

# MASSIVE INTERNAL DISPLACEMENTS IN KENYA DUE TO POLITICALLY INSTIGATED ETHNIC CLASHES

Absence of Political and Humanitarian  
Responses

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or social origin, property, birth



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## The Republic of Kenya: Key facts

- **Capital:** Nairobi
  - **Land Area:** 582,646 sq km (224,961 sq miles)
  - **Population:** 33.4 million (UNDP, 2005)
  - **Major languages:** Swahili, English
  - **Religion:** 40 % protestant, 30 % Roman Catholic, 6 % Muslim, 23% other religions
  - **Major Ethnic Groups:** Kikuyu 22%, Luhya 14%, Luo 13%, Kalenjin 12%, Kamba 11%, Meru 6%
  - **Life expectancy:** 48 years (men), 46 years (women) (UN)
  - **Infant Mortality:** 79 per 1,000 live births (UNICEF, 2005)
  - **Percentage of population living on less than US\$1 a day:** 1990-2004 – 22,8% (UNDP – Human Development Report 2006)
  - **Human development index (HDI rank):** 152 (UNDP – Human Development Report 2006)
  - **Resources:** Tea, coffee, horticultural products, petroleum products...
  - **Real Gross Domestic Product (GDP) growth** - 5.2% (2005 estimate)
  - **Administrative Divisions:** Eight Provinces including the Nairobi area. Provinces are: Central, Coast, Eastern, Nyanza , Rift Valley, Western and North Eastern. These provinces are divided into administrative areas known as districts.
  - **National legislature** - Multi-party Unicameral National Assembly (210 elected members, 12 nominated members, the Attorney-General and the Speaker as ex-officials)
  - **Last elections** - 27 December 2002 (presidential, legislative and civic)
  - **Head of State** - President Emilio Mwai Kibaki
  - **Next elections due** - 2007 (presidential, legislative and civic)
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## International Human Rights Conventions Ratified by Kenya

- International Covenant on Civil and Political Rights (ratified in 1976)
- International Covenant on Economic, Social and Cultural Rights (ratified in 1976)
- Convention on the Elimination of All Forms of Discriminations against Women (ratified in 1984)
- International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 2001)
- Convention on the Rights of the Child (ratified in 2000)
- Convention against Torture and Other Cruel Inhumane or Degrading Treatment and Punishment (ratified in 1997)
- African Charter on Human and Peoples' Rights (ratified in 1992)
- African Charter on the Rights and Welfare of the Child (ratified in 2000)

## Executive summary

Forced internal displacements are an acute and sensitive issue in Kenya. According to the more recent statistics provided by United Nations Office for the Coordination of Humanitarian Affairs, there are around 380,000 internally displaced persons (IDPs) in Kenya. This places the country at the 7<sup>th</sup> rank in Africa in terms of numbers of IDPs.

Through interviews with members of the National IDPs Network, a Kenyan NGO, the FIDH delegates which took part in an international mission of investigation held in Kenya from January 19 to 25, 2007, established with concern that IDPs in Kenya are facing a disastrous humanitarian situation.

Forced to leave their original place of living, IDPs often lost all their properties and are obliged to start a new life without perspective of safe return, resettlement, or compensation. If not “hosted” in isolated camps like the Kieni village visited by the FIDH delegates, IDPs are usually landless and labelled as squatters or slum dwellers. In such living conditions, they face difficulties to find a job or a source of income to pay for medicine or the school fees of the children. Access to public health facilities is also compromised.

Except from urgent assistance provided by humanitarian organisations for one or two months after their displacement, IDPs are left alone as, until now, no particular attention was given to their situation by national authorities or United Nations agencies.

Amongst the various causes of displacements such as floods, droughts, fights between communities for basic resources, the FIDH delegates decided to focus their investigation on displacements due to politically instigated ethnic clashes at the time of general elections considering that the issue is not well known by the international community and does not find adequate political response at the national level. This focus also aimed at contributing to prevention of new IDPs in the country as Kenya will hold its next general election in 2007.

Politically motivated ethnic clashes started one year before the December 1992 first multi-party general elections, when KANU leaders (presidential party of Arap Moi) who wanted at any cost to preserve their political, social and economic “privileges” fuelled ethnic rivalries into violence in many parts of the Rift Valley, Nyanza and Western Provinces. Pro-governmental communities were intended by governors of Provinces and other leaders of the previous

one-party regime, to “secure” that their constituency be “cleaned” from other communities viewed as opposition supporters. As a consequence of the State-sponsored violence, many displaced Kenyans as well as those in the clash-torn zones were unable to register as voters or were barred from voting by violence and intimidation. Violence continued relentlessly in the post-election period until 1996. According to KHRC, from 1991 to 1996, over 15,000 people died and almost 300,000 were displaced in the Rift Valley, Nyanza and Western Provinces. In the run-up to the 1997 elections, new violence erupted on the Coast, killing over 100 people and displacing over 100,000, mostly pro-opposition people. Other incidences of politically instigated clashes were experienced between 1999 and 2005 mostly in the Rift Valley, Nyanza and the Western Kenya regions.

As the FIDH report points out, this violence aimed at creating animosity between communities to split their political inclinations, to frighten whole communities and induce them to vote for the ruling party as a guarantee for their security, or to drive out communities with divergent political views from specific electoral areas. Such recurrent violence every five years at the time of every general elections was facilitated by the fact that the perpetrators and instigators still benefit from impunity. This on-going impunity is indeed worrisome for the near future considering the forthcoming 2007 general elections. There are already many indicators of violence in Subukia, Gucha, Laikoni and Mount Elgon which seems to have been fuelled for political reasons and which led to the forced displacement of hundreds of persons since January 2007.

FIDH and KHRC demand to the Kenyan authorities to decisively deal with politically instigated ethnic clashes at the time of general elections. The Kenyan government should formulate a policy and an administrative framework for the prevention of such displacements. One of the main tools to achieve such prevention is to effectively fight against impunity through prompt arrest and prosecution of those individuals responsible for fuelling ethnic clashes for political gain.

FIDH and KHRC also call upon the Kenyan authorities to consider IDPs as vulnerable individuals and to immediately take all the necessary measures to respect their rights as such, notably, the right to an adequate standard of living, the right to health and medical care, the right to work and the right for return, resettlement and reintegration, as guaranteed in the international instruments ratified by Kenya and in the United Nations Guiding Principles on IDPs.

## Introduction

### 1. Rationale and objective of the mission

According to the conclusions of the African Union meeting of experts on migration and development held in Algeria in April 2006, one third of the 150 millions of migrants in the world are Africans and 20 million of them originate from sub-saharian African countries.<sup>1</sup> It is also noteworthy that 50 per cent of the African migrants are women.<sup>2</sup> One third of the refugees and half of the internally displaced persons (IDPs) in the world are Africans.<sup>3</sup>

Alerted by the Kenya Human Rights Commission (KHRC), FIDH member organisation in Kenya, on the complex and acute issue of IDPs in the country, FIDH decided to conduct an international mission of investigation on that topic on the occasion of its participation in the World Social Forum, held in Nairobi (Kenya) from January 19 to 25, 2007.

The more recent statistics provided by United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) dated from May 2004 counted around 360,000 IDPs in Kenya.<sup>4</sup> The Internally Displacement Monitoring Centre (IDMC)<sup>5</sup> provides the number of 431,153 IDPs in Kenya in 2006.<sup>6</sup> With a total population of 33.4 million people (UNDP,

2006)<sup>7</sup>, Kenya counts one inhabitant out of 90 who is an IDP. This places the country at the 7<sup>th</sup> rank in Africa in terms of numbers of IDPs.

The causes for internal displacements in Kenya vary from floods, droughts, state instigated evictions, fights between communities for basic resources to political persecution or politically motivated displacements often accompanied by organised violence benefiting from impunity.<sup>8</sup> In fact, even if there are no official statistics, the mission established with concern through interviews of members of the National IDPs Network,<sup>9</sup> a Kenyan NGO, that many of the forced displacements are due to politically instigated ethnic clashes at the time of the general elections held every 5 years.

FIDH and KHRC decided to focus their mission of investigation on this latest cause of displacement, notably because the issue is not well known by the international community and does not find adequate political response at the national level. The report also aims at contributing to the prevention of new IDPs as Kenya will hold its next general election later on 2007.

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1. Source : High-Level Dialogue on international migrations and development, UN General-Assembly, 14-15 September 2006.

2. Cf. note 1.

3. Source: "Africa continues to be the continent most affected by internal displacement with more than 12.1 million people displaced in 20 countries." UNHCR Report, Measuring protection by numbers, November 2006.

4. UNOCHA uses, as of May 2004, the figure of 360,000 IDPs taken from a comprehensive report of December 2002.

5. The Internal Displacement Monitoring Centre (IDMC), established in 1998 by the Norwegian Refugee Council is an international body monitoring conflict-induced internal displacement worldwide.

6. IDMC and NRC (Norwegian Refugee Council), "I'm a Refugee in My Own Country," Conflict-Induced Internal Displacement in Kenya, 19 December 2006. <http://www.internal-displacement.org/>

7. Cf. UNDP Kenya Development Cooperation Report 2005, <http://www.ke.undp.org/>

8. During the Stakeholders Forum convened by UNOCHA and IDMC for UN Agencies and NGOs working on IDPs issues on March 30, 2007 at UNOCHA boardroom, there was a broad consensus on the following :

- That the culture of impunity and bad governance of public affairs constitute the root causes for internal displacements in Kenya.
- That political violence constitute the major trigger and accelerating factors for most of internal displacements.

9. The IDPs network is a national movement of the survivors of the politically instigated ethnic clashes in Kenya. It is governed by the functional and democratic structure of the National, Regional and Grassroots committees/ networks. Thus each level has its leadership structures.

