

Behind the Scenes

January 2013

Lessons Learnt from Developing a National Policy Framework on Internal Displacement in Kenya

A study carried out by the Refugee Consortium of Kenya in partnership with
the Danish Refugee Council - Great Lakes Programme



Behind the Scenes

Lessons Learnt from Developing a National Policy Framework on Internal Displacement in Kenya

January 2013

— Acknowledgements

This documentation study was commissioned by the Refugee Consortium of Kenya (RCK) and the Danish Refugee Council's Great Lakes Civil Society Project. The study was undertaken and compiled in two phases. The first phase of collecting primary and secondary data, compiling the findings and writing the report was done by Davis M. Malombe. The second phase of writing and finalising the report was done by Joseph Omolo in consultation with the Study Advisory Group (SAG).

The process of conducting the study and the compilation of this final report immensely benefited from the guidance, review, support and supervision of the SAG. The SAG was made up of staff from the Refugee Consortium of Kenya (Lucy Kiama – Executive Director, Leila Muriithia – Senior Programme Officer, Rufus Karanja – Programme Officer, Ad-vocacy and Riva Jalipa - Associate Programme Officer, Ad-vocacy) and the Danish Refugee Council (Alexandra Bilak – Programme Manager, Great Lakes Civil Society Project and Pauline Wesolek – Programme Officer, Great Lakes Civil Society Project). The Study Advisory Group also played a key role in providing technical, logistical and administrative support for the study.

RCK and DRC extend their gratitude to all the partners and members of the Protection Working Group on Internal Displacement, including those at the field level who were interviewed for the study. RCK thanks all the internally displaced persons who were interviewed for this study in Nakuru, Eldoret and Kitale. Their practical experience and knowledge significantly supported the findings of this study.

Finally, RCK and DRC thank the Kenya Government officials, in particular Michael Nyamai (MoSSP), Joseph Gitonga (MoJNCCA), Members of Parliament including Hon. Ekwe Ethuro as the Chair of the PSC, Hon. Sophia Abdi as the Chair of the LSWC and other international partners who agreed to be interviewed for this study and who have been closely involved in the policy development process.

— List of Abbreviations

Acquired Immunodeficiency Syndrome	AIDS
Advocacy Sub-Working Group	ASWG
African Union	AU
Children’s Legal Action Network	CLAN
Civil Society Organisations	CSOs
Great Lakes Civil Society Project	GCP
Human Immunodeficiency Virus	HIV
International Conference on the Great Lakes Region	ICGLR
International Displacement Monitoring Centre	IDMC
Internal Displacement Policy and Advocacy Centre	IDPAC
Internally Displaced Persons	IDP
International Refugee Rights Initiative	IRRI
Kenya Human Rights Commission	KHRC
Kenya National Commission for Human Rights	KNCHR
Kenyans for Truth with Peace and Justice	KTPJ
Lamu Port-Southern Sudan-Ethiopia Transport	LAPSSET
Legal and Advocacy Sub-working Group	LASWG
Land Sector Non-State Actors	LSNA
Labour and Social Welfare Committee	LSWC
Ministry of Justice National Cohesion and Constitutional Affairs	MoJNCCA
Ministry of State for Special Programmes	MoSSP
North Frontier Districts	NFDs
Non-Governmental Organisations	NGOs
Norwegian Refugee Council	NRC
Office of the Higher Commissioner for Human Rights	OHCHR
Protection Cluster	PC
Post-Election Violence	PEV
Parliamentary Select Committee on the Resettlement of IDPs in Kenya	PSC
Protection Working Group on Internal Displacement	PWGID
Refugee Consortium of Kenya	RCK
The Office of the Representative of the Secretary-General on the Human Rights of IDPs	RSO
Special Rapporteur on the Human Rights of IDPs	SR/IDPs
Truth, Justice and Reconciliation Commission	TJRC
United Nations	UN
United Nations High Commissioner for Refugees	UNHCR
United Nations Children’s Fund	UNICEF
United Nations Office Coordinating Humanitarian Affairs	UNOCHA

— Foreword

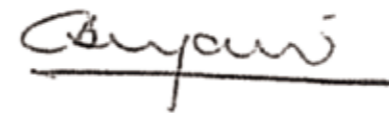
Internal displacement in Kenya has been described as a historical problem which has been exacerbated by the lack of a comprehensive legal and policy framework to, at the least, recognise who an IDP is and where responsibilities lie. As a result, the Kenyan Government has in most instances responded to the problem in an ad hoc and needs-based manner as opposed to a rights-based one that is premised on internationally accepted human rights standards.

Following the devastating impact of the 2007/08 post-election violence in which over 1,300 persons were killed and over 600,000 others internally displaced, the Kenya Government, through the Ministry of State for Special Programmes (MoSSP) and in collaboration with humanitarian and non-state actors, embarked on the development of an IDP Policy. This policy was intended to help the Government better prevent instances of internal displacement, to provide enhanced protection and assistance to internally displaced persons (IDPs) and to promote the achievement of durable solutions for IDPs. This initiative later transformed into the development of legislation on internal displacement (IDP Bill, 2012).

The development and lobbying process of these frameworks has been prolonged and demanding on resources. The experience, however, has been rewarding in terms of both the near realisation of progressive frameworks but also as a learning process for actors who have been instrumental in these processes.

The Kenyan experience is a commendable one, in that it has benefitted to a great extent from the immense support and collaboration from the Government. That is not to say that it has not had its fair share of challenges nor that it has not been without good fortunes. The documentation of this process is an important one which could inform future advocacy strategies on policy development and is also a means of reflection for those who have been involved in the process.

This study by the Refugee Consortium of Kenya and the Danish Refugee Council (Great Lakes Civil Society Project) could not be any more timely, as signatories to the African Union Convention on the Protection and Assistance to Internally Displaced Persons (Kampala Convention) seek to domesticate this Convention.



Dr. Chaloka Beyani
*UN Special Rapporteur on
the Human Rights of IDPs*

— Table of Contents

	Acknowledgements	III
	List of Abbreviations	V
	Foreword	VII
	Table of content	IX
	Executive Summary	XI
Chapter 1	Introduction	1
1.1.	The Kenyan Context	1
1.2.	The Political and Technical Processes Towards Drafting the IDP Policy	2
1.3.	Purpose and Objectives of the Study	2
1.4.	The Partnership between the Refugee Consortium of Kenya and the Danish Refugee Council (Great Lakes Civil Society Project)	2
1.5.1.	Desk Review	3
1.5.2.	Key Informant Interviews	3
1.5.3.	Internal RCK Reflection	3
1.5.4.	Theoretical and Conceptual Framework	4
1.5.5.	Shortcomings of the Methodology	4
Chapter 2	Setting the Scene	6
2.1.	Causes of Displacement in Kenya	6
2.1.1.	Colonial and Post-Colonial Factors	6
2.1.2.	Election-related Violence	6
2.1.3.	Border and Resource Disputes Including Cattle Rustling and Banditry	7
2.1.4.	Natural and Human Made Disasters	7
2.1.5.	Development Projects and Displacement	7
2.2.	Towards a Policy Framework	7
2.2.1.	Development of an Overarching Policy Framework	8
2.2.2.	Development of a Legislative Framework	8
2.2.3.	Synchronising the Policy and Legislative Processes	8
2.2.4.	Taking Stock of the Process	11
Chapter 3	The Role of the PWGID: Added Value of a National Coordination Mechanism	13
3.1.	Institutional Responses to the Post-Election Violence in 2007/2008	13
3.2.	Collective Responses within the PWGID	13
3.3.	Key Achievements of the PWGID	14
3.4.	Key Challenges	15
Chapter 4	The Role of Civil Society	17
4.1.	Identifying the Problem	17
4.2.	Policy Choices	18

— Executive Summary

4.3.	Policy Formulation	18
4.4.	Policy Adoption	19
4.5.	Policy Implementation	20
4.6.	Policy Evaluation	20
4.7.	Participatory Nature of the Policy Development Process	20
Chapter 5:	Navigating through a Tough Political Environment	23
5.1.	Sensitivity of the Topic of Internal Displacement in Kenya	23
5.1.1.	Post-election violence 2007	23
5.1.2.	Ethnic Dimension	23
5.1.3.	State responsibility for IDPs	24
5.2.	Institutional context	24
5.2.1.	Different Visions: The Executive versus Parliament	24
5.2.2.	Private Member's Bill	24
5.2.3.	Engaging with Actors and Managing Interests	25
5.3.	Impact of Changes in the Political Scene since 2007	25
5.3.1.	Implementation of the 2010 Constitution	25
5.3.2.	Proceedings at the International Criminal Court	26
5.3.3.	Upcoming Elections	26
Chapter 6:	Lessons Learned and Recommendations	28
6.1.	Lessons Learned	28
6.1.1.	A Critical Mass of Local Actors	28
6.1.2.	Coordination of Advocacy Work	28
6.1.3.	Resource Mobilisation	28
6.1.4.	Involvement of the Government	28
6.1.5.	Adapting International Standards to Local Conditions	29
6.1.6.	Creation and Utilisation of Networks and Personal Contacts	29
6.1.7.	Timing	30
6.1.8.	Inclusion and Participation	30
6.1.9.	Institutional Weaknesses and Capacity Building for Actors	30
6.1.10.	Flexibility, Concessions and Compromises	30
6.1.11.	Local and External expertise	30
6.2.	Recommendations to Countries Wishing to Engage in the Process of Developing a Policy on Internal Displacement	31
	Appendices	33
	Bibliography	35
	Footnotes	37

Kenya is in the final stages of developing a Policy on internal displacement. Its legislature has recently passed a law to provide for the protection and provision of assistance to IDPs based on the provisions of the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons (Great Lakes IDP Protocol) and the United Nations Guiding Principles on Internal Displacement (Guiding Principles).

Almost all countries within the Great Lakes Region¹ have a population of internally displaced persons whose displacement has been occasioned by a number of factors such as conflicts, natural and man-made disasters and development projects. Despite this, most countries within the region lack a policy framework on internal displacement. At the moment, there is growing momentum to establish a model framework based on the Guiding Principles, the Great Lakes Protocol and African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

This report is the result of a project commissioned by the Refugee Consortium of Kenya and the Danish Refugee Council's Great Lakes Civil Society Project, whose purpose was to capture and analyse the advocacy and engagement process that went into the preparation of the IDP Policy and Bill in Kenya. By highlighting the challenges and lessons learnt from the process, the outcome of the project should make a useful guide for discussions on advocacy strategies for forced migration policies at the regional and continental level.

This report highlights a number of best practices based on the Kenyan experience. These best practices should serve as a guide to persons involved in policy development on forced migration within the region. Some of the best practices may also be applicable to policy development work in other sectors locally and regionally. The best practices identified from the process revolved around issues like: creation of a critical mass of actors; establishment of a national coordination mechanism; strategies for resource mobilisation; partnership with the government in the policy development process; adaptation of international protection benchmarks to suit local conditions; creation and utilisation of networks; timing of policy development processes; participation in the process; identification of institutional weaknesses and building the capacity of actors to boost their participation in the process; need for flexibility on policy development options; and use of local and external expertise. Based on these issues, the report offers a number of comprehensive recommendations aimed at different actors.

Chapter 1: — Introduction

1.1. The Kenyan Context

Kenya is in the final stages of developing a Policy on internal displacement. Its legislature has recently passed a law to provide for the protection and provision of assistance to IDPs based on the provisions of the Great Lakes IDP Protocol on the Protection and Assistance to Internally Displaced Persons and the United Nations Guiding Principles on Internal Displacement. The President assented to the Bill on 31st December 2012.²

Advocacy work in Kenya for the establishment of a national policy on the protection of IDPs started in April 2007 when Kenyan civil society organisations (CSOs), United Nations (UN) agencies and government ministries working on IDP issues established a task force on the protection of IDPs. The mandate of the taskforce included organising a national conference on the protection of IDPs in November 2007, with a view to strengthening mechanisms for immediate responses and advocate for durable solutions for all categories of IDPs.

Following the violence that erupted in 2007/2008, the National Disaster Operations Centre³, on behalf of the Government of Kenya, called upon humanitarian agencies to work towards mitigating the humanitarian crisis caused by the post-election violence. As a result, eleven clusters were established under the UN system to facilitate rapid mobilisation of donor funding, to provide a mechanism for coordinating humanitarian assistance and to support government structures and help restore their capacities.

A national IDP Protection Cluster formed by the United Nations High Commissioner for Refugees (UNHCR) was part of this cluster system with representation from more than 30 agencies including the Ministry of Justice, National

Cohesion and Constitutional Affairs (MoJNC-CA), the Kenya National Commission for Human Rights (KNCHR), UN agencies, national and international NGOs and community-based organisations.

In early 2009, the Protection Cluster was transformed into a national-level Protection Working Group on Internal Displacement (PWGID) in order to expand its capacity for advocacy and to cover other interventions on a long term basis. The mandate of the PWGID included: advocacy and capacity-building of government institutions through training sessions on the Guiding Principles; advocacy for the implementation of the Great Lakes IDP Protocol; participation in efforts towards the finalisation of the Kampala Convention, which existed then in a draft form; and elaboration of a national policy on internal displacement.

1.2. The Political and Technical Processes Towards Drafting the IDP Policy

In July 2009, the first stakeholders' forum was held at which the process of developing a policy on internal displacement for Kenya was initiated. Participants at the forum included senior representatives from the Ministry of State for Special Programmes (MoSSP), from the National Steering Committee on Peacebuilding and Conflict Management, the Provincial Administration and members of the PWGID. The outcome was a consensus on the need for a national policy to address situations of internal displacement in Kenya. The PWGID was then given the mandate to devise a strategy for drafting the policy in collaboration with MoJNCCA and MoSSP.

The process of drafting the policy was taken up

by the MoSSP and the Legal and Advocacy Sub-Working Group (LASWG), a theme group under the PWGID. Meetings were hosted at the ministry on a weekly basis with a technical advisor from the office of the Special Rapporteur on the Human Rights of IDPs (SR-IDPs) providing technical support to the team. In March 2010, partners reviewed a preliminary draft for the policy during the second stakeholders' forum.

From May to December 2010, the LASWG developed and disseminated a matrix auditing the legal, policy and institutional framework in relation to the protection of IDPs. The matrix indicated the weaknesses in the existing framework and justified the need for a concrete legal framework and for implementing the draft Policy. In November 2010, the team amended the draft policy to reflect the provisions of the newly-promulgated Kenyan Constitution so that it correlated with the framework for devolution, human rights, values and principles of governance under the Constitution. Further revisions were made in July 2012 to make the draft Policy compatible with the Land Act (2012), the Land Registration Act (2012) and the National Land Commission Act (2012). On 16th March 2011, the group submitted a draft cabinet memo to MoSSP to accompany the policy for its presentation to cabinet.

