided for under a module legislation

⁶ Other monitoring and advocacy processes were focused on electoral governance during the campaign and balloting periods, responses to post election crisis and the current ORN Programme. The Commission is also engaged in the key policy, legal and institutional reforms initiatives.

- 1.3.5. To equip and empower the National Network of IDPs and the Regional Advocacy Networks to coordinate the monitoring of the compliance processes.

1.4. Methodology

1.4.1. Focal areas

KHRC's monitoring of *ORN Programme* targeted three provinces: Rift Valley, Nyanza and Nairobi. The areas were amongst those that witnessed escalated violence and massive displacement. In addition, the areas had unique characteristics that were essential in conducting comparative analysis. Table 2 below provides the list of constituencies and specific areas where the monitoring exercise took place.

Table 2: Geographical Areas Monitored

PROVINCE	CONSTITUENCY	SPECIFIC AREA
Rift Valley	Mt Elgon	Kopsiro, Cheptais
	Subukia	Bahati, Kabazi, Ndondori,
	Cherangan,	Cherangan, Kaplamai, Chera,
	Saboti	Saboti
	Kwanza	Kwanza, Endebess
	Kipkelion	Kipkelion
	Ainamoi	Kericho,
	Kuresoi	Kuresoi, Kamara, Keringet, Olenguruine
	Molo	Molo, Njoro, Mauche Elbulgon, Lale
	Tinderet	Nandi South
	Eldoret East, Eldoret South, Eldoret North and Eldoret Town	Burnt forest, Timboroa, Langas, Kondoo, Nyakinyua, Ngarua, Usalama, Geiti, Lorian, Nyakio, Turbo, Maili Inne, Kiamba, langas, Cheplanga
	Nakuru Town	Barut, Lanet, Ngata, Solai, Mbogoini, Rongai
	Narok North, Narok South and Transmara,	Ildamai, Narok Town, Ntulele, Ololonga, jogoo, Mulot, Lolgorian, Kilgoris, Kirianganyi
	Marakwet East and West	Tirap, Tot, Kapyego, Tunyo, Kapcherip, Chebiemit, Kapsiriar
Nyanza	Muhoroni	Muhoroni, Tinderet,
	Nyakach	Sondu, Katitu & Pap Onditi,
	Nyando,	Ahero and Awasi,
	Kisumu	Kondele
Nairobi	Kasarani	Mathare, Huruma & Korogocho
	Embakasi,	Dandora and Baba Dogo,
	Langata	Kibera
	Starehe	Huruma
The KHRC is also monitoring the status of IDPs who were forcefully repatriated from Ruring'u Stadium in Nyeri to Rift Valley, Nyanza and Western provinces.		

(Source: KHRC 2008)

1.4.2. Monitoring and Advocacy Process

A total of twenty four (24) monitors were deployed in the areas listed above and in particular camps and other locations where IDPs were present. Eighteen (18) monitors were deployed in Rift Valley, three (3) in Nyanza and three (3) in Nairobi. The Monitors were drawn from the IDPs Network and Communities Human Rights Networks.⁷ The monitors were taken through rigorous training which included familiarization with data collection tools and capacity development on data collection skills. The monitoring tool was devised to guide and provide a framework for monitoring, data collection and compilation of report.⁸ The tool covered four key issues as outlined below:

- a) Provision and enjoyment of all the basic needs and fundamental human rights by IDPs;
- b) Creation of conditions and environment for durable solutions for IDPs'
- c) Responses to other key obligations and expectations of IDPs; and,
- d) Mobilization and availability of resources required to support all the above-mentioned obligations.

In the course of the monitoring of resettlement, the KHRC and its monitors interacted with and interviewed the IDPs, government authorities, Non-Governmental Organizations (NGOs), Community Based Organizations (CBOs), Faith Based Organizations (FBOs) and developmental agencies working on issues related to IDPs.

In addition to the reports filed by the monitors, the KHRC reviewed other sources of information including the media reports and documents on IDPs that were produced by other organizations like UNOCHA, KNCHR, UNICEF, and Peace-Net among others. The KHRC also conducted reflections with the IDPs Network and the members of the Communities' Human Rights Networks, so as to gather information and receive feedback on issues related to IDPs in various parts of the country. Further still, the KHRC and IDPs Network carried out a fact-finding mission from the 29th September 2008 to 3rd of October 2008 with a view to:⁹

- 1) Corroborating the human rights and humanitarian concerns of IDPs emerging in the monitoring of the ORN programme;
- 2) Enhancing solidarity with the IDPs over the emerging violations; and,
- 3) Engaging with the local State and non-State actors over the above concerns.

Before this Report was compiled, KHRC endeavored to engage relevant actors. That is, KHRC lodged a number of formal complaints and sought responses from the local and national authorities over some of the issues that were reported. For instance, KHRC made attempts to correspond with Dr. Naomi Shaban and Prof. George Saitoti seeking responses and action on pertinent issues raised by IDPs at different times.¹⁰ The letters were also copied to selected state agencies and non-state actors. The KHRC also sent an international petition to Prof. Walter Kalin, representative of the UN Secretary-General on the Human Rights of IDPs.

⁷ These Networks are issue-based people's organizations, which are based within the five regions where KHRC operate namely; Coast, Northern(North Eastern province and Upper Eastern sub-region), Western (Western and Nyanza province), Rift Valley(North and South Rift) and Eastern (Nairobi, Central and Eastern province)

⁸ The Monitoring Tool is attached herein as Appendix 1.

⁹ See Appendix 2.

¹⁰ These are the Ministers of State in charge of the Special Programmes and Internal Security and Provincial Administration respectively. These were copied to other relevant Ministries such as Lands or Justice, National Cohesion and Constitutional Affairs as examples.

1.4.3. Scope of the Investigation and Official References

To enhance accountability and credibility in the monitoring and advocacy processes, the KHRC relied on two (2) human rights instruments which Kenya is a signatory to, and two (2) official documents by GoK, as outlined below:

- a) The UN-Guiding Principles on IDPs;
- b) Three IDPs Protocols in the IC/GLR;
- c) National Reconciliation and Emergency Social and Economic Recovery Strategy that was developed by the National Accord Implementation Committee to help deal with the IDPs issues that were occasioned by the post-election violence; and,
- d) Kenya National Dialogue and Reconciliation Plan of Action, which was developed by the National Dialogue and Reconciliation Committee to guide the policy and legal initiatives for underlying long-term issues.

With this, KHRC and IDPs Network monitored the resettlement process. This Report documents major findings from that exercise. However, before embarking on these findings and our recommendations, the concept of internal displacement is discussed before, to bring forth the context of our findings and recommendations.

2.0 INTERNAL DISPLACEMENT IN KENYA

2.1 Definition of IDPs

According to the protocol in the IC/GLR, IDPs are:

“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, and who have not crossed an internationally recognized State border”.¹¹

In addition to leaving their homes as a result of actual or potential conflicts, the protocol further provides that IDPs could be persons who have been forced to flee from their homes as a result of “large scale development projects” but none the less who have not an international border. This gives the dimension that socio-economic activities such as those in Dominion Farm in western Kenya or activities of Tiomin in Kwale, are also IDPs.

2.2 Nature of Displacements in Kenya between 1991-2007

There have been numerous causes of internal displacements in Kenya including floods, drought, forceful evictions by the State, fights between communities for basic resources, politically instigated displacements, among others.¹² However, reports from various sources indicate that most internal displacements in Kenya have been occasioned by violent conflicts related to land, water and other resources. Further still, reports also note that manipulation of ethnic differences by political class, especially during electoral periods, has also resulted in displacement in Kenya.

¹¹ Article 4 and 5

¹² Prisca Mbura Kamungi, *The current situation of IDPs in Kenya*, Jesuits Refugee Service, 2001.

Indeed, the history of the politically-instigated ethnic clashes and internal displacements can be traced back to the emergence of multi-party democracy in the early 1990s. During this time, the ruling party Kenya African National Union (KANU) led by the former President Daniel arap Moi, used violence to frighten and suppress any dissenting individuals, parties and even communities who were perceived to be against KANU regime. As such, the State-sponsored ethnic violence targeted opposition-leaning individuals and communities like Kikuyus, Luos, Luhyas and Kisiis among others.¹³ Another unique feature was that most of the politically instigated violence occurred in the run up to general elections in particular 1992 and 1997. It is believed that this was aimed at creating animosity between communities to disenfranchise them or force them to vote for the KANU regime. The events that preceded the general elections of 2007 and the violence that subsequently erupted affirm the fact that tactics, patterns and trends of politically instigated displacements are still alive in Kenya.

While the displacements of people after the post-election violence that gripped Kenya in 2007 attracted incomparable national and international attention, it is important to note that electoral violence and its concomitant internal displacement are not new phenomena in Kenya. As noted above, there was violence, forced evictions and displacement of persons in various parts of the country in the run up to and during the multi-party general elections of 1992 and 1997. According to KHRC and FIDH, there were already over 360,000 IDPs in Kenya by May 2004.¹⁴ Other sources indicate that the figure had risen to about 450,000 by 2006.¹⁵ This led Kenya to be ranked 7th amongst countries with high numbers of IDPs in Africa. Other reports by the UNOCHA indicate that, at the end of 2007, there were still 380,000 IDPs from the clashes that had been experienced in 1990s.