## 2. Persons met by the FIDH delegation

The FIDH's delegates, Cynthia Gabriel (Malaysia), FIDH Deputy Secretary General and Board member of Suaram (FIDH member organisation), Arnold Tsunga (Zimbabwe), Executive Director of the Zimbabwe Lawyers for Human Rights and Member of Zimrights (FIDH member organisation) and Marceau Siviude (France), FIDH Africa Desk Director, met with the following persons :

- Andrew Timpson, Head of Humanitarian Unit, Office of the UN Resident Coordinator in Kenya
- Pascal Cullat, Head of Regional Delegation, International Committee of the Red Cross
- Olivier Dubois, Deputy Head of Regional Delegation, International Committee of the Red Cross
- Abbas Guillet, Secretary General, Kenya Red Cross Society
- Davis M. Malombe, Programme Officer, Kenya Human Rights Commission

The FIDH's delegates also met with representatives of the National IDPs Network who were participating in the World Social Forum (WSF) held in Nairobi, including John Kennedy Odhiambo, National Chairperson; Cyrus Yugi, National Vice-Chairperson; Samuel Kingori, National Secretary; Florence Wambui Kinyanjui, National Treasurer.

Fourteen interviews were done with IDPs invited by the National IDPs Network to participate in the WSF. And the FIDH's delegates met with many other IDPs on the occasion of their visit of the Kieni Huruma Village in Thika District, Central Province, located about 2 hours by bus from Nairobi.

Requests for meetings were sent to the Minister of Lands and the Director of Land Adjudication and Resettlement, but both of them were not available at the time of the mission.

## I - Internally Displaced Persons (IDPs): A Complex and Acute Issue

### 1. Multiple causes of displacement

The distinctive feature of internal displacement is that it is a coerced or involuntary movement that takes place within national borders. The reasons for flight may vary and include armed conflict, situations or generalized violence, violations of human rights, and natural or human-made disasters.<sup>1</sup>

According to UNOCHA, International Committee of the Red Cross (ICRC) and Kenyan Red Cross Society (KRCS) representatives met by the FIDH delegation, the causes for internal displacements in Kenya are multiple: long-standing inter-ethnic rivalry over land, cattle rustling or competition for the scantily available resources; conflicts between pastoral and agricultural communities;<sup>2</sup> conflicts between refugees and local population;<sup>3</sup> politically instigated ethnic clashes; drought and floods.<sup>4</sup>

There are neither official public figures nor comprehensive figures of humanitarian agencies on the number of IDPs in Kenya in 2006. The only available reliable data is the one given by the Internal Displacement Monitoring Centre (IDMC), which has counted 431,153 IDPs in Kenya in 2006.

The numerous causes driving internal displacements make it difficult to elaborate and implement one appropriate policy response to effectively deal with this phenomenon.

As explained above, this report focuses on internal displacements due to politically instigated ethnic clashes in connection with general elections. Indeed, most of the

displacements have political and ethnic dimensions.

### 2. IDPs due to politically instigated ethnic clashes in the context of general elections

Before independence in 1963, Kenya was a British colony governed by an all-powerful colonial administrator. The vast majority of Kenyans were not allowed to vote and were not represented in the government. With independence, Kenya became a constitutional monarchy under the nominal sovereignty of the British monarch, with a prime minister serving as head of government. In 1964 Kenya cut its ties with the British throne and became a republic with a president as head of state and government. From 1964 to 1966, and from 1969 to 1982, Kenya was, for all practical purposes, a *de facto* one-party state. Between 1982 and 1991 it was a one-party state by law.

In December 1991, the one-party regime of President Daniel Arap Moi capitulated to internal and international pressure to legalize a multi-party system. Having entered the multiparty era involuntarily, KANU leaders (Presidential ruling party) were firmly resolved on either getting the country back to one-party status or keeping genuine democracy in cold-storage through forcible maintain of a *de facto* one-party state. President Moi claimed that Kenya's return to a multi-party system would threaten the State, polarize the country along tribal lines and plunge it into ethnic violence.<sup>5</sup> Cabinet ministers, members of Parliament and KANU officials from the Rift Valley province, most of

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1. Definition set up in OCHA Handbook for applying the guiding principles on internal displacement.

2. See report of the United Nations Development Programme Report, Unveiling Women as Pillars of Peace Building in Communities Fractured by Conflict in Kenya, p.11: "Faced with expanding desertification from the north, ecological pressure within their zones, and encroachment on the fringes of their lands by farming communities, pastoralists have responded in ways that have escalated ethnic conflicts. Many pastoralists have moved out of their regions in search of pastures for their significantly reduced herds or alternative means of subsistence. This development has brought them into direct conflict with non-pastoral communities."

3. *Ibid.*, p.12 : "The presence of humanitarian assistance resources for refugees in Kakuma, and other displaced populations in the Southern Sudan, for instance, has created oases in the middle of deprived local populations in Turkana districts. This has caused conflicts between the locals and the refugees."

4. Cf. November 13, 2006: Nov 13 (Reuters) - Twelve people have died and more than 60,000 have been forced from their homes after heavy rains in Kenya caused massive flooding. <http://www.alertnet.org/thenews/newsdesk/L13143320.htm>

5. "The political agenda of the state took two forms. First, clashes became a vehicle to fulfil President Moi's prediction that Kenya's return to a multiparty system would plunge the country into tribal violence. The second agenda item was to influence the outcomes of the multiparty elections in 1992 and 1997." See report of the United Nations Development Programme Report, Unveiling Women as Pillars of Peace Building in Communities Fractured by Conflict in Kenya, *op. cit.*, p.16.

## Massive Internal Displacements in Kenya Due to Politically Instigated Ethnic Clashes

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them from President Moi's Kalenjin group, began to call for the forcible removal of other ethnic groups viewed as opposition adherents.<sup>6</sup> They advocated "majimboism"<sup>7</sup> as a federal vehicle for the protection of their ethnic privileges.

Starting one year before the December 1992 general elections, the government fuelled violence in many parts of the Rift Valley, Nyanza and Western Provinces. As a consequence of this violence, many displaced Kenyans as well as those in the clash-torn zones were unable to register as voters or were barred from voting by violence and intimidation.<sup>8</sup>

Although violence was suspended during the critical months of campaigning and balloting, it continued relentlessly in the post-election period until 1996.

According to the Kenya Human Rights Commission, from 1991 to 1996, over 15,000 people died and almost 300,000 were displaced in the Rift Valley, Nyanza and Western Provinces.<sup>9</sup>

In the run-up to the 1997 elections, new violence erupted on the Coast, killing over 100 people and displacing over

100,000, mostly pro-opposition up-country people. Other incidences of the politically instigated clashes have been experienced between 1999-2007 mostly in the Rift Valley, Nyanza and the Western Kenya provinces. By April 2007, the Chebyuk clashes in Mt Elgon district, Western province, mark the latest incident of bloody violence in Kenya.

As this report points out, this violence has been aimed at creating animosity between communities to split their political inclinations, to frighten whole communities and induce them to vote for the ruling party as a guarantee for their security, or to drive out communities with divergent political views from specific electoral areas.<sup>10</sup>

And, over the years it has become evident that these clashes were sponsored by the government using surrogate agents to deprive some Kenyans of their franchise while simultaneously avoiding direct responsibility.<sup>11</sup> The politically motivated violence follows definite cyclical patterns following electoral periods with incidences of politically motivated violence and associated displacements increasing as the country moves towards elections and just after elections.

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6. "Elite manipulation of ethnicity as the focal point for political power is a common phenomenon in Kenya's post-independence history, with the 1992 and 1997 multi-party elections clearly demonstrating this pattern. At the core of this trend of electoral process is the issue of the control of the state, the locus of political power and wealth accumulation. This behaviour by the elites not only encourages political patronage and undermines democratization but also perpetuates ethnic polarization and differences. Ethnic conflicts in the Rift Valley, Nyanza, Coast and Western Provinces which continued prior to, and after, the 1992 and 1997 elections can be understood in this context. Specifically, ethnic cleansing is a consequence of elite manipulation." Kenya Governance, Accountability and Human Rights Practice in the Post 1992 and 1997 Multi-Party Electoral Dispensation, UNHCR, Centre for Documentation and Research.

7. The policy of majimboism emerged in the late 1950s and early 1960s. Based on the notion of "group rights", especially the rights of ethnic minorities, as well as exclusive ethnic territory, the policy is akin to federalism.

8. "Thousands of potential voters were displaced in the period leading to the 1992 multi-party elections, during which nearly 400,000 people were displaced. More than 90 per cent of those displaced were in the Rift Valley Province, the majority of whom were non-Kalenjins (i.e. Kikuyus, Luos and Luhyas)." Kenya Governance, Accountability and Human Rights Practice in the Post 1992 and 1997 Multi-Party Electoral Dispensation, UNHCR, Centre for Documentation and Research.

9. See KHRC report, *Killing the Vote – State Sponsored Violence and Flawed Elections in Kenya*, 1998.

10. "Politicians have perfected the art of manipulating ethnicity to strengthen their positions as ethnic leaders rather than national leaders. They often play on ethnic sentiments, fears and sensitivities to secure their positions. Therefore, politicisation of ethnicity has become the strongest single determinant in the domain of governance in Kenya. While the political elite use their ethnicity to enhance both their political power and their wealth, the masses are induced into distrust and fear of other ethnic groups, particularly those who belong to political parties different from their own." *Ibid.*, note 11, p. 15.

