

**An Incident, Impact and Redress
Assessment of the Displacements
Occasioned by the 2007–08 Post-election
Violence (PEV) in Kenya**

Kenya Human Rights Commission and Mazingira Institute

BACKGROUND

- Over 350,000 persons displaced in clashes prior to 2007 elections.
- During the 2007–08 Post Election Violence (PEV), 663,921 people displaced;
- 78,254 houses were destroyed country wide;
- 1,300 lives were lost;
- 640 households fled to Uganda.
- At the height of the violence, 350,000 IDPs sought refuge in 118 camps, while 313,921 IDPs were integrated among various communities in the country. The latter group referred to as integrated IDPs.

STATE RESPONSE TO 2007 PEV

- Operation Rudi Nyumbani
- Profiling/census of IDPs
- Ex-gratia support
- Repair of IDP houses and infrastructure
- Restoration of livelihoods
- Resettlement of IDPs living in self-help groups
- Distribution of relief food
- Peace building and reconciliation

STATE RESPONSE TO 2007 PEV CONT'D

- Commission of Inquiry into Post-Election Violence (CIPEV) Report 2008 recommended prosecutions that ultimately led to cases at the International Criminal Court.
- Truth, Justice and Reconciliation Commission (TJRC) recommended reparations framework for victims of outlined violations, including displacement and election-related violence.

NON-STATE ACTOR INTERVENTIONS

- Extensive documentation of violations occurring during the PEV alongside the Kenya National Commission on Human Rights (KNCHR).
- Monitoring State-led interventions and highlighting inadequacies for corrective action.
- Advocacy for legal frameworks leading to IDP Act (2012) and TJRC Reparations framework (2014).
- Litigation building on the legacies of the civil cases by the Nyayo House torture victims

PURPOSE OF THE IIRA STUDY

- To collect data regarding the impact of displacement from the prisms of wealth, well-being, habitat and human rights deprivations.
- To assist in navigating the options for redress presented by the paradigms of reparations and durable solutions: State-led programmes as well as human rights litigation.

METHODOLOGY OF THE STUDY

- Study took place in 2014 with a limited scope of Mai Mahiu (including Kuresoi) and sites within Uasin Gishu County.
- Based on a sampling design that targeted: Those still in camps; those who had returned to their residences (returnees); those integrated to the communities they fled to and; those resettled by government on alternative land.
- Sample of 30 IDPs per site interviewed using a questionnaire & one focus group discussion at each site.

WELL-BEING IMPACT

- Fatalities: 1,300 fatalities registered. Attributed to ethnically targeted killings, mass murder by organized gangs and extrajudicial killings by the police.
- Sexual and Gender-based Violence: Reported instances of rape, gang rape, sexual mutilation and loss of body parts

WELL-BEING IMPACT CONT'D

- Physical and mental harm: Numerous reports of physical injury and psychological trauma at the hands of organized gangs and the security forces
- Quality of Family Life and Social Bond loss: Death of family members or separation during displacement. Traumatizing ordeals; e.g., husbands abandoning their wives who were raped.

WELL-BEING IMPACT CONT'D

- Multi-ethnic communities disintegrating; e.g., South-Rift region
- Health loss: Violence left behind a legacy of health complications; e.g., victims of traumatic circumcisions, spread of communicable diseases in IDP camps, exacerbation of chronic illnesses in the absence of medical services; esp. contracting of HIV/Aids by rape victims

WELL-BEING IMPACT CONT'D

- Safety Loss: Continuous reports of an overwhelmed security apparatus unable to respond to the violence or indeed complicit in perpetuating the violence.
- Access loss or interruption: Destruction of infrastructure (schools, hospitals), the displacement or relocation of service providers, selective provisions on the basis of ethnicity

SNAPSHOT WELL-BEING ASSESSMENT – MAI MAHIU

- 55.2% IDPs in Mai Mahiu Camp had a family member who suffered illness causing them to be hospitalized as a result of PEV but 44.8% did not experience this. However, 95.8% suffered distress compared to 4.2% who did not experience it.
- 44.4% of the respondents a member of their family suffered injuries during PEV but to 55.6% none of their family members suffered any.
- On rape, 66.7% of the respondents indicated a family member was actually raped compared to 33.3% whose family members were not victims. The actual rape victims were wife/ mother 66.7% and 33.3% daughter.

SNAPSHOT WELL-BEING ASSESSMENT – MAI MAHIU CONT'D

- At least 43.3% of the respondents reported a family member died during PEV.
- 92.9% respondents indicated loss of food during PEV and only 7.1% did not suffer any food loss. Of these, only 32.1% indicate recovery of their food security status but 67.9% are not yet food secure.
- At their current place of abode, 82.1% consider themselves safe and 17.9% do not find it safe.

