

National Response to Internal Displacement: Achievements, Challenges and Lessons from Kenya

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Overview of Internal Displacement in Kenya

The political crisis that engulfed Kenya after the 2007 disputed election results led to the displacement of 663,921 people across the country. However, this was not the first time the country had experienced violence-induced displacement; Kenya has had a long history of forced displacement linked to conflicts over space among different identity groups in multiethnic regions. In Kenya, as in most agriculture-based economies, those who control land also control economic and political power. The competition for control of land, particularly in the Rift Valley, has been protracted, resulting from mutually exclusive claims based on property rights by migrant groups and assertion of cultural heritage rights by indigenous groups. This has made the Rift Valley the theatre of the most vicious episodes of violence and displacement, particularly since the transition to democracy in the early 1990s.

Identity-based politics and contested land rights are the cause and consequence of cycles of displacement in multiethnic regions. The relationship between political affiliation, ethnic identity and land ownership form the basis for contestation, whereby members of ethnic groups associated with rival political opinion are labelled ‘outsiders’ and violently ejected from their farms. In this regard, contested claims about ‘who owns the land’ and therefore who has the right to vote or be voted for on that land becomes a mobilising slogan in the competition for political power. Political strategies to disenfranchise perceived hostile voters and the culture of impunity for political elites cause displacement to become protracted. Conflicts over land make it difficult for IDPs to return to their farms and for the landless to purchase land elsewhere.

The government’s apparent failure to effectively address impunity and “historical injustices” over land access in the Rift Valley and Coast provinces attenuates the realization of durable solutions for conflict-induced IDPs. This has resulted in increased migration to urban areas and the establishment of transit sites from which returnees commute to their farms during the day. Other IDPs have decided to sell or exchange their land and migrate permanently from ethnically heterogeneous regions to safer areas, a coping mechanism that inadvertently seems to support ethnic cleansing. Similarly, the government’s intervention to buy land for landless IDPs far from where they were displaced also seems to result in that unintended outcome.

Apart from political violence and “ethnic clashes,” internal displacement in Kenya is caused by conflict over natural resources, particularly among pastoralist groups; natural disasters such as floods, landslides, drought and famine; incursions into Kenyan territory by armed militia from Sudan, Ethiopia and Somalia; infrastructure development projects such as the construction of roads; and environmental conservation projects. Seven and a half thousand households have been evicted from forests across Kenya] to conserve the environment.¹ The number of IDPs in Kenya is contested as different sources provide unreliable estimates. The Internal Displacement Monitoring Centre (IDMC) suggests there are about 200,000 IDPs while

¹ These evictions were to restore forested areas and protect water catchments. The need to remove those encroaching on forests was widely supported by Kenyans but the manner of eviction raised public outcry because it was done without notice and very violently, in disregard of international eviction laws and Kenya’s own Eviction Guidelines.

government statistics indicate that there were only 158 households in eight camps as of the end of May 2011.

The government did not expressly recognize the presence of IDPs before the 2007 post-election crisis. However, the national and international response to internal displacement in Kenya since 2007 has employed the cluster approach as the *modus operandi*. Kenya has experienced both the advantages and challenges of the collaborative response as reported in the Cluster Approach Evaluation report, particularly the challenge of coordination and the lack of an exit strategy at the end of the emergency phase and the beginning of the early recovery stage.² Lack of timely and efficient profiling of IDPs created loopholes for imposters to infiltrate IDPs camps, where they pose as IDPs in order to benefit from assistance programs, including land allocation. While the Ministry of Special Programs is the line ministry, it is a headquarters ministry with hardly any field staff; implementation of IDP-related programmes is carried out by other collaborating Ministries such as Lands, Internal Security and Provincial Administration. Since ministries are equal and autonomous, inter-ministerial coordination and oversight are palpable challenges for the line ministry. In addition, ineffective sequencing of IDP management activities led to use of force to close camps. Failure to consolidate peace and reconciliation efforts to create conditions of voluntary, safe and dignified return, lack of meaningful consultation with IDPs and receiving communities in host areas; contributed to rejection of IDPs seeking to settle in safer regions. The lack of clear policy guidelines for the management of the IDP crisis has led to concurrent application of ad hoc and disjointed approaches—such as disbursement of money, (re)construction of houses and land allocation to IDPs—while large numbers of deserving IDPs are excluded from assistance programs. The 2010 draft National Policy on the Prevention of Internal Displacement and the Protection and Assistance

to IDPs in Kenya, which provides comprehensive guidelines for responding to all categories of IDPs in all phases of displacement, has yet to be adopted and implemented. Enabling legislation has yet to be developed for pertinent draft policies, including a disaster management policy, human rights policy, peace-building policy, and so forth.

The main protection and assistance concerns facing IDPs include violent attacks, including gender-based violence, sometimes by government officials, humanitarian workers, fellow IDPs and members of host communities; lack of food, water and sanitation; and lack of livelihoods. The government has subsidized access to health care and primary school education for all Kenyans; hence IDPs do not face specific challenges in accessing social services. However, in ethnically segregated parts of the Rift Valley, access to schools and other social services is mutually exclusive for IDPs and members of local communities.

The government has taken a number of steps to respond to the problem of internal displacement. This case study examines the progress, challenges and obstacles faced in implementing these measures against the 12 benchmarks in the Framework for National Responsibility. The findings are as of 31 May 2011.

1. Prevent Displacement and Minimize its Adverse Effects

The government of Kenya has taken measures to prevent displacement and minimize its adverse effects. An institutional framework is in place, and a number of initiatives have been taken to formulate policy and enabling legislation to prevent and respond to displacement. These initiatives and the challenges faced are discussed below.

The government has developed a draft national IDP policy: the National Policy on the Prevention of Internal Displacement and the Protection and Assistance to

² Abby Stoddard et al., *Cluster Approach Evaluation—Final*, November 2007 (www.odi.org.uk/resources/download/3820.pdf).

IDPs in Kenya.³ The draft policy aims to “prevent future displacement, to be better prepared, to mitigate and respond to situations of displacement, and to find sustainable durable solutions.” The draft is an important step toward implementing Kenya’s obligations assumed under the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons and provisions of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). The draft policy adopts the definition of IDPs that is provided in the Guiding Principles on Internal Displacement and contextualizes it to include those internally displaced by political violence, natural disasters including climate change, and development projects or projects on preservation of the environment. It also expressly recognizes IDPs in various locations, such as camps, host families, and transit sites in rural and urban areas.

In 2009, the government, through the Ministry of State for Special Programs (MoSSP), also developed the draft Kenya National Disaster Management Policy to institutionalize disaster management and mainstream disaster risk reduction in the country’s development initiatives.⁴ The policy, which aims to increase and sustain the resilience of communities vulnerable to hazards, is based on international and regional initiatives contained in the Yokohama Strategy and Plan of Action for a Safer World (1994), the Johannesburg Plan of Implementation issued at the World Summit on Sustainable Development (2002), and the targets set to achieve the Millennium Development Goals. It is also consistent with the

Hyogo Declaration and Hyogo Framework of Action 2005–15 and the African Union (AU)/ New Partnership for Africa’s Development (NEPAD) Africa Regional Strategy for Disaster Risk Reduction acknowledged by various agencies in 2004.⁵

The National Disaster Management Policy presents a shift from short-term relief responses to sustainable development and continual risk reduction and preparedness. Further, it aims to preserve life and minimize suffering by providing sufficient and timely early warning information on potential hazards that may result in disasters, and it provides measures to alleviate suffering by providing timely and appropriate response mechanisms for disaster victims.⁶ In 2009, the government produced a National Disaster Response Plan, which contains operating instructions for the MoSSP, the Ministry of State for Provincial Administration, the National Disaster Operations Center, government departments and other collaborating partners countrywide. By the end of 2010, disaster management had been mainstreamed in all government ministries, and staff in 80 percent of the districts had been trained in disaster management.⁷ Kenya’s Vision 2030, the blueprint for development, articulates commitment to “enhance disaster preparedness in all disaster-prone areas and improve the capacity for adaptation to global climatic change.”⁸ Nonetheless, the policy has not prevented displacement; predictable seasonal flooding, while drought in arid and semi-arid areas continue to force people out of their homes.

³ The draft policy, developed in March 2010, was at the time of writing (May 2011) still awaiting Cabinet debate and adoption. However, it has been at this stage for more than a year. The delay has been caused by the lack of a champion at the Cabinet level and the general perception that it is not a priority compared with more urgent legislation that needs to be drafted and passed for timely implementation of the new constitution. Interview with a senior official at the Ministry of State for Special Programs, 22 May 2011.

⁴ Republic of Kenya, MoSSP, *National Policy for Disaster Management in Kenya*, Mar 2009, pp.17-8; also http://www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=157&Itemid=1170

⁵ Strategy developed in 2004 by African Development Bank (AfDB); African Union (AU); New Partnership for Africa’s Development Planning and Coordinating Agency (NEPAD); United Nations International Strategy for Disaster Reduction Secretariat - Africa (UNISDR - AF)

⁶ Kenya National Disaster Management Policy, p. 4

⁷ Interview with a senior government official at the National Disaster Operations Centre, 20 January, 2011; training manuals were developed by a task force drawn from government ministries, OCHA, UNDP, universities and NGOs. See OCHA Kenya, *Humanitarian Update* No. 48, May 2009, p. 6

⁸ Republic of Kenya, *Kenya Vision 2030: The Popular Version* (Nairobi, Government Printer, 2007), p.19

In October 2009, through the Ministry for Lands, the government produced the Evictions and Resettlement Guidelines, which outline safeguards against arbitrary eviction or dislocation of populations without procedural protections identified by the UN Committee on Economic, Social and Cultural Rights. The Task Force that developed the guidelines adopted the draft in March 2011.⁹ The National Land Policy (2009) recommends measures to protect the rights of both informal settlers and land owners from forced evictions. The land management guidelines outlined in the National Land Policy are consistent with the new constitution.¹⁰ The Constitution also provides a comprehensive Bill of Rights, including the right to housing.¹¹ It obliges the government to respect the Bill of Rights to prevent all forms of human rights violations, including arbitrary displacement.

The Ministry of Justice, National Cohesion and Constitutional Affairs, in collaboration with the Kenya National Commission on Human Rights (KNCHR), developed the draft National Policy on Human Rights (2010) to provide a comprehensive framework to protect and promote the realization of the human rights of all Kenyans.¹² The draft policy, which adopts a rights-based approach to development, recognizes that the primary responsibility for human rights of all citizens lies with the state. Specifically, it recognizes IDPs as a human rights concern and obliges the government to domesticate and implement the Great Lakes Protocol on the Protection and Assistance to Internally Displaced

Persons and the Kampala Convention and to ensure prompt resettlement of and/or adequate compensation for IDPs.¹³

In September 2009, the government unveiled the draft National Policy on Peace-Building and Conflict Management. The policy provides for peaceful resolution of disputes and notes that coordinated and consistent response to IDPs is a critical part of post-conflict recovery.¹⁴ The government has also developed a peace-building curriculum for primary schools, which has been piloted in several schools in Nairobi and in two regions affected by the post-election violence.¹⁵

The government became a signatory to the Great Lakes Pact and its protocols in 2006.¹⁶ The Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons commits member states to “prevent and eliminate the root causes of displacement.”¹⁷ It further commits member states to adopt and implement the Guiding Principles on Internal Displacement,¹⁸ ar-

⁹ Administrator, ‘Taskforce Approves Eviction and Resettlement Guidelines’ http://www.esrc-hakijamii.com/index.php?view=article&catid=34%3Anews&id=90%3Atask-force-approves-eviction-and-resettlement-guidelines&format=pdf&option=com_content&Itemid=53

¹⁰ Ch. 5 of the Constitution. Interview with Program Officer-Advocacy, Kenya Human Rights Commission who is also a member Protection Cluster, 22 January 2011.