11. "It has been clearly documented that the persistent and systematic random killing and displacement of people (1991-1997) have been politically motivated, with some top KANU officials and members of parliament opposed to multi-partyism being at the centre of the campaign against the so-called 'foreigners' (non-Kalenjins in the Rift Valley)." Kenya Governance, Accountability and Human Rights Practice in the Post 1992 and 1997 Multi-Party Electoral Dispensation, UNHCR, Centre for Documentation and Research.

## II - Testimonies of IDPs Victims of Politically Instigated Ethnic Clashes

### 1. Politically instigated ethnic violence in the Rift Valley Province in 1992, 1997 and 2002<sup>1</sup>

#### A/ Violence in Kericho District

**Testimony of Counsellor Charles Njenga Kennon, 46 years old**

*"I come from Kericho, in the North West Rift Valley Region. I am a Kikuyu.*

*In 1991, Kenya was pledging for multipartyism as KANU was the only ruling party since independence in 1963. President Moi is a Kalenjin. Its is important to know that the system of voting in Kenya depends on who is in power and from which community he/she comes from. Due to corruption, the distribution of resources in Kenya also depends on ethnic factors. Any community trying to challenge the ruling party is considered as a traitor.*

*In 1992, the Sports Minister of Kenya, Kenneth Matiba, coming from the Kikuyu community, was arrested and tortured for pledging for multiparty system. The Kikuyu community was indeed challenging the ruling party, but peacefully. The climate was very tense between political parties. KANU was unsure to win the elections and its members were fearing prosecutions in the post election era should they lose elections. It led the government to deal with other mechanisms to silence the opposition. One of the tools used was to divide the communities along ethnic lines. KANU selected leaders of Kalenjin and Maasai communities to raise private army or militias to fight against other communities allegedly supporting the opposition.*

*In my village in Kericho, I used to own a timber industry. As a rich Kikuyu leader, I was targeted by the Kalenjin for allegedly financing the opposition struggle. In my industry,*

*there were truck drivers and night guards from Kalenjin communities. I've been told later on that they were asked by Kalenjin leaders to attack me or even kill me.*

*On May 23, 1992, Sunday morning, the Kalenjin working in my industry took some days off from work telling me that they wanted to see their families in their homes. The following day, they did not come back to work. I was worried. I knew something was going wrong. I went to the police station and requested policemen to guard my industry. On May 25, the Kalenjin finally showed up but contested the presence of policemen. They were telling them: 'You know that you are paid by the government. You shouldn't help the opposition.' 200 youths were with the drivers armed with arrows, paraffin and petrol. They torched the entire factory and killed two workers. Policemen did not react. Warned by the Timboroa Office Commanding Police Station (OCS) of the situation, I went to the factory's site accompanied by journalists. The raiders were shooting at me some of them shouting 'We want your head.' One journalist was shot and severely wounded. Finally, I managed to arrest two raiders. But after investigation, the Court ruled on June 1993 that I had to forgive them! I was even instructed to swear an affidavit that I will never again file cases against Kalenjin people!*

*It reminds me of the story of one of my colleagues. On June 21, 1993, the chief of another village forced him to swear an affidavit explaining that he has been financing Kikuyu's members of Parliament and civil leaders. The same day, he was shot dead.*

*As far as I am concerned, I felt insecure and I decided to leave my village in 1997, the year of general elections. I thought the situation might occur again. I took refuge with my family in Molo town.*

*I never received any assistance or compensation from the government. We petitioned it many times, but it did never*

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1. According to the Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, dated 31<sup>st</sup> July 1999 : "Tribal clashes in the Rift Valley Province started on 29<sup>th</sup> October, 1991 in Nandi District, pitting the Nandi, a Kalenjin tribe, against the Kikuyu, the Kamba, the Luhya, the Kisii and the Luo. The clashes quickly spread in Kericho District. Later in early 1992, the clashes spread to Molo and other parts of Kericho, Trans Nozia, Uasin Gishu and many other parts of the Rift Valley Province. In 1993, the clashes spread to Enosupukia, Naivasha and parts of Narok, and the Trans Mara districts. In these areas, the Kipsigis and the Maasai, were pitted against the Kikuyu, the Kisii, the Kamba and the Luhya, among other tribes. In each area, non-Kalenjin or non-Maasai were suddenly attacked, their houses set on fire, their properties looted and in certain instances, some of them were killed or severely injured with traditional weapons. The attackers targetted mainly the kikuyu. The attacks were barbaric, callous and calculated to drive out the targetted groups from their farms, to cripple them economically and to psychologically traumatise them." (...) Commenting on the allegations that the ethnic clashes were politically instigated, the Commission states that "the Provincial Administration had over the years, increasingly been politicised to the extent that in the advent of multi-partyism in 1991, they were averse to any remarks made against KANU and the party in power, and whatever action took had to show their loyalty and support for it."

answer. We fight for our rights thanks to the Kenya Human Rights Commission. I need compensation. The damage for loosing my factory is up to 1.5 Million Kenyan Shillings. I could never come back to my original place because of lack of security. When a government fails to provide security and safety to its people, it shouldn't be in power. I want to be resettled elsewhere."

### **B/ Violence in Enosupukia, Narok District**

#### **Testimony of Stephen Kimani Mbugua, 53 years old**

"I am a Kikuyu born and brought up in Kiambu district (Central Province). I was posted in Enosupukia (Narok District) as a teacher in May 1978. I was very comfortably settled there and decided to stay to raise my family. I bought a piece of land (0.65 Hectares) and cows. All the different communities present in that area were living peacefully together.

Things changed shortly before the 1992 general elections. The Masai community leaders were going around to ask us to vote for the member of Parliament ruling from the President's Party. But as far as I was concerned, the country was not properly governed and it was time for changes. And the area where I was living was supporting the opposition. At that time, we were told that if we supported the opposition, we would be evicted. Finally, the opposition leader lost the elections because of what appeared to us to be obvious electoral irregularities.<sup>2</sup>

But, the government still wanted to put in place a KANU zone.<sup>3</sup> On October 13, 1993, a battle raged between Masai and the other communities. On October 15, 11 people were killed and many more were injured by arrows and swords. As we wanted to avoid other killings, we went to settle in a refugee camp inside Maiella village (Naivasha Division), 10 km from Enosupukia. UNDP staff gave us water, foods, clothes, shoes. But, government authorities kept on continuing to harass people who were benefiting from UN assistance. They dismantled the camps in mid-December 1993. They transported away IDPs in 10 open

trucks to Karigiti stadium in Kiambu town in and other villages like Olkalau, Njoro and Gong. I refused with others to be displaced again and remain in Maiella. Government authorities were preventing us from accessing basic needs. I lost my job. Our children couldn't go anymore to school. In June 2003, we counted 350 graves, people who died of diseases and negligence as a result of clashes."

### **C/ Violence in Nandi Hills, Nandi District**

#### **Testimony of Rosa Akena**

"I was living in Nandi Hills (Nandi District). I'm a Turkana. My husband and I were working in a tea plantation. In 1992, in the wake of the general elections, the Tugen (sub-tribe of Kalenjin) wanted to evict the Kikuyu from the district as well as other communities politically affiliated to them such as the Turkana.<sup>3</sup> The Tugen came to my plantation. They killed my 2-year-old child and looted and burnt my house. Right after the tension arose I had to leave the place to go to Laikipia District where I built a small house on a piece of land.

But, in that area, a conflict raged in 2002 between the Pokot and the Kikuyu. Once again, my house was looted and burnt. I had to move to Muthengera where I rented a small room with roof leaks. I am living with my three children. My husband was obliged to work in Ndume farm as a night watch guard.

Today I still feel insecure. I would like to be resettled elsewhere. I need better facilities to raise and feed my children."

### **D/ Violence in Kondoo Farm, Burnt Forest, Uasin Gishu District**

#### **Testimony of Milka Wanjiruo Ndichu**

"Before 1992, I used to live in Kondoo Farm, Burnt Forest, Uasin Gishu District for five years. I'm originally from

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2. "Elite manipulation of ethnicity as the focal point for political power is a common phenomenon in Kenya's post-independence history, with the 1992 and 1997 multi-party elections clearly demonstrating this pattern and differences. Ethnic conflicts in the Rift Valley, Nyanza, Coast and Western Provinces which continued prior to, and after, the 1992 and 1997 elections can be understood in this context. Specifically, ethnic cleansing is a consequence of elite manipulation." Kenya Governance, Accountability and Human Rights Practice in the Post 1992 and 1997 Multi-Party Electoral Dispensation, UNHCR, Centre for Documentation and Research.

3. "The most disturbing trend of 1993 was the continuation of political violence in rural Kenya. Although many predicted that the so-called tribal clashes that erupted at the end of 1991 and became fiercer as the 1992 election campaign progressed would cease once elections were held, this was not the case. In late 1993, Africa Watch estimated that 1,500 Kenyans had been killed and 300,000 internally displaced since the clashes began." Africa Watch Overview, 1994. <http://www.hrw.org/reports/1994/WR94/Africa.htm#TopOfPage>

Kiambu but I got married to a man at Kondoo Farm. In 1991 there was a tribal clash involving Kikuyu and Kalenjin. One day, in the morning, a group of politicians supporting the Moi regime went campaigning in Kondoo for General Elections. The Kondoo residents were seen as desiring political change.

There was disagreement between the inhabitants and the group. A few days later, on 13 December 1991 at night, we heard trumpets blowing and shouting that the Kikuyu must go, must vacate the area. The community woke up and started running away. I carried the small baby, John (1989), the elder child carried the next small baby Njoki (1982), and we just left running to the Kondoo Centre to take refuge for the night. 2 of my 6 children were left home and instructed to take cattle to the bush and thereafter find their way to the centre. They were forced to stay in the bush for 3 days, as it was too dangerous since the perpetrators were now burning houses.