2.3 Displacements during and after 2007 General Elections

The post-election violence that gripped Kenya after the announcement of the disputed presidential election results of the general election 2007 led to further displacements in most parts of the country. This situation occasioned gross injustices and humanitarian crisis to IDPs. The actual figures of those who were internally displaced by the violence is not known with certainty, more so because there are people who were not hosted in the official camps but sought refuge amongst communities where there was relative stability and peace. The IDPs camps were mainly found in Agricultural Society of Kenya (ASK) show grounds, schools, church compounds, police stations, chief's camps, prison compounds and so on. This made it difficult to have reliable statistics, which was also attributed to the haphazard registration and a lack of profiling of IDPs by the concerned authorities.

However, the United States Institute of Peace Building estimated the number of IDPs that were displaced by the post-election violence 2007 to be about 600,000 persons. The Government Humanitarian Services Committee report dated 19th February 2008 places the estimates at 351, 000 IDPs. On the other hand, the figures by Kenya Red Cross Society (KRCS) which are more widely quoted show that there were 283, 670 IDPs hosted in 235 camps across the country and around the borders.¹⁶ Table 3 below provides a breakdown of the figures.

¹³ Mutuma Ruteere, *Dilemmas of Crime, Human Rights and the Politics of Mungiki Violence in Kenya*, KHRI, 2008

¹⁴ FIDH and KHRC, *Massive Internal Displacements in Kenya due to politically instigated clashes April 2007*.

¹⁵ Edmund Jennings, *Internal Displacements Internally Displaced Monitoring Centre (IDMC) 2006*

¹⁶ The figures were presented by KRCS at a meeting held in Nairobi on the 28th of March 2008.

Table 3: IDPs in Red Cross Camps

	Region	No. of Camps	No. of IDPs
1	North Rift	52	88,524
2	South Rift	117	87,119
3	Nyanza	13	3,866
4	Western	17	15,502
5	Central	32	5,000
6	Nairobi	4	2,459
7.	Coast	3	75,000
8.	Uganda		6,000
9	Tanzania		200
	Total	235	283 ,670

(Source: Kenya Red Cross Society, 2008)

According to reports provided by KRCS in August 2008, about 226,187 IDPs had been returned to their pre-displacement areas and just over 15,000 IDPs were camping in 14 camps in some parts of the country by August 2008.¹⁷ On the other hand, reports by the Ministry of Special Programmes showed that a total of 226,187 IDPs had returned to their homes by August 2008 and only 19,439 were still in the camps in parts of the country. Table 4 below provides a breakdown of IDPs who were still in the camps, as indicated by GoK.

Table 4: Number of IDPs in Camps (August 2008)

Region	IDPs in Camps
Kachibora	330
Endebess	279
Uasin Gishu Show Ground	3,000
Molo	362
Nakuru Show Ground	4,300
Nakuru North Dondori	445
Naivasha	9,000
Narok North	10,063
Turkana Central	1,800
Kakamega	201
Kisii	199
Nairobi	821
Central	552
TOTAL	19,439

(Source: Ministry of Special Programmes, 2008)

Recently, the latest figures from the Ministry of Special Programmes, as at October 2008, indicate that there are 7,690 people still living in camps in Nakuru, Eldoret and Naivasha, while another 76,400 are living in another 129 transit camps around the country. The combined Government figure of 84,090 still in camps and 220,000 being cared for by the KRCS seems to leave a large number of IDPs unaccounted for.¹⁸ Therefore, as we monitored the resettlement exercise, there were IDPs still in camps with no institution with exact figures.

¹⁷ UNOCHA-Kenya, *Humanitarian Update*, Volume 32, August 2008

¹⁸ *Sunday Nation*, October 12, 2008.

3.0 IDPs RESETTLEMENT: FORCE, THREATS AND LIES

3.1 Setting Up

Following the signing of the Accord in February 2008, a National Accord Implementation Committee (NAIC) was appointed and mandated to *inter alia* identify short, medium and long-term policies for implementation by GCG. The Committee developed actions that were to be carried out for the period March to June 2008, so as to mitigate the effects of the post-election violence. The Committee's strategy covered five key areas: a) security; b) peace building and reconciliation; c) resettlement of IDPs; d) revitalization of productive sectors and e) restoration of damaged infrastructure and positive engagement of the youth.¹⁹

On the issue of IDPs, a Mitigation and Settlement Committee (MSC) was set up by the GoK to work with other established and relevant national Committees to resettle IDPs. In particular, the MSC was expected to work with the National Steering Committee on Peace building and Conflict Management in the restoration of peace and normalcy. Consequently, the IDPs return and resettlement programme dubbed ORN Programme was launched. However, it is important to note that the government had began closing camps and compelling IDPs in Nairobi to return to their homes way back in February and March 2008, long before the official launch of the ORN Programme.

Further still, two other operations, 'Ujirani Mwema' (Good Neighborliness) and 'Tujenge Pamoja' (Let's Build Together) were subsequently started in an effort to reintegrate the IDPs in their original homes or in new areas of resettlement. The aim of 'Ujirani Mwema' was to cement and bond different communities together, while that of 'Tujenge Pamoja' was meant to encourage communities to rebuild their lives together and encourage all the IDPs to move out of camps back into their homes. The effectiveness of the subsequent operations is partly alluded to in this Report.

3.2 Rationale and Assumptions for ORN Programme

According to NAIC's strategy that was developed by the GoK, the resettlement and reintegration of IDPs was meant to enhance development, alleviate suffering, improve Kenya's negative image, ensure security and enhance enjoyment of human rights. Judging from its design and implementation thus far, there are numerous underlying concerns and assumptions that could have led to the launch of the programme. To the KHRC, the key assumptions behind ORN programme included:

- (i) The IDPs in the camps were facing real threats related to health, security, food shortage and disruption of education. The GoK was meant to provide food, shelter, security and basic services to the IDPs with support from other well-wishers. Provision of the basic services and support by well-wishers was waning with time. The GoK was also concerned that the humanitarian demands were growing by day yet it lacked adequate funds and mechanisms to ensure coordination and management of the crisis in a systematic and sustainable manner.²⁰

¹⁹ Report of the National Accord Implementation Committee on National Reconciliation and Emergency Social and Economic Recovery Strategy, 2008

²⁰ The Government had left the management of the camps to international agencies, such as the Red Cross, which are used to managing short-term humanitarian crisis. The agencies were however overwhelmed and unwilling to bear the obligations of the State forever.

- (ii) Further, there were fears that the rainy season would find IDPs in the camps and the GoK was afraid of the burden they would have to bear as far as diseases and provision of other basic services were concerned.
- (iii) The country's food security was under threat because some of the areas, such as Kitale, Uasin Gishu, Eldoret, which were worst hit by the violence were central to the national food production.
- (iv) Some of the IDPs were alleged to be engaging in criminal activities that had aggravated insecurity within the camps and the areas neighboring the camps.
- (v) The problem of IDPs was also impacting negatively on other productive sectors like tourism, trade and general investment. As such the GoK wanted to impress upon the international development partners, investors and tourists that all was well in Kenya.
- (vi) The money that was being used to maintain IDPs in the camp could be used to construct houses and other facilities for those IDPs who had returned.
- (vii) Most of the people in the camps were seen as masqueraders and not genuine IDPs.
- (viii) The spirit of the National Accord would trickle down to the IDPs and they would be obviously willing to return home.
- (ix) The IDPs were willing to return home but were being incited by some actors who purportedly wanted to remain relevant.
- (x) The promise for compensation based on return would entice the IDPs to go back without any resistance.
- (xi) The use of State security and administration agencies, especially the Kenya Police Force and Provincial Administration, in the implementation of ORN programme would intimidate IDPs to return home.

These 11 assumptions and concerns were at the heart of the ORN programme. Unfortunately, as we monitored the resettlement programme, key revelations emerged. The reality had dawned on both GoK and its agencies: ORN was a failure, as it was not well thought out and implemented. Thus, *force, threats and lies* were needed to cloud the failures, and ensure successful repatriation, but not resettlement. This Report uncovers these violations to the principle of *non-refoulement* (against forceful return).²¹ Below, the three sub-sections depict: a) emergence of transit camps; b) reasons given by IDPs for not leaving camps; and c) major findings of this exercise.

3.3 Emergence of Transit Camps

While GoK aimed at closing down the main camps that dotted across valleys and hills of Kenya, this was not really successful as many more camps emerged. The camps described in this report fall under four categories, divided in the context of KHRC's monitoring exercise. These are:

- a) *Main camps*: These are the 'original' camps to which IDPs fled to since the violence broke out and still exist to date.
- b) *Transit camps*: These camps were set up when IDPs were moving from main camps to areas near homes of habitual residence; and have also been referred to as 'satellite' camps.
- c) *Main/Transit camps*: There are times when the main camp doubled as a transit camp, especially where these were close to IDPs' habitual residence.

²¹ Although the principle of *non-refoulement* (against forceful return) is entrenched within international refugee law, KHRC has used it to demonstrate the utter disregard to security concerns of the government, when it was forcing IDPs to go back to their home. Forced return is outlawed in the international and regional principles of IDPs.

- d) *Settlement camps*: These were created by IDPs unwilling to stay in main or transit camps, and are unable to return to their homes of habitual residence due to factors outlined in this report.

The KHRC monitors reported that a large number of IDPs who left the main camps to return to their homes ended up in make-shift or transit camps for lack of resources to rebuild their homes or for fear of hostile local communities. Most people in the temporary camps could not access any humanitarian services. In other areas, organizations were offering aid to IDPs who remained behind and ignoring those who had been forcefully repatriated.²² Box 1 below depicts some of the transit camps that exist in Kuresoi and Eldoret, as examples of such camps that exist in Kenya to date.