¹¹ Interview with the director, Hakijamii Trust, 20 November 2010.

¹² The draft policy has yet to be debated by the Cabinet. Interview with the director, Adili Consulting, 16 February 2011.

¹³ Government of Kenya, “Draft National Policy on Human Rights,” 2010, p. 25.

¹⁴ Draft National Policy on Peace-Building and Conflict Management, 2009, p. 38. The peace policy is still a draft that has yet to be debated by the Cabinet and Parliament.

¹⁵ Interview with a senior official at the Ministry of Education, 8 December 2010; interview with the director, Nairobi Peace Initiative-Africa, 26 January 2010; interview with UNDP Early Recovery Cluster representative, UNDP, 29 October 2010.

¹⁶ The pact comprises five elements: the 2004 Dar es Salaam Declaration on Peace, Security, Democracy and Development, ten Regional Protocols (two of them specific to displaced persons), Regional Programs of Action, the Special Reconstruction and Development Fund, and a Regional Follow-Up Mechanism. See Prisca Kamungi and Jaqueline Klopp, “The Challenges of Protecting the Internally Displaced through IC/GLR” (www.columbia.edu/~jk2002/publications/KKlopp08b.doc).

¹⁷ Great Lakes Region, Protocol on the Protection and Assistance to Internally Displaced Persons, 30 November 2006, Article 6 (www.brookings.edu/fp/projects/idp/GreatLakes_IDPprotocol.pdf).

¹⁸ Jaksa Brigitta and Jeremy Smith, “Africa: From Voluntary Principles to Binding Standards,” *Forced Migration Review*,

ticles 5–9 of which call on states to prevent and avoid conditions that might lead to displacement.

The government has an elaborate and effective early warning and early response mechanism. It is signatory to the Conflict Early Warning and Early Response Network (CEWARN) Protocol of the Inter-Governmental Authority on Development (IGAD).¹⁹ The national chapter of CEWARN is coordinated by the Conflict Early Warning and Early Response Unit (CEWERU) in the Office of the President. These mechanisms are mainstreamed within the Provincial Administration and complement existing intelligence systems.²⁰ CEWERU has organs dealing with cross-border conflicts and natural disasters, such as the National Disaster Operations Center. In addition to the IGAD initiative, the government has its own national CEWARN, coordinated by the National Steering Committee on Peace-Building and Conflict Management (NSC) and a network of District Peace Committees (DPCs). The NSC brings together representatives from government, the UN, foreign missions, research institutions and civil society. It coordinates early warning and early response efforts through members of the early recovery cluster and a network of field monitors who issue situation reports, incident reports and alerts.²¹ The District Peace Committee brings together a number of actors involved in detecting displacement, including the Provincial Administration and the District Security Intelligence Committee. The government is in the process of establishing a tertiary institution for training in disaster

management.²² The institution will be open to government employees and members of the public.

Several joint government-UN-NGO conflict-mapping initiatives have been implemented since 2008, most of which rely on mobile phone technology and the Internet.²³ In July 2010, the Kenya National Commission of Human Rights, UN Children’s Fund (UNICEF) and the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) deployed field monitors across the country as part of their early warning mechanism ahead of the August 2010 referendum on the Constitution. The joint initiative also established coordination offices in areas considered “hot spots of violence,” such as the Rift Valley and western provinces. The coordination centers are mandated to respond to any incidents of violence while the monitors are to look out for issues such as family separation and tracing of missing persons, denial of access to assistance and provision of assistance or services, forced movement, sexual and gender-based violence (SGBV) and loss and/or destruction of personal documents and property.²⁴ Following the political violence that engulfed Kenya after the disputed December 2007 general election, the two main parties—the Party of National Unity and the Orange Democratic Party—signed an agreement on February 28, 2008 agreeing on a number of steps to address the crisis. The mediation by the African Union Panel of Eminent African Personalities under the chairmanship of Kofi Annan resulted in the parties signing the ‘Agreement on the Principles of Partnership of the Coalition Government,’ which paved the way for the enactment of the National Accord and Reconciliation Act 2008. Under the Kenya

December 2008, p. 18.

¹⁹ Inter-Governmental Authority on Development, *Protocol on the Establishment of a Conflict Early Warning and Response Mechanism for IGAD Member States*, January 2002.

²⁰ The Provincial Administration is a hierarchical governing structure comprising administrative officers from the Office of the President at the top to the village chief and elders at the community level.

²¹ Interview with senior staff at National Steering Committee, 9 February 2011; interview with Conflict Early Warning and Early Response Network representative at Africa Peace Forum, 14 November 2010

²² Interview with a senior government official, National Steering Committee, 9 February 2011

²³ These were most visible during the 2010 constitutional referendum campaigns—for example, Uwiano Platform for Peace. Kamungi Prisca and Okello Julius, *Strengthening Democratic Governance through ICT: Post-Election Reconstruction in Kenya* (forthcoming, February 2012 Africa Peace Forum, 2011); interview with program officer, PeaceNet, 18 December 2010.

²⁴ Minutes of Eldoret Protection Working Group, 28 July 2010.

National Dialogue and Reconciliation (KNDR) agreement, the parties committed to undertake a set of actions under four main agenda items. These were: Agenda Item 1: Immediate action to stop violence and restore fundamental rights and liberties; Agenda Item 2: Immediate measures to address the humanitarian crisis, and promote healing and reconciliation; Agenda Item 3: How to overcome the political crisis; and Agenda Item 4: Addressing long-term issues, including constitutional and institutional reforms, land reforms, poverty and inequalities, youth unemployment, national cohesion, and transparency and accountability.²⁵

Thus, the Kenya National Dialogue and Reconciliation specifically provides for measures to address internal displacement. Implementation of agenda 2 aims to mitigate the effects of displacement and to ensure that displacement does not become protracted.²⁶ Through Operation Rudi Nyumbani (Return Home) the government has endeavored to implement provisions of the peace agreement. In early 2008, the government developed the National Reconciliation and Emergency Social and Economic Recovery Strategy to expedite early recovery and facilitate attainment of durable solutions.²⁷ The National Accord seeks to address the “root causes” of displacement-inducing violence through legal and institutional reforms and measures to resolve the land question and address poverty, unemployment and inequality.²⁸ Operation Rudi Nyumbani] has faced

issues such as corruption allegations, use of force to close camps or disperse IDPs who were demonstrating against delayed disbursement of ‘start-up’ funds, insecurity in return areas and the rejection of IDPs by receiving communities.²⁹

The National Cohesion and Integration Commission (NCIC) was established in 2009 to promote reconciliation after the 2007-2008 election violence. It has become an important institution for preventing violence and displacement by monitoring hate speech and mobilization for political violence.³⁰ The NCIC Act 2008 criminalizes hate speech and elaborates stiff penalties for mobilization of violence. NCIC has received wide public acclaim for preventing displacement. The Truth, Justice and Reconciliation Commission (TJRC) is mandated to look into past human rights violations, including forced displacement, in order to guarantee that such violations are not repeated. However, since its inception in 2009, the TJRC has faced serious credibility and integrity challenges. The chairperson was compelled to relinquish office to give way for investigation of his alleged involvement in the 1984 Wagalla massacre, an issue over which civil society rejected the TJRC as capable of revealing the truth about the past. The vice chair resigned in July 2010, and the TJRC has since lacked public support and participation and the internal capacity and resources to effectively carry out its mandate.

²⁵ For progress on what the government has done on each of these agenda items, see South Consulting KNDR Monitoring Project, Quarterly Review Reports, www.dialoguekenya.org

²⁶ See Annotated Agenda II, Measures to signed by the parties on 14 January 2008

²⁷ The government launched a number of initiatives to return IDPs to their former homes: Operation Return Home [Rudi Nyumbani], Operation Reconstruction [Tujenge Pamoja] to reconstruct damaged houses and infrastructure and Operation Good Neighborliness [Ujirani Mwema] to promote healing and reconciliation.

²⁸ Agenda 4, National Accord. For progress on the extent to which provisions of the KNDR have been implemented, see monitoring and evaluation review reports conducted by South Consulting on behalf of the African Union Panel

2. Raise National Awareness of the Problem

The government of Kenya acknowledges the existence of IDPs on its territory and has taken measures to raise national awareness of the problem. Since the 2007–2008 post-election violence, the plight of IDPs in Kenya is relatively well known within government and among

of Eminent Personalities (www.dialoguekenya.org).

²⁹ South Consulting, Quarterly Review Reports, section on ‘Agenda II’ www.dialoguekenya.org

³⁰ Interview with chairperson, National Cohesion and Integration Commission, 19 November 2010

the population, unlike with earlier IDPs.³¹ The 2007 caseload was highly visible because of the scope and magnitude of the crisis: thousands across the country were affected and there was a massive international response.³²

The Kenya National Dialogue and Reconciliation, signed by the president and prime minister on 28 February 2008, was the first sign of acknowledgement that IDPs were a problem that the coalition government needed to address as a national priority. In March 2008, the government formed the National Accord Implementation Committee, which formulated the National Reconciliation and Emergency Social and Economic Recovery Strategy. The strategy outlined short-term and long-term steps and budgetary estimates towards reconstruction. It prioritized the resettlement and rehabilitation of IDPs. In March 2008 the president and the prime minister made a much-publicized symbolic unity tour of the Rift Valley to signal the end of violence and to encourage IDPs to return home. Although the visit was clouded by a protocol war between the vice president and prime minister and diverted focus from IDPs, other government officials, notably senior politicians, religious organizations and NGOs continue to emphasize the plight of IDPs in the media, encouraging IDPs to return home. The problem has been highlighted in research reports and at peace rallies, and it is the core dynamic in reconciliation initiatives.³³ Media coverage

of the situation in camps, individual IDPs' stories and advocacy activities have raised and sustained public awareness of the problem.

The government has established an institutional framework for addressing internal displacement. It designated the Ministry of State for Special Programs as the IDP line ministry and established the Department of Resettlement and Mitigation within the MoSSP to coordinate efforts to address internal displacement. The MoSSP coordinates all response activities and compiles information on progress and challenges to addressing the IDP problem through the monthly *Status Brief on IDPs*. It collaborates with OCHA Kenya, which produces and widely disseminates the regular *Humanitarian Update*,³⁴ which documents the number, location and plight of various categories of IDPs and crisis situations as reported by a wide range of sources.³⁵

The Ministry of State for Special Programs also collaborates with other initiatives to respond to disasters, including the Kenya Red Cross Society, the Kenya Food Security Meeting³⁶ the Kenya Food Security Steering Group and Arid Lands Resource Management. Specialized organs such as the National Disaster Operations Center in the Office of the President, the Crisis Management Center in the Office of the Prime Minister, the National Environment Management Authority, the Kenya Meteorological Department, local fire brigades, the police and the National Youth Service

³¹ Human Rights Watch, *Failing the Internally Displaced: The UNDP Displaced Persons Program in Kenya* (New York: 1997); Internal Displacement Monitoring Centre (IDMC), *I Am a Refugee in My Own Country: Conflict-Induced Internal Displacement in Kenya* (Geneva: NRC, 2006).

³² Kamungi, Prisca "The Politics of Displacement in Multi-Party Kenya," *Journal of Contemporary African Studies*, vol. 27, no. 3, 2009, pp. 345–64; OCHA Kenya, *Kenya: 2009 Year End Funding Update*, p. 1

³³ These include peace meetings, dialogue forums, peace training workshops, shelter reconstruction programs, sports and games, peace walks/runs, letter-writing, eating together, and so forth. For quarterly reports of these activities since 2008, see OCHA Kenya, *Humanitarian Update*, 2008–11; South Consulting KNDR Monitoring Project Review Reports (www.kenyadialogue.org)

³⁴ During the emergency, the *Humanitarian Update* was released every week. As normalcy returned, it was released once a month. Since 2009, the *Humanitarian Update* and *Status Brief* are released at longer intervals.