After taking refuge at the Kondoo center the conflict intensified, houses were burnt and razed to the ground and more Kikuyu were killed by the Kalenjin. They were in uniform and operating as a militia. They were armed with bows, arrows, pangas, guns, pistols and other small arms. Six people, all Kikuyu, were killed during fighting.

As conflict and fighting raged, the women and the children went to seek refuge at the local police stations. Police went to the scene and shot in the air to try and separate the groups to no avail. They did not stop the fighting or make a few arrests.

The community stayed for a number of days at the church office. After 3 months the community went back and asked for police escort to go back to their homes; such escort was given. As they were approaching their farm the perpetrators surrounded the victims again and started attacking them again. It was too dangerous to go back and the government was not able to protect us.

As we approach the general elections in 2007 there is a resurgence of ethnic violence in Molo and Kuresoi Constituencies involving Kikuyu, Kalenjin and Kisiis.

Since 1991, I stayed near a forest, in Nakuru Subukia Constituency, Nakuru District. I used to cultivate the forest until the government banned the Shamba cultivation system.<sup>4</sup> I am looking after my children through menial jobs and free education provided by the state has helped substantially. Unfortunately they provide for Primary Education only. Boys resort to drugs, beer and sex while girls get married early as a result of poverty.”

### **E/ Violence in Burnt Forest, Uasin Gishu District**

#### **Testimony of Simon Mwangi Muthoko**

“I was living in Burnt Forest, Uasin Gishu District, Rift Valley Province. In 1992 during the general elections campaign, the Kalejin Tribe invaded some Kikuyu Community in Burnt Forest, Kondoo Farms, and killed 3 people on the spot, burnt houses, looted houses and properties, raped women and children. This process took about 10 days.

The District Commissioner Ishmael Chelang’a took no action nor did the police. No one was prosecuted despite the fact that the names of perpetrators were known.

As invaders were unleashing violence, people fled to the local church.

Invaders wanted to set the church on fire and the Chief Phillip Koskei agreed with the elders that the victims had to leave without their personal belongings. The community went to the Ainabkoi Centre in transit at Nakuru. Thereafter my family and I took refuge at the King Catholic Church in Nakuru.

We stayed there for three months after which we left for Wanyororo A. farm located near Solai in Nakuru District where we are all living in a rented house since 1992. The house is two rooms of 10ft by 10ft (my original residence was a 5 acre holding built up with houses of timber and iron sheets. The plot was used to sustain the family). I currently leave there with my wife Margaret Murugi and our 4 children: Isaiah Muthoko (1981), Peter Gitawu (1983), Timothy Kariuki (1985), and Mary Wambui (1987).”

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3. Most of the Turkana were politically conservative and therefore affiliated to Kalenjin and other pastoral communities in Rift Valley opposed to political, constitutional and administrative reforms under the so called the KAMATUSA Alliance-Kalenjin, MAasai, TURkana and SAMburu.

4. The word “Shamba” means in Kiswahili “Field” and with the term ‘shamba system’ is generally defined in Kenya a form of agroforestry by which farmers are encouraged to cultivate crops on previously clear cut forest land on condition that they replant the forest trees. After three years cultivating the trees would be grown enough to shadow the agricultural crops. The farmer would then have to move out of the allocated plot and would be eligible for another forest plot to be cleared.

[http://www.rsrg.uni-bonn.de/Projekte/kenya/dfg\\_rep/vegetation\\_types/farm\\_system/shamba.html](http://www.rsrg.uni-bonn.de/Projekte/kenya/dfg_rep/vegetation_types/farm_system/shamba.html)

## **F/ Violence in Molo, Nakuru District**

### **Testimony of Bernard C. Mwangi, 56 years old**

*"I was born and brought up in Molo (Nakuru District). In 1992, threats against the Kikuyu started. I am a Kikuyu. Other communities were telling us 'Go back to Murang'a' (place where Kikuyu use to live). Or, 'if you salute with two fingers (the way the supporters of the opposition party FORD ASIALI were doing), they will be cut off.' Then the clashes started. The Kalenjin who were supporting the KANU party burnt my houses and other family belongings. We were displaced to Molo town into camps and churches. There were 4,000 people in the camps. The UNDP gave blankets and food. In 2 months, the camps were dismantled. I rented a room, but my mother was relocated to a camp. I am still living there. I can't go back to my original place because people there still do not want to see Kikuyu. I did not go to the courts to claim for compensation because the assailants belonged to the ruling party. I want the Government to resettle me in my original village only if it ensures security for my people."*

## **G/ Violence in Laikipia District**

### **Testimony of Jane Mugure Wachira, 47 years old**

*"I am born in 1960 in Laikipia. In 1992, I was still living there with my husband and our six children namely Susan Nyambura (1977), Damalis Waithera (1979), Josephat Mungai (1981), David Gitahi (1983), James Kimani (1987), and Peter Ndung'u (1990).*

*In 1992, incidents started between two communities, the Pokot and the Kikuyu. The Pokot invaded one homestead, raped and killed one person. In revenge, the Kikuyu went to the Pokot and slashed one cattle and in the skirmish 21 Kikuyu were killed by the Pokot. This was in August 1992. The Pokot had small arms (guns) and the Kikuyu had ordinary pangas (knives) used in houses. The Pokot also had bows, arrows and spears. After the killings, the Pokot came to attack the people in the Almaran area in the same month in August 1992. The Pokot raped small kids and wives in front of their husbands and killed whoever was in sight especially husbands.*

*The whole village was forced to take refuge in August 1992 in a nearby Almaran Catholic Church, which was headed then by Father Sadro. About 3,000 families had moved to stay in safety in the Catholic Church. The Government of President Daniel Arap Moi did not offer any assistance to these IDPs. No NGOs or Red Cross came to help. The*

*families stayed in the church compound for two months being fed by Father Sadro. When Father Sadro got no support from the government of Moi or anyone else, he then requested them to vacate and find somewhere to go. After Father Sadro got tired and asked the group to find somewhere else to go, they broke themselves into 4 sub-groups, one to Muthengera, another one to Wanjiku, one to Gatero and the rest to Theria.*

*My family and I went to Muthengera in November 1992 living with 200 other families forming slums of IDPs. There, I constructed for myself and 6 of my children a small dwelling of approximately 50x50 feet made of timber. We were sharing one room with my four boys and two girls. Me and my husband were in Nakuru a different town trying to earn a living. I was looking for a job to support the family. The only jobs IDPs could find involved such jobs as fetching water for somebody and washing clothes. The children's schooling was disrupted. I wish to see my two children finish school as four of them are wasted now for they did not manage to go past class 8. Today I am still living in the same structure. I still earn a living through my job, renting small pieces of land to plant vegetables. My biggest disappointment is that in Laikipia, I had a land measuring 5 acres where I could have supported the children and myself. Now due to insecurity and safety considerations I am in chronic poverty and my children have lost opportunities.*

*The incidents between Kikuyu and Pokot took place as Kenya was approaching its general elections (civic, parliamentary, presidential). In my opinion the violence was linked to electioneering because no one was arrested or prosecuted despite the Government's ability to deal with the case."*

## **H/ Violence in Cherangani Hills, Trans Nzoia District**

### **Testimony of Juma George Jakait, 47 years old**

*"I'm born in 1960 in Trans Nzoia.*

*On 28 December 1992 a group of people came to our villages in Trans Nzoia Cherangani Hills in Chepsiro Location, looting, robbing, raping, assaulting people.*

*I was personally assaulted and permanently disfigured in the face [marks were still visible when the person was interviewed]. My late sister Bentela Atianga Wambuchi was raped. As a result of this attack about 80 people died. The assault was done to us as a minority community of Teso by a larger Community of Kalenjin. The immediate reaction was for the minor ethnic groups to run away from*

*the area for safety from the North Rift to the North Western Province of Kenya called Kaposokwany. 1,198 families with an average family size being 5-6 moved.*

*In this area we found that the ethnic conflicts there were worse than in the area where we had fled from. The dominant residents are of Saboat descent, a sub-tribe of the Kalenjin ethnic group.*

*After 6 months my family and I headed back to our home and the Kalenjin extended reconciliation.*

*Meanwhile I had bought a farm (1 acre) but I lost it after the owner refused to abide by the written agreement.*

*My parents and I worked on the farm for a while and a year later the whole family was still too frustrated and scared and we evacuated as we felt insecure and unsafe.*

*We resettled on a small piece of land ½ acres which we bought for safety. There are twenty two people living on this half acre after being displaced.*

*Me and my wife have seven children. They have been unable to continue with their education because the family has no income and is surviving on fetching water and firewood to sell to people.*

*Since we are victims of human right violations we believe that the Government should resettle us."*

#### **I/ Violence in Mashangwe Village, Trans Mara District**

##### **Testimony of Maryann Bhoke**

*"Since 1990, I'm resident in Mashangwe Village, in Trans Mara district with my husband and 3 children. In 1990, clashes started when a Masai group came at night with some police officers and stated that Kuria do not belong to Trans Mara and that they must go back to Tanzania.*

*From then, they started coming and burning houses, destroying crops, cattle rustling, killing people of Kuria ethnic group.*

*These processes are still taking place now but to varying levels of intensity.*

*The violence also increases when there is political activity following or in support of electoral processes.*

*I was assaulted in 1994 at my own homestead when I was still living with my parents. They came at night, stole cattle and in the process indiscriminately beat up people. I was beaten using sticks and sjambok (used to control cattle). My grandfather was also assaulted, using spear, bow and arrow. He was stabbed in the back with a spear which remained lodged in his back until it was removed in hospital.*

*In 2004, during another attack, a male relative was killed. My family ran away that night for safety in the bush and when we returned in the morning that is when we realized that one of our relatives had been slaughtered. This was reported to the police but no one was arrested from 2004 to date.*