Box 1: Transit Camps Illustrated

Kuresoi

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

Eldoret

In Eldoret it is reported that those who left through the *Operation Rudi Nyumbani* that commenced in May 2008 went to transit camps like Ainaptich, Chepkanga, Moiben, Raio Farm, Chebororwa, Kaptagat, Tarobi, Jasho, Kiambaa and Yamumbi, Rehema, Outspan, Iruha, Kimori, Langas, Huruma, Maili Inne. Others went to Soi, Turbo, Lelmorok and Sogi.

3.4 Reasons Given by IDPs for Remaining in the Camps

During the monitoring exercise and also the fact-finding mission, the following were the main reasons that IDPs gave, as to why they had refused to leave the types of camps above:

- i) **Landlessness**: A number of IDPs are landless and have nowhere to return. They had hoped that the government would settle them to some other locations.
- ii) **Business people**: Other IDPs were business people and had rented business premises, which were vandalized and robbed during the post-election skirmishes.
- iii) **Insecurity**: Some IDPs are afraid of returning to their farms for fear of attacks. Some of the affected farms in Kuresoi constituency include, Ndeffo, Mwahe, Kio, Chemanel.
- iv) **Education**: Other IDPs can access their farms but their children have joined schools around the camps and they do not want to disrupt their learning process.

²² The institutions providing humanitarian assistance in Kuresoi at the moment are Danish Refugee Council, Kenya Red Cross Society and Catholic Relief Services. The Danish Refugee Council provided to each IDP 12 kg of fertilizer (D.A.P) and 7kg of green feast seeds (peas). However, they only catered for some few individuals in Kuresoi and Kamara divisions and target 600 families.

- v) **Inaccessible Farms:** Some IDPs in the camp have no access to their farms, others have their boundaries altered and trees cut down and sold. Some farms have also been taken over by host communities using them as grazing fields.
- vi) **Poverty:** Some IDPs lost all they had and therefore cannot sustain their livelihoods in their homes and/or places of habitual residence.
- vii) **Shelter:** Those who would like to move to their farms cannot do so since they have no shelter in their farms.

The above seven reasons explain why many people have not been able to leave the camps since such a move would cause more displacements. Below are the major findings of this monitoring exercise.

3.5 Major Findings of the Report

According to the reports filed by the field monitors, information gathered by KHRC's fact-finding mission and those gathered from other sources such as reports by stakeholder institutions, the implementation of the ORN Programme flouted the internationally and regionally accepted standards and principles that govern resettlement of IDPs. The GoK failed to provide the requisite protection and assistance to IDPs as outlined in these instruments.

Consequently, most IDPs have found themselves in precarious and deplorable conditions that stripped them of their human rights and dignity. Majority still lack security, adequate food, decent shelter, quality health care, safe drinking water and proper educational services and facilities. Most families are still languishing in worn-out tents in hundreds of transit camps that emerged after the closure of the main camps as a result of the ORN programme.

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

The findings captured in this report have been grouped into seven (7) key areas that touch on gross human rights violations, poor governance and humanitarian crisis. In particular, the areas include;

- 1) Poor Co-ordination and Corruption
- 2) Mismanagement of IDP Profiling Process
- 3) Exclusion and Suppression of IDPs and other Stakeholders
- 4) Insecurity and Poor Inter-communal Relations
- 5) Child and Gender-based Violations
- 6) Inadequate Shelter
- 7) Compensation

3.5.1 Poor Co-ordination and Corruption

The UN Guiding Principles on Internal Displacement places the primary responsibility on the Government to provide protection and humanitarian assistance to IDPs within their

jurisdiction.²³ Similarly, Article 3 of the IDPs protocols IC/GLR obligates the Government to lead the coordination, protection and assistance of IDPs.

However, this monitoring exercise has established that the implementation of the ORN Programme lacked proper governance and effective accountability mechanisms thus causing confusion that resulted in a host of human rights violations and suffering of IDPs. In particular, there are concerns that the Ministry of State for Special Programmes sidelined other key Ministries that would otherwise add a lot of value to the implementation of the ORN Programme.²⁴ At Word of Faith main camp (in Limuru), IDPs claim that there is no coordination between the Ministry of State for Special Programmes and local Provincial Administration. On its part, the Administration cites that the said Ministry and other concerned national authorities issue directives without taking into consideration local realities. In Naivasha main camp (as local stadium), IDPs also claim that there is no coordination between the Ministry of Special Programmes and the Administration, in addition to which they have been excluded from decision making on matters that concern them.

Some of the Local Administration officials interviewed, on condition of anonymity, acknowledged that the ORN programme had failed due to poor coordination by the Ministry of State for Special Programmes. Senior members of government have also admitted as much during a tour of main and transit camps in the Rift Valley, castigating the Ministry of State for Special Programmes and the Provincial Administration for failing to meet its original timetable and targets for resettlement.²⁵ Further still, the National Humanitarian Fund Advisory Board has blocked Kshs. 330 million (USD 4.8 million), in procurement for building materials for the displaced, citing unaccountable systems in place, or an authentic register available.²⁶ Indeed, within the Ministry of State for Special Programmes, cases of disharmony have been reported in the press.²⁷ This has led in further disharmony between the above Advisory Board and the said Ministry.

The disharmony amongst the implementing bodies has led to a situation where the displaced continue in their desperate situation. Moreover, there have been complaints about corrupt Administration Chiefs who were requesting payments before they could register IDPs. For instance, when a KHRC monitor visited the IDP registration offices in Soliat sub-location in Kuresoi he found the Acting Assistant Chief charging Kshs. 20 for registration of IDPs; yet this is a free service. Some IDPs who turned up for registration at Temoyetta Primary School were turned away because they could not raise the registration fee. Similar cases were also reported at Lulukwet sub-location where it is alleged that an Assistant Chief was demanding for payment before he could register IDPs. At Kamwaura Center, Chiefs were requesting each farm to contribute Kshs. 1,000 before their members could be registered. Majority of IDPs in

²³ Principle 3

²⁴ The ORN Programme was meant to be coordinated by the Ministry of State for Special Programmes in collaboration with the Ministry of Provincial Administration and Internal Security, Ministry of Agriculture, Ministry of Lands and the Kenya National Commission on Human Rights.

²⁵ Deputy Prime Minister, Uhuru Kenyatta, as reported in the *Daily Nation*, September 5, 2008.

²⁶ Part of the payment is also stuck with the Cooperative Bank of Kenya. Sources say the bank had experienced difficulties processing payments because vouchers and relevant documents were not forthcoming.

²⁷ *The Standard*, Monday September 1, 2008.

Mutaragon farm (in Kipkelion), have not received the Kshs. 10,000, which they claim was mostly paid to outsiders and not genuine IDPs.²⁸

3.5.2 Mismanagement of the IDP Profiling Process

The IDPs protocol in the IC/GLR is emphatic on the requirement for needs assessment and registration of IDPs. In particular, the protocol states that that Member States are responsible for assessing the needs of IDPs, and shall to the extent necessary, assist the IDPs with registration and maintain a national data base of the same.²⁹ Although proper profiling is central to the success of any resettlement or return programme, there is evidence that registration of IDPs in Kenya has been haphazard, incoherent and marred with corruption. This is evidenced in part above, and also by the absence of factual figures and details of IDPs in the country even amongst key GoK ministries, departments and agencies.

This is further compounded by the re-labeling of IDPs particularly by the Government. When the government launched the ORN Programme, it christened the IDPs as ‘dislocated’, ‘returnees’, ‘internal refugees’ and so on. They went further to term those who refused to leave the camps as ‘remainees’. Such categorization led to the criminalization, stigmatization and mismanagement of IDPs.³⁰ In some other areas the Provincial Administration has been accused of mistreating and handling IDPs like criminals. Some of the IDPs interviewed claimed that the confusion was Government’s tactic to frustrate them and evade the compensation of IDPs.³¹

Reports by the field monitors in Kuresoi and Molo indicate that a number of IDPs have not been registered. In Kuresoi, there are allegations that there was inadequate personnel and political goodwill by the GoK to reach out to all IDPs in the area. In addition, the exercise of profiling of IDPs was carried out in two uncoordinated sets. One was being carried out by the Ministry of State for Special Programmes while the second one was being conducted by the Ministry of State for Internal Security and Provincial Administration. In Molo, there were complaints of shortage of registration forms throughout the process. In addition, there are claims that insecurity in the area has made it impossible for the IDPs to access the registration centers where the profiling officers had been stationed. Most IDPs could not afford the charges that were being levied for registration. The IDPs allege that they had been subjected to numerous registration exercises and in every case they were being asked to contribute some money ranging from Kshs. 10 to Kshs. 50. Further still, the confusion over IDPs’ lists is frustrating IDPs in all the following camps:

- a) Naivasha main camp, where IDPs picture profiles are deliberately being mislabeled to benefit strangers;
- b) Rironi transit camp (Kuresoi), where IDPs allege that the Assistant Chief, has developed several lists, some of which have his cronies;
- c) In Jogoo transit camp (Kuresoi), where none of the IDPs have received the Kshs. 10,000 due to claims by Government that it had not received the list from the DC.

²⁸ Field monitor in Kuresoi Constituency. Rift Valley IDPs have petitioned the Prime Minister and the Kenya Anti-Corruption Commission (KACC), accusing the administrators in the Rift Valley of demanding money from them before issuing compensation.

²⁹ Article 3

³⁰ The DC Molo and DO Dundori were reported to have claimed that the government has dealt with the real IDPs and that those who now purported to be IDPs were in fact criminals.