³⁵ Interview with a senior official, Department of Mitigation and Resettlement, Ministry of Special Programs, 12 February 2011.

³⁶ The Kenya Food Security Meeting (KFSM) is the main coordinating body that brings together food security actors in a forum where information is exchanged, options debated and decisions on activities formulated for referral to the Government of Kenya and donors. It is an open forum of high level presentation of a broad grouping of organizations at the national level with interest in food security (www.kenyafoodsecurity.org).

operate in a partially spontaneous system³⁷ assisted by the UN and relief agencies to respond to natural or human disasters. The government supports and collaborates with various clusters formed by the UN and international partners in January 2008 to respond to the needs of IDPs in all phases of displacement.³⁸ The protection, early recovery, and water, environment and sanitation clusters highlight assistance, protection and recovery needs and advocate for government action.

As noted previously, the government has signed regional instruments on IDPs and formulated a number of national policies and guidelines to prevent displacement, indicating its acknowledgment of the problem of IDPs and its willingness to address it. The IDP question has been the subject of vibrant parliamentary debate, particularly after the 2007 crisis. Legislators highlight new cases of displacement and question the prolonged encampment of IDPs despite restoration of relative peace. The debates are broadcast live from Parliament on television and radio, which has increased public access to information on IDPs. Over the last two decades, the government has formed a judicial commission of inquiry,³⁹ thematic task forces,⁴⁰ working groups⁴¹ and a parliamentary select committee⁴² to investigate and report on specific situations or issues of internal displacement.⁴³ The 2010 Parliamentary Select Committee

on Resettlement of IDPs is mandated to draft legislation on IDPs.⁴⁴ The government also raises national awareness about IDPs through training conducted by the Kenya National Commission on Human Rights and members of the Protection Working Group on IDPs.⁴⁵ The national human rights institution, the Kenya National Commission on Human Rights (KNCHR), and the NGO Kenya Human Rights Commission (KHRC) work with field staff and research assistants to monitor displacement and issues affecting IDPs.⁴⁶

The government works with IDPs themselves to find acceptable and feasible durable solutions. The government through the National Steering Committee on Peacebuilding collaborates with members of the UN early recovery Cluster and local communities in return areas to mitigate the stigma associated with displacement. The children's department in the Ministry of Home Affairs works closely with UNICEF Kenya and religious organizations to raise awareness about separated

³⁷ When there is a disaster, the actors such as the Kenya Red Cross respond immediately and automatically without waiting for prompts from any particular body or government agency; coordination and synergy is built after initial response

³⁸ OCHA Kenya, *Emergency Humanitarian Response Plan*, 2010.

³⁹ Commission of Inquiry into Ethnic Clashes in Kenya, 1999.

⁴⁰ Task Force on IDPs, 2004; Task Force on Mau Forest Evictions, 2009.

⁴¹ Several ministries are represented in the Protection Working Group on IDPs and the Legal Aid Working Group. Interview with senior official, Department of Mitigation and Resettlement, MOSSP, January 2011.

⁴² Parliamentary Select Committee on Resettlement of IDPs, 2010.

⁴³ Commission of Inquiry into Ethnic Clashes in Kenya,

1999. Task Force on IDPs, 2004; Task Force on Mau Forest Evictions, 2009. Several ministries are represented in the Protection Working Group on IDPs and the Legal Aid Working Group. Interview with senior official, Department of Mitigation and Resettlement, MoSSP, January 2011. Parliamentary Select Committee on Internally Displaced Persons, 2010.

⁴⁴ Parliament, *National Assembly Official Report (Hansard)* (Nairobi: Government Printer, 17 Nov 2010) (www.parliament.go.ke/index.php?option=com_content&view=article&id=91&Itemid=84).

⁴⁵ Members that have conducted training on IDPs using the Guiding Principles include OCHA Kenya, UNHCR, UNICEF Kenya, Kenya Human Rights Commission, Danish Refugee Council, Kituo Cha Sheria in collaboration with IDMC, and the Refugee Consortium of Kenya. The Guiding Principles have been translated into Kiswahili and widely disseminated in regions affected by massive displacement.

⁴⁶ The KNCHR is the government national human rights institution, while the Kenya Human Rights Commission (KHRC) is an independent human rights NGO. Both are based in Nairobi. They work in close collaboration, and many have difficulty distinguishing the two, perhaps because persons who worked in the NGO were employed by the KNCHR, which has retained a vibrant human rights monitoring and advocacy role.

children and unaccompanied minors. Despite measures to consult with IDPs and receiving communities, landlessness and lack of social cohesion at the community level present intractable challenges to resolving internal displacement.

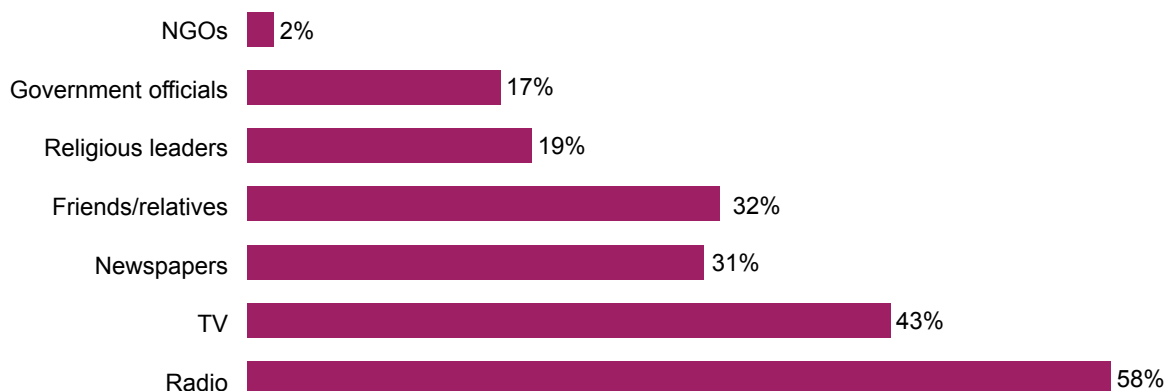
Successive national surveys show a high level of public awareness of the issue of IDPs. A national survey of 6,017 persons carried out in July 2010 found that 95 percent of the respondents were aware of the problem of IDPs.⁴⁷ Kenyans living in areas affected by violence and regions to which IDPs fled were most aware of the problem. Interestingly, the main source of information on IDPs was the media; only 2 percent had heard about IDPs from NGOs; see figure 2-2, below.

attention and aid to camps and so-called self-help groups⁴⁹ discourages IDPs from going home and attracts impostors. Kenyans aware of these challenges express dissatisfaction with the government’s strategy to address internal displacement.⁵⁰

3. Collect Data on Number and Conditions of IDPs

The government has taken measures to collect data on the number and condition of IDPs; a number of profiling exercises have been conducted by the Ministry of State for Special Programs and the Ministry of State for Provincial Administration and Internal Security.

Figure 2-2. What is the source of what you know about IDPs?
(multiple responses, N=6017)



Source: South Consulting, July 2010 survey data, on file with author.

The media highlights IDPs’ situations, self-advocacy activities (for example, public demonstrations), public pronouncements by the executive, government policy actions and expert opinion on the matter.

On the flip side, the association of IDPs with tents (camps) obscures the visibility of IDPs living in other, non-camp settings.⁴⁸ The concentration of government

In June 2008, the MoSSP, in conjunction with the Central Bureau of Statistics and UNHCR, conducted an IDP profiling exercise that concluded that there were 663,921 IDPs in Kenya,⁵¹ of whom 314,000 were integrated

⁴⁷ Respondents were male and female adults (over eighteen years), including IDPs and non-IDPs throughout Kenya.

⁴⁸ The Kiswahili term for IDPs is “those in tents.”

⁴⁹ Self-help groups are groups of landless IDPs who formed cooperatives and collectively purchased small parcels of land in safer areas. The government offered to support their initiative by buying bigger plots of land for them and helping them construct homes.

⁵⁰ Kenya Human Rights Commission and National IDP Network, “Gains and Gaps: A Status Report on IDPs in Kenya, 2008–2010” (Nairobi: KHRC, 2011).

⁵¹ Ministry of State for Special Programs, *Status Brief on*

in host communities.⁵² The data were disaggregated by province only. The MoSSP and the Protection Working Group continue to monitor the number and situation of IDPs and regularly release this information through the *IDP Status Brief*.

The profiling exercise focused only on IDPs displaced by post-election violence (PEV); it excluded many other categories of IDPs.⁵³ Communities viewed as “aggressors” claimed that affected people with whom they shared ethnic, tribal, or other kinship ties were neither counted nor assisted.⁵⁴ Due to exclusion of some PEV IDPs, the old caseload and those displaced by natural disasters, there is no consensus about the number of IDPs in Kenya.⁵⁵ It is not clear how many PEV IDPs are remaining or what types of camps still dot the Rift Valley. Furthermore, imposters and opportunists have infiltrated camps and mixed with genuine IDPs, distorting numbers.⁵⁶ The flux caused by IDPs’ inability to return to their original homes, the high incidence of family separation, the proliferation of “satellite”/ “transit” camps, self-help groups and migration into urban areas confound efforts to establish an accurate number of IDPs. In 2010, Kituo Cha Sheria, a legal aid NGO, conducted research on urban IDPs in Nairobi and published a short report that described lack of assistance but did not give numbers of IDPs.⁵⁷

There is no central depository of data on persons displaced by other causes, such as natural disasters or

development projects.⁵⁸ Such data are collected by the Ministry for Provincial Administration at the district level, local leaders, the UN Inter-Agency Joint Team and the Kenyan Red Cross Society.⁵⁹ Some members of the protection cluster and IDP self-advocacy groups have called for an inclusive profiling exercise to determine accurate number of IDPs from all causes.⁶⁰

Generally, data on IDPs are not disaggregated by gender, age, sex, ethnicity, head of household or any other characteristic, making it difficult to describe or categorize IDPs. In 2008–2009, UNICEF Kenya and the Ministry of Home Affairs, in partnership with Kenyan civil society organizations established a database of separated children in the Rift Valley, with the data disaggregated by gender and age. “The humanitarian agencies which were the first to establish field presence to assist IDPs in camps ignored disaggregation of data; it was difficult for those which came later to correct this because clusters were using the same sets of numbers.”⁶¹ The MoSSP has collected hundreds of registers of IDPs compiled by officials from the Ministry of Internal Security and Provincial Administration and self-advocacy teams of IDPs for purposes of disbursement of relief and assistance funds. Those submitting these lists claim that they were not instructed to disaggregate the data.⁶² In many

IDPs, March 2009.

⁵² OCHA Kenya, *Humanitarian Update*, vol. 6, 2008.

⁵³ South Consulting, “KNDR Monitoring Project Review Report,” August 2008.

⁵⁴ UNICEF Kenya, *Emergency Response Review Mission Report*, unpublished, July 2008.

⁵⁵ IDMC, *Kenya: No Durable Solutions for Internally Displaced Yet*.

⁵⁶ Interview with official at the Ministry of Special Programs, 22 January 2011; interview with official at the Ministry of Lands, 10 February 2011; interview with the national coordinator, IDP Network, 20 December 2010.

⁵⁷ Interview with program officer, Peace, Justice and Reconciliation Program, Kituo cha Sheria, 18 January 2011.

⁵⁸ There is no mechanism for collating data for these IDPs, ostensibly because only a small number of people are affected and causes such as floods and drought are predictable. Besides, displacement caused by disasters is seen as temporary. The government is strengthening its disaster preparedness and response capacity. Interview with a government official from Ministry of Internal Security and Provincial Administration, 2 February 2011.

⁵⁹ OCHA, Displacement Tracking Matrix (January 2009–January 2010), January 2010 (<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1157161>).

⁶⁰ Interview with program officer, KHRC; interview with national coordinator, IDP Network; see KHRC, *Out in the Cold: The Fate of Internally Displaced Persons in Kenya* (Nairobi: KHRC, 2009).