*I am really unhappy that there is no political will to effectively deal with the issue of safety and security."*

#### **2. Politically instigated ethnic violence in Likoni area, Mombasa District, Coast Province in 1992 and 1997<sup>5</sup>**

**Testimony of John Kennedy Odhiambo, Chairman of the National IDPs Network, 42 years old**

*"I come from Likoni Division in Mombasa District, Coast Province. The indigenous people of that area are the Digo, known as diggers. But in that district they are less numerous than the other communities as many individuals from other tribes coming from the countryside migrated to Mombasa because of job opportunities in that area.*

*The politically instigated clashes started in 1992. The person who wanted to vie for the Likoni parliamentary seat on a KANU ticket was a Digo. The Digo being a minority, he was scared to lose the elections as the other communities were supporting the opposition party. He decided with the support of the government to hire some raiders to fight the*

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5. According to the Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, dated 31<sup>st</sup> July 1999 : "The introduction of multi-party politics in 1991, gave the coastal people a chance to express themselves politically and the result of this, was a serious set back for the ruling KANU party. This meant that come the next presidential and general elections which were to be held at the end of 1997, KANU would have to take appropriate steps to ensure that this time around, it did much better in the general elections and secured the twenty five per cent Coast Province vote in favour of President Moi. In the Likoni-Kwale area, the only strategy that in the given circumstances of tribally polarised politics, would yield favourable results for KANU, would be to ensure that the upcountry people, namely, the Luo, Kikuyu and Luhya who were seen as supporters of the opposition parties, did not vote for these parties. And how best to achieve this than to exploit the existing and latent animosity which the coastal people might have, against the upcountry inhabitants which had hitherto, no led to any violence, so that the former can intimidate or drive away the latter from voting for the opposition parties."

## Massive Internal Displacements in Kenya Due to Politically Instigated Ethnic Clashes

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other communities, so that they would flee the area and lose their franchise. 700 people died during the political clashes and many houses were burnt. My metal fabrication workshop located in Ukunda was burnt. That was my only source of livelihood. During the clashes, I took refuge at the Likoni Catholic Church. 3,600 families were gathered in around the church, all belonging to other communities than Digo. I stayed in that camp for 3 months. Then with my savings, I decided to put the workshop back.

The political clashes revived in 1997 during the general elections. On August 13, I was working at the church, building a water tank tower. Being on the top of the tower, I saw smokes coming from a small village called Shonda. That is where the clashes started in Mombasa. I asked the Father to open the church's gate to let the IDPs come in. As I was in charge of the camp, I can say that 1,800 families came on the first day of clashes. They were 3,600 families the second day. All the surrounding villages were deserted. The Kenyan Red Cross Society and the Italian Embassy provided us with basic necessities and assistance. The raiders did kill four persons at the police station, looted the

firearms and burnt the place. The fourth day, the raiders came at the gate of the camp and killed two policemen and civilians. They wanted to invade the camp. As I know most of their leaders because we were school mates or we used to work together, I entered a discussion with them. And, they finally went away.

President Kibaki, at that time the opposition leader, visited the camps and told us that if he were to be elected, he would do something for the IDPs. But Arap Moi won again the elections.

In 1998, there were again new clashes in Mombasa, this time religious based. The conflict arose when a catholic owner of an hotel did want to extend its business which would have led to the destruction of a mosque. As a reaction, the Muslims did burn all business belonging to Christians. I lost again my workshop.

From 1998 to 2004, I was jobless. My wife left as I could not take care of my family. Recently, someone gave me money to restart my workshop."

### III - “IDPs Pia Ni Watu”<sup>1</sup>

#### 1. Overview of the IDPs humanitarian situation

IDPs due to State-sponsored violence in 1991 and 1997 wanting to escape the attackers were first forced to camp in the local schools, church compounds and shopping centres. There they lived in makeshift structures of polythene sheets, cardboard and similar materials. They had little food and belongings with them and lived in poor sanitary conditions; their children could no longer go to school.

Many camps were put in place by the Kenya Red Cross Society right after the massive displacements of 1991 and 1997. Regrettably, after offering shelter and urgent basic needs, the camps were rapidly dismantled and the IDPs were left without any form of assistance. IDPs are now located all over Kenya.

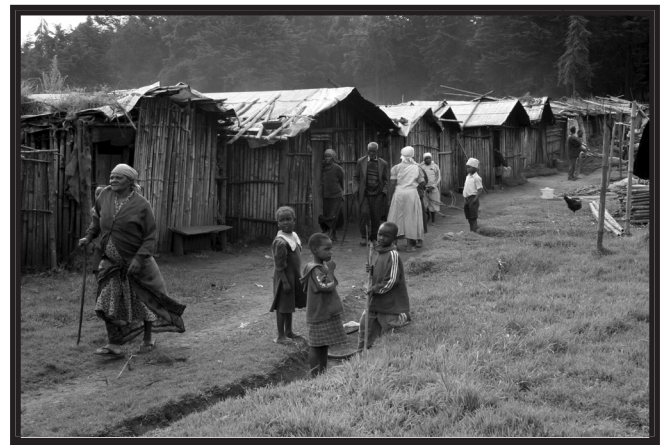
The majority of IDPs cannot go back to their original places as they are still fearing politically motivated ethnic violence and harassment and therefore still feel insecure. Others do not want to go back as they lost their title deeds to land after being forced to sell the land at a very low price before or as part of their displacement.

Having neither compensation for what they lost, nor being resettled in a safe place, IDPs have to start a new life in an unknown environment. Most of them have menial or exploitative jobs (like night guards). They are facing serious financial difficulties and find it onerous even to rent small houses. As a consequence the majority of IDPs live in slums. All the IDPs met by the FIDH delegation expressed difficulties to take care of the basic needs of their families, such as paying school fees for their children or procuring adequate food and dietary needs for their family or even affording basic medication for the children.

The National IDPs Network also confirmed to the FIDH delegation the existence of ten IDPs camps in Kenya in:

Mt Elgon; Thika (Kieni Forest); Uasin Gishu (Eldoret); Kisumu; Laikipia; Nakuru; Narok; Trans Mara; Mombasa (Likoni) and Kwale districts.

#### 2. The IDPs camp of Kieni Huruma Village



##### A/ A camp or an outdoor prison?

FIDH delegates visited Kieni Huruma Village in Thika District, Central Province, located at about 2 hours by bus from Nairobi. FIDH delegates were accompanied by 15 members of the National IDPs Network who were willing to come “to express their solidarity with the IDPs living in this camp.”

The Village is located in a clearing, deep inside the Kieni forest. The two nearest towns outside the forest are Gakoe and Flyover, both situated 7 kms away in different directions.

The Village consists of 11 rows of fifty 10x10 feet bamboo-made houses called “cubes” by their inhabitants.<sup>2</sup>

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1. Kiswahili translation of “Internal Displaced Persons are also Human Beings,” slogan written on signs during a demonstration organized in Nairobi (Kenya) in January 2007 by the National IDPs Network on the occasion of the World Social Forum.

2. After having visited the Kieni Village, Miloon Kothari, the UN Special Rapporteur on Adequate housing as a component of the right to an adequate standard of living, makes the following comments concerning the “cubes” in its report dated 2004: “The shacks cannot be expanded despite the population growth. The shacks do not provide adequate protection from the cold and they leak, so that when it rains families have to share the ‘best’ shacks. The Special Rapporteur witnessed and received testimonies of malnutrition and starvation. The population, particularly the children, shows signs of infection and disease; tuberculosis and HIV/AIDS are spreading rapidly.”

## Massive Internal Displacements in Kenya Due to Politically Instigated Ethnic Clashes

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Mr. Gad Wainaina and Ms. Florence Wambui Kinyanjui led the FIDH delegation. Mr. Wainaina is the chairperson of the village and the Central Kenya Chapter, and Ms. Wambui is the Treasurer of the said Chapter, of the National IDPs Network.

According to the chairperson, up to 520 families were living in the camp. They are now still over 300 families, including many old people and around a thousand children under the age of 6. Each family, whatsoever the number of persons, is living in one cube. There is no electricity and no gas. Each cube consists of two parts: the bedroom and the living room. Each family has sheets and tents which were given by the Kenyan Red Cross Society in 1992, when the IDPs Village was created after the State sponsored politically ethnic violence of 1991.

The Forest authorities prevent the IDPs from cultivating the land. They forbid them to build other houses. Their only school in the camp is poorly staffed and equipped. While children can go to the free primary public schools in the nearest towns, only 20 individuals can afford to go to secondary school. Moreover, there are no medical facilities in the camp.

Most of the people of the camp are jobless, the nearest towns being too far away to go and come back on a daily basis. And, if some IDPs try to be employed in the nearest farms, they are exploited by their owners. Their only sources of income come from selling fruits and broken wood from the forest, as they are not allowed to use timber.

The government had committed to provide IDPs with monthly food assistance only consisting of 7 kilos of maize meal and 3,5 Kilos of beans per family. This extremely inadequate ration is often distributed once every three months. Many people in the camp reportedly die of drought or disease like pneumonia. It is noteworthy that the Forest authorities also prevent IDPs from burying their people near the camp. IDPs receive no other assistance from humanitarian or UN organisations. Only the nearest catholic mission comes from time to time in the camp to give food to IDPs.

The situation of the IDPs living in this camp shows obvious violations of their economic and social rights such as those guaranteed by the International Covenant on Economic, Social and Cultural Rights ratified by Kenya in 1976. Notably, the IDPs are deprived from their right to an adequate standard of living, their right to health and medical care, their right to work...