To further entrench its advocacy work, the PWGID had engagements with other stakeholders like the Parliamentary Select Committee on the Resettlement of IDPs (PSC) and the Labour and Social Welfare Committee (LWSC), which resulted in the development of the Bill on internal displacement. The Prevention, Protection and Assistance to Internally Displaced Persons Bill has already received Presidential assent while the broader policy document has been approved by the Cabinet and is awaiting presentation to Parliament for debate.⁴

1.3. Purpose and Objectives of the Study

The purpose of this study is to capture and analyse the advocacy and engagement process that went

into the preparation of the IDP Policy and Bill in Kenya. By highlighting the challenges and lessons learnt from the process, the outcome of this study should make a useful guide for discussions on advocacy strategies on forced migration policy at the national, regional and continental level.

According to the Brookings Institution's database on national laws and policies on internal displacement, only four countries in the Great Lakes region have developed an IDP-specific policy to deal with particular protection needs.⁵ The Kenyan experience could therefore inspire other countries within the region and beyond, especially as momentum builds up for the implementation of the Guiding Principles, the Kampala Convention and the Great Lakes IDP Protocol. Beyond its particular context on internal displacement, lessons learnt from the Kenyan process could also be useful for reflecting on policy development work in other sectors.

1.4. The Partnership between the Refugee Consortium of Kenya and the Danish Refugee Council (Great Lakes Civil Society Project)

The Great Lakes Civil Society Project is a regional programme implemented since January 2010 by the Danish Refugee Council in partnership with civil society organisations in six countries of the Great Lakes region: Burundi, Central African Republic, Democratic Republic of Congo, Kenya, South Sudan and Uganda. The vision of the programme is to build the capacity of civil society to hold governments accountable to their commitments to protect displaced persons by proposing realistic policy solutions to conflict and displacement. The programme supports national civil society organisations in documenting and analysing specific displacement and conflict issues, and translating these analyses into practical advocacy goals at the local, national and regional levels. The project relies on existing legal and political frameworks for the protection of refugees and IDPs and, where possible, encourages cross-border learning between civil society organisations and regional

initiatives aimed at providing joint solutions to regional displacement problems.

The Refugee Consortium of Kenya (RCK) is a national Non-Governmental Organisation that works to promote and protect the rights and dignity of refugees and other forced migrants. RCK was constituted and registered in 1998 in response to the increasingly complex refugee situation in Kenya. RCK is distinct in the role it plays in promoting the welfare and rights of refugees and other forced migrants. It focuses on refugee and IDP issues using a human rights and social justice approach as it advocates for their rights. In partnership with its networks locally, regionally and internationally, RCK has been able to deal with a wide range of issues in forced migration. These include legal reforms, policy development, civic education, research and information dissemination, refugee and IDP empowerment and capacity building. Since 2010, RCK in partnership with DRC Great Lakes has been engaged in IDP work under three strategic objectives for the year 2012: i) Lobbying for the enactment of the IDP Policy with different duty bearers; ii) Creating awareness on the rights and protection needs of IDPs in Kenya; and iii) Documenting the advocacy and engagement process towards an IDP policy framework in Kenya.

1.5. Methodology of the Study

1.5.1. Desk Review

This study was informed by a review of a number of secondary sources of information in the form of publications, reports, minutes, concept papers, as well as relevant national, regional and international frameworks on IDPs. This information was used to build the context on IDP protection, identify gaps in existing protection and advocacy initiatives, identify the key stakeholders in IDP work, and establish benchmarks for protection and advocacy work.

1.5.2. Key Informant Interviews

The study made use of purposive sampling, interviewing various respondents from organisations or institutions that have taken an active part in the policy development process. These respondents included state and non-state actors and represented international, national and field-based level actors. The interviews were mainly conducted using semi-structured questionnaires as well as informal discussions.

In total, 22 stakeholders were interviewed. 13 were representatives of state institutions comprising of four international (mainly UN Agencies), six national (from relevant ministries, Kenya National Commission on Human Rights – KNCHR, and Parliament) and three field-based Protection Working Group members (mainly from the Provincial Administration in Nakuru and Eldoret). Nine non-state actors were also interviewed: two international non-governmental organisations, four national actors and three members from the IDP Network. Informal reflections were also undertaken with members of the Eldoret field-based Protection Working Group on 26th July 2012.

1.5.3. Internal RCK Reflection

While the consultants who conducted this study carried out interviews with the relevant stakeholders in an attempt to re-enact and re-examine the policy development process, they also relied on information accumulated by RCK from its own advocacy work. RCK has played a significant role in the development of the policy framework on internal displacement in Kenya. Initial efforts in this respect have included preliminary discussions with actors around the prospect of developing an IDP Policy. After the post-election violence, the role of RCK became more concrete with the inception of the Protection Working Group on Internal Displacement and of the legal and advocacy subgroup for longer-term interventions such as policy development, promotion of access to durable solutions and ensuring a holistic approach to internal displacement in Kenya. The specific role of RCK

cannot be distinguished from the objectives and activities of the advocacy sub-group of the PWGID.

The strength of RCK as a partner in this sub-group could be ascribed to several factors, such as its extensive experience in advocacy and policy development, most notably with the development of the Refugees Act in 2006. Its programming for that period had the technical and financial support of the Danish Refugee Council Great Lakes Civil Society Project and its approach and long standing relationship with relevant stakeholders including Government Ministries, civil society, UN bodies and the IDP communities was close and constant enough to influence and garner support for certain initiatives and thus lend legitimacy to its actions and the process at large. For instance, RCK sought to address issues emerging at the local level such as the flawed profiling exercise by the Government.

RCK worked with partners to develop an abridged version of, and other IEC materials, on the draft policy. The IEC materials were disseminated through its training sessions on peacebuilding and reconciliation with peace committee members in Uasin Gishu County and other training sessions for state and non-state actors on the rights of refugees and other forced migrants. RCK also engaged with formal and informal channels to maintain knowledge on the process and intervene where possible with this advocacy expertise. For instance, RCK benefited from the Executive Director's previous engagements with the Minister of State for Special Programmes (MoSSP) in the development of the Sexual Offences Act.⁶ These established relationships and facilitated the organisation of high level meetings at short notice, helped the sub-group access timely information such as the status of the draft policy within the MoSSP and made it easier for RCK to mobilise the relevant ministry staff to participate in the key workshops and meetings related to advocacy around the draft IDP Policy.

In the same spirit, the MoSSP recognised the role of RCK in the process of developing the policy framework and subsequently invited RCK to contribute to critical technical meetings that pushed the policy forward at different stages. Key meet-

ings included the first committee meeting of the Parliamentary Select Committee on the Resettlement of IDPs in Naivasha in February 2011, and the workshop between the MoSSP and the Ministry of Land to build consensus around the provisions of the draft IDP Policy for both ministries in order to resubmit it to Cabinet in August 2012. RCK staff also followed parliamentary proceedings during two of the three readings of the IDP Bill in parliament. They regularly prepared briefing notes and shared with the advocacy sub-group to keep them informed of progress of both the Policy and the Bill.

1.5.4. Theoretical and Conceptual Framework

In this study and report, "policy" will be understood in a very broad sense to include general policy, specific policy, laws, institutions and government practice. Unless otherwise specified, therefore, reference to a policy framework includes reference to the Constitution, legislation, institutional set up and practices, whether in written form or not, existing in a single document or scattered across numerous sources, and whether implemented in an *ad hoc* manner or sustained and guided by some objective work-plans. It also includes failure by the Government to take particular action or courses of action (omission).

In analysing the role of CSOs, this study greatly relied on a five-stage policy development cycle which covers setting the agenda for policy development; formulating the policy; adopting the policy; implementing the policy; and evaluating the policy.⁷ By using the cycle, this report systemically assesses and re-examines the policy development process for ease of reference and adaptability for application in other contexts.

The analysis in this report greatly benefited from the approach outlined in the Brookings Institution's manual for law and policymakers especially in assessing the standard of protection offered through policy interventions.⁸ While seeking to establish best practices that could be utilised beyond

the national level, this study remained conscious of the primary obligation on the State to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.⁹

At the heart of policymaking lies consensus-building, which is achieved through a consultative and participatory approach. This study views participation in policymaking as a continuum, with actors taking part in the process to different extents depending on the surrounding circumstances and their inherent capabilities or disadvantages. As a continuum, participation in policy encompasses a wide range of scenarios which may include: exchange of information; public consultation and engagement; shared decisions and shared jurisdiction. Based on this, different actors would necessarily engage with the policy development process to varying extents. This continuum was used to assess the extent to which stakeholders participated in the process of developing the policy framework.

1.5.5. Shortcomings of the Methodology

The study encountered some methodological challenges. First, there were several advancements made on the part of the Government towards the policy which were not properly documented. The study would have benefited from engaging with more Government stakeholders as key informants that could have shed light on the internal dynamics that affected the policy development process. This was not done on two accounts: first, because Government actors were scattered across numerous ministries, sometimes with uncoordinated approaches, and second because of time constraints. For instance, while the PSC and its members played an important role in the policy development process, it was not clear what their exact motivation was nor what criteria were used to identify the original members of the committee.

Secondly, though the interviews with the respondents targeted persons and institutions that had been significantly involved in the policy development process, at the time of the study some of

these respondents had moved to work with other organisations or in other sectors. This affected to some extent the respondents' understanding of the two processes.

Thirdly, as some persons interviewed had been involved in the process of developing the policy framework, there was a great risk of bias in their assessment of the process. The study, however, greatly benefited from these persons who had the institutional memory of the process and remain key proponents of the process.

Chapter 2: — Setting the Scene

The Great Lakes region is said to be home to over eight million internally displaced persons.¹⁰ IDPs are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights, natural or human-made disasters, and development programmes and who have not crossed an internationally-recognised state border.¹¹ Internal displacement within the region has been caused by conflict, disaster, violence, massive development projects and socio-economic inequalities leading to landlessness among other things. This population is distributed across all the nations that fall within the region and represents a significant segment of global statistics on internal displacement.¹²

Kenya has a long history of displacement with a climax in the aftermath of the 2007/ 2008 post-election violence. This section discusses some of the causes of violence in Kenya as a way of providing a context for understanding advocacy work for a policy on internal displacement.

2.1. Causes of Displacement in Kenya

2.1.1. Colonial and Post-Colonial Factors

The introduction of colonisation saw the forced displacement of African communities from their ancestral lands to make way for the white settlers. In Kenya, this was exemplified in evictions from fertile lands in Rift-Valley and Central Kenya where the natives were reduced to squatter-labour force for colonial settlers. At the time of independence,

it was expected that this adverse legacy of colonial land alienation processes would be corrected.¹³

However, the post-independence government went ahead to preside over a land re-distribution programme that instead became a further source of discord. Initial land allocations in favour of persons who had been labourers on the settler farms incensed the pastoralist communities of the Rift Valley and fuelled the sentiment of “outsider communities” which continues to persist to this day. The situation was compounded by a programme to empower communities through formation of land-buying companies which saw large-scale land acquisition by communities perceived as close to the centre of power. This historical context infused itself with the political and ethnic relations of Kenyan society and has become a cause of periodic population movements and displacement in Kenya.¹⁴

2.1.2. Election-related Violence

Massive internal displacement in Kenya can be traced to the re-introduction of multi-party politics in 1992 with political parties formed largely along ethnic lines becoming vehicles for championing redress for perceived communal injustices. This trend continued into the 1997 general elections, with violence registered in the Rift Valley and Coast provinces leading to the displacement of 120,000 people. The victims were largely from communities perceived as supporters of opposition parties. In total, election-related violence prior to the 2007 general elections is said to have been responsible for the displacement of approximately 350,000 persons.¹⁵ Violence following the 2007 general elections saw an escalated and unprecedented level of displacement that affected 663,921 people.¹⁶ Areas affected by election-related dis-

placement include mainly Molo, Njoro, Kuresoi, Eldoret, Burnt Forest, and Coastal region.¹⁷

2.1.3. Border and Resource Disputes Including Cattle Rustling and Banditry

Closely associated with political conflict are border disputes arising from arbitrarily established administrative boundaries and contested land rights. As administrative boundaries began to create ethnic enclaves, minority communities within these boundaries soon became the target of forceful evictions. Areas such as Chesikaki in Mt. Elgon, Ol Moran in Laikipia West, Thangatha in Tigania, the Pokot/Turkana border, Riosiri in Rongo, Tembu in Sotik, Masurura in Transmara, Marsabit-Isiolo and Tana River¹⁸ have been particularly problematic in this regard.¹⁹ Related to general disputes about resources is the evolution of cattle-rustling from a traditional practice to one of belligerence and criminality fuelled by politics and the proliferation of small arms and light weapons. Pastoralist communities such as the Pokot, Turkana, Marakwet, Samburu, Tugen and Keiyo continue to endure incidences of displacement, death and loss of livestock over time²⁰, as detailed in a 2003 study on conflict in Northern Kenya estimating the level of displacement in the pastoralist areas of North Frontier Districts (NFDs)²¹ in Kenya²² at 164,457.

2.1.4. Natural and Human Made Disasters²³

A historical profile from 1975-2004 indicates that Kenya has experienced multiple episodes of drought, landslides and floods in various parts of the country with far-reaching economic and social consequences.²⁴ Kenya experiences regular floods in the areas of Kano, Nyakach, Rachuonyo, Migori, Budalangi, Kilifi, Kwale, the Tana River Basin, Garrissa, Wajir, Nairobi, Nakuru, Mombasa, Kisumu, Baringo, Elgeyo and Marakwet districts.²⁵ Landslides and mudslides also occur mostly during the rainy season and are accelerated by flooding.

2.1.5. Development Projects and Displacement

Kenyans have also been displaced from their lands and homes on account of development projects and environmental conservation efforts carried out arbitrarily. A recent decision from the African Commission on Human and Peoples’ Rights restored the land rights of the *Endorois* community who had been displaced from their ancestral lands to make way for a game reserve.²⁶ More recently, a taskforce recommended the eviction of persons deemed to have encroached on the Mau Forests complex in a bid to conserve the country’s essential water towers.²⁷ As of September 2011, some 6,500 families had been evicted from the complex with a further 23,500 projected for eviction once the next phase of restoration commences.²⁸ Other projects that may lead to displacement include the Lamu Port-Southern Sudan-Ethiopia Transport (LAPSSET) project and the discovery of oil in Turkana. The LAPSSET project will comprise of a port, an international airport and an oil refinery in Lamu along with a road and pipeline network cutting across Kenya, Ethiopia and Southern Sudan and according to initial assessment by the government may affect 6,000 families.²⁹

2.2. Towards a Policy Framework

From the very outset, it must be acknowledged that although before 2008 Kenya did not have a single repository encompassing all its policies in relation to internal displacement, such policies did exist. The policies existed as part of other laws, for instance those relating to human rights, development plans, disaster response, compulsory acquisition of land, armed conflict and laws on general administration. Other policies existed not in written form but were employed through practice and mostly depended on the preferences and priorities of the government of the day.³⁰ What Kenya was really missing before the 2008 displacements was a consistent and coordinated response to internal displacement. The Government did not expressly recognise the protection needs of IDPs, and inter-

ventions were consequently majorly *ad hoc* and not focused on IDPs as such.