⁶¹ Interview with IOM field staff in Eldoret, 12 November 2010.

⁶² Interview with a district officer in Central Rift Valley, 6 November 2010.

instances, the distinction between number of persons and number of households is not clear.⁶³

The Ministry of State for Special Programs also collects, collates, and disseminates information on assistance programs to IDPs, including records of monies disbursed to returning IDPs, houses reconstructed, counselling programs and sources of funds. The *Status Brief* on IDPs summarizes progress made in addressing the IDP problem and the challenges that the government faces in resolving the problem.

The draft national IDP policy acknowledges that it is necessary to establish a system for the collection of relevant disaggregated data on internal displacement, including the number of internally displaced persons and their location, conditions and needs, including the special needs of the most disadvantaged among the displaced population.

4. Support Training on the Rights of IDPs

The Ministry of Justice, through the Kenya National Commission on Human Rights, supports training on the rights of IDPs. From June 2008, KNCHR has offered a series of training sessions on IDPs for public officers, including district officers and judicial authorities, and law enforcement authorities, including the army, police, prison services, and the national intelligence service.⁶⁴ The training curriculum on the rights of IDPs is based on the Guiding Principles on Internal Displacement. The Kenyan National Commission on Human Rights also took the lead in monitoring and advising government departments on the human rights of IDPs prior to and after the 2007-2008 election violence.⁶⁵ KNCHR's human rights education department works to "inform

and educate the public as to human rights for the purpose of enhancing respect for such rights by means of a continuing programme of research, publication, lectures, symposiums and by such other means that the commission may deem fit."⁶⁶ In August 2010, KNCHR began to build the internal capacity of human rights organizations involved in monitoring the IDP situation in the country. Monitors were drawn from all regions and trained using the Guiding Principles.⁶⁷ OCHA Kenya has translated the Guiding Principles into Kiswahili. The Kenya Red Cross offers regular training on disaster management across the country.⁶⁸

In March 2008, KNCHR advocacy prevailed on the Ministry for Internal Security to deploy trained security officers to newly established "gender desks" in police stations in regions with high numbers of IDPs to respond to the need for protection of women and children.⁶⁹ In May 2008, the government deployed thirty-five district officers with special training on IDPs and peace-building to violence-affected areas.⁷⁰ The officers, most of whom have stayed, have helped to educate the public about the special vulnerability of IDPs to human rights violations and to promote IDPs' enjoyment of rights in their various settings. In particular, they have increased IDPs' awareness of their rights and access to justice. For instance, more SGBV cases and more types of sexual and gender-based violence are reported at the gender desks than were reported before.⁷¹

The 2010 draft National Policy on the Prevention

⁶³ Discussion at a protection cluster meeting, November 2010.

⁶⁴ Interview with human rights officer, KNCHR, 4 January 2011

⁶⁵ Interview with human rights officer, KNCHR, 4 January 2011.

⁶⁶ KNCHR, Human Rights Education Programme, 28 January 2011 (www.knchr.org/index.php?option=com_content&task=blogcategory&id=2&Itemid=67).

⁶⁷ Interview with human rights officer, KNCHR.

⁶⁸ Interview with the head of Disaster Management, Kenya Red Cross, 3 February 2011.

⁶⁹ *Ibid*; gender desks also address child protection issues in collaboration with local offices of the Children's Department.

⁷⁰ Interview with senior official, Ministry of Internal Security and Provincial Administration, 30 November 2010; the officers were trained by KNCHR.

⁷¹ Interview with official at the Federation of Women Lawyers (FIDA) Kenya Chapter, 18 May 2011.

of Internal Displacement and the Protection and Assistance to IDPs in Kenya reiterates at various points the need for capacity building. The Ministry for Special Programs, the IDP line ministry, is not explicitly mandated to conduct training on the rights of IDPs, but it collaborates with human rights NGOs to conduct such training.⁷² For instance, the Protection Working Group, which the MoSSP co-chairs, works to strengthen government capacity to protect the rights of IDPs by holding training sessions on the UN Guiding Principles on Internal Displacement for the government.⁷³ In July 2009, the Protection Working Group held a stakeholders' forum on protection and durable solutions for IDPs in Kenya, which initiated the process for developing a national IDP policy. In cooperation with UNHCR, other cluster members, including the Internal Displacement Monitoring Centre, held a workshop on the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa and the draft national policy on IDPs. In October 2010, the Kenya Human Rights Commission and the National IDP Network trained twenty-five IDP monitors and dispatched them to regions affected by cycles of displacement.⁷⁴

5. Ensure a Legal Framework for Upholding IDPs' Rights

The government has no legislation on IDPs. However, the 2010 Parliamentary Select Committee (PSC) on the Resettlement of IDPs is mandated to come up with a draft bill. The PSC is collaborating closely with members of the Protection Working Group to ensure that the anticipated draft legislation is consistent with provisions outlined in the 2010 draft National Policy on the Prevention of Internal Displacement and the Protection

and Assistance to IDPs in Kenya, which is based on the Guiding Principles, the Great Lakes Protocol and the Kampala Convention.

The 2010 Constitution of Kenya contains the Bill of Rights, which explicitly recognizes and protects the fundamental rights and freedoms of the individual citizen—including IDPs—and sets out the mechanisms for enforcing those rights and freedoms. Rights are also protected by statutory laws; there are many acts of Parliament dealing with issues that cause displacement—for example, the Public Order Act, the Preservation of Public Security Act, the Election Offences Act, and the Sexual Offences Act. In addition, there are sectoral laws with provisions on issues such as land, which is a key underlying cause of displacement in Kenya. Such laws include the Agriculture Act, the Forests Act, the Water Act, the Environmental Management and Coordination Act, Wildlife Conservation and Management Act, and so forth.

6. Develop a National Policy on Internal Displacement

The Ministry of State and Special Programs and the Ministry of Justice, National Cohesion and Constitutional Affairs, in collaboration with the Protection Working Group (PWG) have developed the 2010 draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya. The draft was unveiled on 17 March 2010 at a stakeholders' review workshop. The IDP policy addresses all phases of displacement.⁷⁵

The draft national IDP policy recognizes the complexity of internal displacement in Kenya. It adopts the Guiding Principles' definition of IDPs and includes persons displaced by politically instigated violence or inter-communal hostilities such as competition over land or other resources; persons displaced by natural disasters, whether or not triggered by climate change; and those

⁷² Interview with senior official at the Department of Mitigation and Resettlement, MOSSP, 21 January 2011.

⁷³ Kenya IDP Protection Cluster, Protection Working Group on Internal Displacement, Transition Concept Note, 2 June 2009 (<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1152806>).

⁷⁴ Interview with program officer, KHRC.

⁷⁵ IRIN, "Draft Policy Offers New Hope for IDPs," March 2010, (www.irinnews.org/report.aspx?ReportID=88485).

displaced by development projects or projects to preserve the environment, including those forcibly evicted, who remain without proper relocation and sustainable options for reintegration.⁷⁶ It provides for protection in all phases of displacement.

Further, the draft policy establishes an institutional framework outlining the roles of relevant stakeholders, including the government, communities, elders, community-based organizations, regional institutions, the international community, humanitarian and development partners and armed groups or similar nonstate actors in addressing displacement. It identifies the Ministry of State for Special Programs as the national government's institutional focal point for internal displacement. It also designates the yet-to-be-established Consultative Coordination Committee to bring together focal points from relevant ministries, other national actors, IDP representatives, civil society and the international community. The draft policy identifies the Kenya National Commission on Human Rights as the government's chief agency for promoting and protecting the human rights of IDPs.

The draft policy further recognizes national laws for protecting the rights of citizens, affirming the primary responsibility of the state to protect the rights of IDPs as citizens of Kenya. Chapter VIII of the draft policy outlines measures to ensure protection and assistance during displacement, including protection of rights and entitlements and protection of life, integrity, liberty and security, movement-related rights and adequate standard of living, health and education.

The Protection Working Group has disseminated the draft policy and regional instruments on IDPs to government and other stakeholders through training sessions. With support from UNDP, the PWG has developed a

⁷⁶ Government of Kenya, Office of the President, Ministry of State for Special Programs, National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, Final consolidated draft (24 March 2010), Chapter II (1-3).

simplified version of the draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya in English and Kiswahili that summarizes provisions of the draft policy; it is intended to be used as a training tool to sensitize IDPs on their rights.⁷⁷

Chapter X (4) of the draft policy provides for an effective mechanism for monitoring and evaluation of implementation of the policy. The draft policy has been approved by a technical committee⁷⁸ and has been pending before the Cabinet since March 2010. The Protection Working Group is exploring ways to push it to the next step in the legislative process.⁷⁹

The draft National Disaster Management Policy has been revised sixteen times and has remained without an enabling legislation for over a decade.⁸⁰ The draft IDP policy seeks to address coordination and collaboration challenges presented by power struggles within government. However, failure to legislate or enforce existing laws presents the main challenge to overcoming displacement.

7. Designate an Institutional Focal Point on IDPs

Presidential Circular No.1/2008 designates the Ministry of State for Special Programs (MoSSP) as the government office mandated to deal with, among other things, mitigation and resettlement of IDPs and coordination of disaster risk-reduction programs.⁸¹ This is further af-

⁷⁷ Interview with human rights officer, KNCHR,

⁷⁸ The technical committee comprises officials from MOSSP, the Attorney General's Chambers, and the Justice Ministry; interview with official at MOSSP, 16 February 2011.

⁷⁹ Discussion and debate at a forum with the Parliamentary Select Committee organized by the KNCHR, 23 May 2011.

⁸⁰ Ostensibly due to power struggles among ministries; interview with a member of the National Disaster Coordinating Committee, 13 February 2011.

⁸¹ The circular outlined the organization of the coalition government, providing information on senior government officers, their official titles, duties and mandates of ministries

firmed by the draft policy, which states, “The Ministry of Special Programmes is the national institutional focal point for internal displacement within government.”⁸² According to the draft policy, the primary role and responsibility of MoSSP is “policy implementation and coordination of implementation efforts with its branches and other relevant government stakeholders at the regional and local level, and other relevant ministries and government entities in accordance with their respective ministerial responsibilities, the Kenya National Commission on Human Rights (KNCHR), IDPs, civil society and the international community.” The ministry is also mandated to ensure that effective coordination of efforts take place at the regional and community level, to monitor and evaluate implementation and to develop guidelines on internal displacement in collaboration with other ministries.

In response to the displacement following the 2007-2008 post-election violence, the MoSSP established the Department of Mitigation and Resettlement with the role of resettling post-election violence IDPs and offering counselling and assistance to restore their lives.⁸³ The department is responsible for implementing the mandate of the National Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of post-2007 election violence, which was established in January 2008 to fund the resettlement of IDPs. The fund is also meant to support measures to replace destroyed household effects, services to restore livelihoods, reconstruction of basic housing, and rehabilitation of community utilities and institutions.⁸⁴

(www.communication.go.ke/media.asp?id=635).

⁸² Government of Kenya, Office of the President, Ministry of State for Special Programs, National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, Final consolidated draft (24 March 2010), p. 12.

⁸³ OCHA Kenya, “Frequently Asked Questions on IDPs in Kenya,” February 2010 (<http://reliefweb.int/node/344084>)

⁸⁴ MoSSP, National Humanitarian Fund (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=271&Itemid=167).

The draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya recognises that the MoSSP works with a number of other ministries responsible for addressing issues related to internal displacement, such as human rights, justice, security, foreign affairs, lands, education, environment, social protection and support, health, disaster management and relief, reconciliation, and so forth. The MoSSP works with the Ministry of Lands to identify and purchase land for resettlement of IDPs and with the Ministry of Home Affairs to address child protection issues.⁸⁵ These ministries are key players in Protection Working Group at the national level (Nairobi) and in the field (Nakuru and Eldoret). The PWG meets once a month.