After having visited the Kieni Village, Miloon Kothari, the UN Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living made the following recommendations in a report dated 2004:

*"The population in Huruma village is living in extreme poverty, and in such an emergency situation, the Special Rapporteur recommends that the Government establish an emergency assistance programme to ensure that immediate steps are taken to remedy this and similar situations."*



**B/ Testimony of Florence Wanbui Kinyanjui, one inhabitant of the camp**

*"The politically instigated ethnic clashes between Kalenjin, Luhya and Kikuyus started in my village in Molo Division (Nakuru District, Rift Valley Province) in 1991, one year before the general elections. The Kalenjin burnt all the houses and looted all the livestock. Many people were killed, including women and children. One night, I heard people shouting outside my house. I was terribly afraid. I took my child with me and ran to another village. We stayed there for many days for our safety.*

*In 1992, I was told that the government was opening a forest for cultivation and requesting IDPs to come there. Very often, governmental authorities, after having cut down trees, need people to clean the forest and plant other trees. It was a safe place for us to go. Once there, the Kenyan Red Cross Society gave us tents, food and medicine. We had to pay 120 shilling every three months to be able to stay in the forest. The forest authorities allowed us to build our houses made of timber. Mine was very nice. We could cultivate vegetables and sell them. All inhabitants of the village were IDPs due to politically instigated ethnic clashes of 1992 and 1997 in Narok, Kisumu, Trans Nzoia...*

*In the year 2000, the governmental authorities decided to have a new management for the forest. They wanted us to leave the place, but we refused. They sent the forestry guards to us. And they burnt all our houses. To protest*



*against this situation, we decided to show off by building structures on the road side-along the Thika-Fly Over-Nakuru Road..*

*One day, President Arap Moi passed by, joined by Uhuru Muigai Kenyatta (He is a son of the first president and the KANU presidential aspirant in 2002. He comes from the same district and own tea plantations in the Kieni area). They stopped and asked why we were living on the road side. They demanded the forest authorities to move us back into the forest and provide each of us with a plot of 100x100 feet. This was a political ploy to hide IDPs in the forest and salvage image of the then Government in power. But they never did so. Instead, they built 3x3 'cubes,' one per family. We were not anymore allowed to cultivate nor to build other houses. We never receive assistance except from one catholic mission of Kijabei which brought food last December.*

*I would prefer to be in a refugee camp. We need food. We do not have enough money to pay school fees for our children. I want to be resettled in Molo but the government has to ensure security for its inhabitants."*

## IV - Violations of Human Rights of IDPs

### 1. IDPs are entitled the same human rights as all individuals

Being internally displaced is not a legal status in international humanitarian and human rights law requiring special internationally imposed minimum protection measures. The UN Guiding Principles on Internal Displacement do not confer a special legal status on those displaced. Unlike refugees, the internally displaced have not left their country. As such, they remain entitled to the same rights as all other persons in their country. They do however have special needs by virtue of their displacement.

IDPs have thus the same rights as other citizens in their country. Domestic and international law apply equally to internally displaced persons and to those who do not leave their homes.

IDPs in Kenya must consequently enjoy all their rights set up in international humanitarian and human rights instruments to which Kenyan authorities are legally bound, such as :

- International Covenant on Civil and Political Rights (ratified in 1976)
- International Covenant on Economic, Social and Cultural Rights (ratified in 1976)
- Convention on the Elimination of All Forms of Discriminations against Women (ratified in 1984)
- International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 2001)
- Convention on the Rights of the Child (ratified in 2000)
- Convention against Torture and Other Cruel Inhumane or Degrading Treatment and Punishment (ratified in 1997)
- African Charter on Human and Peoples' Rights (ratified in 1992)
- African Charter on the Rights and Welfare of the Child (ratified in 2000)

### 2. Specific attention should be given to the protection of economic and social rights of IDPs in view of their vulnerability

In accordance with the International Covenant on Economic, Social and Cultural Rights (ICESC), the State has a duty to respect, protect and fulfil economic, social and cultural rights, individually and through international assistance and cooperation. The Committee on Economic, Social and Cultural Rights has defined minimum core obligations to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights. These *“core obligations apply irrespective of the availability of resources of the country concerned.”*<sup>1</sup>

Further, specific attention should be given to vulnerable members of society,<sup>2</sup> as *“certain groups suffer disproportionate harm in this respect such as (...) internally displaced persons.”*<sup>3</sup>

On the right to adequate food, violations of the Covenant occur when a State fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger. The general comment n°12, further states that *“Even where a State faces severe resource constraints, whether caused by a process of economic adjustment, economic recession, climatic conditions or other factors, measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals.”*<sup>4</sup>

Regarding the right to work, the Committee on Economic, Social and Cultural Rights has defined as a core obligation<sup>5</sup> *“to ensure the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity.”*

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1. Maastricht guidelines on Violations of Economic, Social and Cultural Rights, January 1997, para 9.

2. General Comment No. 3, para 12.

3. Maastricht guidelines on Violations of Economic, Social and Cultural Rights, para 20.

4. Committee on Economic, Social and Cultural Rights, 1999, General Comment No. 12, The right to adequate food, para 28.

5. Committee on Economic, Social and Cultural Rights, 2005, General Comment No. 18, The right to work, para 31.

Concerning the right to adequate housing, *“such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere.”*<sup>6</sup>

Similarly, the core minimum obligation of the state is *“to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups”*;<sup>7</sup>

Concerning the right to water,<sup>8</sup> *“whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that: (f) Refugees, asylum-seekers, internally displaced persons and returnees have access to adequate water whether they stay in camps or in urban and rural areas.”*

### 3. Violations of Kenyan Government's obligations vis-à-vis IDPs

Referring to the situation of IDPs in Kenya, it is possible to highlight various violations of human rights of IDPs by national authorities:

#### Violation of the State obligation to protect its citizens/ Violations to the right to life and physical integrity

*Article 4 of the African Charter on Human and Peoples' Rights (ACHPR) - Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.*

*Article 6.1. of the International Covenant on Civil and Political Rights (ICCPR) - Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

In its general comment 6 [16],<sup>9</sup> the UN Human Rights Committee observed that the right to life is the supreme right from which no derogation is permitted. The Committee observed that it is the supreme duty of States to prevent wars and other acts of mass violence. State sponsored violence which occurred during 1992, 1997 and 2002 general elections and caused the death of thousands of civilians constitutes obviously a violation of the State obligation to protect its citizens. And the authors and instigators of such violence still benefit from impunity in violation of the right to justice for victims.

#### Violation of freedom of movement

*Art 12.1 of the ACHPR - Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.*

*Art 12.1 of the ICCPR - Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

Politically instigated ethnic clashes leading to mass displacements of population contradict the obligations of Kenyan government to protect individuals against arbitrary displacement. Arbitrary displacement robs people of the choice of where to reside. It also deprives them of the right to freedom of movement by compelling them to leave their homes.

#### Violation of an adequate standard of living/Violation of the right to health and medical care

*Art 16.2. of the ACHPR - States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.*

*Art 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) - The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.*

The testimonies of IDPs collected by FIDH show that the Kenyan Government fails to guarantee their economic and

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6. Committee on Economic, Social and Cultural Rights, 1991, General Comment No. 4, The right to adequate housing, para 8.

7. Committee on Economic, Social and Cultural Rights, 2000, General Comment No. 14, The right to the highest attainable standard of health, para 43.

8. Committee on Economic, Social and Cultural Rights, 2002, General Comment No. 15, the right to water, para 16.

9. See: <http://www.ohchr.org/english/bodies/hrc/comments.htm>

social rights as set up in the African Charter on Human and Peoples' Rights and in the International Covenant on Economic, Social and Cultural Rights. Competent national authorities have the responsibility to provide IDPs with, or to ensure safe access to, basic assistance. Guiding Principles 18 to 23 stress upon the fact that, regardless of whether they live in camps or are dispersed in cities and rural areas, at a minimum, IDPs must have access to essential food and potable water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation.

### **Violation of the right to work**

*Art 6.1 of the ICESCR - The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

According to the testimonies of IDPs forced to live in Kieni Huruma Village visited by FIDH delegates, the fact that they are located in the middle of a forest, far from any other villages, prevents them from finding a job, in clear violation of their right to work. They are not even allowed to cultivate pieces of land.

### **Violations of the responsibility for return, resettlement and reintegration**

*Art 12.1 of the ACHPR - Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.*

*Art 9.1 of the ICCPR - Everyone has the right to liberty and security of person.*

*Art 12.1 of the ICCPR - Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

IDPs have the right to return voluntarily, in safety and with dignity, to their homes or to resettle voluntarily in another part of the country. This right is a logical extension of the right to liberty of movement and freedom to choose one's residence. The Kenyan government has completely failed to guarantee the enjoyment of this right to the IDPs. Indeed, the Kenyan authorities must establish the conditions under which safe and dignified return becomes possible.

### **Violation of the right to return of property or compensation**

As highlighted in the UNOCHA Handbook for Applying

the Guiding Principles on Internal Displacement, upon return or resettlement, the former IDP has the right to regain his or her property and possessions. When recovery is not possible, he or she should be compensated for the loss or receive another form of just reparation. Virtually all the Kenyan IDPs have received no compensation at all for their lost property or lost opportunities as a result of their forcible displacement.

### **Violation of the right to justice**

*Article 8 of the Universal Declaration of Human Rights - Every one has a right to an effective remedy by the competent national tribunal for the acts violating the fundamental rights granted him by the constitution or by law.*

*Article 2 of the ICCPR - Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

According to most of the testimonies collected by the FIDH delegates, the IDPs tried to complain before policemen or national courts against the violation of their rights. But, as the violence which forced them to move were state-sponsored, the said authorities were not in a position to take independent decisions. FIDH and KHRC strongly believe that fighting against impunity is the most sustainable way to foster lasting peace and reconciliation.