³¹ When the Government organized a funds drive to raise money to resettle IDPs they only managed to raise Ksh1.46 billion of the targeted Ksh 30 billion. Perhaps this perception by IDPs is founded on such reality.

- d) In Karirikania transit camp (Kuresoi), less than 200 people have received the Kshs.10,000, and the DO claims to have a list of only 360 people yet the camp has 3,100 people (700 families).

Indeed, as time progresses it becomes even more difficult to verify who among the IDPs have been paid, and how much. For example, in Muchorwe transit camp (in Kuresoi), allegations of double registration of some IDPs have been recorded and as such, the GoK has preferred to ignore the whole camp instead of sorting out the problem. IDPs in Lelu farm (Kipkelion) allege that there is deliberate confusion in registration by the Administration. In this camp, IDPs claim that they only received Kshs.8, 000 instead of the Kshs.10, 000, which even some of the locals received, yet they were not genuine IDPs. In Burnt Forest main camp there were claims of that camp leaders deliberately excluded the names of IDPs from certain ethnic communities from lists. In Eldoret main camp IDPs whose names were excluded from lists were not being given food and only received emergency rations.

3.5.3 Exclusion and Suppression of IDPs and other Stakeholders

The UN Guiding Principle on IDPs is emphatic on the need for involvement of organizations in the provision of necessary assistance to IDPs with the consent of the State.³² Similarly, Article (3) of the IDPs protocols in the IC/GLR states that where the Government lacks the capacity to protect and assist IDPs, they shall accept and respect the obligation and collaboration of the organs of the international community. Some of the principal actors who were identified in the ORN resettlement and reintegration programme included, the GoK, IDPs, CSOs and international humanitarian organizations, multilateral and bilateral agencies, corporate organizations and individuals among others. However, the Government remains with the primary responsibility of providing protection and assistance to IDPs at all times. Failure to adhere to these principles and obligations has led to, among others, the following consequences and/or violations:

- (i) Exclusion from participating in key decisions processes;
- (ii) Humanitarian crisis as a result of withdrawal of social services;
- (iii) Threats and intimidation from Kenya Police Force and Provincial Administration;
- (iv) Unmitigated crime and insecurity; and,
- (v) Congestion and poor housing.

The fact-finding mission revealed that IDPs were not adequately involved in the ORN Programme in most of the areas, with many complaining that they were not meaningfully consulted on the implementation of the programme. In most camps too, Government had ceased responsibility towards the IDPs, directly by withdrawing support, and indirectly through compelling withdrawal of international humanitarian organizations that had been serving the IDPs.

IDPs at Word of Faith camp (Limuru) claim that Administration has been threatening them and making life in the camp unbearable in order to force them out of the camp, even labeling the IDPs criminals and militias. IDPs alleged that they have to get approval from the DC in order to get treatment from hospital; the tents are leaking and need replacement; not to mention the unresolved psychological trauma suffered by the Kiambaa group.³³ At Naivasha camp the Administration has been threatening and coercing IDPs to leave by such actions as

³² Principle 25

³³ These IDPs came from Kiambaa, Eldoret, where the grotesque act of burning down a Church took place.

removal of services by development organizations, and reduction or delay in food supply to IDPs. The GoK also cut water supply to the camp, withdrew mobile clinics and destroyed early childhood education facilities in the camp, in addition to which the Provincial Administration has now warned IDPs that they face forceful eviction if they failed to move out.³⁴ IDPs at Eldoret camp have also been threatened with forceful eviction by the area DC. The DC of Nandi South also warned the IDPs against returning to the area, claiming it would fuel tension. In other areas IDPs have been allowed to return but are warned against operating any business.

At Karirikania camp, between 7 and 12 IDPs are being forced to share a single tent, and are being frustrated by the Administration. The KRCS removed water tanks and disconnected water supply to the camp, and the food provided to the IDPs is grossly insufficient. Tractors that were brought by GoK to plough farms for the IDPs only served a ¼ acre each for about 20 families only. Indeed, even where farms are ploughed, IDPs cannot plant as they have not yet received seeds and fertilizer. Those in Mutaragon farm (Kipkelion) and Burnt Forest camp, that did receive seeds, IDPs allege were given the wrong varieties that failed to germinate. IDPs in Muchorwe camp are experiencing similar treatment. IDPs allege that the area Chief has been harassing them and threatening to evict them from the camp. Water supply to the camp was disconnected in May 2008, and the IDPs last received food rations in May 2008. Government's refusal to reinstate teachers in schools like those serving Mutaragon farm, Burnt Forest camps and Rironi camp is also an abuse of the IDP children's right to education.

In Ruringu camp IDPs have even faced harassment from the local communities – some IDPs have been thrown out of the houses they were renting over the belief by landlords that they (integrated IDPs) were also paid the Kshs.10, 000, in addition to which the Administration has denied them letters recognizing them as IDPs, subjecting them to constant harassment and suspicion.

Provincial Administration is alleged to have used force to coerce IDPs at Noigam, Kitale Showground and Endebess to return home and leave the camps. In Noigam / Cherangani Hills for instance, the DC allegedly refused NGOs to access to provide basic services to over 700 IDPs remaining in the camp. To suppress IDPs demands for their rights, the GoK resorted to use of force and intimidation thus curtailing their freedom of assembly and association. Reports received by KHRC indicate that IDPs' rights to life and dignity have been violated in cases where the state security apparatus used excessive force either to force IDPs out of camps or disrupt their protests against arbitrary relocation.³⁵

The Kenya Police Force is also complicit in such harassment of IDPs. For example, police officers in Nakuru allegedly shot and killed a peaceful demonstrator, Peter Kamau and seriously injured another, John Kamau Mugoan June 21, 2008.³⁶ This is contrary to the UN Guiding Principles on IDPs, which provides:

³⁴ The last deadline given for closure of Naivasha main camp was September 30, 2008.

³⁵ Press Release by KHRC on June 17, 2008. See various media reports

³⁶ The demonstration was organized by IDPs to express their concern over the disappearance of one, Mr. Kariuki, and their dissatisfaction with the ORN programme. See various media reports

“IDPs have the right to request and to receive protection and humanitarian assistance from these authorities, and shall not be persecuted or punished for making such a request”.³⁷

Finally, there are allegations of monopolization of the ORN Programme by the Government. Many CSOs have complained of deliberate exclusion from the resettlement and reintegration of the IDPs. They accused the Government of mischief for locking out some key non-state actors from the ORN programme.³⁸ The organizations stated their dissatisfaction with the manner in which the whole process was being managed by the Government. This they said was against the requirement of the ‘cluster approach’ that seeks to ensure the inclusion of key partners in the resettlement and reintegration of IDPs.³⁹ The ‘cluster approach’ worked well in Kenya though it was largely dominated by the human rights, humanitarian and development organizations. There are also concerns that the Government has neither been supportive nor committed to the process.

3.5.4 Insecurity and Inadequate Inter-communal Relations

According to UN Guiding Principles, the GoK has the primary duty to guarantee security of IDPs to enable them to return to their home or to resettle voluntarily, in safety and with dignity.⁴⁰ The GoK is required to put up adequate measures for the return of IDPs with provision of adequate security for return and enjoyment of their human rights. They are also supposed to facilitate peace, reconciliation and reintegration of IDPs within the host communities. The reports filed by the field monitors and findings from the fact-finding mission show that the GoK contravened the above principle by using force and threats to compel the IDPs to return to their homes even after it had emerged that many IDPs were nervous about returning home for fear of harm from their neighbours.

In addition, the Government failed to involve host communities and to launch effective peace and reconciliation initiatives. Reports indicate that members of some host communities had complained of being forced to co-exist with their neighbours instead of being given a chance to discuss their differences and find a common ground for co-existence. As a result the ORN resettlement programme has faced serious impediments that cannot merely be attributed to ordinary teething problems as has been suggested by the Government.⁴¹

According to the reports by field monitors, most IDPs especially those who returned to their homes or to farms adjacent to their homes were forced back to the temporary camps due to threats on their lives, which they received mostly through hate leaflets. Others were forced back to the camps by fresh attacks that had been launched in areas where they were meant to return. There are reports from Kamwaura (Kuresoi) that leaflets are being circulated warning non-

³⁷ Principle 3(2), 8 and 12

³⁸ Recently, UNICEF, KHRC and KNCHR expressed similar sentiments during a consultative meeting that was held at the KNCHR offices to review the progress of the ORN Programme.

³⁹ The cluster approach is aimed at ensuring more coherent and effective response by mobilizing groups of agencies, organizations and NGOs to respond in a strategic manner across all key sectors or areas of activities. Each sector is supposed to have a clearly designated leader. However, the clusters are supposed to be in consultation with the Government as the authority with the primary responsibility to protect and assist IDPs, and as such must always work towards phasing out or transcending and handing over their delegate responsibility to the Government. Some of the clusters are nutrition, health, water/sanitation, camp coordination & management, early recovery, logistics, emergency shelter and so on.

⁴⁰ Principle 28

⁴¹ *Daily Nation* 9th May 2008.

Kalenjins to vacate the area. The leaflets warn that if Government dares implement the Mau eviction, then Kikuyus and Kisiis should vacate their farms.⁴²

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

At Sirikwa in Kuresoi, it is alleged that people believed to be from the Kalenjin community issued threats to Kikuyus warning them to advise the Government to deal with historical injustices before resettling the IDPs. No peace and reconciliation programmes were initiated in Sirikwa and Kamwaura which are in Kamara and Keringet divisions of Kuresoi respectively. Some of the most volatile and inaccessible farms included, Ndeffo Farm, Nguirubi, Kariba and Chebonde.