The MoSSP also works to prevent and mitigate the effects of displacement due to natural disasters, particularly those caused by drought, famine, fires and landslides. It distributes food relief monthly to affected districts and provides emergency shelter.⁸⁶ The Kenya Red Cross Society, established under the Kenyan Red Cross Society Act, is the government’s main actor in this respect. The particular role of the Kenyan Red Cross is also reflected in the institutional part of the draft national IDP policy. The Crisis Response Centre and the Interim Coordinating Secretariat in the Office of the Prime Minister reinforce institutional response to natural disasters and forest evictions.⁸⁷

Due to the lack of human and financial capacity, the MoSSP is dependent on the Ministry for Provincial Administration to carry out resettlement program activities at the local level. Its technical capacity has been greatly enhanced by collaboration with the Protection

⁸⁵ OCHA Kenya: “Frequently Asked Questions on IDPs in Kenya.”

⁸⁶ MoSSP, “Relief and Rehabilitation, Programmes and Activities,” (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=255&Itemid=140); MoSSP, National Disaster Response Plan (<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1160526>).

⁸⁷ Persons who have illegally encroached on forestlands and other protected areas are removed.

Working Group. Since mid 2010, the MoSSP has taken measures to enhance its own capacity; for instance, regional offices have been established in Nakuru, Eldoret and Nyandarua.⁸⁸ Nonetheless, there is concern that poor coordination between the MoSSP and other ministries, particularly the Ministry of Provincial Administration and the Ministry of Lands, hinders the effectiveness of its programs and activities.⁸⁹ There is also concern that the mandates of the MoSSP and the Humanitarian Fund are restricted to the post-2007 election violence IDPs, excluding other categories of IDPs.⁹⁰

IDPs are able to engage and dialogue with the MoSSP directly at the ministry headquarters and at lower-level offices as well as at Protection Working Group meetings where other line ministries are also represented. The regional PWG meetings are chaired by the District Commissioner, who has the authority to respond to IDPs' protection and assistance needs at the district level. As noted above, IDPs may petition the MoSSP directly or through human rights NGOs, most of which are members of the Protection Working Group

8. Support NHRIs to Integrate Internal Displacement into Their Work

The government supports the efforts of the national human rights institution, the Kenya National Commission on Human Rights (KNCHR), to integrate internal displacement into its work.⁹¹ KNCHR is a constitutional body established in 2002 through the Kenya National Commission on Human Rights Act, and it became operational in July 2003 when the president

appointed nine commissioners.⁹² KNCHR's mandate is to enhance the promotion and protection of human rights.⁹³ The commission draws its finances from the Treasury, but its activities are independent of government direction.⁹⁴ The 2010 Constitution provides for its financial independence, and the commission will now draw resources from the Consolidated Fund at the Treasury.⁹⁵

KNCHR focused on the human rights situation of IDPs before and after the 2007 political crisis. Even though the government did not expressly recognize the presence of IDPs until the 2007 crisis, KNCHR was working to raise the profile of IDPs. For instance, advocacy efforts culminated in the 2004 visit by the UN Special Rapporteur on Adequate Housing,⁹⁶ who described the situation of IDPs in Kieni Forest as a "humanitarian crisis and recommended assistance programmes."⁹⁷ The Kenya National Commission on Human Rights also highlights broader issues that cause displacement and cause it to become protracted.⁹⁸

In 2009, the commission recognized IDPs as an important human rights concern and designated a focal point and dedicated staff to work on IDPs. It established regional offices and a network of field monitors. It is working in concert with other organizations

⁸⁸ Interview with senior official at the MOSSP, January 2011.

⁸⁹ KHRC, "Out in the Cold: The Fate of Internally Displaced Persons in Kenya," December 2009 (<http://2logicstudios.com/khrc/1/content/khrc/1/images/2009-12/Binder1.pdf>).

⁹⁰ Interview with human rights officer at KNCHR, January 2011; see Agenda 2 of South Consulting reports, (www.kenyadialogue.org).

⁹¹ National Human Rights Institutions Forum, Kenya (www.nhri.net/NationalData.asp?ID=95).

⁹² KNHRC, "Public Accountability Statement for 2006–2008, Statement of Successes and Challenges," (www.knchr.org/index.php?option=com_docman&Itemid=&task=doc_download&gid=21).

⁹³ KNCHR, "About Us," (www.knchr.org/index.php?option=com_content&task=blogsection&id=4&Itemid=14).

⁹⁴ Interview with a KNCHR commissioner, 26 January 2011.

⁹⁵ *Ibid*; also Chapter 249 of the 2010 Constitution.

⁹⁶ Interview with human rights officer, KNCHR, 23 May 2011.

⁹⁷ UN Commission on Human Rights, "Adequate Housing as a Component of the Right to an Adequate Standard of Living," *Report by the Special Rapporteur, Miloon Kothari—Mission to Kenya*, 17 December 2004.

⁹⁸ Reports and special issues published in the KNCHR annual human rights journal, *Nguzo Za Haki*— for example, "IDPs and the Land Question in Kenya," *Nguzo za Haki* (Nairobi: KNCHR, 2009).

concerned with IDPs⁹⁹ on monitoring the government's response to IDPs, investigating cases of human rights violations, advising government institutions, and promoting rights awareness among IDPs and government authorities.¹⁰⁰ KNCHR plays a large and important role in protecting and promoting the human rights of IDPs and holding the government accountable through its advocacy work.¹⁰¹ It conducts visits to IDP in camps and other settings as well as return sites to monitor the progress of IDP returns and to assess whether or not the rights of IDPs are being respected. In 2009, it released a report showing that millions of shillings from the Humanitarian Fund meant for IDPs had been embezzled.¹⁰² Following investigations into the Kenya situation by the International Criminal Court in 2010, the KNCHR advocated for an effective program to protect witnesses to human rights violations—including 'forced transfer of a population'—committed during the post-election violence, some of whom are IDPs.¹⁰³ The KNCHR is obligated to submit an annual report to the National Assembly that includes an "overall assessment of the performance of the government in the field of human rights" and of KNCHR's achievements and challenges.¹⁰⁴ In its 2009–13 Strategic Plan, KNCHR re-

ported that two of its main challenges in carrying out its mandate were limited physical access across the country and inadequate staffing.¹⁰⁵ From 2009, it began to boost its internal capacity to address internal displacement through hiring permanent staff and supporting a network of field monitors. It moved away from ad hoc to sustained activities; IDPs issues are now an integral part of the commission's work.¹⁰⁶ While its initial focus was the post-2007 IDPs, a broader response under the Economic, Social and Cultural Rights Programme is looking at all the causes of displacement, as articulated in the draft national IDP policy.¹⁰⁷ The KNCHR was an important actor in the process of developing this draft policy: it co-chairs the National Protection Working Group, under the auspices of which the policy was developed.

9. Facilitate IDPs' Participation in Decisionmaking

(a) Do the national authorities encourage and facilitate the ongoing participation of IDPs in the planning and implementation of policies and programs for addressing internal displacement?

The government facilitates IDPs' participation in decisionmaking processes at the local and national levels. IDPs participate in national and regional Protection Working Group (PWG) meetings, where they articulate their concerns to national and international policymakers. In addition, individual IDPs participate actively as key respondents in policy research conducted by government and NGO teams, including commissions of inquiry, thematic task forces, parliamentary select committees, independent commissions and monitoring and evaluation projects. During the emergency phase,

⁹⁹ Interview with a KNCHR commissioner, 26 January 2011.

¹⁰⁰ KNCHR, *Strategic Plan 2009–2013*, launched January 2010 (www.knchr.org/index.php?option=com_docman&Itemid=&task=doc_download&gid=41)

¹⁰¹ IDMC, *Kenya: No Durable Solutions for Internally Displaced Yet*, December 2008 (www.internal-displacement.org).

¹⁰² KNCHR, "Outcome of KNCHR Assessment of GOK Resettlement Program of IDPs and Corruption Allegations," *Daily Nation*, 2 December 2009. See also: South Consulting, *December 2009 Status of Implementation Report*, p. 29 (www.kenyadialogue.org).

¹⁰³ Interview with a KNCHR commissioner, 26 January 2011.

¹⁰⁴ KNCHR produces two reports: the *Status of Human Rights Report* and an accountability report, the *Annual Report of the Commission*. Since its inception, the KNCHR has produced three status of human rights reports and submitted annual reports to the Ministry for Justice, which is supposed to present it to the National Assembly for debate. No annual report has ever been discussed by the National Assembly. The KNCHR does not know why the reports have not been discussed, but it has continued to submit its reports. Interview with deputy secretary of

the KNCHR, 21 January 2011.

¹⁰⁵ KNCHR, *Strategic Plan 2009–2013*.

¹⁰⁶ Interview with human rights officer, KNCHR, 26 January 2011.

¹⁰⁷ Ibid.

the National IDP Network, a self-advocacy network of IDPs from all parts of the country, represented IDPs in all UN clusters, where operational decisions were often made. As noted above, random individual IDPs have unhindered access to government ministries, most of which have designated at least two days a week to receive members of the public. IDPs approach relevant government departments on their own initiative or through KNCHR monitors or human rights NGOs to express concerns or demand rights. IDPs have access to the MoSSP's focal points in regional offices established in Nakuru, Eldoret and Nyandarua in 2010.¹⁰⁸

Nonetheless, the quality of consultation and participation of IDPs is poor and perceived to be done to fulfill an expectation rather than a genuine commitment to their views and wishes.¹⁰⁹ Avenues for genuine participation at the policymaking level are not open since key policy decisions on response strategy and actions on IDPs are made by the Cabinet Subcommittee on Resettlement, which comprises senior officials from the ministries of special programs, lands, provincial administration, justice and finance.¹¹⁰ Concerns articulated to low-level policymakers at PWG meetings and government departments may not necessarily impact high-level decisions due to lack of efficient intraministerial reporting and feedback channels and lack of efficient interministerial coordination.

IDPs have contributed to the development of the draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya through their participation in the PWG.¹¹¹ From 2006, the Ministry of Lands, the Kenya Land Alliance and NGOs such as the Kenya Human Rights Commission facilitated IDPs' participation in the process of drafting of the National Land

Policy, which was approved by the Cabinet in June 2009.¹¹² IDPs are also represented in peace-building mechanisms, notably the district peace committees and the Shelter Reconstruction Program. Humanitarian NGOs and religious organizations, most of which work in partnership with relevant government ministries, consult with IDPs and host communities to identify the most vulnerable among them for assistance.¹¹³ Opportunities for participation in the Protection Working Group¹¹⁴ and peace forums are systematic and available to the members of the of the Kenya National Network of IDPs. The protection and assistance concerns of women and children are discussed first at Protection Legal Aid Working Group meetings and more comprehensively at meetings of the Protection Working Group.

However, IDPs complain that the level and quality of consultation is poor; for instance, they were not meaningfully consulted on the development and implementation of Operation Rudi Nyumbani, the resettlement program launched in May 2008. They were also not adequately consulted on eligibility for/distribution of relief and assistance funds or land allocations. The involvement of IDPs was poor in substantive ways—for example, dissemination of information to IDPs on the resettlement plan and their rights was inadequate. As a result, forcible closure of camps and violent dispersal of protesting IDPs characterized the initial phase of the resettlement program.¹¹⁵ The

¹⁰⁸ Interview with official at MoSSP, January 2011.

¹⁰⁹ Interview with program officer, Advocacy, KHRC (14 December 2010).

¹¹⁰ Interview with senior official at the Ministry of Provincial Administration and Internal Security, 28 January 2010.

¹¹¹ Interview with member of the National IDP Network, 22 November 2010.