## **4. Absence of effective responses by national authorities**

Under the Arap Moi regime, the national authorities including the President were totally denying the issue of IDPs. The current government is now agreeing on the fact that IDPs is a burning issue for Kenya. But no effective policy or legal or administrative framework to effectively deal with the IDPs crisis has been developed until now. There can be no valid justification for this omission.

Plans to organise IDPs for advocacy interventions began in earnest in September 2001 when the KHRC launched the Campaign Against Impunity project. Following the successive empowerment and advocacy engagements at the international, national and community levels with disparate initiatives of IDPs, the IDPs National Network

was formally launched in May 2004 and elections for the leadership positions at all levels accomplished by May 2005. John Kennedy Odhiambo was therefore elected as the chairperson of the National IDPs Network in 2005 and Keffa Magenyi and Samuel King'ori as the National Coordinator and Secretary respectively.<sup>10</sup> Since then, the Network which has local representatives in all Kenyan Districts with IDPs has collected data on about 54,000 IDPs.

From the year 2000, the National IDPs Network together with KHRC has many times petitioned the Office of the President, the Minister of Justice and the Minister of Lands, all three being responsible for IDPs issues. No coherent response has been received from any of these offices on the issue of IDPs which tends to show serious absence of political will to effectively resolve the IDPs issue.

### **A/ The Task Force on IDPs**

Once the National Network was launched, the IDPs National Network in partnership with the civil society organisations and the Kenya National Commission on Human Rights engaged in a national campaign which made the Government to respond to their concerns especially from the security, land and governance perspectives. Consequently, President Mwai Kibaki finally decided in November 2004 to set up a Task Force aiming at collecting data on IDPs, registering them and making recommendations for their assistance.

The Team's terms of reference limited its focus mainly to the following:

- The 1992 and 1997 tribal clashes, particularly at the Coast and parts of the Rift Valley Provinces.
  - The factors leading to displacement, the extent of 'genuine' displacement and loss of land.
  - The documented proof of ownership of land. Thus, it did not cover issues of compensation of lost lives, property and opportunities – but only dealt with compensation of land.
- First, the Task Force was willing to register only IDPs who have title deeds to land. The National IDPs Networks publicly complained about this, giving the example of the Coastal Land where more than 90% of the land belongs to the government and thus all civilians including IDPs have no title or are all "squatters." Finally the Task Force accepted to register all IDPs.

The Task Force members went to see all District Commissioners (DCs) who were meant to gather all IDPs for registration. But, the lack of public information on its work and the fact that most IDPs couldn't afford to travel to meet the Task Force, led to the registration of only 8,000 IDPs. Moreover, the fact that DCs among other agencies within the provincial administration were part of the state institutions either abetting and or perpetrating the 1992-1998 clashes made them to be very unsupportive to the Task Force. In May 2005 and March 2006, the IDPs Network and the Kenya Human Rights Commission met with the Task Force and petitioned its team on 2 issues respectively:

- Its legal and institutional status and mandate in order to make its operations more effective, independent and accountable to the citizenry,
- The human rights, humanitarian and developmental concerns of IDPs for inclusion in their final report and recommendations.

During the 2 meetings and petitions, the Task Force requested the National IDPs Network to give its data. KHRC gave them financial and technical assistance to collate, analyse and print the data. But, before the process was completed, the Task Force did finally submit its report to the office of the President in September 2006. The National IDPs Network and KHRC thus contested these figures among other findings, as they ignore the actual situation and can only result in inadequate policies.<sup>11</sup>

Until now, the report has not been made public.

However, it reportedly includes important recommendations, such as the resettlement of IDPs in their original place with guarantee of security or in other safe places. Task Force members also request to give alternative land to the IDPs who produce title deeds to land (this is contested by the National IDPs Network as most IDPs do not have any). But apparently, no provisions of the report relates to compensation and rehabilitation of IDPs.

### **B/ National Commissions and policies on political clashes**

Before the above Task Force was set up, the State was able to come up with the following interventions:

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10. The National IDPs Network is not yet registered as an NGO in Kenya as the government requires for such registration 40,000 Kenyan Shillings; one well equipped office with landlines. The Network cannot afford that.

11. See for instance the 'KHRC and IDPs Network's Roadmap to Justice and Resettlement'; a petition copied to the media on Friday, September 1, 2006.

- Setting up of the Parliamentary Committee chaired by Hon. Kennedy Kiliku in 1992. The Report presented to Parliament that year exposes the perpetrators of the 1991-1992 clashes,<sup>12</sup>
- The Judicial Commission of Appointed to Inquire In Tribal Clashes in Kenya in 1998 (Akiwumi Report of 1999). Although the report was made public in 2002 following a court decision, the Attorney General released a separate rejoinder, punching holes in to the mandate and findings of the Akiwumi Commission,
- On July 30, 2003, the Kenyan Parliament passed a motion binding the Government to establish the status of land from where survivors were evicted and facilitate the resettlement process,
- The Task Force formed to Inquire into the Viability of Establishing the Truth Commission in April 2003 chaired by Prof. Makau Mutua. In its report in August 2004, the Task Force called for the formation of a truth commission in order to accord justice to inter alia, the survivors of the politically instigated clashes,<sup>13</sup>
- Formulation of the Draft Land Policy (October 2006) and Draft Policy on Peace and Conflict Transformation (July 2006) which calls for redress to historical land injustices; conflicts related to politically instigated violence and formulation of IDPs policy.
- Allocation of National Resettlement budget during the 2006/2007 Financial Year.

In the budget, which was made public in June 2006, the government allocated around 400,000,000 Kenyan Shillings for buying land to resettle IDPs. The National IDPs Network has no idea what this money has been used for so far, as their members have not benefited from any resettlement since the budget allocation was made. The Kenyan government has also not established a mechanism to allow for the National IDPs Network to track the use of this budget to allow for transparency in the manner the government is spending money to resolve the IDPs situation.

While all these efforts have provided different official reports,

positions and recommendations on IDPs, the Government has done very little to act on them. This is because they implicate or point out the responsibility of current members of parliament and even Ministers in the clashes. It is thus most unlikely that these reports could be acted upon this year, which is an electoral year.

### 5. Lack of humanitarian assistance

Even if the UN and humanitarian agencies working in Kenya are aware of the burning issue of IDPs in Kenya and their disastrous humanitarian situation, there were until now neither planned nor coordinated programmes to assist them. According to Abbas Guillet, Secretary General of the Kenya Red Cross Society (KRCS), they provide urgent basic needs to every new IDPs. But *“KRCS can only help them for a few months as the responsibility for further assistance is the burden of the government.”* Andrew Timpson, Head of the Humanitarian Unit of the Office of the UN Resident Coordinator in Kenya acknowledges that there are no UN ongoing programme on IDPs. But, *“OCHA will set up a working plan in the near future to achieve long-term assistance for IDPs, and UNHCR will probably take the lead on that item notably appointing an IDP advisor.”*

After the fact-finding missions successively led by IDMC and FIDH, the UN agencies and the NGOs working on IDPs have launched a Civil Society Forum coordinated by the KHRC and Peacenet. The Forum will provide leadership on the technical, policy and political advocacy issues at the local, national and international levels. The IDMC, UNOCHA, United Nations Development Fund for Women (UNIFEM) and UNICEF will mainly provide technical and logistical support to the Forum. Moreover, UNOCHA is working on a task force which will be the information and documentation center on the past and incoming information on IDPs in Kenya.

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12. *The Weekly Review*, September 25, 1992 'The Clashes' Report pages 3-16.

13. Report of the Task Force on the Establishment of a Truth, Justice and Reconciliation Commission, August 2003 ('Makau Report').

## Conclusion and recommendations

Internal displacements are an acute and sensitive issue in Kenya. As of today, the Internally Displacement Monitoring Centre estimates that they are more than 400,000 IDPs in the country. Whatever their causes (floods; droughts; fights between communities for basic resources; political persecution or politically motivated displacements), these forced displacements invariably lead to gross human rights violations and disastrous humanitarian situation for IDPs who lost all their properties and were forced to start a new life in an unknown and often unsecured environment. If not located in camps, IDPs are usually landless, thus termed as squatters or slum dwellers. In such living conditions, they face difficulties to find a job or a source of income to pay for medicine or the school fees of the children. Access to public health facilities is also compromised.

Of particular concern however to the FIDH mission was that neither the government nor the humanitarian agencies developed and implemented effective policies to respond in a systematic and sustained manner to the humanitarian catastrophe arising from massive displacements, except in some cases urgent short-term assistance. The Kenyan government has the primary responsibility to address the continued plight of the IDPs. This report shows how important it is to find appropriate answers to the IDPs situation in Kenya in conformity with the international human rights instruments which are legally binding on Kenya, such as safe return, resettlement and compensation.

Another concern to the FIDH mission was that besides the necessary needs for protection of IDPs nothing is done regarding possible prevention of further displacements, particularly those due to politically instigated ethnic clashes. Besides natural disasters and long-standing inter-ethnic rivalry, politically instigated ethnic clashes or ethnic clashes due to political motives at the time of general elections should be decisively dealt with by the authorities. It is possible for the Kenyan government to formulate a policy and administrative framework for the prevention of such displacements. One of the main tools to achieve such prevention is to effectively fight against impunity through prompt arrest and prosecution of those individuals responsible for fuelling ethnic clashes for political gain. This is why the independent commissions on ethnic

clashes are so important as they should raise individual responsibilities and recommend or initiate appropriate judicial investigation.