Even without a comprehensive law for the protection of IDPs, the Government has on several occasions sought to investigate disruptive incidents that led to displacement. In this regard, the Government had previously established various temporary institutional mechanisms to conduct enquiry into incidences of displacement and make recommendations.³¹ Further, following the displacements triggered by the violence in 2007/2008, it could be seen that the Government had some basic mechanism for responding to internal displacement, or rather, to disasters. At the onset of the crisis, the Ministry of State for Provincial Administration and Internal Security co-ordinated interventions through the Disaster and Emergency Co-ordination Department. Later, the MoSSP established the Mitigations and Resettlements Department to assist in resettling and restoring livelihoods for IDPs after being made the focal point for coordinating interventions. The MoSSP also had the Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of the 2007 post-election violence.³²

The move towards a comprehensive and cohesive framework on internal displacement was therefore a reactionary phenomenon brought about by the level of prominence afforded to internal displacement following the post-election violence in 2007/2008. The unsatisfactory nature of responses by the Government (poor coordination, short-term planning, failure to allocate sufficient resources and poor profiling) and the uncoordinated way in which various CSOs responded to internal displacement following the violence served to highlight the need for a framework to act as a platform for collaboration and coordination.

While there had been earlier attempts at advocacy on internal displacement, efforts intensified in 2007³³ when the United Nations Office Coordinating Humanitarian Affairs (UNOCHA)³⁴ and the Internal Displacement Monitoring Centre (IDMC) co-hosted the first capacity-building workshop on the Guiding Principles on IDPs for non-state ac-

tors working on IDP issues in Nairobi. The workshop led to the formation of a Task Force on IDPs comprised of all interested CSOs organised on a rotational basis. It drew up a strategy to push for the development of a legal and policy framework on internal displacement, highlighted the need for durable solutions, including the development of pilot projects for the resettlement of IDPs, and sought to establish a mechanism for dialogue and advocacy work in cooperation with other actors.³⁵

From 23rd to 25th April 2007, the International Refugee Rights Initiative (IRRI), IDMC and the Norwegian Refugee Council (NRC) co-organised a regional workshop at the Silver Springs Hotel in Nairobi to encourage the adoption and implementation of protection mechanisms for IDPs. On the basis of this event, national stakeholders were expected to host a follow-up conference with a view to strengthening intervention strategies as the general elections approached. Additionally, the workshop was supposed to spearhead legal and policy actions while advocating for durable solutions for IDPs in Kenya. Between August and October 2007, the Task Force undertook preparatory work for the conference. Unfortunately, the conference had to be moved to February 2008 as the election period appeared not to provide a conducive environment to hold it in November 2007. The conference did not take place in February as planned because of the violence that erupted after the 2007 elections. The agenda items of the proposed workshop were finally realised during the stakeholders' forum organised in July 2009 to discuss durable solutions and the establishment of a policy framework for IDPs.

2.2.1. Development of an Overarching Policy Framework

Although the need for a policy on internal displacement had been mooted in 2007, it properly began in 2009 with a stakeholders' forum in Nairobi held on 30st and 31st July 2009.³⁶ The specific objectives of the forum included to reflect on the gains made and challenges faced in the protection of and pro-

vision of assistance to IDPs after the post-election violence; to analyse the situation of IDPs displaced by other factors other than the post-election violence; to review the existing and anticipated policy, legal and institutional frameworks at the national and international levels; to get the voices of IDPs and strengthen their involvement in all decision-making processes; to develop a framework for building the capacity of stakeholders and to profile IDPs; and to develop strategies for advocacy and common interventions.³⁷

This forum was followed by a National Stakeholders' Review Forum held in Nairobi on 14th March 2012 and during which a preliminary draft outlining the key provisions of an IDP policy was developed by the LASWG and presented to partners for review. Deliberations from this forum were used to improve the draft, the content of which was finalised in April 2010.³⁸ Following the agreement on the general outline and content of the policy, the LASWG developed in May 2010 an advocacy strategy for the draft policy to run from June to December 2010. From May to December 2010, the Sub-Working Group audited the existing legal, policy and institutional frameworks with a view to informing the implementation of the proposed policy. A detailed matrix was developed and disseminated indicating the weaknesses in the existing legal architecture and justifying the need for a concrete legal framework to foster the implementation of the draft policy.³⁹

In November 2010, the LASWG revised the draft policy to bring it in line with the newly-promulgated Constitution of Kenya.⁴⁰ Following these revisions, a draft cabinet memo was prepared and presented to the MoSSP on 16th March 2011. This was later presented to the relevant Cabinet sub-committee.⁴¹ Later, on 18th July 2012, the policy was revised to align it with developments in the land sector, in particular with the provisions of the Land Act, the Land Registration Act and the National Land Commission Act with respect to the protection of IDPs in the context of landlessness.

2.2.2. Development of a Legislative Framework

A legislative instrument forms part of a broader policy context and seeks to give effect to various aspects of the policy by giving them the force of the law. Similar to the need for broader policy on internal displacement, the need for legislation on internal displacement was identified during the workshops held in March and April 2007. However, the real momentum came when Parliament established the Parliamentary Select Committee on the Resettlement of IDPs (PSC) on 17th November 2010 in response to what it considered an inadequate government response to internal displacement. The mandate of the PSC included examining the policies and laws governing all forms of forced displacement and coming up with a draft Bill on forced displacement.⁴² Having conducted numerous public hearings with multiple stakeholders, the PSC recommended the need for a legislation to ensure that government action on internal displacement would be well coordinated, adequately resourced and in line with its constitutional and international obligations.⁴³

This recommendation provided an avenue for the PSC and the PWGID to work together given the progress made so far by the PWGID in relation to the draft IDP policy.

2.2.3. Synchronising the Policy and Legislative Processes

While the entry of the PSC into the discourse on establishing a framework for the protection of IDPs was timely, it brought with it some structural challenges. Whereas the PWGID had concentrated its efforts on developing the broader policy and had worked closely with the executive arm of the government (MoSSP and MoJNCCA), the PSC's mandate on the other hand was parliamentary. In addition, its initiation was not related to the broader policy development process. The process of cooperation with the PSC therefore started with attempts to reconcile and merge the progress made so far by the PWGID on the policy with the mandate, interests and strategies of the PSC.

This process started with a strategic planning workshop organised by the PSC in which members of the PWGID advocacy sub-group outlined key issues regarding internal displacement and introduced the draft IDP policy to the PSC. The Bill prepared by the PSC was presented during this workshop and it was agreed that it should be revised in accordance with the contributions made at the workshop, the principles related to protection during internal displacement and other legislative drafting requirements.

This initial engagement was followed by a workshop organised by RCK between the PWGID and the PSC, which further discussed the international standards on IDP protection, the extent to which they were incorporated into the draft IDP policy and the probable role for an IDP Bill. This second workshop took place on 30th September and 1st October 2011. RCK, together with the PWGID, convened this forum to review the initial draft of the IDP Bill and to work towards conclusion of the process. The forum appointed the PWGID advocacy sub-group to review the draft Bill and submit it for a final review and validation in December 2011, just before the expiry of the term of the PSC.⁴⁴ The composition of the PWGID, and the advocacy sub-group in particular, benefited from having a long-standing structure, as the PSC were persuaded by this arrangement when it came to committing the review of the draft with a reliable and proven arrangement.

The second forum was attended by the Minister of State for Special Programmes, who expressed her support for the draft Bill. The Minister's participation was also important as it provided an opportunity to lobby her to hasten the finalisation of the policy that had stalled for some time. The PWGID used this forum strategically to lobby for the Ministry's support of the draft Bill, especially because the Bill would be tabled in Parliament as a "private members' bill". The Minister's commitment to supporting the Bill was instrumental at the later stages of debate on the Bill, as the Ministry moved a crucial amendment that provided for the proposed IDP humanitarian fund in the Bill to receive funding from the Government's consolidated fund.

These forums marked important stages in the policy development process, especially where the realisation of the Bill was concerned and in the sensitisation process of the PSC to understand, and consequently support, the proposed policy framework for internal displacement. The PWGID submitted the final version of the Bill to the PSC during the December workshop and committed to work with the MoSSP and other Government stakeholders to move the process forward.⁴⁵

The final report of the PSC was unanimously adopted in Parliament on 2nd August 2012.⁴⁶ The report had a number of recommendations including one that called for:

The Government [to] establish a legal framework on internal displacement through formulation of [a] policy and enactment of the draft bill on prevention, protection and assistance of IDPs. This legal framework should take into account the UN Guiding Principles, the AU Convention (Kampala Protocol) and Great Lakes Protocol on Protection and Assistance of IDPs.⁴⁷

With the adoption of the Committee's report, the chair of the PSC, Hon. Ekwe Ethuro, seized the opportunity to build momentum for the enactment of the IDP Bill. The Bill was published on 24th April 2012, and was presented to Parliament for its first reading on 13th June 2012. After its first reading in Parliament, the Bill was committed to the Parliamentary Labour and Social Welfare Committee (LWSC) for review. The PWGID advocacy sub-group organised a forum in Mombasa in July 2012 to sensitise members of this committee on the protection needs of IDPs and took the opportunity to lobby for its adoption in Parliament. The Bill underwent three readings in Parliament before being passed. It is useful to note the key deliberations that occurred during the readings as these informed the state of the Bill as it was passed and the concessions and challenges for stakeholders in policy making.

The second reading took place on 19th September 2012 and showed broad based support for the Bill, albeit with significant misconception and misun-

derstandings of IDP issues, and despite the fact that a lot of the sensitisation had been conducted by the PWGID, specifically targeting the LSWC. Examples include the introduction of integrated IDPs as a separate category of IDPs requiring definition and references to IDP protection as refugee protection. It was promising to note, however, that MPs recognised the Bill as addressing all forms of displacement including historical evictions and praised it for acknowledging the forthcoming devolved system of government.

The third reading took place on 4th October 2012 and brought about the most amendments both from Parliament and indirectly from stakeholders through submission of proposed amendments to Hon. Ekwe Ethuro. Most notably, Hon. Esther Murugi proposed that the IDP Fund be funded from the Exchequer (Government budgetary allocation). Hon. Millie Odhiambo also lobbied hard to ensure that IDPs and UN agencies remain within the National Consultative Coordination Committee. The clause on armed groups being required to adhere to the provisions of the Act was deleted for fear that such observance would afford legal status or recognition of armed groups despite the provision expressly providing otherwise.

2.2.4. Taking Stock of the Process

Although the process of establishing a policy framework for the protection of IDPs in Kenya is yet to be fully completed, the advocacy efforts that went into its development have recorded some remarkable achievements. The process of passing the legislation has moved fast despite a crowded legislative calendar that was preoccupied with the implementation of the Constitution through scheduled legislations.⁴⁸ The initiative managed to highlight the protection needs of IDPs and helped construct it as a national problem that transcended ethnic and political affiliations. By successfully developing this narrative, the advocacy work has set the pace for objective discussions. Support for the Bill on internal displacement has brought about a renewed push for the adoption of the draft IDP Policy within the MoSSP. In the

course of developing the IDP Bill, the PSC made efforts to hold the MoSSP accountable for the status of the draft IDP Policy and the Ministry of Lands to be involved in the process by summoning the Ministers during its public hearings.

Both the draft Bill and draft Policy on internal displacement have incorporated international standards on the protection of IDPs.⁴⁹ The policies adopt a human-rights based approach, establish a coordination framework and emphasise the primary responsibility of the government to protect IDPs while spelling out the role of non-state actors. In addition, both the broader Policy and the Bill deal with displacement through all its phases from prevention to the achievement of durable solutions and respond to all forms of displacements irrespective of their cause.

The collaboration and networking amongst the members of the PWGID has enriched the process and provided a blend of expertise. Of significance has been the involvement of the legal expert from the Office of the UN Special Rapporteur on IDPs, who helped in drafting both the Policy and the Bill. The legal expert critically analysed the international frameworks on internal displacement so that the proposed drafts were attuned to any discrepancies with the UN Guiding Principles or the Great Lakes Protocol, as well as existing provisions within national legislation, the most notable one being the Constitution of 2010. The members of the PWGID advocacy sub-group remained steadfast in their advocacy work and kept the agenda within the mandate of their protection work.

The participation of the Government in drafting the policy helped elevate the status of the advocacy work by promising official support. Representatives from the Ministry of State for Special Programmes and the Ministry of Justice attended most of the meetings where the policy was being developed. The stakeholders carried out activities aimed at disseminating the content of the policy and legislation through various forums. This was done through the production and dissemination of brochures, documentaries, policy briefs and posi-

tion papers, periodical reports and Information, Educational and Communication (IEC) materials. Others

strategies entailed updates and sharing of information through monthly PWGID meetings. Press statements, TV and radio talk show programmes were also used to create public awareness on the engagements.⁵⁰

Finally, although the policy on internal displacement is based on international standards, it also enhances and elevates the instruments in Kenya. For instance, the enactment of the Bill on internal displacement gives the standards full force of law. The policy itself is specific on the obligation imposed on the State as the primary protector with other actors playing only a supporting role. Moreover, the policies anchor protection of IDPs on a right-based platform thereby confirming that the protection of IDPs is not a mere political venture but a human rights issue.

PWGID workshop with PSC on resettlement of IDPs, at Pangoni Beach Resort from 4th - 6th Dec. 2011



Chapter 3: — The Role of the PWGID: Added Value of a National Coordination Mechanism

In Kenya, the PWGID provided a vehicle for the coordination of advocacy efforts and collective approaches on internal displacement. It acted as a focal point for discussions, information sharing, planning and review of strategies by various stakeholders⁵¹ involved in advocacy and other interventions on internal displacement.

3.1. Institutional Responses to the Post-Election Violence in 2007/2008

The aftermath of the 2007/2008 post-election violence and the humanitarian crisis that followed, exposed the ineffectiveness of existing government structures to respond to internal displacement. It triggered action towards establishing a legal and institutional framework focused exclusively on internal displacement.

Organisations interviewed for this study indicated that they have responded in various ways to issues surrounding internal displacement within their institutional mandates, interests and strategies. Their key strategies include advocacy for durable solutions, work on the development of a policy framework on the protection of and provision of assistance to IDPs, coordination of humanitarian responses, research and documentation of IDP issues, and provision of technical and financial support for activities related to the protection of IDPs. The coordination of most of these interventions was done through the “Early Recovery Coordination Mechanism” which provided a forum for partnership and collaboration in a multifaceted yet interconnected approach in various areas.