¹¹² Sessional Paper on Land adopted by the National Assembly on 3 December 2009; interview with program officer, Advocacy, KHRC, December 2010; statement by the national coordinator, Kenya Land Alliance, at the KACC-LSK Ethics and Anti-corruption Workshop, 25-26 February, 2010, Panari Hotel, Nairobi.

¹¹³ Interview with IOM Eldoret, November 2010; interview with a bishop, Catholic Diocese of Eldoret, November 2010.

¹¹⁴ In 2009, the Protection Cluster transformed into the Protection Working Group, which has been further subdivided into thematic areas, including the Protection Working Group on Internal Displacement and the Legal Aid Working Group, which covers SGBV and child protection concerns.

¹¹⁵ IRIN, "Kenya: Guiding Principles Violated in IDP Resettlement—Activist," October 2008 (www.irinnews.com).

government failed to recognize the substantial category of IDPs who were unable or unwilling to return home.¹¹⁶ Communities to which IDPs were returning or integrating were also not consulted, resulting in rejection of IDPs in return and host areas.¹¹⁷ IDPs who protested against delayed disbursement of relief and assistance funds were often violently dispersed.

But there are potential avenues for future active participation and consultation of IDPs, including the most disadvantaged, reflected in the draft National Policy on the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya (March 2010). The draft policy recognizes that participation and consultation “in all processes in matters affecting them [IDPs] contributes to a more effective response to their needs, reduces their dependency and facilitates reintegration” and thus envisages the establishment of a permanent forum for dialogue with IDPs, with separate mechanisms for consulting with women, children and others with special needs, in concert with national and international stakeholders.¹¹⁸ The government’s first stakeholders’ meeting to discuss the draft national IDP policy in March 2010 had over 100 participants, including representatives of the IDP community from all affected districts, as well as NGOs, international organizations and the United Nations. The forum was the result of collaborative planning by MoSSP, the Ministry of Justice, National Cohesion and Constitutional Affairs, the Kenya

National Commission on Human Rights, civil society (including IDP groups) and UN agencies. The forum was designed, among other things, to “garner the voices of IDPs, strengthen their involvement in this process, and ensure their participation in the implementation of the Policy.”¹¹⁹ At the meeting, the minister of state for special programs expressed the government’s hope that the policy “espouses the virtues of inclusiveness, consultation and participation.”¹²⁰

(b) Are IDPs able to exercise their right to political participation, in particular the right to vote, without undue difficulties related to their displacement?

Generally, IDPs are able to exercise their right to political participation, in particular to vote, without undue difficulties related to their displacement. They face no legal or administrative challenges; in fact, the government has taken specific measures to restore the right to political participation if and where it was abrogated. The Kenya National Dialogue and Reconciliation (KNDR) gave priority to the replacement of documents lost in the post-election violence, and in May 2008 the government began facilitating the issuance of new documents or replacement of documents lost or destroyed in the course of displacement.¹²¹ In the run-up to the August 2010 referendum, the Interim Independent Electoral Commission (IIEC) set up voter registration centers near camps and urged IDPs to register.¹²² The IIEC carried out a fresh registration of voters countrywide; hence IDPs did not need to return to the regions from which they were displaced to obtain docu-

org/report.aspx?ReportID=80948); KHRC, *Out in the Cold: The Fate of Internally Displaced Persons in Kenya*, December 2009 (<http://2logicstudios.com/khrc/1/content/khrc/1/images/2009-12/Binder1.pdf>); South Consulting, *Status of Implementation Report*, March 2009 (www.kenyadialogue.org).

¹¹⁶ Jacqueline Klopp and Nuur Mohamud Sheekh, “Can the Guiding Principles Make a Difference in Kenya?” *Forced Migration Review, Tenth Anniversary of the Guiding Principles on Internal Displacement* (2008).

¹¹⁷ South Consulting, *Status of Implementation Report*, December 2010.

¹¹⁸ Government of Kenya, MoSSP, *National Policy on the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya* (Draft March 2010), 1.2. (on file with the authors).

¹¹⁹ OCHA, *Kenya Humanitarian Update*, vol. 59, 9 March–7 May 2010, pp. 7-8 (<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1164181>).

¹²⁰ Government of Kenya, MoSSP, “Speech of Minister for State for Special Programs at the Workshop on the National Internally Displaced Persons Policy,” 17 March 2010 (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=321&Itemid=117).

¹²¹ South Consulting, *Status of Implementation Report*, August 2008.

¹²² “Commission Calls on IDPs to Register,” *The Standard*, 5 April 2010 (www.standardmedia.co.ke/InsidePage.php?id=2000007034&catid=159&a=1).

mentation or to vote. During the referendum period, adequate security was deployed to regions mapped as hot spots, and results indicated high voter turnout in polling stations near camps and resettlement areas.¹²³

The draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya acknowledges IDPs' participatory rights and provides for their right to freedom of association and assembly and the right to vote and participate equally in government, public and community affairs, including the right to vie for any elective post. The draft obligates the government to "include provisions related to internal displacement in election management processes" as well as to "provid[e] for registration of IDPs" and to "remov[e] all obstacles hindering them from effectively exercising their political rights."¹²⁴

While physical and logistical impediments do not prevent IDPs from exercising their right to vote, IDPs displaced by the 2007 elections nonetheless do face difficulties in participating because of other reasons, such as trauma suffered during the last elections. Many IDPs associate voting with violence and displacement: "I am in the tent because I voted; why should I vote if it means this?"¹²⁵ Reluctance to participate in the electoral process is not a new phenomenon. The UN Development Fund for Women (UNIFEM) reported that there was low IDP voter turnout during the 1997 general elections due primarily to trauma from the previous election cycle, which was the cause of displacement.¹²⁶ Besides fear of

violence, some IDPs from the 2007 crisis have felt that the government has neglected them;¹²⁷ threatening not to vote was a strategy to draw attention to their plight as a constituency.¹²⁸ Lack of confidence in the electoral system is leading some IDPs to consider boycotting the whole electoral process.¹²⁹

10. Establish the Conditions and Provide the Means for IDPs to Secure Durable Solutions

The government has made efforts to establish the conditions and provide the means for IDPs to secure durable solutions. The signing of the National Accord on 28 February 2008 halted the violence and triggered the voluntary return of some IDPs.¹³⁰ The Mitigation and Resettlement Committee was set up to resettle and rehabilitate IDPs and to work with existing peace-building mechanisms to restore peace and normalcy.¹³¹ The National Humanitarian Emergency Fund for Mitigation and Resettlement of Victims of 2007 Post-Election Violence was set up to meet the full costs of resettlement of IDPs, including reconstruction of basic housing, replacement of household effects, and rehabilitation of

Dispossessed Women in Kenya, UNIFEM/African Women in Crisis Programme, January 2002; also Human Rights Watch (HRW), *Failing the Internally Displaced: The UNDP Displaced Persons Programme in Kenya* (New York: HRW, 1997).

¹²⁷ "IDPs Shun Voter Registration, Claim Neglect," *The Standard*, 24 March 2010 (www.standardmedia.co.ke/archives/InsidePage.php?id=2000006341&cid=4&story=IDPs%20shun%20voter%20registration,%20claim%20neglect)

¹²⁸ South Consulting, *Status of Implementation Report*, October 2010.

¹²⁹ Jacob Mulaku, "Kenya: IDPs to Boycott Voter Registration," *AfricaNews.com*, 25 March 2010 (www.africanews.com/site/Kenya_IDPs_to_boycott_voter_registration/list_messages/30828).

¹³⁰ OCHA Kenya, *Kenya Humanitarian Update*, vol. 19, May 2008.

¹³¹ National Accord Implementation Committee, *National Reconciliation and Emergency Social and Economic Recovery Strategy*, March 2008, p. iv.; on file with author.

¹²³ South Consulting, *Status of Implementation Report*, October 2010. KNCHR monitors and referendum observers reported that IDPs voted. Interview with KNCHR human rights officer, February 2010.

¹²⁴ Government of Kenya, Office of the President, Ministry of State for Special Programs, National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, Final consolidated draft (24 March 2010), Chapter VIII, 24(a-c).

¹²⁵ Interview with a displaced woman at the Pipeline IDP Camp in Nakuru, 20 November 2010.

¹²⁶ Prisca Mbura Kamungi, *The Lives and Life-Choices of*

infrastructure, such as community utilities and institutions destroyed during the post-election violence.¹³² On 5 May 2008, the government launched Operation Rudi Nyumbani to close all camps and facilitate the return of IDPs to predisplacement areas.

In August 2008, the government launched Operation Ujirani Mwema (Operation Good Neighborliness) to promote reconciliation and reintegration of returnees. That was followed by Operation Tujenge Pamoja (Operation Build Together), aimed at reconstructing the destroyed houses and supporting recovery of livelihoods for people who had returned to their farms. The government reconstructed twenty-two destroyed or vandalized schools and put up thirty-two new police stations and 200 patrol bases to enhance security in the regions most affected by violence and displacement. The heavy police presence has produced positive results, as witnessed during the peaceful referendum in August 2010.¹³³ The government and the Early Recovery and Shelter Clusters, with support from the African Development Bank, the UN Central Emergency Response Fund and development partners have constructed over 19,000 houses.¹³⁴

¹³² OCHA Kenya, *Humanitarian Update*, vol. 3-48, 2008-2010 (<http://ochaonline.un.org/Kenya/reports/UNOCHAHumanitarianUpdates>).

¹³³ South Consulting, *KNDR Quarterly Review Report*, October 2010 (www.kenyadialogue.org). On the flip side, the heavy security deployment aggravated resentment and feelings of subjugation among local communities, who complained that the government had “poured” hundreds of police officers into communities to protect non-locals. See South Consulting, *Quarterly Review Report*, Oct 2010

¹³⁴ Members of the Shelter Cluster who have collaborated with MOSSP to support shelter reconstruction include Habitat for Humanity, International Organization for Migration, Goal Ireland, Kenya Red Cross Society, Danish Refugee Council and the Catholic Church; interviews in Nairobi and the Rift Valley, October and November 2010 and February and April 2011.

The MoSSP, with funding from the African Development Bank, is running a four-year project to offer fertilizers and farm inputs to returnees. It is also running a four-year project, with UNDP support, on sustainable livelihoods,¹³⁵ including animal restocking, farm inputs, fishing and construction of fish ponds, vocational training and establishment of District Business Solution Centers for information gathering, capacity building and coordination of business initiatives in violence-affected regions.

Government officials in their official and personal capacity have supported efforts to restore normalcy. For instance, individual politicians spearheaded peace activities such as Operation Karibu Nyumbani (Operation Welcome Back Home) in 2008.¹³⁶ Similarly, media houses and NGOs have facilitated reconciliation programs, peace meetings and conflict management training workshops.¹³⁷ The government established two commissions, the Truth, Justice and Reconciliation Commission and the National Cohesion and Integration Commission in July and September 2009 respectively, to promote healing and national cohesion.

To fight impunity for perpetrators of political violence, in 2009 the Kenya National Commission on Human Rights initiated drafting of the Hate Speech Bill¹³⁸ and in March 2010 the International Criminal Court (ICC) began investigations into the Kenya situation. The ICC intervened after it became apparent that the government was unwilling to fight impunity, particularly among senior politicians. Impunity is a major cause of political

¹³⁵ Interviews with MoSSP and a program officer at UNDP, February 2011.

¹³⁶ “Close Camps, Say Rift Valley MPs,” *Daily Nation*, 22 February 2009.