In Molo, tension connected to the impending Mau forest eviction is high. There have been high incidences of insecurity in some areas, especially in Sirikwa location within Kuresoi next to Molo Town. The IDPs have been intimidated, threatened and even injured when trying to access their farms. Pedestrians along the Molo/Kuresoi main road have also been victimized. There are people admitted to Molo Hospital following injuries suffered while trying to access their farms, while others have already been discharged. They have been warned by their original neighbours that they do not own land in the area. A local livestock officer escaped death, when he was hijacked, beaten and robbed.

Similar threats are being experienced in Kamwaura, Giticha and Githima within Molo District. Again in Molo, IDPs who returned to their homes are living under fear and are afraid of working in their farms. Some IDPs who returned to their homes were robbed of household and livestock. In Cherangany, a primary school teacher was attacked and killed on the 4th July 2008. It was reported that the local communities have not been disarmed. There were reports that some IDPs had been harassed, killed and maimed by the neighboring Pokot community. More so, the police posts were never beefed up in some regions like Munyaka, Sokomoko, Aruba junction and Kesogon which are believed to be susceptible to attacks.

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

⁴² There are controversies surrounding the eviction of people from Mau forest, and politicians hailing from this region are politicizing the matter and inflaming people once again against government and/or those who support it. See various media reports

In Marakwet, increased cases of cattle rustling were reported. For instance, on the 27th July 2008 over 200 heads of cattle belonging to people said to be from the Kikuyu community were recovered in the middle of Kabolet forest which had become a dangerous hideout for cattle rustlers. Tension is also high at Rironi camp, Kuresoi, where there have been cases of theft and cattle rustling. IDPs at Jogoo transit camp also claim that high tension in the area has barred them from accessing and returning to their farms. There is similar tension at Karirikania camp, where some local community members graze their animals in the farms belonging to IDPs, who are still unable to access their farms due to insecurity.

In Subukia, some IDPs who had opted to return to their farms in Ampiva (Solai location) were shocked to find that all their crops had been uprooted and the farms had been turned to grazing land. Noteworthy is that the high insecurity had been compounded by lack of adequate security personnel. For instance police at Bahati camp are expected to take care of the people in Ampiva which is quite a distance away.

In Burnt Forest, many IDPs were scared of returning home because of fear of attack. Most of them were reluctant to return to their homes because they feared fresh attacks and had not overcome the trauma occasioned by the post-election violence.⁴³ On 15th July 2008 Mr. Romei Boi was attacked and killed in his house in Kayosi Cooperative Farm. On the same date Pastor Wanjala was killed at Duka Moja marketing centre.

According to residents of Seguton (Kuresoi) tension is still high in the area and they are of the opinion that things might get worse if durable solutions are not sought, and political polarization is not halted. In particular, the residents are accusing the Government and development agencies of discrimination in the provision of food and resources. They claim that too much has been given to the 'non-locals' whereas the locals were also affected by the violence and deserve attention. According to them building of police stations in the area only serves to worsen the situation as it creates an impression that the non-locals are afforded special attention. The residents here have proposed the strengthening of peace committees instead of construction of police stations.

IDPs in Eldoret main camp are plagued with insecurity both inside the camp, where lack of security lights exposes them to theft, sexual and physical violence, and outside.

3.5.5 Child and Gender-based Violations

Both the UN Guiding principles and the IDPs protocols in the IC/GLR have specific clauses that seek to ensure protection and assistance of children and women who are internally displaced. It is not in doubt that the massive displacement that was experienced in Kenya after the post-election violence of 2007 affected many children and women. Reports from field monitors indicate that the *Operation Rudi Nyumbani* worsened the plight of children. Most children suffered trauma as a result of the post-election violence and are in need of psycho-social support to facilitate their recovery through peace-building activities and counseling. Further, many IDP women heading households in the camp are additionally burdened by responsibility for orphaned children. In short, the rights of women and children, and their development have been affected in the following three ways: food security; education; and also, Sexual and Gender-based Violence (SGBV).

⁴³ Daily Nation, 18th July 2008

1) Food Security, Health and Nutrition

The UN Guiding Principles on IDPs states that all IDPs have a right to adequate standard of living. The State is obligated to provide the IDPs with safe access to essential food and potable water at the minimum regardless of the circumstances and without discrimination.⁴⁴ The introduction of the ORN Programme led to the reduced in humanitarian assistance. Most humanitarian organizations halted or slowed their services when the Government commenced the programme in May 2008. It is reported that some of them redirected their efforts to the IDPs who were leaving the camps thus leaving those in the camps without any means of survival. Consequently, many IDPs especially women and children were forced to seek alternative means of survival. This explains the horrendous cases that were reported of women who are forced into sex to get food.⁴⁵ According to reports by Centre for Rights Education and Awareness (CREAW), food shortage had led to cases of sexual violations in camps hosting IDPs. Single mothers were forced to trade-in for sexual favours in return for food for as little as Kshs. 20, which has been described as 'transactional sex'.⁴⁶

In Subukia, IDPs were forced to look for casual work within the neighborhoods to find money for food. Other IDPs were forced to sell the maize they got from KRCS to get money for vegetables, salt and soap which were not being offered at the camp. They also sold the maize to get money for grinding the maize, so that children could be able to eat. In Endebess, the Provincial Administration allegedly refused to recognize over 108 IDPs who had been left in the camps. The IDPs were neither given any food nor any basic services. In Word of Faith camp (Limuru), IDPs get food only once per week, the food is inadequate and the special dietary needs of children and invalids are not catered for. IDP women at Muniu settlement camp in Maai Mahiu said they were selling their maize rations in order to buy food for their children. At Naivasha stadium camp, pregnant mothers are forced to give birth in the camp since the Government withdrew mobile clinics from the camp, making emergency medical cases impossible.

At Rironi transit camp women pointed out the fact that they were facing serious health risks as they now were cleaning the toilets and bathrooms using their bare hands since they are no longer given protective gear. As an old woman in Rironi posed to the KHRC fact-finding mission: "*Does the Government want us to die in these camps?*" The women and girls have also not been provided with sanitary towels since the ORN programme began. At Jogoo camp, the women request for underpants in addition to the sanitary towels. The IDPs here are forced to go long distances to get medical attention from medical centers in Molo, where they are charged a fee that majority cannot afford. IDPs at majority of the camps have to pay some amount of money in order to get medical treatment, even for children. This is partly because most of the humanitarian organizations that had been providing medical services in the camps have since pulled out. IDPs in Eldoret showground camp report that they are required to produce their National Hospital Insurance Fund (NHIF) card before treatment at the district and referral hospital in Eldoret, again a requirement that is bound to affect women and children more due to the vulnerabilities described above.⁴⁷

⁴⁴ Principle 18

⁴⁵ *Saturday Nation*, 26th July 2008

⁴⁶ Documentary aired on local TV stations in August 2008

⁴⁷ In camps like Muchorwe, Karirikani and Eldoret, where water supply has been cut since beginning of ORN, children are especially vulnerable to water borne diseases from the unhygienic conditions and poor sanitation.

Further, the shelters in which the IDPs live are precarious health hazards in themselves. In majority of cases the IDPs use cooking stones, *jikos* and paraffin stoves to cook inside the tents, exposing them to respiratory ailments; on top of which they are exposed to dampness and cold owing to harsh weather conditions. IDPs interviewed by the fact-finding team in Eldoret showground camp and Burnt Forest, allegedly reported high prevalence of diseases such as pneumonia, joint pains from past injuries, ulcers, malaria and typhoid. Among children, mumps and chickenpox are also prevalent. There is malnourishment and increased child mortality. Pregnant women are also worse off, due to compromised diets, and lack of access to medical care. They also lack access to **Prevention of Mother to Child Transmission (PMCT)** care.⁴⁸ In addition, women being overall carers, producers and reproducers of families in the camp, are overburdened by the load of caring for children, including orphans, the sick and looking for income all at the same time.

The standard food rations given to IDPs at onset of the ORN in May are 45 kg of maize, 12 kg of beans, and 3 litres of cooking fat. However, at the transit, main and settlement camps food distribution is inadequate and highly skewed. At Muniu settlement camp (Maai Mahiu), women are trading in maize for children's food; there is reduction and gross delays in food supply to Naivasha camps since ORN began in May; while IDPs in Muchorwe transit camp have not received any food rations since May 2008. IDPs in Mutaragon farm are also experiencing food shortage as they were supplied the wrong maize variety which dried up in the farms. At Burnt Forest, IDPs are relying on food aid which is brought only once a month, during which time unregistered IDPs miss food rations. Eldoret showground camp is among the worst hit – the IDPs were last supplied food on 23rd August 2008.

Women, children and men's access to food items distributed by the humanitarian agencies is inequitable in many camps. IDPs in Muchorwe camp and Eldoret showground reported skewed distribution of food, as women, who were normally away from the camps during the day (mostly working part-time in surrounding farms or in the town) when food rations were brought were passed over. Women in Burnt Forest camp reported that camp leaders among the IDPs took the food and distributed it only to their relatives or ethnic kinsmen. In addition, those IDPs who are not registered do not get food, apart from emergency distribution of food.