3.2. Collective Responses within the PWGID

The PWGID was established on 3rd February 2009 to replace the national IDP Protection Cluster (PC).⁵² The PC was spearheaded by the UNHCR in January 2008 and brought together more than 30 agencies from the UN, KNCHR, national and international NGOs and the IDP Network.⁵³

The mandate of the PWGID⁵⁴ was to enhance the capacity of actors to address the protection needs of IDPs throughout Kenya through training on the Guiding Principles, advocating for the implementation of the Great Lakes IDP Protocol, finalising the ratification process of the Kampala Convention, developing a national legal and policy framework for the protection of IDPs in Kenya, establishing a monitoring mechanism to ensure compliance with regional and international commitments, and identifying the protection needs of IDPs by highlighting the human rights context, gaps and specific government obligations.⁵⁵

On 3rd February 2009, the Legal Aid Sub-Working Group was formed to provide technical support to and advise the PWGID around a number of issues, which included the development of policies and legislation on internal displacement, the provision of legal aid to IDPs during their engagements with judicial and quasi-judicial processes such as Tribunals, the Truth, Justice and Reconciliation Commission (TJRC), the design of schemes for reparation, pursuit for durable solutions, and enforcement of the obligation of Government to protect IDPs. Following the finalisation of the drafting process for the policy in April 2010, the LASWG

was converted to the Advocacy Sub-Working Group (ASWG) and mandated to publicise and lobby for the adoption and implementation of the policy and other legal frameworks on the protection of IDPs.⁵⁶

3.3. Key Achievements of the PWGID

Some remarkable achievements by the PWGID were identified by the respondents in this study. First, the PWGID as a coordination forum brought together a strong, vibrant and resilient coalition of state and non-state actors giving prominence to the issue of IDPs. This sense of shared purpose was created through regular meetings, sharing of information and development of joint strategies. These actors played varying roles in the process largely depending on their institutional mandates, the technical expertise and personal commitment of individual PWGID members and the financial resources available from their respective organisations.

Indeed, the PWGID managed to enlist the participation of the State in the working group through the KNCHR, MoSSP and MoJNCCA. At the field level, personnel from the Provincial Administration chaired the field-based PWGID meetings. This elevated the status of its work and gave it the assurance of government support, and to a great extent allowed the government to recognise its coordination and intervention mechanisms.

The involvement of UN agencies in the working group also enhanced its political standing. By January 2008, the Government had sanctioned the establishment of 11 UN clusters, which played a critical role in the management of the post-election violence crisis. This cooperation has since evolved from the emergency response phase to more long-term goals, like formulating a policy and legal framework on internal displacement. The UN agencies involved in the working group were UNHCR, UNICEF and UNOCHA.

Another remarkable achievement is the fact that the PWGID has advocated for the achievement of durable solutions for IDPs by monitoring and supporting the provision of assistance to the affected communities and lobbying for the recognition of other categories of IDPs (in addition to those displaced by 2007/2008 post-election violence). Stakeholders have also managed to identify their common interests through the PWGID, thereby bringing consensus and commitment and helping build a common front in intervention. The group has thrived despite the diversity of competencies and expertise dictated by their mandates.

The PWGID has also facilitated timely gathering and dissemination of information on the protection of IDPs.⁵⁷ A case in point was the collection of data on the number and condition of IDPs after the 2007 post-election violence. This process was undertaken by the MoSSP, in collaboration with the Kenya National Bureau of Statistics and the UNHCR.

In addition, the state and non-state actors brought together under the PWGID have enhanced awareness and carried out capacity-building for various stakeholders on the protection, provision of assistance and other mechanisms for durable solutions. Since 2007, the Government has acknowledged the need for training of its officers on the rights of IDPs in order to effectively provide assistance and protection to IDPs. It has availed officers at different levels to attend training sessions, mostly conducted by members of the PWGID.⁵⁸

Furthermore, the working group promoted the establishment of child-focused initiatives in its advocacy and dissemination of information on internal displacement. In Molo, such initiatives were successful in raising awareness on and advocating for child rights and the need for child protection mechanisms in the area. This resulted in the deployment of a district children's officer to assist with case management of the violations of child rights. In other parts of the country, child-focused Disaster Risk Reduction was piloted through schools where children were responsible for cultivating crops to mitigate climate change disasters.

The group also managed to highlight the protection needs of other categories of IDPs beyond those resulting from the 2007/2008 post-election violence. For instance, it undertook a fact-finding mission to Turkana County with respect to drought-induced displacement. The main motivation behind this mission was to find ways of extending the mandate of the PWGID beyond the protection of IDPs displaced by the post-election violence to include IDPs resulting from natural disasters.⁵⁹

Finally, the group supported the development of the draft Policy and Bill on the protection of and provision of assistance to IDPs in Kenya. This was done as envisaged within the terms of reference given to the Working Group in 2009 which was reaffirmed annually and helped the group to engage in long-term interventions beyond responding to the short and medium-term needs arising from the 2007/2008 post-election violence.

3.4. Key Challenges

The PWGID did meet some challenges. First was the lack of effective local level participation in agenda-setting of the work of the PWGID. One respondent lamented that the group's agenda was written in Nairobi without any consultation with the field-based groups. This affected the linkage between the work of the national and field-based groups and undermined feedback channels on protection work as well as advocacy on the policy framework.⁶⁰ Even though the advocacy sub-group of the PWGID remained the most active unit in policy work, it lacked representation at the field level and had to rely on reports from field officers to inform its advocacy interventions⁶¹. Consequently, field-based stakeholders were concerned about the poor participation of IDPs at the meetings due to inadequate facilitation. They were also concerned about the failure by key state actors to attend their meetings so as to respond to emerging issues.

Secondly, limited financial resources coupled with bureaucratic processes, both at the national and

field levels, affected the extent of participation and decision-making within the group. The burden of facilitating meetings and related activities was often left to a few organisations, thereby limiting collective ownership of projects within the group. This often affected working relationships between participating organisations and prevented some from taking positions on vital issues. Tied to this was the "politics of visibility" which sometimes encouraged unhealthy competition amongst the members.

Thirdly, the group suffered from a problem of coordination at the national and local levels, which could be attributed to the lack of a full-time secretariat to run the working group. Additionally, the lack of a definite policy on internal displacement to inform such coordination led to occasional conflicts between the MoSSP and other government ministries. This was particularly apparent in the emergency phase of the post-election violence as the Ministry of Provincial Administration and Internal Security and the MoSSP jostled for control of the resources directed to humanitarian response and in the resettlement phase between the MoSSP and the Ministry of Lands in regard to funds for the purchase of land to resettle IDPs.

Fourth, the high turnover of persons seconded from participating organisations to participate in the meetings of the working group affected the leadership and continuity of operations. Some members took time to familiarise themselves with the group's agenda, and as such could not participate optimally in the work of the working group, while others did not stay long enough to have impact on decision-making within the group. This affected the output of the group especially on matters that required prompt and effective decision making.⁶²

Fifth, the absence of accurate and up-to-date data on the number and status of IDPs caused major protection gaps in the group's work. The process and outcome of the government profiling exercise was rejected by IDPs as flawed and not credible as a significant number of affected persons claimed they were left out arbitrarily. There were also allegations of corruption against the provin-

cial administration officials who were steering the profiling process around the country.⁶³ Moreover, the database developed by MoSSP did not disaggregate data on account of vulnerabilities and special needs and was limited to victims of displacement related to the post-election violence in 2007/2008, and mainly to those based in camps. The MoSSP rejected an offer to review its database in a joint initiative with the PWGID.⁶⁴ After consultations between the ministry and working group collapsed in June 2011, the MoSSP proceeded to unilaterally carry out the verification exercise. However their objective was for the exclusion of beneficiaries who had illegitimately profited from Government assistance and not to include potential beneficiaries who should have been profiled in the first place.

Sixth, efforts towards peacebuilding and psychosocial counselling were yet to fully gain traction with a section of IDPs refusing to return to their farms while others faced hostility in proposed areas of resettlement. Other categories of displaced persons⁶⁵ protested the Government's resettlement initiatives on account of perceived exclusion. The support and protection given to PEV IDPs by the Government were criticised for being arbitrary in forcing and threatening IDPs to return to

their original homes and for lacking mechanisms to ensure accountability in the allocation and utilisation of funds earmarked for the exercise.⁶⁶

Finally, referring to the original terms of reference and principles of engagement prepared for the Working Group, it failed to provide effective legal aid to support IDPs in their engagements with the International Criminal Court and the Truth, Justice and Reconciliation Commission; the purchase and registration of land and other immovable property; the facilitation of *pro-bono* representation of IDPs in matters requiring legal and/or judicial intervention; the institution of class action or test cases on behalf of IDPs, among others. Most of these were done by other networks such as the Kenya Transitional Justice Network, Kenyans for Truth with Peace and Justice (KTPJ) and the Land Sector Non-State Actors (LSNSA). This could be attributed to the failure by the working group to monitor and evaluate its plans of action and partner with like-minded organisations and networks to extend its reach. Moreover, attempts to incorporate organisations working with special needs groups within the displaced population such as women, children, persons living with disabilities, the elderly, and persons living with HIV/AIDS were limited.⁶⁷

PWGID Workshop with Members of the LSWC on 31st July, 2012



Chapter 4: — The Role of Civil Society

Civil society organisations, mostly from the PWGID, have participated to various extents in the response to the problem of internal displacement in Kenya. Some of these responses and interventions revolve around working with the survivors and families of victims of displacement to seek justice, undertaking research to highlight the needs and concerns of IDPs, undertaking peacebuilding initiatives and contributing resources to assist with resettlement.

Beyond provision of direct humanitarian assistance to IDPs and other affected communities, CSOs have also supported the development of the policy framework for the protection of IDPs in Kenya. In fact while the Government bears the primary responsibility to protect its subjects from the effects of displacement, CSOs played a disproportionately prominent role in the process of developing a policy framework on internal displacement in Kenya. This chapter analyses the involvement of CSOs based on a five-stage model of policy development process. Although this model of analysing policy development process is a convenient way to review the participation of CSOs, it must also be understood as a mere theoretical framework, because in practice policymaking does not follow such an organised, predictable and linear model.

4.1. Identifying the Problem

Since policies seek to respond to particular issues or problems, the identification of the issue to deal with is a natural starting point. The manner in which the issue or problem is identified depends on a number of factors, such as whether the identification takes place in the context of regular monitoring and review process or is brought about by a crisis, and whether identification of the issue

originates from the government or from non-state actors and the institutional context in which it does. All these factors converge to determine the framing of issues and the subsequent discourses in the development process.

Related to the identification of the issue is the identification of objectives, which set out a clear path to be taken to respond to the identified issue(s). At the beginning, the objective could be tentative and general in nature and is refined as the process progresses. The objectives also play an important role in guiding the implementation of the policy as well as in reviewing the policy once adopted. When properly thought out, the statement of objective should encourage collaboration among all actors and minimise any risk of disagreement or conflict.

As Kenya already implemented some programmes geared towards responding to internal displacement, the first issue was to determine whether to have a stand-alone and self-contained policy on internal displacement or to incorporate specific provisions into already existing frameworks. According to the analysis and legal audit by the PWGID between 2009 and 2010, a clear need for a specific policy on the protection of IDPs was identified. Additionally, the stakeholders' forum at Jacaranda Hotel on 30th and 31st July 2009 had answered this question by recommending the development of an IDP-specific policy capable of addressing the complexity of the IDP problem, but also to increase accountability, improve the coordination of stakeholder interventions, pave the way for proper planning and budgeting, and monitor compliance of requirements under the UN Guiding Principles on Internal Displacement. The CSOs present identified the lack of a comprehensive policy as the main issue undermining the protection of IDPs in Kenya.

Indeed, the electoral violence that took place in Kenya in 2007/2008 highlighted the Government's failure to respond to the protection needs of IDPs within a clear and specific implementation framework. Developing such a framework rather than introducing amendments to other sectors appeared to be an efficient way of addressing displacement and developing a specific policy to deal with it. The sense of urgency also came from the perception that Kenya needed a policy to prevent the recurrence of violence in following presidential elections, expected at the time to take place between August and December 2012. The advocacy initiatives were actively led by CSOs (through the PWGID) with some participation from Government. Consequently, while the proposal to radically alter the legal architecture for dealing with internal displacement did not receive opposition from the Government, the latter remained rather indifferent and uncommitted to the process.

The Commission of Inquiry into the Post-Election Violence had made the following diagnosis:

*From the evidence we have gathered so far, there exists sufficient basis for enacting a clear policy and legal framework for dealing with IDPs. [...] While there are coordinating organs for dealing with emergency situations, it is now imperative to put the problem of IDPs on a sound statutory footing where lines of authority and responsibilities are assigned. There is no reason why such an enactment can not be put in place within the next four months.*⁶⁸

From the assessment carried out by civil society actors at the time, a specific policy and legislation on internal displacement could greatly improve the protection of IDPs in Kenya. This view was confirmed by all respondents interviewed for this study.

4.2. Policy Choices

Having identified the issue, civil society actors had to make choices among various policy options. First they had to choose between developing an IDP-specific framework and incorporating pro-

tection mechanisms into already existing frameworks. They then had to agree on the standards of protection which would have to be incorporated into the policy. These standards represented various policy options and CSOs even convened forums to build consensus among stakeholders on possible frameworks based on internationally recognised protection standards.⁶⁹

During discussions on whether or not there existed sufficient provisions in existing legislation to deal with displacement, some expressed concern that having a specific law and policy on the protection of IDPs could institutionalise the status of IDPs, thereby making it a permanent problem in Kenya, or marginalise the issue, thereby reducing the likelihood of reaching adequate government response to the problem. CSOs managed to deconstruct this misconception by showing that internal displacement went beyond the 2007/2008 post-election violence, and as such there was need to have a sustainable framework to prevent future displacements while making provisions for assistance and protection. This was accomplished mainly through sensitisation forums targeting key stakeholders in the policymaking process.

4.3. Policy Formulation

The Kenya scenario became quite interesting when it came to policy formulation. While the Executive was working on the broader policy, the Legislature came into the picture focusing on legislation through an act of Parliament. CSOs immediately saw a risk for two parallel processes to develop and sought to reconcile them by playing a bridging role between the executive and the legislature. They managed, to a great extent, to ensure that the content of the resulting legislation remained compatible with the content of the broader policy.

From 2007, the PWGID had been actively involved in the process of drafting the broader policy in partnership with MoSSP and other actors. Later, it also partnered with the PSC to draft and review the content of the IDP Bill, thereby ensuring that

both the Policy and the Bill incorporated international standards on IDP protection. The process of drafting the IDP Bill brought about many technical questions. Key contentions included the extent to which substantive provisions should be written, as opposed to scheduling the relevant instruments. This caused tensions within the drafting team. In the end, a mixture of both drafting methodologies was achieved as stakeholders lobbied for specific provisions that did not appear in any of the international instruments to be substantively drafted. In terms of content, concessions also had to be made at every stage. The broader terminology of "arbitrary displacement", for example, was amended to cover development projects and projects to protect the environment. While such a provision would have provided an additional protection for IDPs, some of its aspects are covered under the body of law on international humanitarian law and other penal laws, so that to some extent such a mechanism could be termed unnecessary. Providing for criminal responsibility was another provision that was initially contemplated but is covered by the Rome Statute, to which Kenya is a signatory, and by the International Crimes Act 2008.

4.4. Policy Adoption

Since it is the prerogative of the Government to implement policies, any advocacy for their review or improvement must ultimately be adopted by the Government before being operationalised. The draft IDP Policy was approved by the Cabinet⁷⁰ and the MoSSP is currently working on a sessional paper which may be subjected to debate in Parliament depending on the advice of the Attorney-General. In contrast, the IDP Bill was passed by Parliament and received presidential assent on 31st December 2012.