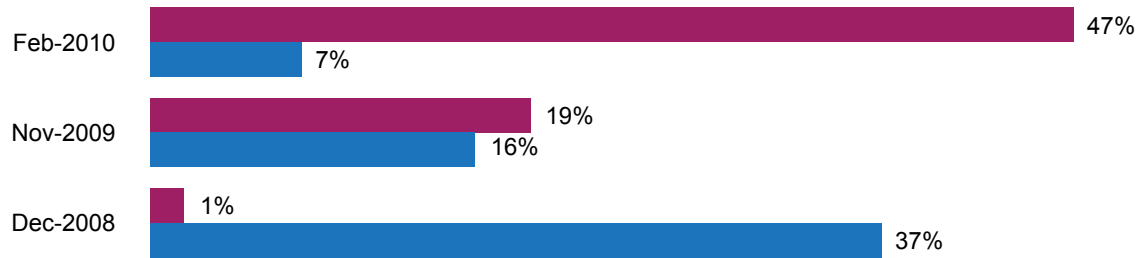
¹³⁷ For review of efforts to promote peace and address root causes, see Agenda 2 and Agenda 4 sections of successive status of implementation reports by South Consulting (www.kenyadialogue.org).

¹³⁸ The draft was incorporated into the National Cohesion and Integration Act, which established the National Cohesion and Integration Commission.

violence and displacement in Kenya.¹³⁹ Lethargy in holding perpetrators accountable contrasted sharply with public demand for accountability, particularly once the country stabilized, as shown in figure 2-3 below.

re-establish sustainable livelihoods or occupy houses reconstructed for them. The Kenya National Commission on Human Rights and some members of the Protection Cluster criticized Operation Rudi Nyumbani as untimely and “a failure,” arguing that return should have

Figure 2-3. What is the best way to prevent future violence in your community?



Source: South Consulting data, on file with author

■ Prosecute those responsible ■ Promote national unity

Under the framework of Agenda 4 of the National Accord, the government has been undertaking legal and institutional reforms and rolling out programs to address the root causes of violence and displacement. These include measures to implement land reforms; to fight poverty, inequality, regional imbalances and unemployment, particularly among the youth; and to promote national unity and transparency and accountability.¹⁴⁰

Despite such positive actions, an unknown number of IDPs remain in at least twenty transit camps and camp-like self-help groups.¹⁴¹ The majority are unable to

been preceded by or done concurrently with confidence-building measures and peace-building activities in return areas.¹⁴² The push factors employed by the government to spur movement out of camps (including use of force),¹⁴³ along with lack of information, lack of incentives to return,¹⁴⁴ disconnection of water supplies, and the end of general food distribution and promises of compensation once IDPs were back on their farms, induced involuntary return and were inconsistent with

¹³⁹ Susan Mueller, “The Political Economy of Kenya’s Crisis,” *Journal of Eastern African Studies*, vol. 2, no. 2 (2008), pp. 185–210.

¹⁴⁰ For progress made in each of these areas, see the Agenda 4 section of monitoring and evaluation review reports, South Consulting Review Reports, 2008-2010, dialoguekenya.org

¹⁴¹ Statistics from the MoSSP show that by end of May 2011 there were only eight transit camps with a total of 158 households remaining in one district in the Rift Valley. However, a spot check by the author in late May 2011 revealed that there were many more camps in at least six districts, and some of the camps on the government list do not exist on the ground.

¹⁴² Mushtaq Najum, “Doubly Displaced,” *IPS News*, 28 June 2008 (<http://ipsnews.net/news.asp?idnews=43007>); KHRC, *Tale of Force, Lies and Threats: Operation Rudi Nyumbani in Perspective* (Nairobi: KHRC, 2008)

¹⁴³ For instance, police beat up IDPs and forcibly closed Endebess Camp in TransNzoia, while two IDPs protesting the resettlement program were shot dead by police officers at Nakuru Show Ground Camp. OCHA Kenya, *Kenya Humanitarian Update*, vol. 19, May 2008.

¹⁴⁴ The government offered monetary incentives to encourage people to return home, paying Ksh (Kenyan shillings) 10,000 (approximately \$127) to those who agreed to ‘go back home’ Jacqueline Klopp and Nuur Mohamud Sheekh, “Can the Guiding Principles Make a Difference in Kenya?” *Forced Migration Review, Tenth Anniversary of the Guiding Principles on Internal Displacement* (2008).

human rights standards.¹⁴⁵ UNHCR concluded that “the way in which Operation Rudi Nyumbani was implemented suggests that the movement of people out of camps cannot be fully characterized as being free and voluntary based on an informed choice.”¹⁴⁶ Allegations of corruption and embezzlement of the Humanitarian Fund have been reported.¹⁴⁷

There is concern that the government has focused on the return process at the expense of finding other durable solutions;¹⁴⁸ it seems preoccupied with “making camps disappear.”¹⁴⁹ IDPs leaving camps have not necessarily returned to their former homes due to lingering insecurity and lack of social cohesion.¹⁵⁰ While a substantial number of IDPs have unimpeded access to their farms, others have ended up in transit sites and urban areas while others have returned to camps. As one IDP remarked in November 2010, “facilitating IDPs to move out of camps only disperses them and makes them less visible; it doesn’t mean their problems are over.”¹⁵¹ Observers refer to the apparent lack of a strategy for the attainment of durable solutions for those who do not

wish to return home.¹⁵² The government has also tended to focus on landowning IDPs and to attach durable solutions to land; there is no clear strategy for dealing with landless IDPs, such as squatters and non-farmers, who are unable to return for some reason. A university instructor observed, “The government wants to give land to fishermen and artisans without asking them why they are unable to go back where they came from.”¹⁵³

Kenyans also complain that while the government has taken steps to implement reforms under the framework of the National Accord, such reforms have little impact at the community level. For instance, the TJRC is discredited and has had little impact, while the NCIC has little human capacity, is Nairobi-based, and has focused only on hate speech rather than its broad mandate. Moreover, the political culture has not changed; politicians continue to mobilize along divisive lines and to tacitly endorse measures at the community level [to block the return of IDPs. Surveys show that while fear was a major obstacle to resolving Kenya’s IDP problem in 2008, three years later root causes such as landlessness and lack of political were the main causes (see figure 2-4).

A trend analysis over a three-year period shows the level of satisfaction with the government’s performance in finding durable solutions to IDPs was, at best, average, as seen in figure 2-5.

The low level of public satisfaction may be attributed to use of force to disperse IDPs during Operation Rudi Nyumbani, allegations of embezzlement of funds meant for IDPs,¹⁵⁴ and lack of profiling and screening

¹⁴⁵ Kenya Human Rights Commission, *Gains and Gaps: A Status Report on IDPs in Kenya, 2008-2010* (Nairobi: KHRC and National Network for IDPs in Kenya, Feb 2011), pp. 35-40.

¹⁴⁶ UNHCR, “Lessons Learned from UNHCR’s Emergency Operations for IDPs in Kenya,” September 2008 (www.unhcr.org/publ/RESEARCH/48e5d90d2.pdf).

¹⁴⁷ Kenya Human Rights Commission, *Tale of Force, Lies and Threats: Operation Rudi Nyumbani in Perspective* (Nairobi: KHRC, 2008); see also KHRC, “Operation Rudi Nyumbani Wapi (*Return Where?*): Formulating Durable Solutions to the IDP Situation in Kenya,” Briefing Paper, June 2008; “Corruption in Operation Rudi Nyumbani,” *The Standard*, 1 September 2008.

¹⁴⁸ UNHCR, “Lessons Learned from UNHCR’s Emergency Operations for IDPs in Kenya.”

¹⁴⁹ Interview with a university lecturer, Centre for Refugee Studies, Moi University, 20 November 2010.

¹⁵⁰ Water sources were deliberately poisoned in some return areas to block the return of IDPs to their farms. See UNICEF Kenya, “Mission Review Report,” July 2008, on file with the author.

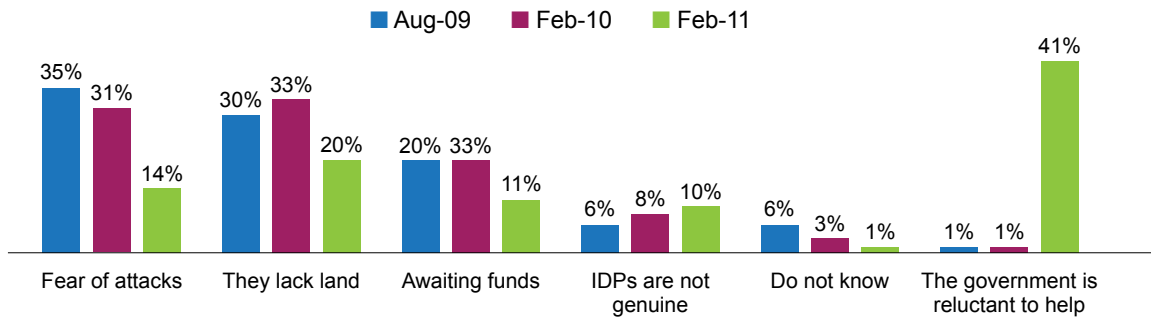
¹⁵¹ Interview with an IDP in a transit site in Mau Summit, November 2010.

¹⁵² Jacqueline Klopp and Nuur Mohamud Sheekh, “Can the Guiding Principles Make a Difference in Kenya?” *Forced Migration Review, Tenth Anniversary of the Guiding Principles on Internal Displacement* (2008).

¹⁵³ Interview with a university lecturer, Centre for Refugee Studies, Moi University, 20 November 2010.

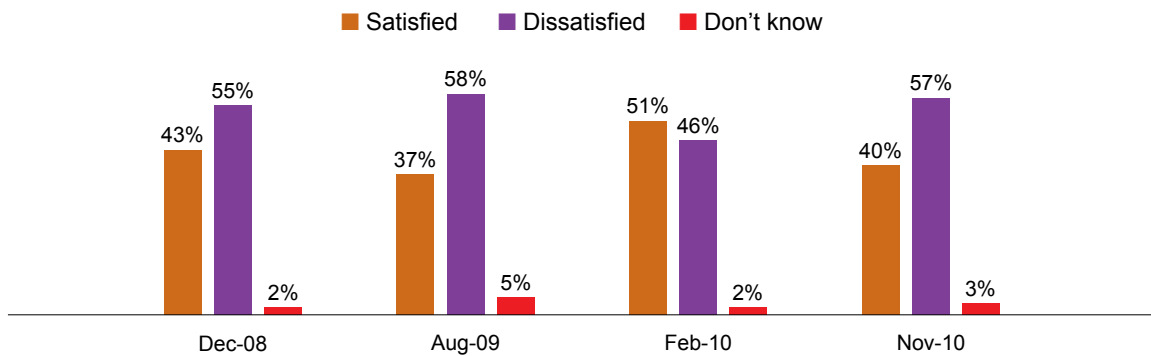
¹⁵⁴ KNCHR, “Outcome of KNCHR Assessment of Government of Kenya Resettlement Program of IDPs and Corruption allegations,” press release, 2 December 2009. In August 2008, the National Humanitarian Fund Advisory Board blocked Ksh 330 million for procurement of building materials in

Figure 2-4. What are the main reasons IDPs remain in camps?



Source: South Consulting survey data, 2009-2011

Figure 2-5. Level of public satisfaction with government's performance in resettling IDPs



Source: South Consulting survey data, 2008-2010

mechanisms, which has enabled infiltration of impos-
tors into camps. When the government began to pur-
chase land for IDPs at the beginning of 2010, the level
of satisfaction spiked from 37 percent in August 2009 to 51
percent in February 2010.

Over a quarter of respondents in successive surveys (see
figure 2-6) say that resettling IDPs elsewhere is one im-
portant step that the government can take to address the
problem. A significant number also emphasize the need
to both resettle IDPs in their communities of origin and

give them land, underscoring the centrality of land as a
cause of and solution to displacement in Kenya.

While these suggestions to achieve durable solutions are
important strategies that should be taken into account
by the government, they must be anchored in broader
democratic governance reforms for better impact.

11. Allocate Adequate Resources to the Problem

The government allocates budgetary resources to fi-
nance measures to address the problem of internal dis-
placement. The draft National Policy for the Prevention
of Internal Displacement and the Protection and

the Rift Valley due to the absence of authentic registers or
accountability systems: "Corruption in Operation Rudi
Nyumbani," *The Standard*, 1 September 2008.