2) Education

During the post-election violence, schools were razed and some destroyed all over the country. This had adverse impact on the right to access education as most learning institutions were closed down, while some lost essential facilities. When it comes to the right to education, the UN Guiding Principles on IDPs provides:

“The State is obligated to ensure that IDPs and in particular internally displaced children receive education which shall be free and compulsory at the primary level. The State is also required to ensure availability of education and training facilities to all IDPs in particular adolescents and women whether or not they are living in camps”.⁴⁹

In this monitoring exercise, reports indicate that in some areas IDPs had not gone back to the farms with their children because of fear. It was discovered that in most of the schools the non-Kalenjins pupils were fewer. In Kuresoi, most of the schools were opened but few students and fewer teachers reported back. At Sundu River, there was high community hostilities and

⁴⁸ Prevention of Mother to Child Transmission of HIV/AIDS

⁴⁹ Principle 23

mistrust. A head teacher at Umoja Primary School was forced to hold staff meetings at the local center because he could not access his school. Due to insecurity, he was monitoring the school from a distance, as was advised by the Ministry of Education. At the same school, no single teacher/student from non-Kalenjin communities had returned back. The head teacher had never stepped in this school since last year. Further north, in Subukia, not all children went back to school. Those who were adversely affected were those in secondary schools and those who had just completed their class eight since they did not collect their result when violence erupted.

In Molo, the ORN Programme had major effects on the lives of the IDPs as far as education was concerned. For instance, children who had enrolled in schools in Molo were not willing to leave the camps and return home. In Jogoo and Mlima Primary school camps in Molo, IDPs were living in the school compound while learning was still on going thus interfering with the students. At Rironi camp Kuresoi, due to lack of tents some of the IDPs are forced to reside in the classrooms of Koigi Secondary School, which has remained closed to students as a result. In Mt Elgon, most IDPs camped in learning institutions. For instance, about 2,000 IDPs camped in Kebee primary school in Kopsiro division, Elgon Bible School near Kapkirwok Primary school had 1,500 people while Kobura Primary school had 1,200 people. This has interfered with learning in the area.

At Nakuru Show ground, the Government had to rescind its decision to pull down tents meant for Early Childhood Development classes after IDPs protested vehemently over the move that they alleged was a plot to force them out of the camp.

Though children in the IDP camps were accorded admission in surrounding schools, most schools complained of lack of adequate resources to meet the increased student population. Reports show that lack of facilities and increased teacher to student ratio in such schools affected the quality of education. Although ongoing in majority of the transit camps surveyed, the quality of education for IDP children has been seriously affected by the following factors:

- (i) In some areas like Rironi and Jogoo, IDPs were staying in classrooms thus preventing re-opening of some school.
- (ii) IDPs are still expected to pay school fees, despite the inadequacy of compensation from the government, and lack of income. Some are indeed using the Kshs.10, 000 token to pay school fees.
- (iii) Termination of early childhood education in IDP camps has adverse effect on children; idleness and many visibly exploited for labour in the camps.
- (iv) Many local schools are seriously affected by failure of Teachers' Service Commission (TSC) teachers to return to work. Though youth have volunteered as teachers in some areas like Rironi, they are paid only Kshs.1, 000 - amounts that cannot sustain them.
- (v) There are claims that IDP children from certain communities are not being considered for bursaries, again forcing parents to use the token money from government to pay fees.
- (vi) There are additional financial burdens for women who took in orphans affected by the post-election violence - majority cannot afford the extra fees burden.
- (vii) In Karirikania (Kuresoi) and Eldoret showground camps secondary school IDP children are being harassed and chased home for school fees.

- (viii) In Eldoret town, hundreds of school-aged children are ending up begging in the streets. Girls on the street are particularly at risk of sexual violence.

Education was cited by the IDPs as one of the reasons for not wanting to leave the camps, as most children are attending school and some are about to sit for their national examinations. Majority of the problems experienced with education in the IDP camps are not a factor of gender, and affect both boys and girls similarly. Rather, they owe to lack of adequate resources, high pupil numbers, lack of teaching materials and teachers, and other structural problems.

These problems, however, introduce elements of discrimination based on gender, whereby boys are given priority in accessing and completing their primary and secondary school education over girls. For example, the makeshift, overcrowded classrooms (like those found in Eldoret showground camp) where boys and girls are forced to squeeze together on a few desks create conditions that increase vulnerability of young girls to sexual abuse. In addition, lack of proper sanitation and unavailability of sanitary pads is also distressful for girls, and affects their attendance and performance at school.

3) Sexual and Gender-based Violence

The KHRC monitors filed reports with specific cases of women rights violations. In particular, it is reported that incidences of rape were rife within the camps and for the IDPs who had returned to their homes. It is said that some of the violations have been perpetrated by civilians and security personnel. In Endebbes it is reported that women are being raped mostly by police deployed in the area to maintain peace. Although the fact-finding mission did not find much evidence of rape and sexual violence within the camps, the circumstances surrounding the living arrangements of the IDPs, their dire financial situation, and lack of access to sexual and reproductive health care are all factors contributing to the increased vulnerability of IDP women and girls (including men and boys) to sexually transmitted diseases and HIV/AIDS, unwanted pregnancies and rape.

Just as traumatic as the physical acts of sexual violence are damning, so are realities of 'transactional sex'. All these have affected responsiveness of humanitarian agencies and government response to the needs of IDP women and girls affected by sexual and gender-based violence. At the same time, dominant narratives of IDP women's victimhood at the hands of rapists denies the immediacy of their claims to broader economic, political and social rights and spaces. Such narratives have the effect of silencing and ignoring aspects of the IDP women's livelihood and survival choices/alternatives like transactional sex or illicit brewing of alcohol that are considered illegal, yet which present considerable challenges to women's safety and security, including their relationship with the law, which ought to protect them.

3.5.6 Inadequate Shelter

The UN Guiding Principles on IDPs states that all IDPs have a right to an adequate standard of living.⁵⁰ The State is obligated to provide the IDPs with safe access to basic shelter and housing at the minimum regardless of the circumstances and without discrimination. Similarly, Article 5 (5) of the IDPs protocol in IC/GLR places responsibility for provision of adequate and habitable sites on the Government.

⁵⁰ Principle 1(8)

Unfortunately, reports from field monitors and the fact-finding mission found that IDPs are subject to pathetic living conditions, exposed to harsh weather and crowded accommodation. This poor housing is a feature of all the IDP camps. At Word of Faith camp, IDPs tents are torn and leaking, and have not been replaced since inception of the camp in January 2008. This is also the case in Burnt Forest camp and Eldoret showground camp, where the especially old people and children were living in deplorable conditions. IDPs in Muniu camp have to put up with makeshift shelter made from polythene bags and torn tents, without poles to support the shelters.

Moreover, some IDPs in Rironi and Jogoo (both in Kuresoi) are living in classrooms as they have no tents, and are sleeping on the floor as they neither have blankets nor mattresses. Others are hosted by relatives and friends in crowded tents of up to 12 people, thus preventing the hosts from leaving as they would render their guests without shelter. By 17th July 2008, 54 families from Kirathimo camp were still camping under the tree near Narok North DCs office.

In camps where construction of houses has began, IDPs are lamenting the poor quality of housing. At Karirikania camp 50 people were given construction materials (20 iron sheets, 14 posts and roofing timber, 3 kg nails and black polythene paper) but the IDPs have to find their own rafters. They were neither provided doors nor windows. Further, whereas the Danish Refugee Council (DRC) and United National High Commissioner for Refugees (UNHCR) promised to build 299 houses for the IDPs, they have only supplied materials for 50 houses. In addition, the quality samples that were erected by the DRC are different from those provided for construction. At Lelu farm, the IDPs were only given 20 iron sheets and frames by GOAL Ireland and left to construct their own houses using polythene bags. IDPs in Burnt Forest say the houses being built are of poor quality – the model houses should have been 14x14 ft. yet the ones under construction measure only 11x14 ft. 15 houses have so far been constructed in Timboroa.

3.5.7 Compensation

The IDPs Protocol in the IC/GLR places responsibility squarely on the State to compensate IDPs for loss and destruction of property. The State is not only obligated to compensate the IDPs, it is also required to develop an elaborate framework for compensation to aid in the determination of appropriate compensation package for the IDPs.⁵¹

Closely linked to the poor coordination and corruption described above with regards to administration of the ORN programme is the issue of compensation. Government compensation and/or facilitation to IDPs have been piecemeal, and the perception now is that the pledge to compensate IDPs was merely a way of enticing them to return home. This facilitation was envisaged at two levels: Kshs.10, 000 for all the IDPs to cater for basic needs after moving from the main camps; and Kshs.25, 000 for reconstruction to those IDPs who had returned. Both provisions were grossly inadequate given the needs of the IDPs and the losses they suffered in the course of displacement. IDPs have either not fully received the Kshs.10, 000, Kshs.25, 000 and/or both.

On 10th May 2008 the DC in Molo held a public Baraza at Sawmill Camp and promised that all the IDPs who returned to their farms were to be compensated, and accorded assistance such as construction of houses. In Kamara Division in Molo, the Government had promised to give

⁵¹ Article 8

the IDPs seeds, fertilizers and other farm inputs but that has not happened. Consequently, many IDPs defied the orders to return home without proper compensation. Although the displaced people in some of the IDP camps welcome the move, most of them are concerned about the guarantee of their safety and access to basic necessities (food, shelter, health, education and sources of livelihoods) once they return to their farms.