Efforts by the Executive to adopt the policy have been slow. Through the PWGID, CSOs have continued to lobby the relevant actors to speed up this process, including by proposing questions to MoSSP through Parliament in an effort to hold it accountable to the process. The PWGID has also played a key role in furthering the adoption of the

draft Bill. The group provided consistent support to the Parliamentary team that was championing the legislation through preparation of questions for presentation to Parliament, conducting research and preparing amendments for the improvement of the Bill. This included frequent meetings with the MPs to develop strategies on how to counter any opposition to the Bill and incorporation of further amendments to the Bill for those that were proposed on the floor of the House.

Generally, as the policy development process moves towards higher levels, non-state actors have decreasing control over it as legislative development (including eventual approval or rejection) remains within the sanctum of Parliament. There still remains room, however, to lobby and provide logistical and technical support. For instance, in December 2011, participants from a workshop organised at Pangoni Beach Resort sought to push the MoSSP to fast-track the process of adopting the policy document by cabinet by formulating the following question to be presented to Parliament by an MP (Hon. Ekwe Ethuro, Chair of the PSC):

- (a) *Can the Minister confirm that Kenya lacks a national policy on the prevention of internal displacement and the protection and assistance to Internally Displaced Persons, despite the presence of thousands of IDPs and the fast-approaching General Elections?*
- (b) *Could the Minister appraise the House on the status of approval of the said policy as well as the status of IDPs resettlement?*
- (c) *What steps is the Minister taking to fast-track the formulation, approval and implementation of the policy?*

To these questions, the Minister responded:

"I wish to confirm that Kenya lacks a national policy on the prevention of Internally Displaced Persons (IDPs). In recognition of this gap, we prepared a Cabinet Memorandum in May, which we circulated to various stakeholders. Last month, we got a response. We hope that in the next one or two weeks, it will be able to reach the Cabinet level."

Further, during a workshop in July 2012 in Mombasa with the Parliamentary Labour and Social Welfare Departmental Committee, to which the IDP Bill had been committed after its first reading in Parliament, the PWGID developed a press statement which was issued jointly with the Parliamentary Committee and called upon actors to make commitments to the process of developing an effective policy and legal framework for the protection of IDPs. This statement was followed by a letter to the President, the Prime Minister, the Vice President, the Speaker of the National Assembly, the Attorney General, the Chairman of the Commission for the Implementation of the Constitution, the Minister for Special Programmes and the Minister for Justice to urgently make commitments towards establishing a policy framework for the protection of IDPs. This memorandum was later developed into a press statement whose issuance was timed to coincide with the Parliamentary debate on the IDP Bill. Following the workshop in July 2012 in Mombasa with the LWSC, several MPs who had been part of the workshop supported the speedy adoption of the final report developed by the PSC and ultimately the IDP Bill.

CSOs involved in the process also called for international actors to push forward the adoption of the policy. For instance, the PWGID held a meeting with Prof. Chaloka Beyani, the Special Representative of the UN Secretary General on Internally Displaced Persons, at the KNCHR offices in Nairobi on 21st September 2011⁷¹ and his final report made the Government of Kenya (through its Permanent Mission in Geneva) issue a statement during the Nineteenth Session of the Human Rights Council. The statement read, in part:

Kenya welcomes the report of the Special Rapporteur on the rights of internally displaced persons. [...] The Government has developed a national policy on internally displaced persons. [...] The policy provides for the protection and assistance of IDPs and also aims to prevent future displacements. Most important, the policy allows for the review of existing laws to deal with impunity. The laws will ensure that those who contribute to the displacement of others are made to account.⁷²

4.5. Policy Implementation

Although the broader policy framework for the protection of IDPs is still pending adoption before the cabinet, CSOs are already strategising on ways in which to support the implementation of this new legislation. The PWGID is developing strategies to work with the MoSSP to create awareness among stakeholders on the policy, and discussions have started on how to support MoSSP in developing regulations for the proposed IDP Act and to lobby for the establishment of the various institutions created by the law, including an early-warning system as well as financial arrangements.

4.6. Policy Evaluation

The protection of IDPs imposes obligations on the state and other actors. An effective policy implementation evaluation set-up is therefore necessary to ensure that the relevant obligations are met, that the necessary resources are allocated and that the standards of protection, including direct assistance, are adhered to. CSOs will play an important oversight role and will need to identify strategies to hold the Government to account on the implementation of the policy but also to support it in attempting to do so.

In evaluating whether or not the policy itself has succeeded in addressing the concerns of IDPs, assessments and comparisons (of policy provisions *vis-a-vis* actual needs) may be made through the lens of transitional justice.⁷³ A recent study proposes that victims of the post-election violence overwhelmingly request for access to livelihoods as their reparative demand, signifying the impact of violence and displacement on the economic circumstances of its victims.

4.7. Participatory Nature of the Policy Development Process

Policy development is the work of State (executive, judiciary and legislature) yet other actors

outside the Government have a significant role to play in the process. The extent to which CSOs participate in the process depends on the existence and strength of civil society. Kenya has a long history of civil society action which has over the years benefited from strong outside support and gained in experience. In the policy development process in Kenya, CSOs enjoyed a good relationship with various arms of the government and this greatly advanced their participation in the process. They played a key role in gathering and analysing information and through consultations managed to cast debate on the policy in an objective way. In fact, substantial credit for any success from the process is owed to CSOs for their aggressive approach including initiating contact with government actors.

Conversely, CSOs' participation in the process could bring with it a number of downsides. Not all civil society actors take part in such processes and so the agenda might be solely driven by a few vocal CSOs, in the present case the PWGID, and mostly in Nairobi. This could create perceptions of the process lacking full ownership and might pose challenges at the adoption and implementation stages. For instance, some respondents interviewed for the study regretted the lack of meaningful participation in the process by the AG's Office, members of the Cabinet Committee on Resettlement, Ministry of Lands, Ministry of Foreign Affairs, Ministry of Local Government, National Cohesion and Integration Commission, host communities, Kenya Red Cross, Office of the Higher Commissioner for Human Rights, UN Women, the provincial administration and field-based stakeholders in the process. Indeed, in the Kenyan case, the realisation of the need for policy on internal displacement was first conceived by international actors,⁷⁴ thereby raising concerns about "foreign" or "outside" influence.

It appears that the dominant role played by the CSOs in the policy development process in Kenya has also overshadowed the need for participation by the intended beneficiaries of the policy. Granted, levels of participation may vary based on knowledge and expertise, but the need for beneficiaries to optimally participate in the process

cannot be overemphasised. A bottom-up approach would have ensured a higher degree of local ownership. Concerns about the lack of meaningful participation by IDPs in the process continue to linger as the only involvement was by the victims of the 2007/2008 violence and, even then, most of the victims were from Eldoret and Nakuru. Additionally, where there was participation by IDPs, most special groups like women, the elderly and persons with disability were not represented.

A few factors might have contributed to the beneficiaries' limited participation. First, the formulation process for the broader policy and the legislation were owned by the executive and the legislature respectively and the PWGID only came in to support them. Second, and specifically related to the development of the legislation, the PSC had a very short timeline within which to do its work and as such it was not possible to have extensive consultations including public hearings for the bill. Third, the PSC and other actors involved in the process faced resource constraints in relation to wider participation and extensive consultations.

Those who were closely involved in the policy development process argue that despite the failure to actively involve all stakeholders, including IDPs, in the process, various actors were given opportunities at different times to make their contribution. For instance, the PWGID engaged in an extensive consultative process that yielded the draft IDP policy whose provisions informed the content of the Bill. Furthermore, the PSC conducted over the course of 2011 public hearings around the country regarding the concerns of IDPs. In addition, there was up-to-date sharing of information at different stages of the process, including reporting mechanisms between national and field-based actors and through other communication channels like the PWGID mailing list. Despite attempts to encourage the participation of stakeholders, the process became increasingly confined to the Advocacy Sub-group of the PWGID during the review of the policy documents.

Milestones in Developing the IDP Policy:

- The need for a policy was identified during a workshop held for national and international stakeholders in March and April 2007.
- The need to develop a policy was agreed upon during the National Stakeholders Forum held in Nairobi on 30th and 31st July 2009. MoJNCCA and ASWG were tasked to provide leadership.
- In October 2009, MoJNCCA agreed to spearhead the process following a meeting between ASWG and Prof. Walter Kälin, UN-SR on IDPs.
- Preparatory work on policy drafting was initiated between August and December 2009. The actual drafting took place between January and February 2010.
- Prof. Kälin seconded his legal adviser on IDP protection to advise and support the drafting in January 2010.
- MoSSP took over the policy drafting process from MoJNCCA following a meeting with their PS, Prof. Kälin's advisor and the AWSG on 13th January 2010.
- The draft policy was submitted to stakeholders for validation at a forum hosted by the PWGID in Nairobi on 14th March 2010.
- The policy was revised and adopted by MoSSP in April 2010. It was amended in October and December 2010 in line with the new Constitution.
- PWGID prepared a Cabinet Memo between December 2010 and February 2011. The Memo was submitted to the Minister of MoSSP on 16th March 2011.
- Further discussions with respect to the policy were held with PSC, MoSSP and PWGID at Pangoni Hotel in Mombasa on 30th September- 1st October 2011; 4-6 December 2011 and 29-30 July 2012.
- On 18th July 2012, ASWG, MoSSP and Lands Ministry revised the draft policy to comply with the Land Act 2011, Land Registration Act, 2012 and National Land Commission Act, 2012.
- On 14th September 2012, MoSSP Minister confirmed that the Minister of Lands had signed the IDP Policy with a few recommendations.
- The Cabinet approved the IDP Policy on 25th October 2012 and MoSSP is preparing a Sessional paper on the Policy which will be debated in Parliament for it to be approved as a National Policy.

Chapter 5: — Navigating through a Tough Political Environment

Allowing IDPs to vote in areas where they have been resettled will encourage the use of options for a durable solution as a political tool to influence local politics through strategic relocations. If that is the position in the IDP Bill, then I will make sure that the bill never sees the light of day in the house.⁷⁵

Policymaking closely relates to the politics of the jurisdiction in which it takes place. This is because policymaking involves building consensus or establishing cooperation among various actors within the political field. The interaction between advocacy work and politics contributes to the quality of the resulting policies and determines to a great extent their durability by either hindering or facilitating their implementation. The Kenyan experience in developing the IDP policy framework provides a rich case study of how political factors affect policymaking.

5.1. Sensitivity of the Topic of Internal Displacement in Kenya

The recognition of the existence of IDPs in Kenya has generally faced resistance from Government, mainly because of its political and financial implications. IDPs are perceived to be a national shame and a reminder of the events of the 2007/2008 post-election violence. Granting official recognition of an IDP status implies providing resettlement, which in turns compounds already existing land problems. Consequently, when engaging with politicians on the subject of internal displacement, undue focus is often placed on what this might demand of Government resources and how it might affect voting patterns if resettlement were the prime solution for resolving the situation of IDPs.

5.1.1. Post-election violence 2007

Arguably, the violence that erupted after the elections in 2007 marked the turning point in efforts to deal with internal displacement. The violence came to a close after a National Dialogue and Reconciliation Process that resulted in the formation of a coalition government and a comprehensive reform agenda designed to resolve the political crisis and its root causes.⁷⁶ The comprehensive reform agenda provided a context for calls to the Government to respond to internal displacement and provided a basis upon which discussions on a policy framework for IDPs began. The PWGID used this context to call upon the President and the Prime Minister to establish a comprehensive framework for the protection of IDPs, since the four agendas developed through the reconciliation process were to be implemented within a period of one year from 28th February 2008.⁷⁷ While the post-election violence acted as catalyst for advocacy work on the protection of IDPs, in some instances it acted as a distorting factor by introducing subjective standards and concentrating more on displacement caused by the violence in 2007 to the exclusion of other categories of IDPs.

5.1.2. Ethnic Dimension

Although the Constitution of Kenya characterises the country as a multi-party democratic state, ethnic affiliation plays a prominent role in national debates, where actors analyse situations through partisan lenses. Discourses on internal displacement were assessed through this same lens, with the Parliament accusing the Executive of favouring particular interest and ethnic groups in its interventions. This perception was compounded by the failure of the

Government to establish a transparent mechanism for screening and profiling victims of displacement. In advocating for a policy framework on internal displacement, therefore, the actors, mainly CSOs, knew that they had to construct a narrative that portrayed internal displacement as a national problem that went beyond the violence in 2007.

5.1.3. State responsibility for IDPs

While from a classical point of view, the State bears the primary responsibility for the well-being of its citizens, whether displaced or not, in Kenya the State generally viewed its responsibility to protect IDPs as a humanitarian one. Interventions by the Government, including its resettlement efforts (e.g. Operation “Rudi Nyumbani”), were not open to scrutiny and criticised for being arbitrary. This erroneous approach by the Government may explain the haphazard and uncommitted way in which the Government continued to deal with the protection needs of displaced persons.

5.2. Institutional context

5.2.1. Different Visions: The Executive versus Parliament

Advocacy towards the adoption of the draft policy on internal displacement remained in limbo for over a year after its submission to Cabinet in March 2011, without explanation or recourse in the matter. One explanation could be the bureaucratic processes of several Ministries considering the policy before collectively endorsing it. The PSC presented the PWGID advocacy sub-group with an alternative avenue for developing legislation on internal displacement. Although efforts by the PWGID ensured that the content of the resultant legislation remained in line with the terms of the broader policy, it was not able to fully merge the two processes run by the executive and the legislature, and the Bill was enacted on 3rd October 2012. It remains to be seen when the policy will be adopted.

It had been hoped that the involvement of the MoSSP in the development of the IDP Bill would hasten the adoption of the policy by the Cabinet so that both the broader policy and the legislation could be presented to Parliament together. In fact, preliminary discussions during the validation forum in December 2011 suggested that the MoSSP consider taking up the IDP Bill as a government-sponsored bill, giving effect to the draft Policy. This suggestion was however declined by the MoSSP who proposed instead to support any MP that moved the bill forward. Other executive branches were also uncommitted to the policy development process, failing to fully cooperate with the PSC by defying summons to appear before it during its hearings.

All along, the PSC remained sceptical of the Government’s commitment to adopt the policy. In its deliberations with the PWGID and bilateral discussions with the MoSSP, the PSC noted that since the draft policy was yet to receive cabinet approval, it would not base its recommendations to Parliament on a policy whose adoption was uncertain. This position was made clear to the PWGID in a meeting with the PSC and SR-IDPs during the SR-IDPs’ visit to Kenya in September 2011. At this point, on the basis of its stakeholder consultations and public hearings, the PSC had started drafting an IDP Bill that would be submitted with its final report upon the expiry of its mandate in December 2011.

Within the executive itself, there appeared to be a silent tussle among various Ministries on the provisions of the broader policy, particularly the Ministries of Lands and Finance. Sometimes, officers at different levels within particular Ministries appeared to operate at cross purposes and in conflict with each other, making engagement with the MoSSP difficult. A large number of interlocutors also remained largely invisible, yet had control over the policy development and slowed down the process at different stages. Their invisibility or the lack of clear guidelines on what their role was made direct engagement with them difficult.