Figure 2-6. What can the government do to address the problem of IDPs in Kenya?

| | Aug-09 | Feb-10 | Nov-10 |
|--|--------|--------|--------|
| Resettle them elsewhere | 33% | 34% | 28% |
| Resettle them in areas where they were displaced from | 25% | 18% | 24% |
| Give them financial assistance | 12% | 13% | 28% |
| Promote peace and reconciliation | 12% | 12% | 10% |
| Take them back to their ancestral districts | 7% | 12% | 6% |
| Increase security | 6% | 9% | 6% |
| Give them land | | | 35% |
| Settle them where they are (promote local integration) | | | 11% |
| Don't know | 3% | 1% | |
| Other | 2% | 1% | 1% |

Assistance to Internally Displaced Persons in Kenya recognizes the need for predictable funding and provides for the establishment of an IDP fund “to comprehensively cover the implementation of the policy in all its aspects and any kind of displacement situation irrespective of its cause.”¹⁵⁵ To address corruption and mismanagement of the fund, the draft policy further provides that the fund

shall be overseen by an independent board composed of representatives of relevant stakeholders and be open to receive bilateral and multilateral donations, but not exclude the possibility for donors to continue to directly fund humanitarian activities as well as recovery and development projects.

As noted above, a special fund, the National Humanitarian Fund for Mitigation and Resettlement, was established in March 2008 to support the return of post-election violence IDPs.¹⁵⁶ The budget for the fund is provided through budgetary appropriations by Parliament, but it is also open to public

¹⁵⁵ Draft IDP Policy, Chapter X, Paragraph 3

¹⁵⁶ Minister of MoSSP, Speech at Launch of Public Fund Raising toward the Resettlement of IDPs, 12 May 2008 (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=143&Itemid=117).

contributions by citizens, other countries, and international institutions.¹⁵⁷ The government provided an initial 1 billion Kenyan shillings (Ksh.) (estimated \$12.5 million) to establish the fund.¹⁵⁸ Records from the Ministry of Finance show the government has spent Ksh. 7.977 billion (\$99,712,500) to support IDPs.¹⁵⁹ The funds allocated since 2007 are shown below:

Figure 2-7. Government expenditure on IDPs, 2007-2011

| Financial Year | 2007/2008 | 2008/2009 | 2009/2010 | 2010/2011 |
|----------------|--------------|---------------|---------------|---------------|
| Amount (Ksh.) | 1.25 billion | 1.035 billion | 3.005 billion | 2.687 billion |

Source: Government of Kenya, Ministry of Finance, January 2011.

As shown in figure 2-8, the funds were disbursed to the

¹⁵⁷ MoSSP, National Humanitarian Fund (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=271&Itemid=167); “Report of the Commission of Inquiry into Post-Election Violence,” 15 October 2008 (www.dialoguekenya.org/docs/PEVReport1.pdf).

¹⁵⁸ MoSSP, National Humanitarian Fund (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=271&Itemid=167).

¹⁵⁹ \$1=KSH 80. “Statement on Government Support for IDPs,” press statement from the Office of the Deputy Prime Minister and Ministry of Finance, *The Star*, 7 January 2011.

MoSSP and the Ministry of Lands for payment to IDPs, department maintenance and operations, house construction and purchase of land for resettlement of IDPs.

Figure 2-8. Government funds to purchase land for IDPs (by financial year)

| | 2007/ 2008 | 2008/ 2009 | 2009/ 2010 | 2010/ 2011 |
|-------------------------|-----------------|------------------|------------------|------------------|
| MoSSP | 1.25 billion | 1.035 billion | 1.605 billion | 1.187 billion |
| Ministry of Lands | 0 | 0 | 1.4 billion | 1.5 billion |

Source: Government of Kenya, Ministry of Finance, January 2011.

The fund pays Ksh. 10,000 (\$150) in “relief and assistance” as a token to each displaced household to “start up” their lives through replacement of basic household items and transportation cost to former homes. Those whose houses were destroyed or vandalized are entitled to a cash payment of Ksh. 25,000 (\$350) for home reconstruction.¹⁶⁰ As of March 2010, the government reported that 157,598 households had received their start-up funds and another 38,145 households received payments to reconstruct their houses.¹⁶¹ Due to alleged mismanagement of the fund by government officials, diversion to other uses by beneficiaries and “recycling” by IDPs, in January 2010 the government decided to distribute building materials instead of disbursing cash.¹⁶² As noted above, civil society organizations, the media and IDPs reported that funds had been grossly mismanaged and embezzled by government officials colluding with some IDP representatives.¹⁶³ By the end of 2009, the government could not account for over \$19 million allocated to purchase the land.¹⁶⁴

¹⁶⁰ OCHA, “Kenya: Frequently Asked Questions on IDPs in Kenya,” February 2010.

¹⁶¹ Statistics from the Ministry of State for Special Programs, March 2010.

¹⁶² Interview with an official at the Humanitarian Fund Secretariat, 2 February 2011; also see South Consulting *Status of Implementation Report*, April 2010.

¹⁶³ South Consulting, *Status of Implementation Report*, April 2010.

¹⁶⁴ IDMC, “Kenya: Corruption keeps resettlement funds from

International funding support to address the IDP problem has come from the UN Consolidated Appeals Process and the Emergency Humanitarian Response Plan (2008, 2009 and 2010) launched by the UN and nongovernmental organizations, in close coordination with the government of Kenya.

Funds for disaster-related displacement come from the treasury, which funds the Ministry of State for Special Programs, the National Disaster Operations Center (NDOC) and all pertinent line ministries. Other funding for government intervention is received from donations, grants and joint programming with UN agencies, NGOs, community-based organizations, and the private sector.¹⁶⁵ The Kenya Red Cross, the main implementing partner of the government on disaster management, also complements government financing through public fundraising appeals for disaster preparedness and response activities.¹⁶⁶

Funding for IDP-related activities, including durable solutions, has been hampered mostly by corruption and red tape, including bureaucratic delays and inadequate interministerial coordination mechanisms. The ministries with a mandate to address IDPs have often complained of delays in disbursement of funds from the Treasury. In addition, there is lack of clear interministerial accountability mechanisms, a persistent flaw that has contributed to misappropriation of funds. The draft national IDP policy seeks to address some of these problems—for instance, by providing for easy access to available resources, including quick release for immediate response to emergency situations.

IDPs,” IDP News Alert, 14 January 2010 ([www.internal-displacement.org/idmc/website/news.nsf/\(httpIDPNewsAlerts\)/05E28D99085F598CC12576AB00591D09?OpenDocument#anchor2](http://www.internal-displacement.org/idmc/website/news.nsf/(httpIDPNewsAlerts)/05E28D99085F598CC12576AB00591D09?OpenDocument#anchor2))

¹⁶⁵ Interview with Conflict Early Warning and Early Response Network NGO focal point in Nairobi, 15 February 2011; see also National Disaster Response Plan, p. 12.

¹⁶⁶ Telephone interview with head of Disaster Management, Kenya Red Cross Society, 16 February 2011.

12. Cooperate with International Community when National Capacity is Insufficient

The government cooperates with the international community to respond to internal displacement when national capacity is insufficient. It invites and accepts assistance from the international community to help address the IDP problem and takes measures to ensure that international actors enjoy safe and unimpeded access to the internally displaced. The government works in partnership with UN agencies and international organizations on protection and assistance programs and to strengthen government capacity to respond to displacement. The Ministry of State for Special Programs is the coordinating institution that facilitates cooperation between the national authorities and international actors on IDP issues.¹⁶⁷

In January 2008, eleven UN clusters were established and began to be rolled out, including the protection, early recover and shelter clusters, which have supported the government since the emergency phase of late 2007 to early 2008. Due to lack of preparedness and capacity of the government to deal with the large number of IDPs, the clusters more or less took over the management of the IDP problem, and eventually the government raised concerns that clusters had failed to “respect the extent of national capacity and systems.”¹⁶⁸ In August 2008, members in coordination with the UN and line ministries revised the clusters and began to reorient their work to focus on “supporting national mechanisms for national and sub-national sector coordination.” In 2009, the clusters transitioned into “more sustainable and inclusive structures with stronger national leadership; government ministries took over as Chair of the clusters.” The former protection cluster is the current National Protection Working Group, led by the Ministry of Justice, National Cohesion and Constitutional Affairs

and co-chaired by the Kenya National Commission on Human Rights and the Ministry of Special Programs.¹⁶⁹

In June 2008 the government collaborated with UNHCR to conduct a profiling exercise to determine the number of IDPs. The government has also worked with UNOCHA and UNDP on disaster management and information sharing and early recovery initiatives respectively. The government has sought funding from development partners, the African Development Bank and the UN, to run its IDP resettlement programs. Investigative commissions such as the Commission of Inquiry into the Post-Election Violence (Waki Commission) and the Independent Review Commission on the General Elections Held in Kenya on 27 December 2007 (Kriegler Commission) formed after the crisis have employed international expertise. In addition, reform commissions including the Committee of Experts on Constitution Review, the Truth, Justice and Reconciliation Commission and the Task Force on Police Reforms enjoyed international expertise. The Office of the Representative of the Secretary-General (RSG) on the Human Rights of IDPs provided technical expertise for the drafting of the national IDP policy. In April 2011, the government invited the new Special Rapporteur on the Human Rights of IDPs to conduct a mission in Kenya.¹⁷⁰

In February 2008, RSG Walter Kälin visited Kenya and met with the MoSSP, the Ministry of Justice, UN agencies, the Kenyan Red Cross, NGOs, local authorities and humanitarian organizations and visited IDP camps and transit sites for returnees.¹⁷¹ He recommended that the government adopt a comprehensive IDP policy. In January 2010, a staff member from the RSG’s office was

¹⁶⁷ UNHCR, “Lessons Learned from UNHCR’s Emergency Operations for IDPs in Kenya,” September 2008 (www.unhcr.org/publ/RESEARCH/48e5d90d2.pdf).

¹⁶⁸ Ibid.

¹⁶⁹ IDMC, *Kenya: No Durable Solutions for Internally Displaced Yet*; citations from p. 13 in which IDMC references email correspondence with OCHA Kenya.

¹⁷⁰ Remarks by Chaloka Beyani, the new RSG, at a forum with the Parliamentary Select Committee on the Resettlement of IDPs, organized by the KNCHR, in Mombasa, Kenya, 23 May 2011.

¹⁷¹ “Report from OHCHR Fact-Finding Mission to Kenya,” 6–28 February 2008.

seconded to Kenya to give technical support to the IDP policy drafting process. The RSG Kälin revisited Kenya in March 2010 to provide his personal support to and show his appreciation of the IDP policy process. As noted above, OCHA Kenya has translated the Guiding Principles into Kiswahili.

The draft IDP policy provides for a complementary system of cooperation with the international community. Chapter III, Article 20, of the draft policy provides that the Government of Kenya shall seek support and cooperate with members of the international community, including humanitarian, development and human rights actors, in the implementation of this Policy, in particular in circumstances overwhelming national capacities to provide adequate protection and assistance to internally displaced persons.

Kenyan authorities allow international programs assisting IDPs in all parts of the country. International actors have unimpeded access to IDPs and return sites; they

do not have to deal with bureaucratic delays. The draft national IDP policy provides for rapid and unimpeded access to IDPs to actors providing protection and assistance, including through “facilitation and fast-tracking of immediate entry and direct access to all IDPs.” It also provides for free passage of humanitarian assistance through waivers of customs and taxes and the elimination of price regulations. In addition, the draft policy prohibits the diversion of humanitarian assistance by state and nonstate actors.¹⁷²

¹⁷² For the provisions mentioned in this paragraph, see Chapter III, 21(a-c) in Government of Kenya, Office of the President, Ministry of State for Special Programs, National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, Final consolidated draft (24 March 2010),