Reports from the monitors indicate that only a small percentage of IDPs have received the token Kshs. 10,000 from GoK, and fewer still the Kshs. 25,000. The GoK made promises of compensation, which have informed the demands of IDPs, ranging from assistance to purchase land, as is the case with IDPs. In Word of Faith camp (Limuru), the IDPs are appealing to GoK for assistance to help them purchase land and settle those IDPs who previously did not own land.⁵² This latter demand is expressed by IDPs in Nakuru showground and Burnt Forest camp. Thirdly, as is the case with those in Ruringu camp, the IDPs are seeking legitimization through letters of official recognition from the GoK, to enable them benefit from the financial tokens and other forms of assistance being extended to IDPs.⁵³

In the latest move to find lasting solutions for the IDPs problem, the Government has pledged financial assistance to IDPs – it plans to give loans to IDPs who wish to start businesses.⁵⁴ The Advisory Board acting Vice-Chairperson stated that the loans would be given to those still in camps and those who have been resettled, and further, that any IDP who wants to start a business and wants a financial boost would benefit from this project. Speaking at Nakuru Showground camp, the Vice-Chairperson urged the IDPs to explore businesses they would wish to start, and commended those at the camp who had used the compensation money to buy land.⁵⁵

The Rift Valley Provincial Commissioner, has indeed acknowledged that many IDPs still remained in the camps and that some may not be able to return to their homes or farms due to the fact that most of those remaining in the camps do not own land, majority lived in urban areas where they rented houses, and the situation has been compounded by the urban poor, some of whom have moved to camps in order to get help. The PC also said that the GoK is encouraging those who can pool together to buy land and is urging the United Nations and other charitable groups to help such people in putting up the infrastructure required – sanitation facilities, health facilities, education and other social needs. He further said that the Government is looking at the issue of the displaced who had bank loans and could not service them during displacement, and was looking at ways of assisting these people.⁵⁶

⁵² These IDPs have scheduled a fund raising for 9th November 2008 and are appealing to government to help the raise the Kshs. 98.4 million they need, to purchase 328 acres of land for settlement in Lanet.

⁵³ In addition to financial compensation, the GoK also pledged to supply IDPs with farm input, seeds, fertilizer and building materials.

⁵⁴ *The Standard*, Monday October 13, 2008

⁵⁵ Some of the IDPs, like those in Muniu camp who received the Kshs. 10,000 resettlement aid have pooled together to purchase land in areas other than their place of origin.

⁵⁶ IRIN, 30 September, 2008.

3.6 The Forgotten IDPs

A number of IDPs have been forgotten and/or neglected owing to poor profiling, as mentioned above, and targeting by state and non-state actors. Cases in point are the IDPs in the urban slums and traders who were internally displaced.

3.6.1 IDPs in the Informal Settlements

Kibera

Kibera-based IDPs were hosted at the Jamhuri show ground camp. However, when the government introduced the *ORN Programme* most people dreaded going back home because they feared that they would be attacked again. While some went back and others were taken to their rural homes, others migrated to other parts of Nairobi including Mukuru and Mathare. The IDPs were ambushed one day and were given less than forty eight hours to prepare to go home. The IDPs were not accorded any security to return home nor were attempts made to deal with the root causes of the problem to ensure durable peace. Currently, there are some IDPs who are still living in Waithaka at the D.Os offices and others at the Kibera chief's camp.

It is alleged that some IDPs who returned to their homes were threatened and forced to relocate to more secure areas mostly close to their ethnic groups. Most Kibera IDPs returned home just to find their houses and business premises razed or vandalized. The Government has not compensated these IDPs.

Korogocho

In Korogocho Slum the post-election violence revived animosity between owner of the structures and tenants. Most of the displaced persons from Korogocho were the landowners from Ngomongo mostly from Kikuyu communities. Most of them sought refuge with their relatives and nearby police stations. The problems between the landlords and tenants have not been addressed as some tenants who invaded property have refused to move out while other have refused to pay rent. According to the Kasarani DO, the authorities are in a dilemma over ways to claim property invaded by tenants without collapsing the fragile peace.⁵⁷ It is worth noting that Article (4) of the Great Lakes protocol obligates the State to assist the IDPs to recover to the extent possible their property and possessions left behind or were dispossessed of upon their displacement.

Mathare

During the post-election violence, Mathare had more than 1000 IDPs who had been displaced from Mathare slums and neighboring areas like Kariobangi and Huruma. So far there are about 691 people in three different camps in the area.

Table 4: IDPs around Mathare

Camp	Situation
a) Mathare Chief's Camp	This was the largest IDPs camp in Mathare. It had a population of 427 with: Adult males-78, Female-201 and Children-113(female: 52, male: 61). Most of the IDPs in this camp were land owners. The KRCS was facilitated provision of food for the IDPs but since the <i>ORN Programme</i> started the food supply was cut. Information from the IDPs is that they filled the government forms for

⁵⁷ Daily Nation, July 2008: Interviews and findings by Centre for Rights Education and Awareness.

	resettlement in June 2008 but had received no response. Most of the IDPs from this camp were demanding for protection and compensation. The IDPs from the Mathare chief's camp claimed that the area chief had failed to protect the IDPs. There were also allegations that a donation of iron sheets to the IDPs through the Chief from Cheshire Home in Kariobangi did not get to the IDPs.
b) Soul Winning Camp (Mathare 4)	The Soul Winning IDP Camp had a population of 206 people: Adult 142(male: 86, Female 56) and Children 64(Male: 27, Female: 37) Most of the people in this camp were willing to return to their homes but claimed they lacked materials to rebuild their structures. They also filled the form for resettlement but had not received any feed back from the government.
c)P.C.E.A Church Camp	The camp had a total of 58 internally displaced persons all from Mathare slum: Adults 39 (male 7, female 32) and Children 19 (male 7, female 12). All the IDPs were hosted in one of the halls in the church compound. Basic needs like water and toilet are provided by the church. Food supply was cut when ORN Programme commenced. The IDPs in this camp claimed that they had no place to return to since their houses were burnt down.

(Source: KHRC, 2008)

3.6.2 Landless IDPs

Most of the IDPs who are still in both main and transit camps are largely those who do not own land. The resettlement process gave priority to those who owned land. *Operation Rudi Nyumbani* focused on people who fled their farms and ignored landless IDPs. Traders who were internally displaced claimed that their businesses were razed, looted and vandalized. They have demanded compensation from the Government to enable them rebuild their businesses. According to NAIC, the GoK had set aside Kshs. 10 billion to assist traders who had been displaced to rebuild their premises.

In Molo, the IDPs who claimed to be business people refused to leave the camps. The Baraka camp in Molo is still hosting a number of people who were either business community or those who rented farms. In Subukia, IDPs in *Maji ni Mingi* near Solai refused to return to their homes claiming that when they fled their positions in the farms were taken by others who were looking for jobs. In Cherangany, IDPs who were camping at Noigam vowed not to return to their homes. Most of them were residents of Kapcherop in Marakwet district whose business premises were destroyed and others shut down.

3.6.3 IDPs Displaced between 1991 – 2007

For many years, the problem of internal displacement in Kenya has been either ignored and or given lip service more so when it is attributed to natural disasters, human related factors and marginalized communities/ regions. While many have been internally displaced major causes such as floods, famine, conflicts over resources, development induced evictions; political violence has been the major emphasis. Internal displacement somehow became an issue of national and international action after the politically and state instigated violence in the 1990s.

Thus, the GoK has forgotten those IDPs displaced between November 1991 – November 2007 by politically instigated clashes, and has mainly focused on IDPs as a result of the post-election violence between December 2007 and February 2008, mainly within Rift Valley province. The GoK has also forgotten IDPs displaced in other regions as a result of armed conflict between November 1991 and November 2007.

3.7 Key Recommendations

Based on the findings and the above mentioned points of reference, the KHRC and the National Network of IDPs recommends the following:

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

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

3.7.2 Profiling and Involvement of IDPs: There is need to take proper and accurate census of IDPs in view of the specific causes of displacement, time of displacement, type of needs amongst other essential concerns. In addition, IDPs must be incorporated in decision making at all levels and their concerns as to how they would like the government to run the ORN Programme be taken into account.

3.7.3 Security and Inter-communal Relations for IDPs: The Government must guarantee security to IDPs who are willing to go back to their homes. In this respect, peace building and reconciliation initiatives must precede the return of the IDPs for sustainable peace. In addition, the government should address the issues of tenants and landowners, which are quite glaring and explosive amongst IDPs in the urban slums. Moreover, the GoK needs to identify and eliminate the root causes of internal displacements and to develop effective early warning systems to curb eruption of conflicts and violence.

3.7.4 Coordination and Leadership: the government should be at the forefront in providing leadership over all the short, medium and long-term interventions on IDPs. In cases where other development partners offer to coordinate different initiatives individually or collectively, the partners should put in place appropriate measures to ensure sustainable and systematic transition to allow

responsible Government authorities to continue. Nevertheless, the partners should sustain their support, monitoring and evaluation initiatives. The Government should effectively involve other stakeholders e.g. CBOs and NGOs in the ORN Programme. In addition, the GoK should consider making the composition and operations of the Advisory Board more participatory, independent, accountable and effective. All the key State and Non-state actors working on diverse IDPs issues should be involved.

3.7.5 Reparations: The Government must develop an elaborate and accountable framework for reparations to IDPs for loss of lives, property and livelihoods. Subsequently, the GoK must also appreciate the difference between the current facilitation of Kshs. 10,000 and 25,000 and the legitimate claims of IDPs for comprehensive reparations.⁵⁸

3.7.6 Protection to Women, Children and other Special Interest Groups: The Government should put in place mechanisms for protection of IDPs with special needs and interests. This includes protection and assistance to women and girls, children, persons with disability, the sick, among other interest groups.