5.2.2. Private Member’s Bill

The legislation on internal displacement in Kenya went to Parliament as a private member’s bill, i.e. a bill not sponsored by the Executive. While this provided an expedient way to introduce a Bill on internal displacement to Parliament, it had to contend with one major shortcoming, which was that its financing arrangements would be able to draw contributions from the Government’s consolidated fund. In fact, this shortcoming dogged the Bill until the later stages of the legislative process, when the MoSSP introduced an amendment in Parliament to include funds from the consolidated fund as one of the funding sources for activities under the Bill.

Beyond the expedience of finding a faster avenue to introduce a legislation on internal displacement to Parliament, moving it through a parliamentarian who is neither at the forefront of either the Government or the opposition served to insulate it from perceptions of bias as alleged against interventions by the Government. This provided an opportunity to look at the problem of internal displacement as a national catastrophe whose impacts went beyond the 2007/2008 displacements and not as a political campaign tool.

5.2.3. Engaging with Actors and Managing Interests

The multiplicity of actors in the policymaking process implied the existence of multiple and varied interests. While Kenya has fairly well-developed governance institutions, the existence of numerous personal or even institutional interests meant that success in engagement could only be obtained through informal and sometimes personal interactions. This was a challenge that required actors to rely on personal contacts from previous interaction with parliamentarians and government officials. The government officers (including Parliament) tasked with the protection for IDPs also appeared to lack a good understanding of the protection context for IDPs. Most of the time, their level of involvement was therefore determined by

extraneous factors. This could be an explanation for minimal participation by government institutions in the policymaking process.

5.3. Impact of Changes in the Political Scene since 2007

5.3.1. Implementation of the 2010 Constitution

The promulgation of a new Constitution in Kenya thrust the country into a reform course with many laws being enacted or revised to comply with the Constitution. The Constitution has an elaborate Bill of Rights and provides a broader context for arguments for the responsibility of the government to protect IDPs. The need to adopt a rights-based approach to the protection of IDPs in the Bill did raise too much controversy as the Constitution already provided for this broader framework. In fact, one question that repeatedly came up for consideration was whether the Constitution in itself did not suffice for the protection of IDPs without having to draft a specific legislation for them.

It was expected that the implementation of the Constitution would delay the enactment of the IDP Bill, as the Constitution requires Parliament to prioritise particular legislations. However, the sensitivity of the IDP question in Kenya, the imminence of the next general elections and the peace and reform agenda under the Kenya National Dialogue and Reconciliation Accord following the post-election violence, together with concerted advocacy by actors, appear to have made the enactment of the legislation a success despite a busy legislative calendar.

5.3.2. Proceedings at the International Criminal Court

Four prominent Kenyans,⁷⁸ half of whom are presidential aspirants, face an assortment of charges before the International Criminal Court arising from the 2007/2008 violence. These prosecutions have been viewed as an additional avenue for securing justice for various persons affected by the violence, including IDPs. The prosecutions appear to have contributed to an understanding of displacement as a criminal human rights violation warranting response through a policy. The establishment of a policy framework on internal displacement could also be seen as an indication of commitment by the Government to justice. Although the executive continues to waver in its efforts to adopt the broader policy, it would however be quick to point out the enactment of the Bill as part of its record of reforms. This aspect could provide an explanation for the enthusiasm of the Executive through MoSSP in supporting the IDP Bill during its later stages in Parliament.

5.3.3. Upcoming Elections

While the policy on internal displacement is meant to deal with all kinds of displacement, the 2007/2008 violence remains a crucial reference point for discussions on internal displacement. The establishment of a framework for the protection of IDPs is perceived as a clear manifestation of recovery from violence and would act to minimise the possibility of violence while laying out a protection mechanism should violence occur. The upcoming presidential elections might therefore have acted as a catalyst for a speedy enactment of the legislation on IDPs to deal with internal displacement, which is seen as a national shame and failure. Success of the executive in responding to internal displacement would also appear to take cognisance of this.

Milestones in Developing the IDP Bill:

- Parliament constituted the PSC on 17th November 2010 with the mandate to examine government action on displacement and the relevant laws governing the same.
- The PSC convened a Strategic Planning Workshop in February 2011 where government ministries and the PWGID offered perspectives on the key concerns regarding internal displacement.
- PWGID convened a workshop to discuss the state of internal displacement in May 2011, which was attended by the PSC and by government ministries, the SR-IDPs, the Chairman of the ECOSOCC political affairs cluster and civil society organisations. The meeting agreed on the following: to advocate for the adoption of the draft IDP Policy and ratification of the Kampala Convention; that a law on prevention, protection and assistance of IDPs was required; and that monitoring and multi-stakeholder information-sharing on IDP concerns be maintained.
- The PSC conducted bilateral meetings with the Minister of State for Special Programmes and the Minister of State for Provincial Administration and Internal Security. The PSC also consulted the Truth, Justice and Reconciliation Commission (TJRC).
- The PSC conducted 26 public hearings and field visits around the country between March and October 2011 to gain further insights on the plight of IDPs in Kenya.
- The SR-IDPs conducted a country visit to Kenya in September 2011 and had a meeting with the PSC and PWGID. The PSC shared its preliminary findings and indicated that it had prepared an initial draft legislation on internal displacement.
- PWGID and PSC convened a workshop in October 2011 to review the initial draft legislation. The meeting resolved to establish a joint taskforce that would review the draft legislation and ensure consistency with the draft IDP policy, Guiding Principles and Kampala Convention.
- The PWGID and PSC convened a validation workshop in December 2011 to consider and approve the reviewed draft legislation from the PWGID-PSC taskforce. The PSC and MoSSP approved the draft and resolved to support its enactment in Parliament.
- The PSC tabled its final report before Parliament in February 2012 and Hon. Ekwe Ethuro tabled the IDP Bill before Parliament in April 2012.
- The Bill underwent its first reading on 13th June, 2012; its second reading on 19th June, 2012 and its third reading in which it was passed by Parliament on 4th October 2012.
- The President assented to the IDP Bill on 31st December 2012.

Chapter 6: — Lessons Learned and Recommendations

Although the policy development in Kenya has not reached the penultimate stage in its policy development process, its experience provides a rich case study with lessons that could inspire other advocacy work. This chapter discusses a number of factors that contributed to the success of these efforts.

6.1. Lessons Learned

6.1.1. A Critical Mass of Local Actors

It cannot be taken for granted that all countries have a critical mass of local and national civil society actors with the capacity to engage in advocacy work. The Kenyan situation illustrates the amount of dedication that policy development work requires. Although the advocacy work was carried out under the umbrella of the PWGID, in reality its success derives from the commitment of particular non-state actors in the process. Without a critical mass of organisations with the mandate to engage in a long term perspective, these advocacy efforts may not have reached the same results.

6.1.2. Coordination of Advocacy Work

The cluster system provided an effective mechanism for coordinating interventions towards IDP protection. This coordination mechanism ensured that advocacy work on the policy was informed by accurate information on the status of IDPs in Kenya. Key partners among the PWGID regularly published and undertook studies on the status of IDPs.⁷⁹ Given that UNOCHA

support through its Early Recovery Coordination Mechanism activities in the 11 countries that make up the Great Lakes Region, it is conceivable that other countries in the region could borrow the structure of the PWGID, adjust it to their local needs and use it to coordinate activities on the protection of IDPs including development of policy.

6.1.3. Resource Mobilisation

Policy development work requires financial resources in order to succeed. These could go towards various activities that include meetings, forums for lobbying and general logistical support. While the PWGID provided a mechanism for coordinating advocacy work, many challenges arose when it came to resource mobilisation for joint activities. All the activities were financed by CSOs, with Government departments providing minimal financial support to the process. Furthermore, not all organisations contributed equally to the process, and it was often difficult for them to mobilise resources on an ad-hoc basis for activities that had not been planned in their respective annual plans.

6.1.4. Involvement of the Government

Policymaking is a government function and as such non-state actors may only take part in it insofar as the Government organs permit them. Even where policy reforms are being championed by CSOs, it is imperative to seek official endorsement. This endorsement would be crucial at later stages of adopting and implementing the policy and would give the resulting policy a measure of legitimacy. In Kenya, the policy development pro-

cess was initiated by CSOs, who managed to bring different branches of the government on board. The government institutions that were part of the advocacy work included the KNCHR, MoSSP, MoJNCCA, Provincial Administration and the legislature.

MoSSP and MoJNCCA participated in the process of developing the broader policy on internal displacement. Provincial Administrators participated in the field-based working groups as the chair, while KNCHR was part of the national PWGID which it also chaired. Parliament played a major role in calling upon the executive arm of the Government to give account of its efforts to protect IDPs and ultimately passed the legislation on internal displacement. All these institutions will remain relevant as the policies move to the implementation stage.

While the Government would be expected to initiate contact with CSOs in policy development, in some instances CSOs must be proactive especially where the Government remains hesitant to act. Different government offices take part in the policy development process for different reasons and it may well be possible to take advantage of rivalry between the different arms and strategically use it to bolster advocacy. By partnering with the PSC, the PWGID was able to secure a draft Bill when the executive arm continued to remain equivocal on its commitment to protecting IDPs through the adoption of the draft Policy. In addition, actors used the Legislature to hold the Executive accountable for failure to fully protect IDPs.

Depending on the extent and nature of government involvement in the process, other non-state actors should clearly conceptualise their role in a way that facilitates the process. Sometimes this could even involve initiation and leadership of the process as it happened in Kenya.

6.1.5. Adapting International Standards to Local Conditions

In drafting the IDP Policy and Bill, actors in Kenya greatly borrowed from protection standards contained in international instruments for the protection of IDPs. The policies relied on the Guiding Principles, the Great Lakes IDP Protocol, the Kampala Convention and other human rights instruments. These international and regional norms and standards provided a useful guide for dealing with the protection of IDPs. However, in adopting the universal standards, care must be taken to confirm their suitability to local circumstances. For instance, the definition of an IDP as contained in the Kenyan policy makes reference to politically-instigated violence or inter-communal hostilities, natural disasters and development projects, which are recognised as some of the causes of displacement in Kenya.

Policy development work does not occur in an abstract or hypothetical setting. It will relate to real contexts which influence its course. It would be important for any person engaged in policymaking to fully appreciate environmental factors and develop strategies on how to deal with or take advantage of them. In the Kenyan case, actors remained attuned to the sensitivity of internal displacement and set out to develop a narrative of internal displacement as a human rights violation warranting a national response. Further, the local context would also determine the way in which countries adopt international standards and if need be, countries should feel free to apply standards higher than those stipulated in international frameworks.

6.1.6. Creation and Utilisation of Networks and Personal Contacts

The extent to which CSOs take part in the policymaking process depends on their ability to engage with different actors within the Government. To this end, CSOs need to have useful contacts within

official circles to be able to effectively influence policy work. In the Kenyan case, partnership with the Government under the PWGID facilitated access to information, for example on Government plans. Additionally, the various organisations under the PWGID brought together a comprehensive network of contacts. Through RCK, for instance, the PWGID had access to a number of actors who significantly supported the policy development process ranging from parliamentarians to ministers and government officials.

6.1.7. Timing

The policy development process should be strategically timed. Proper timing allows the process to take advantage of environmental and political factors to aid its progress. Poor timing of the process would either make it move slowly or even undermine relevant identification of issues, policy options and formulation. Most of these events may not directly relate to the policymaking process and may in fact be driven by other independent factors. In the Kenyan case, the 2007/2008 violence enhanced perceptions that time was ripe for a policy and this enriched the process with a sense of urgency together with the upcoming elections. Promulgation of the Constitution in 2010 also set a higher standard of state responsibility.

6.1.8. Inclusion and Participation

Broad-based participation in policymaking ensures popular acceptance of the resulting product and promotes its ownership, which in turn makes its implementation easier. In addition, depending on the nature and profile of the persons or actors involved in the process, participation ensures that the resulting policy takes a practical approach to the issues under consideration. In Kenya, the process benefited from participation from the field as well as national and international level involvement. However, all these actors did not take part in the process to the same extent and the participation of IDPs was marginal. This was clearly a

weakness in the Kenyan case. Other actors contemplating engagement in policy development should understand the role of each stakeholder and ensure that they are given adequate facilities to meaningfully participate in the process.

6.1.9. Institutional Weaknesses and Capacity Building for Actors

One often presumes the existence of capacity in governmental departments, allowing officers to initiate and formulate policies to respond to various issues that fall within these departments. The Kenyan experience shows that various actors including government departments and officers may sometimes lack the technical capacity to diagnose problems and design policies to respond to them. Recognising this, the PWGID embarked on capacity-building initiatives targeting key actors to enhance their participation in the policymaking process. A number of workshops were organised with Parliament, CSOs and Ministries. As such, any strategy for policymaking should contemplate weaknesses and gaps within official policymaking systems and work towards their reinforcement.

6.1.10. Flexibility, Concessions and Compromises

Policymaking entails a great deal of choice and concessions. These concessions vary in benefits, costs and risks yet it may sometimes be difficult or even impossible to develop a consensus on particular policy options. In such instances and with a comprehensive understanding of the available policy options, a compromise would be advisable and a thorough knowledge of the implications of any concessions is necessary.

6.1.11. Local and External expertise

Involvement of external expertise plays a crucial role in the policymaking process. While it engen-

ders a sense of detachment from the issues and encourages objectivity, it also gives the process additional political weight depending on the profile of the external persons involved. Their participation enriches the process with a comparative angle. External expertise would however be in vain unless there exist local capacities to match and temper its application to local issues and problems. The PWGID provides a rich blend of local expertise that includes lawyers, social scientists, drafters and communication specialists among others.

6.2. Recommendations to Countries Wishing to Engage in the Process of Developing a Policy on Internal Displacement

Recommendation 1:

Map out and identify key organisations with strategic interests in displacement issues. Categorise them by the nature of their mandates to develop a strategy that will ensure long-term planning and engagement.

Recommendation 2:

Establish a coordination mechanism with a clear structure and secretariat to manage its affairs.

Recommendation 3:

The relevant Ministry should house the coordination mechanism as it serves as an easy entry point for most actors. However, this would depend on the level of involvement and support for the process by the Government.

Recommendation 4:

Clearly categorise objectives in the short, medium and long-term and develop implementation strategies for their achievement including timelines.

Recommendation 5:

The coordination mechanism should have mechanisms for ensuring commitment, regular and consistent participation and accountability by its members, or a monitoring and evaluation component to its terms of reference which would be used to evaluate the performance of the group.

Recommendation 6:

The coordination mechanism must ensure the participation of all relevant stakeholders to the extent necessary and feasible.

Recommendation 7:

Develop a budget for the whole policy development process and establish a mechanism for mobilising resources that would ensure equitable sharing of burdens among the actors involved in the process. The Government, as the primary duty-bearer, should take part in these efforts.

Recommendation 8:

Policies are governance guidelines and as such all relevant Ministries and other government departments should play an active part in their implementation. Their participation would enrich the process with practical perspectives about possibilities and constraints within the executive.

Recommendation 9:

Considering the extent of resources invested in developing policies, once adopted, the governments must support their implementation.