WEALTH IMPACT

- Access loss or and damage: Restricted or no access to farms, work premises
- Earnings loss: Lost crops, livestock, farms and businesses. Some employees and casual labourers were forced to leave certain towns as a result of ethnically targeted violence.
- Opportunity loss: lost employment, investment opportunities, and disrupted education.

WEALTH IMPACT CONT'D

- Switching Expense: Some IDPs through self-help groups were responsible for their own relocation to areas of refuge with nominal assistance from the State at best; including purchase of construction material.
- Services Expense: With limited social services at IDP camps, IDPs incurred various service-related expenses e.g. accessing medical care, setting up of schools

Snapshot of Uasin Gishu Findings

- 53 persons were interviewed (53 men and 15 women). Men dominate wealth due to patriarchal society.
- 96.1% were returnees while 2.9% were resettled
- 52.8% had been on their farms for over 20 years prior to PEV & attributed attacks to incitement
- 43.4% said PEV had uprooted them from their jobs.
- 71.7% indicated houses were burnt

HABITAT IMPACT

- Tenure loss: Some IDPs ejected from their land unable to return and yet to be offered resettlement or integration.
- Buildings and loss damage: Numerous instances of torched houses and destroyed buildings (business premises, govt. offices) in the context of ethnically targeted violence.
- Infrastructure damage: Road blocks, damage to the railway system

Habitat Assessment

Tenure	Those who owned/had land	Those who lost land	Those who accessed land after PEV
Leased	46%	21%	5%
Inherited	45%	6%	3%
Purchased	36%	6%	6%
Government Allocation	1%	-	-
Community Land	1%	-	-

Habitat Assessment

Land Use	Leased	Inherited	Purchased	Gov't Allocation	Community land
Agricultural/farming	39%	44%	22%	1%	-
Residential	1%	-	6%	-	1%
Mixed Use	1%	-	-	-	-
Business/commercial	1%	-	6%	-	-

THE LEGAL FRAMEWORK

- Domestic Instruments: CoK, Penal Code, Sexual Offences Act, Children Act, IDP Act
- Global Instruments: UDHR, ICCPR and ICESCR
- Regional Instruments: ACHPR, Great Lakes Pact, Kampala Convention
- Subsidiary Instruments: UN Guiding Principles on Internal Displacement, Rome Statute, CaT, CEDaW, CRC

DOMESTIC INSTRUMENTS

- The Constitution: Supremacy Clause (Art. 2), Rights and Fundamental Freedoms (Arts. 26–57), Enforcement of Bill of Rights (Arts. 22 and 23)
- Penal Code: Offences against Public Order §44, 59–66; Possession of firearms and other weapons §89; Murder, Manslaughter and related offences §202, 205, 220–224, Excessive Force §241; Assault §250, 251. Also provisions on theft, stealing and robbery.

Domestic Instruments Cont'd

- International Crimes Act: Domesticates Rome Statute
- The Sexual Offences Act (Rape §3, 4; Sexual Assault §5; Defilement §8, Gang rape-§10; Deliberate Transmission of HIV or life-threatening STDs §26)
- The Children's Act: Safeguards for the rights and welfare of the child (§ 3–22)

REGIONAL INSTRUMENTS

- ACHPR: Equal Protection of the law, right to life, dignity, liberty and security of the person, right to information, free movement and residence, right to property, physical and mental health, education, protection of the family unit;
- Great Lakes Pact: Protocol on Protection and Assistance to IDPs (Art. 12) and Protocol on Property Rights of Returning Persons (Art. 13)

KAMPALA CONVENTION

- Protection from Internal Displacement (Art. 4);
- During internal displacement (Art. 9);
- Sustainable return, local integration or relocation (Art. 11);
- Displacement induced by projects (Art. 10);
- Compensation (Art. 12);
- Registration (Art. 13);
- Monitoring compliance (Art. 14)

SUBSIDIARY INSTRUMENTS

- UN Guiding Principles: Restate binding international legal norms (Human Rights Law, International Humanitarian Law); Clarify what these mean in IDP situations; Spell out IDPs' rights + responsibilities of States and other actors towards them
- Rome Statute: Establishment of the International Criminal Court with jurisdiction over crime of genocide, crimes against humanity, war crimes and the crime of aggression.

REDRESS OPTIONS

- Criminal Prosecutions: Kenyan cases at ICC + Domestic Prosecutions (5,000 local case files), ICC cases since terminated & DPP failed to proceed with local prosecutions.
- Enforcement of Human Rights Litigation: Case No. 273 of 2011: FIDA Kenya & Others v. AG
- Govt. Resettlement Programme: Numerous integrated IDPs failed to be resettled, hence the PIL case

REDRESS OPTIONS

- TJRC: Mandate from Dec. 1963–2008. Issued recommendations & proposed reparations framework that remains unimplemented.
- President's pledge for a restorative justice fund in 2015 failed to materialize.

THANK YOU