3.7.7 Provision of Durable Solutions: the State needs to develop effective structures for supporting IDPs early recovery, sustainable livelihoods and/or durable solutions.⁵⁹ The GoK should put in place the necessary legal and policy measures to deal with the root causes and the manifestations of all the injustices facing IDPs, some of which include but are not limited to:

a) **Policy on IDPs:** the GoK should hasten the process of formulation, enactment and implementation of a policy to deal with matters related to protection and provision of assistance to IDPs in Kenya. The policy should be elaborate and progressive and should address the interests and rights of all IDPs in Kenya.

b) **Land Policy:** there is need to expedite the formulation and implementation of the draft national land policy in order to deal with historical land injustices and repugnant land governance systems. These

⁵⁸ According to International Law, the right to remedy and reparations entails restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition. Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law (Basic principles on the right to a remedy and reparation) was adopted and proclaimed by UN General Assembly resolution 60 / 147 of 16 December 2005, UN Doc. A/RES/60/147. For details, see Appendix 3.

⁵⁹ The IDP phenomenon, though shaped around the 4 agendas, was initially located in agenda number 2 and has now graduated to Agenda No. 4 for the purposes of durable solutions as expected. The 4 agendas during the National Negotiation and Dialogue Process are namely Agenda No. 1 (Cessation of violence); Agenda No. 2 (humanitarian assistance and restoration of basic rights); Agenda No. 3 (the restoration of the political crisis) and Agenda No. 4 (the resolution of long term underlying issues). For details about the current status of IDPs and this agenda refer to 'Kenya National Dialogue and Reconciliation (KNDR): Agenda Item 4: Long Term Issues and Solutions Matrix of implementation agenda' advertised by (KNDR) in *Daily Nation*, Nairobi, Thursday August 21, 2008.

injustices and systems are the basis for conflicts and massive displacements in many parts of the country.

c) Disaster Policy: this policy is required to provide mechanism for disaster preparedness in order to deal with humanitarian crises and other emergencies related to and beyond internal displacements. In addition, the ongoing formulation of a strategic plan by the Ministry of State for Special Programmes must include specific strategies and performance indicators on IDP-related issues.

d) National Security, Peace and Conflict Policies: Consultative formulation and effective implementation of these policies will help the State to deal with insecurity and conflict issues in a sustainable and well-coordinated manner. Thus, a security component should be added to the draft Peace and Conflict Transformation Policy to avoid duplication of governance frameworks on related issues.

e) Transitional Justice, Constitutional and Institutional Reforms: An effective and victim-centered TJRC, a people-centered human rights plan of action, democratic constitution and progressive judicial and electoral reforms are essential in pre-emption of displacements and provision of mechanisms required for effective remedy.

f.) Overall Justice and Accountability Concerns: In addition to the above, action should be taken against persons who make hate speeches and incite communities against each other and perpetrate violence and internal displacements. The Government must implement the recommendations of the Commission of Inquiry into the Post-election Violence (CIPEV) Report, the Independent Review Commission (IREC) Report and the Report of the Akiwumi Commission of Inquiry into Ethnic Violence in Kenya.

4.0 CONCLUSION

It is glaringly evident that the ORN Programme has failed to meet the basic standards for mitigation and resettlement of IDPs set in the Official and Human Rights Points of Reference alluded to in this report due to several factors. First, and as mentioned elsewhere, the programme was based on the wrong premises and assumptions. Second, the programme lacks the requisite resources and coordination mechanisms. Third, the programme is skewed in targeting, understanding and responding to diverse and pertinent needs and demands of different groups of IDPs. This is partly due to lack of a comprehensive policy framework to deal with the phenomenon of internal displacement in a comprehensive manner.

Thus, the ORN Programme can be termed as a circus of failed promises, unmitigated force and lies, with the State straining and/or struggling to meet its obligations to protect and assist IDPs.

While return and resettlement are essential and inevitable, they must be guided by the internationally accepted principles to ensure that IDPs' human rights and dignity are not violated. The GoK must adhere to the UN Guiding Principles on Internal Displacement and the Great Lakes Protocol as frameworks for the protection of IDPs. The Government must cease from using force, threats and empty promises to compel the IDPs to return to their homes. The Government must also consider the recommendations proposed in this report. In addition, the Government must take care of all IDPs including those who were displaced between the period November 1991 and November 2007, those who were displaced by other factors other than post-election violence and those displaced from areas other than Rift Valley, Nyanza and Western provinces.

END

APPENDICES:

Appendix 1:

A Human Rights Monitoring Framework on Protection of and Assistance to IDPs

a) Introduction

This tool is meant to guide human rights monitors and advocates in identifying, reporting and advocating for protection of and assistance to IDPs in regards to their rights, guarantees and needs⁶⁰ during the so called *Operation Rudi Nyumbani* among other repatriation and response mechanisms.

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

b) Key issues during the monitoring and advocacy processes:

1. *Addressing the basic needs/ fundamental rights of IDPs in all aspects* so as to ensure the dignity and well being of the displaced. This includes but not limited to provision of :
 - Adequate food, clean water and habitable shelter,
 - Good medical care(to all) and education for children,
 - Adequate liberty and security,
 - Non-discrimination and or equal treatment,
 - Protection of and assistance to other rights and needs (mention them).
2. *Creating conditions for durable solutions which includes but not limited to:*
 - Involving the IDPs in decision making-planning and management of their return and or relocation
 - Ensuring voluntary, safe and dignified return and or settlement and reintegration,
 - Rebuilding infrastructure and providing facilities to regain livelihoods,
 - Fostering inter-personal and community relations, peace, conflict transformation and reconciliation
 - Providing adequate security and enhancing access to land for better/sustainable livelihoods,
 - Analyzing the process and impact of resettlement in regards to special protection and assistance to different categories of IDPs, vulnerable groups and family situations. For instance IDPs from single female and or male parents; orphans, women, children(boys and girls), aged, sick, persons living with HIV/ AIDS, persons with disabilities; and those from within and outside the camps, farmers, traders, pastoralists among others,
 - Addressing the roots causes of displacement and initiating mechanisms for effective remedy and accountability to the victims and perpetrators of the displacement and related violations respectively,
 - Participating fully in the public affairs within the area of residence,
 - Deciding on how and when internal displacement ends-on the basis of objective criteria that ensures the respect for the human rights of the IDPs,
3. *Responding to other key obligations and expectations*
 - Involving all the relevant state and non-state actors at all levels and interventions,
 - Collecting and disseminating factual data and information about the numbers, location and needs of IDPs,

⁶⁰ As stipulated by the UN Guiding Principles and other governance frameworks on IDPs.

- Creating national awareness on the rights and needs of IDPs and obligations of the State,
- Building a national consensus around the issues/ problem and making efforts to address the crisis as a national priority,
- Supporting and responding to the monitoring and advocacy roles of independent state and non-state actors,
- Developing a national and sustainable response-legal and policy framework and plan of action, national and regional institutional focal point.

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

Appendix 2: Fact-Finding Questions and Schedule

1. **Compliance:** Is the Government complying with its human rights obligations as envisaged in the UN Guiding Principles on IDPs and the IDPs protocol in the International Conference Great Lakes Region in the *Operation Rudi Nyumbani*?
2. **Success of the Operation Rudi Nyumbani programme:** is the insistence by the Government that the *Operation Rudi Nyumbani* has been a great success the truth or is it a public relations statement? Is it true that there are less than 20,000 people in the camps? How many IDPs are in the main and satellite camps?
3. **Coordination:** How effective is the coordination by the State and Non-State actors working on IDPs issues?
4. **Reparations:** How many IDPs have received the Kshs. 10,000 and 25,000 that was being awarded by Government? Has the government put in place necessary framework for other forms of reparations as envisaged in international law?(see below on reparations).
5. **Durable solutions:** What are some of the mechanisms that have been put in place to address the root causes of displacement and to ensure durable solutions? And what do we need to do in terms of formulation and engagement.

Date	Location	Teams	Day
Monday 29 th September 2008	Limuru and Naivasha	KHRC and National IDPs network	Day 1
Tuesday 30 th September 2008	Molo and Kuresoi areas	KHRC and National IDPs network	Day 2
Wednesday 1 st October 2008	Burnt Forest and Eldoret	KHRC and National IDPs network	Day 3
Thursday 2 nd October 2008	Eldoret, Nakuru Town and travel back to Nairobi	KHRC and National IDPs network	Day 4

Appendix 3: Forms of Reparations

The five forms of reparation which are based on the Basic principles on the right to remedy and reparation, principles 19 to 23 include:

- “**19 Restitution** should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.
- **20. Compensation** should be provided for any economically assessable damage, as appropriate and proportionate to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law such as: a) Physical or mental harm, b) Lost opportunities, including employment, education and social benefits c) Material damages and loss of earnings, including loss of earning potential d) Moral damage e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.
- **21. Rehabilitation** should include medical and psychological care as well as legal and social services
- **20.Satisfaction** should include, where applicable any or all of the following: a) Effective measures aimed at the cessation of continuing violations b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities d) An official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim, e) Public apology, including acknowledgements of the facts and acceptance of responsibility f) Judicial and administrative sanctions against persons liable for the violations g) Commemorations and tributes to the victims h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.
- **23. Guarantees of non – repetition** should include, where applicable, any or all of the following measures, which will also contribute to prevention: a) Ensuring effective civilian control of military and security forces b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality c) Strengthening the independence of the judiciary d) Protecting persons in the legal, medical and healthcare professions, the media and other related professions, and human rights defenders e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement, officials as well as military and security forces f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychosocial, social service and military personnel, as well as by economic enterprises g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law”.