Recommendation 10:

Where Government is involved in the process, it should make it clear which departments hold what mandate in the protection of IDPs. Where the Government is not involved in the process to a meaningful extent, the involved actors should try and understand how the bureaucracy works.

Recommendation 11:

The AU and the ICGLR should provide technical support to countries seeking to establish mechanisms for the protection of IDPs that respond to country-specific issues and contexts, rather than push for a universal process and instrument for domesticating international standards.

Recommendation 12:

There is a need to adopt and implement complementary policy and legal frameworks which have a bearing on the protection and provision of assistance to IDPs.

Recommendation 13:

Actors in the policymaking process, state and non-state actors, must ensure to map out all key actors, mark their role in the process and establish a useful network to facilitate their work. Sometimes lobbying will require informal contacts with influential actors.

Recommendation 14:

Capacity building initiatives should target both state and non-state actors

Recommendation 15:

To enhance long-term learning, the policy development process should be documented. Documentation would also help during implementation and review of the policy.

Recommendation 16:

Policymaking involves choices and as such actors should contemplate all the policy choices: costs, risks and benefits. This analysis is important during negotiations on particular policy options to be included in the policy.

— Appendices

A: Questionnaire

1: Policy Development Process

1. What do you see as the major issues on IDP protection in Kenya?
2. Is your organization part of the PWGID and what role does it play in the protection of IDPs?
3. (For respondents whose organizations are not part of the PWGID). Has your organization been involved in responding to the situation of IDPs in Kenya?
Yes [] No []
If yes, what has been the nature of this involvement?
4. What are the major achievements, lessons and challenges realized in working within these groups? What are your recommendations towards addressing these challenges?
5. What is the justification for a policy on protection of IDPs in Kenya?
6. How has your organization been involved in the policy development process?
7. Do you think the policy development process was informed by the national, regional and international frameworks and contexts on protection of IDPs?
Yes [] No []
(Please cite any such relevant frameworks or elaborate)
8. Please rate the IDP policy development process in line with the following (Select one):
a) Non-participatory
b) Fairly participatory
c) Fully participatory
9. Were IDPs active participants in this process?
Yes [] No []
(Please elaborate the extent of their participation/ non-participation)

10. What are the major achievements, lessons and challenges realized in the IDPs policy development process so far? What are your recommendations towards addressing these challenges?

Section 2: Drafting of the Bill

11. Was/ Is there need for legislation on IDPs in Kenya?
Yes [] No []
(Please elaborate)
12. How has your organization involved in its development process?
13. Has there been a harmonized approach to processes of developing the draft IDP Policy and IDP Bill?
Yes [] No []
What has been the impact of this harmonisation/ lack of harmonisation?
14. Do you think the development of the Bill was informed by the national, regional and international frameworks and contexts on protection of IDPs?
Yes [] No []
(Please cite any such relevant frameworks or elaborate)
15. Please rate the IDP Bill drafting process in line with the following (Select one):
a) Non-participatory
b) Fairly participatory
c) Fully participatory
16. Were IDPs active participants in this process?
Yes [] No []
(Please elaborate the extent of their participation or non-participation)
17. What are the major achievements, lessons and challenges realized in the development of the Bill so far? What are your recommendations towards addressing these challenges?

General Issues

18. Did the participation of external actors like the UN Special Representative on the Human Rights of IDPs, and other consultants in the development of the policy and Bill on IDPs influence the processes in any way?

Yes [] No []

(Please elaborate)

19. What do you see as the next phases of engagement in the development of the Policy and Bill? Can you propose a framework or process of adoption/ enactment, implementation/ enforcement and M/E/ feedback?

20. Any other comments or observation in regard to above issues?

B. Supplementary Questionnaire

1. To what extent and in what ways do you see the result of this study informing and influencing regional initiatives to develop frameworks for the protection of IDPs? What particular issues do you think deserve special mention i.e. would be importance for regional advocacy?
2. What is the mandate of your organisation and how does it relate to IDP work in Kenya? When did RCK start taking part in advocacy work for a policy framework on internal displacement?
3. In what way have you been involved in the advocacy initiatives to develop a policy (and legislative) framework for the protection of IDPs in Kenya? What kind of partnerships? Extent of involvement? What's your assessment of the Kenyan processes so far? Challenges, opportunities, milestones, setbacks, criticism?
4. Beyond the Kenyan context, have you participated in any kind of international (and regional) advocacy on internal displacement? Where and in what way?
5. How does the context of the other countries relate to the Kenyan scenario? Any opportunities for comparison/ challenges/ unique issues? Is the Kenyan scenario a classical one and can it be replicated in the region to influence development of a legal framework on internal displacement?

6. What is RCK's strength in advocacy? How did it manage to successfully lead these advocacy initiatives?

7. What political obstacles did you come across in your advocacy work on a policy framework on IDPs? How did you overcome them?

8. What strategies do you intend to employ in supporting or ensuring that:

a. The policy on IDPs is adopted

b. The implementation of the IDP Bill once assented to

c. There is constructive monitoring and evaluation of the implementation process of the policy and the Bill

— Bibliography

1. British Council, MoJNCCA and PeaceNet Kenya (2011) *Conflict Mapping: An Insider's Perspective. A Report on National Conflict Mapping for the Active Citizens Programme*, accessed on http://reliefweb.int/sites/reliefweb.int/files/resources/9916B6A8B2BA70558525784E00744C6C-Full_Report.pdf on April 30, 2012.
2. Brookings Institution, 'Addressing Internal Displacement: A Framework for National Responsibility', April 2005.
3. Brookings Institution, 'Protecting Internally Displaced Persons: A Manual for Law and Policymakers', October, 2008.
4. Brookings-LSE Project on Internal Displacement available at <http://www.brookings.edu/about/projects/idp/laws-and-policies/africa-policies>
5. Brookings-LSE, Project Overview (Project on Internal Displacement) available at <http://www.brookings.edu/about/projects/idp>
6. Cabinet Media brief, 25th October, 2012, www.statehousekenya.go.ke
7. Calvin Onsarigo and AlphonseGari, 'Attackers ferried to Tana Delta, says NSIS' in The Star, Monday, August 27, 2012.
8. Communication 276/2003- Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v. Kenya, accessed at http://www.achpr.org/english/Decision_Communication/Kenya/Comm.%20276-03.pdf on April 30, 2012.
9. Constitution of Kenya, 2010.
10. "Forest Evictees Still Waiting Three Years On", accessed at www.propertykenya.com/news/1524669-forest-evictees-still-waiting-three-years-on on May 10, 2012.
11. Global IDP Database (as of 30 November, 2004) Profile of Internal Displacement: Kenya, accessed at [www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29A7C2D6322766F7B1802570BA00529A80/\\$file/Kenya%20-November%202004.pdf](http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29A7C2D6322766F7B1802570BA00529A80/$file/Kenya%20-November%202004.pdf) on April 30, 2012.
12. Government of Kenya (2009) Report of the Prime Minister's Task Force on the Conservation of the Mau Forests Complex.
13. "Internal Displacement in Kenya: Report on the Workshop for Civil Society Organisations organised jointly by the UN Office for the Coordination of Humanitarian Affairs (OCHA-Kenya) and the Internal Displacement Monitoring Centre (IDMC); Nairobi, Kenya, 30 March 2007".
14. Intermediate Technology Development Group (2003), "Conflict in Northern Kenya: A Focus on the Internally Displaced Conflict Victims in Northern Kenya", accessed at www.practicalaction.org/docs/region_east_africa/conflict_in_northern_kenya.pdf on May 11, 2012.
15. Joan Corkery, Anthony Land, and Jean Bossuyt, "The Process of Policy Formulation: Institutional Path or Institutional Maze?" a study based on the introduction of cost-sharing for education in three African countries available at [http://www.ecdpm.org/Web_ECDPM/Web/Content/Download.nsf/0/ED2FA8DD08900C60C12571180055BE12/\\$FILE/PMR3E.pdf](http://www.ecdpm.org/Web_ECDPM/Web/Content/Download.nsf/0/ED2FA8DD08900C60C12571180055BE12/$FILE/PMR3E.pdf).
16. Kenya: Human Rights Council; Nineteenth Session, Agenda Item 3: "Statement by Kenya on the Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Chaloka Beyani".
17. Kenya National Assembly (April 2012) Report of the Parliamentary Select Committee on the Resettlement of the Internally Displaced persons in Kenya.
18. Kenya National Assembly, Official Report, Thursday, 2nd August, 2012.
19. Kenya National Assembly, Official Report, Wednesday, 17th November, 2010.
20. KHRC, 2008, "A Tale of Force, Threats and Lies: 'Operation Rudi Nyumbani' in Perspective".

21. KHRC (2011), *“Gains and Gaps: A Status Report on IDPs in Kenya 2008-2010”*.
22. KHRC, 2009, Kenya IDPs Protection Cluster, *“Concept Paper: Legal Aid Working Group on Internal Displacement”*.
23. KNCHR, KHRC and RCK, Draft National Policy on Internal Displacement: Simplified Version, 2011, Nairobi.
24. LASWG, *“Concept Paper on IDPs Stakeholders Forum, April 2009”*.
25. Ministry of State for Special Programmes: Progress on Resettlement of Internally Displaced Persons as at 6th January, 2012.
26. Mohamed Ali Baadi and Others v. The Attorney General of Kenya and 9 Others, High Court of Kenya at Nairobi, Petition No. 22 of 2012.
27. MoSSP and PWGID, *“Concept Note of the Verification of IDPs Database, May 2012”*.
28. Pablo T. Spiller, Ernesto Stein and Mariano Tommasi, *‘Political Institutions, Policymaking Processes, and Policy Outcomes: An Intertemporal Transactions Framework’* April 2003.
29. PC meeting minutes of February 3, 2009. The initial meetings were held at UNCHR’s Rhapta 50 offices.
30. Prevention Web, Kenya- Disaster Statistics, Natural Disasters from 1980-2010 accessed at <http://www.preventionweb.net/english/countries/statistics/?cid=90>.
31. Prisca Kamungi and Jacqueline Klopp, *‘The Challenges of Protecting the Internally Displaced through IC/GLR’* paper presented at the conference on ‘International Conference on The Great Lakes Region: Progress, Challenges and Opportunities’ in Kigali Rwanda, 18-19th March 2008.
32. Report of the Commission of Inquiry appointed to inquire into Tribal Clashes, 1999
33. Report of the Commission of Inquiry into Illegal and Irregular Allocation of Public Land, 2003
34. Report of the Parliamentary Select Committee to Investigate the Ethnic Clashes in Western Kenya and Other Parts of Kenya, 1992
35. Report of the Task Force and Advisory Committee on IDPs, 2004
36. Sam Kanyamibwa, Great Lakes Region Impact of Refugees and Internally Displaced Persons on Ecosystem Integrity, Report for the United Nations Environment Programme, October 2007.
37. Saverio Krätli and Jermy Swift Institute of Development Studies University of Sussex, UK (1999) Understanding and Managing Pastoral Conflict in Kenya for a comprehensive profile on pastoral conflict, accessed at <http://www.eldis.org/fulltext/pastconf.pdf> on April 30, 2012.
38. The Annotated Agenda and Timetable for the Kenya National Dialogue and Reconciliation, available on the Kenya National Dialogue and Reconciliation website at <http://www.dialoguekenya.org/>.
39. The Commission of Inquiry on the Post Elections Violence [CIPEV (2008)], Final Report of the CIPEV, Kenya: Government Printers.
40. *“Towards Durable Solutions to Internal Displacement: Report of the Workshop with the Parliamentary Select Committee on the Resettlement of Internally Displaced Persons, Pangoni Beach Resort, Mombasa, 4th- 6th December 2011”*.
41. UNHRC, “Kenya IDPs Protection Cluster Working Group on Internal Displacement: Transitional Concept Note-February 6, 2009”.
42. UNCHR, RCK, IOM, UNICEF, OHCHR, IN-COUNTRY NETWORK OF PSEA, KNCHR, GENDER COMMISSION, UNFPA, UNOCHA, “Protection Working Group in Internal Displacement (PWGID) report on protection issues related to displacement as a result of drought in Turkana. A fact-finding mission report on the protection issues arising from drought-induced displacement in Kakuma, Lokichoggio, Lodwar and Kitale” November 2011.
43. United Nations Development Program- Enhanced Security Unit, Kenya Natural Disaster Profile, accessed at <http://mirror.undp.org/kenya/KenyaDisasterProfile.pdf> on April 30, 2012.
44. UNOCHA KENYA: Frequently Asked Questions on IDPs”- Fact Sheet on Kenya’s IDPs prepared by the United Nations for the Coordination of Humanitarian Affairs on July 16, 2009.
45. Working matrix developed by the PWGID that analysed various frameworks relating to IDP protection in Kenya.

— Footnotes

1. In this report, Great Lakes Region refers to the 11 countries that participated in the International Conference on the Great Lakes Region and ratified the Great Lakes Pact: Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Uganda, Rwanda, Sudan, Tanzania and Zambia.
2. President Assents Eight Bills, accessed at www.statehousekenya.go.ke/news/december2012/2012311202.htm
3. Housed within the Ministry of State for Provincial Administration and Internal Security and was formed in 1998 to manage and coordinate disaster responses at the national level in Kenya. Information available at www.nationaldisaster.go.ke
4. As a sessional paper to be prepared by the MoSSP.
5. These countries are Angola, Burundi, Sudan and Uganda, see Brookings-LSE Project on Internal Displacement available at www.brookings.edu/about/projects/idp/laws-and-policies/africa-policies.
6. Hon Esther Murugi, was at that time with the Ministry of Gender, Children and Social Development.
7. Pablo T. Spiller, Ernesto Stein and Mariano Tommasi, *‘Political Institutions, Policymaking Processes, and Policy Outcomes: An Intertemporal Transactions Framework’* April 2003. Some scholars expand the cycle by breaking down agenda setting into specific stages like definition of problems, clarification of values and goals, identification of objectives and development of possible options; see Joan Corkery, Anthony Land, and Jean Bossuyt, *‘The Process of Policy Formulation: Institutional Path or Institutional Maze?’*, a study based on the introduction of cost-sharing for education in three African countries available at www.ecdpm.org/Web_ECDPM/Web/Content/.../PMR3E.pdf.
8. Brookings Institution, *‘Protecting Internally Displaced Persons: A Manual for Law and Policymakers’*, October 2008.
9. Brookings Institution, *‘Addressing Internal Displacement: A Framework for National Responsibility’*, April 2005.
10. See Sam Kanyamibwa, *Great Lakes Region Impact of Refugees and Internally Displaced Persons on Ecosystem Integrity, Report for the United Nations Environment Programme*, October 2007; See Prisca Kamungi and Jacqueline Klopp, *‘The Challenges of Protecting the Internally Displaced through IC/GLR’* paper presented at the conference on ‘International Conference on The Great Lakes Region: Progress, Challenges and Opportunities’ in Kigali Rwanda, 18-19th March 2008.
11. Deng, Francis. *‘The guiding principles on internal displacement’*. E/CN.4/1998/53/Add.1, February 11. New York, NY: United Nations. New York: United Nations.
12. Brookings-LSE, Project Overview (Project on Internal Displacement) available at www.brookings.edu/about/projects/idp.
13. Global IDP Database (as of 30th November 2004) Profile of Internal Displacement: Kenya pp 6-7. Accessible on [www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/A7C2D6322766F7B1802570BA00529A80/\\$file/Kenya%20-November%202004.pdf](http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/A7C2D6322766F7B1802570BA00529A80/$file/Kenya%20-November%202004.pdf) as accessed on 30th April 2012.
14. Ibid.
15. *“OCHA KENYA: Frequently Asked Questions on IDPs”- Fact Sheet on Kenya’s IDPs* prepared by the United Nations for the Coordination of Humanitarian Affairs on July 16, 2009. Data on displacement prior to 2007 is derived from this source.
16. Of this total, 350,000 sought refuge in 118 camps while 313,921 were integrated in communities countrywide and 640 households took refuge in Uganda. 1,300 fatalities and the destruction of 78,254 houses were further outcomes of this conflict (Ministry of State for Special Programmes: Progress on Resettlement of Internally Displaced Persons as at 6th January, 2012).
17. Commission on the Inquiry into Post-election Violence Report, (CIPEV) 2008.
18. In August 2012, Kenya experienced a bloody conflict between the Pokomo (agricultural by nature) and Orma (pastoral by nature) communities in Tana River district. Some analysts saw competing political interests (County governance) towards the 2013 General Elections as a key element. According to the Kenya Red Cross, more than 6,000 people were displaced. (Calvin Onsarigo and Al-