The on-going impunity is indeed worrisome for the near future considering the 2007 general elections. There are already many indicators of violence in Subukia, Gucha, Likoni and Mount Elgon. The Kenya Red Cross Society (KRCS) indicated on 14 February 2007 that at least 30,000 people have been displaced and 60 killed in continuing ethnic clashes due to political decisions on land in the western Mt Elgon District of Kenya. *"Houses are being torched and we expect more IDPs"* said Linet Atieno, spokesperson for the KRCS *"some of the IDPs who tried to go back to their farms have been hurt and some killed."* According to the KRCS, the displaced, mostly women, children and the elderly, had sought refuge at market places, with relatives in nearby locations or had fled to neighbouring areas such as Kaptama, Bungoma, Trans-Nzoia and parts of Busia. Violence erupted when the government controversially allocated land to alleged squatters and settled 1,732 families in Chebyuk (western Mt Elgon District) in 2006.<sup>1</sup>

In light of the information available in this report, **FIDH and KHRC recommend the Kenyan authorities:**

**1. to urgently find adequate responses to the issue of IDP, by:**

- fully implementing the UN Guiding Principles on Internal Displacement;
- adopting and implementing the Framework for National Responsibility in addressing internal displacement. Its sets forth benchmarks to take towards fulfilling national responsibility for IDPs;
- considering the setting up of a Joint Assessment Team involving the UN team, Kenya Government, Civil Society Organizations, including the National IDP Network in order to profile the IDPs situation in Kenya looking at both the push factors and the consequent humanitarian catastrophe and how the situation can be best contained in order to resolve this issue once and for all;
- finalising the formulation of the Land, Peace and Conflict

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1. The Mt. Elgon clashes is a result of the Saboat displacements stretching back to the colonial era and the schewed resettlement programmes from independence in 1963 to date. Violent clashes were triggered last year when those settled since 1971 were ordered to pave way for new allottees. Consequently, a militia group (from the Soy clan) calling itself the Saboat Land Defense Forces started launching attacks mainly targeting the Ndorobo clan. By April 2007, more than 60,000 persons were displaced and at least 150 killed. See *Saturday Nation*, April 7, 2007.

Policies for effective policy and interventions on the land and security concerns for IDPs;

- developing a comprehensive response strategy, including establishing national institutions to serve as interlocutor on issues of IDPs; and develop multisectoral policy, strategies and action plans to address the root causes of displacement with a view to formulating national and regional approaches to displacement, notably with the support of UNHCR, Inter-Governmental Authority on Development (IGAD) Secretariat and other development partners;
- respecting the right of IDPs to return to their property or to be resettled and providing them with adequate security;
- creating a national legal Commission including IDPs with the mandate and power to address the issue of rehabilitation and compensation of IDPs for loss of lives, property and opportunities;
- respecting the right of IDPs to primary health care, medicine and care and to an adequate standard of living by urgently providing assistance to IDPs located in camps in the form of food, medicine and other basic needs;
- ensuring and facilitating safe access to IDPs by humanitarian organisations, in order to allow the delivery of the required protection and assistance;
- bearing in mind that education is a great asset for IDPs, carrying out feasibility studies to provide them with access to education, vocational training in relevant sectors and education grants;
- ensuring that IDPs are included in the national HIV/AIDS strategic plans;
- enhancing the independence and autonomy of the Electoral Commission of Kenya and the Kenya National Commission on Human Rights to deal with all the perpetrators of political and communal violence during the 2007 general elections;
- fully allocating or account for the funds provided in the 2006 national budget to the IDPs;
- publishing and implementing without further delay the report of the Task Force on IDPs;
- including the issue of IDPs in its report due to be presented before the Committee on Economic, Social and Cultural Rights in 2007;

**2. to fight against impunity of the authors of human rights violations, by:**

- making the declaration under article 34.6 of the Protocol to the African Charter on Human and Peoples' Rights establishing the African Court on Human and Peoples' Rights permitting NGOs and individuals to file direct communications to the Court;
- incorporating the International Criminal Court Statute into its national legislation;
- holding the authors and perpetrators of the politically instigated ethnic clashes accountable;

**3. and more generally**

- to adopt a policy on land reform to deal with the current widespread observation and concern at inequitable land ownership where a few people linked to political elite own most of the land in the country;
- to find a solution to the problems of small arms that have been used to commit atrocities and incorporate transparent and accountable eradication of such arms in an overall comprehensive security plan, notably to guarantee the safe return of IDPs to their homes;

**4. to ratify, incorporate into national legislation and fully implement international human rights instruments, notably:**

- to ratify the African Union Convention on Preventing and Combating Corruption and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- to respect their obligations set up in the international human rights instruments ratified by Kenya, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child;
- to finalize the Great Lakes Pact and Protocols on the Protection and Assistance to IDPs and the Property Rights of Returning Persons;

**Moreover FIDH and KHRC recommend:**

**1. The UN agencies and Humanitarian organisations in Kenya:**

- to take a census of the IDPs;
- to analyse the urgent and long-standing needs of IDPs;
- to adequately coordinate in order to find appropriate responses to urgent situations of displacements;
- to elaborate plans for return, resettlement and reintegration of IDPs in conformity with the UN Guiding Principles;

**2. The African Commission on Human and Peoples' Rights, notably to the Special Rapporteur on Refugees and Displaced Persons in Africa:**

- to address the issue of IDPs in the framework of its dialogue with the government of Kenya;
- to consider the situation of IDPs in the framework of the examination of the Periodic Report of the Republic of Kenya due in 2007 at its 41th session in May 2007 in Ghana;
- to adopt a resolution on the situation of IDPs in Kenya;

**3. The United Nations Representative of the Secretary-General on the human rights of internally displaced persons:**

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- to intensify fact finding missions and engagements with the Kenyan Government and other UN forums and agencies at the national and international levels;

#### **4. The Committee on Economic, Social and Cultural Rights:**

- to pay particular attention to the situation of IDPs under the examination of Kenya State Report due in 2008;

#### **5. The European Union:**

- to address the issue of IDPs in the political dialogue set up between Kenya and the European Union under the Cotonou Agreement;

#### **6. The international community:**

- to adopt a legally binding convention on the rights of IDPs.

## Annex

### United Nations Guiding Principles on Internal Displacement

#### Introduction - Scope and Purpose

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
  - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
  - (b) States when faced with the phenomenon of internal displacement;
  - (c) All other authorities, groups and persons in their relations with internally displaced persons; and
  - (d) Intergovernmental and non-governmental organizations when addressing internal displacement.
4. These Guiding Principles should be disseminated and applied as widely as possible.

#### Section I. General Principles

##### **Principle 1**

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

##### **Principle 2**

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.
2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

##### **Principle 3**

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

**Principle 4**

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

**Section II. Principles Relating to Protection From Displacement**

**Principle 5**

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

**Principle 6**

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
  - (a) When it is based on policies of apartheid, «ethnic cleansing» or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
  - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
  - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
  - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

**Principle 7**

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.
3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
  - (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
  - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
  - (c) The free and informed consent of those to be displaced shall be sought;
  - (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;

- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

**Principle 8**

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

**Principle 9**

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

**Section III. Principles Relating to Protection During Displacement**

**Principle 10**

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

**Principle 11**

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

- (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
- (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
- (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

**Principle 12**

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

**Principle 13**

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

**Principle 14**

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

**Principle 15**

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

**Principle 16**

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

**Principle 17**

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations

engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

**Principle 18**

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) Basic shelter and housing;
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

**Principle 19**

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

**Principle 20**

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

**Principle 21**

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

- (a) Pillage;
- (b) Direct or indiscriminate attacks or other acts of violence;
- (c) Being used to shield military operations or objectives;
- (d) Being made the object of reprisal; and
- (e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

**Principle 22**

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

**Principle 23**

- 1. Every human being has the right to education.
- 2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
- 3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
- 4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

**Section IV. Principles Relating to Humanitarian Assistance**

**Principle 24**

- 1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
- 2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

**Principle 25**

- 1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
- 2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
- 3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

**Principle 26**

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

**Principle 27**

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

**Section V. Principles Relating to Return, Resettlement and Reintegration**

**Principle 28**

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

**Principle 29**

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

**Principle 30**

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.



Fédération Internationale des Ligues des Droits de l'Homme  
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The International Federation for Human Rights (FIDH) is an international non-governmental organisation for the defence of human rights as enshrined in the Universal Declaration of Human Rights of 1948. Created in 1922, the FIDH brings together 141 human rights organisations from 100 countries. FIDH has undertaken over a thousand missions of investigation, trial observations and trainings in more than one hundred countries. It provides its members with an unparalleled network of expertise and solidarity, as well as guidance to the procedures of international organisations.

The FIDH works to:

- mobilise the international community,
- prevent violations and support civil society,
- observe and alert,
- inform, denounce and protect.

The FIDH is historically the first international human rights organisation with a universal mandate to defend all human rights. FIDH enjoys observer status with the United Nations Economic and Social Council (UNESCO), the Council of Europe's Permanent Committee, the International Labour Organisation (ILO), and consultative status with the African Commission on Human and Peoples' Rights. FIDH is represented at the United Nations and the European Union through its permanent delegations in Geneva and Brussels.



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The Kenya Human Rights Commission (KHRC) was established in 1992 in response to serious human rights abuses by the government of Kenya against its people.

Between 1992 and 2003, the KHRC focused on monitoring, documenting and publicizing violations of civil and political rights and played an important role in strengthening the role of civil society in advocating for democratic reforms. It also focused on human rights work broadened to incorporate a wide range of economic, social and cultural rights.

In its current phase, Vision 2012: "...Rooting Human Rights Work in Communities...", the Kenya Human Rights Commission's goal is to adequately root human rights and democratic values in communities, for them to defend and also claim their rights. In achieving Vision 2012, the KHRC seeks to address multiple concerns such as sustainability of the human rights movement, liberation (notably in the context of political struggles against injustice), social justice, accountability and gender mainstreaming.

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