- phonce Gari, “Attackers ferried to Tana Delta, says NSIS” in *The Star*, Monday, 27th August 2012, p. 6).
19. British Council, MoJNCCA and PeaceNet Kenya (2011) *Conflict Mapping: An Insider’s Perspective. A Report on National Conflict Mapping for the Active Citizens Programme*. Accessible on <www.reliefweb.int/sites/reliefweb.int/files/resources/9916B6A8B2BA70558525784E00744C6C-Full_Report.pdf> as accessed on 30th April 2012.
 20. See Saverio Krätli and Jermy Swift Institute of Development Studies University of Sussex, UK (1999) *Understanding and Managing Pastoral Conflict in Kenya for a comprehensive profile on pastoral conflict*. Accessible on <www.eldis.org/fulltext/pastconf.pdf> as accessed on 30th April 2012.
 21. The term “Northern Frontier District” was mostly used during the colonial times in reference to the Northern Eastern province and the adjacent districts-Lamu, Isiolo, Marsabit and Tana River districts.
 22. Intermediate Technology Development Group (2003), “Conflict in Northern Kenya: A Focus on the Internally Displaced Conflict Victims in Northern Kenya”. Available on <www.practicalaction.org/docs/region_east_africa/conflict_in_northern_kenya.pdf> as accessed on 11th May 2012.
 23. According to Prevention Web, there have been 79 incidences of natural disasters which led to 6,066; affected 48,004,436 persons and led to economic losses amounting to USD112,338,000. See Prevention Web, Kenya- Disaster Statistics, Natural Disasters from 1980-2010 available at <www.preventionweb.net/english/countries/statistics/?cid=90>.
 24. 70% of the country’s land mass is either Arid or Semi-Arid and as such significant sections of communities will continue to suffer displacement (United Nations Development Program- Enhanced Security Unit, Kenya Natural Disaster Profile. Accessible on <www.mirror.undp.org/kenya/KenyaDisasterProfile.pdf> as accessed on April 30, 2012).
 25. Ibid.
 26. Communication 276/2003- Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v Kenya. Available on <www.achpr.org/english/Decison_Communication/Kenya/Comm.%20276-03.pdf> as accessed on April 30, 2012.
 27. Government of Kenya (2009) Report of the Prime Minister’s Task Force on the Conservation of the Mau Forests Complex.
 28. “Forest Evictees Still Waiting Three Years On” Available on <www.propertykenya.com/news/1524669-forest-etictees-still-waiting-three-years-on> as accessed on 10th May 2012
 29. Local communities in the area have commenced legal proceedings against the State citing lack of consultation and potential violation of their land and environmental rights in the High Court of Kenya at Nairobi, Petition No. 22 of 2012 (*Mohamed Ali Baadi and Others v. The Attorney General of Kenya and 9 Others*)
 30. See the working matrix developed by the PWGID that analysed various frameworks relating to IDP protection in Kenya.
 31. Some notable initiatives in this regard included the Parliamentary Select Committee to Investigate the Ethnic Clashes in Western Kenya and Other Parts of Kenya (Kiliku Commission 1992); the Commission of Inquiry appointed to inquire into Tribal Clashes (Akiwumi 1999); the Commission of Inquiry into Illegal and Irregular Allocation of Public Land (Ndung’u Commission in 2003); formation of a Task Force and Advisory Committee on IDPs (Ngali Committee 2004); the Commission of Inquiry into the Post-Election Violence (Waki Commission, 2008); and the Parliamentary Select Committee on IDPs (PSC) among others.
 32. The Commission of Inquiry on the Post Elections Violence [CIPEV (2008)], Final Report of the CIPEV, Kenya: Government Printers.
 33. In April 2004, the Kenya Human Rights Commission organised a stakeholders’ forum to encourage collaboration among key non-state actors, civil society organisations, faith-based organisations (especially the Catholic Justice and Peace Commission (CJPC) and the National Council of the Churches in Kenya) and the National IDPs Network. Moreover, the annual commemorations of the death of Father John Kaiser, organised by CJPC, became one of the major forums for stakeholders to agitate for the rights of IDPs though most of the initiatives focused on the resettlement and access to justice.
 34. Between 2006-2007, UNOCHA was the UN focal point on IDPs matters under the initial leadership of Andrew Timpson and later Jeanine Cooper. This mandate was later moved to United Nations Higher Commissioner for Refugees (UNCHR).
 35. For details see: “Internal Displacement in Kenya: Report on the Workshop for Civil Society Organisations organised jointly by the UN Office for the Coordination of Humanitarian Affairs (OCHA-Kenya) and the Internal Displacement Monitoring Centre (IDMC); Nairobi, Kenya, 30th March 2007”; p. 3.
 36. The draft concept paper which was discussed by members on 31st March 2009 at KHRC indicates that the forum was initially scheduled for 4-5th May 2009 to coincide with the first anniversary since the “Operation Rudi Nyumbani” was launched in May 5, 2008. However, due to operational and administrative reasons, this was moved to July 2009.
 37. LASWG, “Concept Paper on IDPs Stakeholders Forum, April 2009”.
 38. KNCHR, KHRC and RCK, *Draft National Policy on Internal Displacement: Simplified Version, 2011, Nairobi*.
 39. The Ministry of Justice provided a great deal of legal support to the ASWG during the review of the legal, policy and institutional frameworks upon the conclusion of the policy formulation process.
 40. Most of the amendments touched on the need to have the framework for devolution, human rights, values and principles of governance in the Constitution reflected in the draft policy.
 41. The Sub-committee comprises of senior officials from the Ministries of Special Programmes, Provincial Administration, Justice, Lands and Finance
 42. Kenya National Assembly, Official Report, Wednesday, 17th November, 2010, p. 4
 43. Kenya National Assembly (April 2012) Report of the Parliamentary Select Committee on the Resettlement of the Internally Displaced persons in Kenya, p. 70.
 44. For a more detailed account of the deliberations, refer to “Towards Durable Solutions to Internal Displacement: Report of the Workshop with the Parliamentary Select Committee on the Resettlement of Internally Displaced Persons, Pangoni Beach Resort, Mombasa, 4th-6th December 2011”.
 45. For a more detailed account of the deliberations, refer to “Towards Durable Solutions to Internal Displacement: Report of the Workshop with the Parliamentary Select Committee on the Resettlement of Internally Displaced Persons, Pangoni Beach Resort, Mombasa, 4th-6th December 2011”
 46. Kenya National Assembly, Official Report, Thursday, 2nd August, 2012, p. 40- 62.
 47. Kenya National Assembly, Report of the Parliamentary Select Committee on the Resettlement of the internally displaced persons in Kenya, April, 2012 p. 70.
 48. In accordance with the Fifth Schedule of the Constitution 2010.
 49. The legislation borrows from the UN Guiding Principles, the Great Lakes IDP Protocol, the Kampala Convention among other human rights instruments. Kenya is not yet a party to the Kampala Convention and as such, the legislation does not make specific reference to it.
 50. Hon. Ekwe was featured on NTV, K24 regarding the draft IDP Bill. The PWGID also held two press conferences: one during the sensitization workshop with the LSWC and the other calling on the two principals to commit to the establishment of the legislative framework on protection of IDPs.
 51. Apart from the interviewees from parliament, all other respondents interviewed for this study were part of the protection working group either at the national (Nairobi) or field level (Eldoret and Nakuru).
 52. Ideally the newly formed PWGID was to be chaired by a government ministry or national human rights/ protection organisation with the new Chair commencing on 1st March 2009.
 53. See PC meeting minutes of 3rd February 2009. The initial meetings were held at UNCHR’s Rhapta 50 offices.
 54. The proposed principles of engagement for the PWGID were: inclusion of key humanitarian partners; identification of key protection themes and issues; establishment and maintenance of humanitarian coordination mechanisms; coordination with national and local authorities, state institutions, local civil society organisations and other relevant actors; identification of priority cross-cutting issues; planning and strategy development; application of standards; monitoring, reporting and response; advocacy and resource mobilisation; training and capacity building; and confidentiality.
 55. See UNHRC: “Kenya IDPs Protection Cluster Working Group on Internal Displacement: Transitional Concept Note-6th February 2009”.
 56. Kenya IDPs Protection Cluster, “Concept Paper: Legal Aid Working Group on Internal Displacement” p 2. The concept was drafted by KHRC on 9th February 2009.
 57. As evidenced in the monthly protection and updates meetings at national and field-based levels; quarterly progress updates on resettlement from MoSSP; periodical reports, policy briefs and papers, publications and documentaries from stakeholders among others. The development and dissemination of the abridged version of the draft IDPs policy by the KNCHR, RCK, KHRC and DRC was a critical milestone.
 58. The participating officers include: policy-makers at the national level; the provincial administration responsible

- for the implementation of government programmes at the local level and the police who play a key role in ensuring the security of IDPs.
59. UNCHR, RCK, IOM, UNICEF, OHCHR, INCOUNTRY NETWORK OF PSEA, KNCHR, GENDER COMMISSION, UNFPA, OCHA, "Protection Working Group in Internal Displacement (PWGID) report on protection issues related to displacement as a result of drought in Turkana. A fact-finding mission report on the protection issues arising from drought-induced displacement in Kakuma, Lokichoggio, Lodwar and Kitale" November 2011.
 60. It is important to note that there were, however, structures to ensure sharing of information with field-based actors which included reporting and monitoring mechanisms. In fact, KNCHR and the representative of the Office of the UN Special Rapporteur on IDPs participate in both the national and field based PWGID meetings.
 61. However, it must be noted that the PWGID has mechanisms to facilitate reporting, information sharing and coordination with field actors which included representation of the field working group at the national level and similarly representation of the national working group at the field level.
 62. A good number of the organisations or individuals who founded the PWGID in January and February 2008 have now moved on. This is either due to staff transition or lack of interest (related to mandate or capacity) with the current phases of engagement with IDP issues.
 63. KHRC (2011) "Gains and Gaps: A Status Report on IDPs in Kenya 2008-2010" p. 13.
 64. A series of consultative meetings took place between March and June 2011. A concept note to inform the process was developed with a view to: developing an authentic and comprehensive database reflecting the different categories of PEV IDPs, ascertaining the beneficiaries of support programmes being offered and the programmes in particular they have benefited from; and developing guidelines for the sustainable management and updating of an IDP database (MoSSP and PWGID, "Concept Note of the Verification of IDPs Database, May 2012).
 65. These included forest evictees, squatters and persons displaced by other factors before 2007.
 66. "A Tale of Force, Threats and Lies: 'Operation Rudi Nyumbani' in Perspective"- Kenya Human Rights Commission (KHRC), 28th October 2008.
 67. FIDA-Kenya, CLAN Kenya and Help Age International were founding members of the PWGID. If they were active, they could have helped in increasing the voices of women, children and older members in the society.
 68. Government of Kenya (2008) The Commission of Inquiry into Post-Election Violence Report, p. 293-294
 69. Examples include the three workshops in Mombasa with members of the PSC, PWGID and LSWC; stakeholder meetings with other thematic groups such as the child protection actors.
 70. Cabinet media brief, 25th October 2012, www.statehousekenya.go.ke.
 71. UNHCR played a key role in coordinating this visit by Prof. Beyani and other key state and non-state actors in the protection of IDPs in Kenya.
 72. Kenya: Human Rights Council; Nineteenth Session, Agenda Item 3: "Statement by Kenya on the Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Chaloka Beyani", pp 1-3.
 73. "To Live as Other Kenyans Do": A Study of the Reparative Demands of the Kenyan Victims of Human Rights Abuses, International Centre for Transitional Justice (July 2011).
 74. It was the stakeholder forum organised by UNOCHA and IDMC in March 2007 that set the stage for discussions on the need for a policy.
 75. Sentiments of an MP during a workshop with the Labour and Social Welfare Committee in Mombasa in July 2012 to lobby for the adoption of the IDP Bill in Parliament. This comment was made in relation to the rights of IDPs to register and vote in places where they live during displacement or after resettlement.
 76. The process was brokered by a Panel of Eminent African Personalities under the chairmanship of Mr. Kofi Annan with four agenda: 1) Immediate Action to Stop Violence and Restore Fundamental Rights and Liabilities; 2) Immediate Measures to Address the Humanitarian Crisis, Promote Reconciliation, Healing and Restoration; 3) How to Overcome the Current Political Crisis; and 4) Long-term Issues and Solutions See the Annotated Agenda and Timetable for the Kenya National Dialogue and Reconciliation, available on the Kenya National Dialogue and Reconciliation website at <http://www.dialoguekenya.com/>.
 77. Agenda 1,2 and 3 were supposed to be achieved between 7 and 15 days from the commencement of dialogue; agenda 4 was to be achieved within one year from 28th February 2012, See the Annotated Agenda and Timetable for the Kenya National
 78. Former Deputy Prime Minister Uhuru Kenyatta, former Head of Public Service Francis Muthaura, Eldoret North MP William Ruto and radio journalist Joshua Sang.

RCK

Haki House, Ndemi Road
off Muringa Road, Kilimani
P. O. Box 25340
00603 Lavington, Nairobi,
Kenya

Tel: +254 20 208 8060 / 208 8067

Fax: +254 20 2088054

Office Cell : +254 733 860 669 /
720 943 164

Email : info@rckkenya.org

www.rckkenya.org

DRC

Lower Kabete Road,
Ngecha Road Junction
P. O. Box 14762
00800 Westlands, Nairobi,
Kenya

Tel: +254 20 418 04 03/4/5

Email: info@drchoa.org

www.drc.dk

