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تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية

والاجتماعية والثقافية، بما فيها الحق في التنمية

تقرير المقرر الخاص المعني بحقوق الإنسان للمشردين داخلياً، تشالوكا بياني

إضافة

البعثة إلى كينيا*

موجز

أجرى المقرر الخاص المعني بحقوق الإنسان للمشردين داخلياً، تشالوكا بياني، بعثة رسمية إلى كينيا في الفترة من ١٩ إلى ٢٧ أيلول/سبتمبر ٢٠١١، بدعوة من حكومة كينيا. وعملاً بولاية المقرر الخاص المنصوص عليها في قرار مجلس حقوق الإنسان ٦/١٤، سعى المقرر الخاص إلى دراسة الحالة الراهنة للمشردين داخلياً في كينيا، بمن فيهم المشردون بسبب أعمال العنف التي أعقبت انتخابات ٢٠٠٧/٢٠٠٨، وبسبب الكوارث الطبيعية ومشاريع التنمية وحفظ البيئة.

ويُثني المقرر الخاص على حكومة كينيا لما أحرزته حتى الآن من تقدم واتخذته من خطوات مهمة من أجل معالجة مسألة التشرد الداخلي، بوسائل منها وضع مشروع سياسة عامة للمشردين داخلياً ومشروع قانون يتعلق بالمشردين داخلياً، وتعيين جهة تنسيق مؤسسية معنية بالتشرد الداخلي. ويسرّت الحكومة أيضاً عودة وتوطين الكثير من المشردين

* يُعمّم الموجز بجميع اللغات الرسمية. أما التقرير المرفق بالموجز فيُعمّم باللغة التي قُدّم بها فقط.

داخلياً من أعمال العنف التي أعقبت انتخابات ٢٠٠٧/٢٠٠٨ وتشرّد إثرها زهاء ٦٦٤ ٠٠٠ شخص، كما حافظت على علاقة تعاون ببناء مع الأمم المتحدة.

وأشار المقرر الخاص إلى التحديات الرئيسية المتبقية، ومنها الافتقار إلى سياسة عامة وإطار تشريعي ونظم شاملة وفعالة لجمع المعلومات المصنّفة، فضلاً عن عدم توافر القدرة التشغيلية والمؤسسية الكافية. وأبرز وجود احتياج إنساني ملح لمعالجة الظروف المعيشية السيئة وحالة حقوق الإنسان البائسة للعديد من الأشخاص الذين لا يزالون مشردين، فضلاً عن الحاجة إلى اتباع نهج تشاركي أشمل لإيجاد حلول دائمة. وشجع حكومة كينيا على أن تتخذ، بدعم من المجتمع الدولي والمجتمع المدني، التدابير الضرورية للتصدي للشواغل المذكورة أعلاه، وأن تصدّق على اتفاقية الاتحاد الأفريقي لحماية المشردين داخلياً في أفريقيا ومساعدتهم (اتفاقية كامبالا)، وتعتمد مشروع السياسة ومشروع القانون المتعلقين بالمشردين داخلياً اللذين سيتيحان إطار عمل قوي يستعين به البلد لمنع وقوع حالات التشرّد الداخلي وإدارتها وإيجاد حلول دائمة لها.

Annex

Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, on his mission to Kenya (19-27 September 2011)

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–3	4
II. General context	4–15	4
A. Political and socio-economic context	4–6	4
B. Human rights situation.....	7–9	5
C. History, causes and extent of internal displacement	10–15	6
III. Frameworks for the assistance and protection of internally displaced persons	16–26	8
A. Domestic response	16–24	8
B. International response.....	25–26	10
IV. Protection of internally displaced persons.....	27–55	11
A. Protection from forced displacement.....	27–30	11
B. Protection during displacement	31–48	12
C. Durable solutions.....	49–55	18
V. Conclusions and recommendations	56–70	20
A. Conclusions	56–58	20
B. Recommendations.....	59–70	20

I. Introduction

1. In accordance with his mandate, contained in Human Rights Council resolution 14/6, and at the invitation of the Government of Kenya, the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, conducted an official visit to Kenya from 19 to 27 September 2011. The Special Rapporteur undertook this visit in order to examine the current situation of internally displaced persons (IDPs) in Kenya, including those displaced as a result of the 2007/2008 post-election violence, natural disasters, and development and environmental conservation projects. The Special Rapporteur's conclusions and recommendations are based on his findings during his visit, and on the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

2. In the course of his visit, the Special Rapporteur met with the Minister for Justice, National Cohesion and Constitutional Affairs, Mr. Mutula Kilonzo; the Minister of State for Special Programmes, Ms. Esther Murugi Mathenge; the Attorney General, Mr. Githu Muigai; staff of the Office of the President and of the Ministry of Foreign Affairs; Regional Commissioners; and members of the Parliamentary Select Committee on Internally Displaced Persons. He also met with the Kenya National Commission on Human Rights (KNCHR), members of the Truth, Justice and Reconciliation Commission, civil society organizations, United Nations agencies, and local officials in the field locations he visited. In addition to Nairobi, the Special Rapporteur visited various sites of displacement, including internal displacement camps, and areas of return and resettlement, in and around the region of Nakuru and Eldoret, and satellite IDP camps of evictees from the Mau Forest complex.

3. The Special Rapporteur would like to express his appreciation to all his interlocutors, and, in particular, the Government of Kenya for its invitation and constructive engagement during the visit, the Office of the United Nations Resident Coordinator, the Office of the United Nations High Commissioner for Refugees (UNHCR), the Office for the Coordination of Humanitarian Affairs (OCHA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), which provided invaluable support in the preparation and coordination of the visit, as well as throughout its duration. He also expresses his gratitude to the United Nations Country Team, the members of the Protection Working Group on Internal Displacement (PWGID), and the many internally displaced persons he met with during his visit who shared their experiences and concerns with him.

II. General context

A. Political and socio-economic context

4. Kenya, which gained its independence in 1963, established itself as a Constitutional multiparty electoral democracy in 1991. It was dominated by a single party until 2002. In 2007, a disputed general election led to widespread post-election violence and displacement, and ultimately to the establishment of a coalition Government between the Party of National Union (PNU) and the Orange Democratic Movement (ODM). Politically motivated clashes, often underpinned by land and political disputes, have long been associated with electoral processes in the country, and a key cause of repeated displacements over the years. To address these issues, the Government has embarked on a series of constitutional, electoral and institutional reforms. A constitutional referendum was

held on 4 August 2010, leading to the promulgation of a new national Constitution in August 2010, containing a comprehensive Bill of Rights.

5. The Kenyan population is composed of diverse ethnic, racial and linguistic groups.¹ According to the 2011 human development index, Kenya is considered a low human development country, with a ranking of 143 out of 187 countries. The same report reveals that about 46 per cent of the population live below the national poverty line, and a further 27.4 are vulnerable to poverty.² Kenya is also considered among the 10 most unequal societies in the world.³ The country's population, estimated at nearly 39 million, is young, with a median age of 18.5 years. The combination of widespread absolute poverty and a young population (over 42 per cent are children under 15 years of age), among other factors, means that over 82 per cent of Kenyans depend on others.⁴ The majority of the population live in rural areas, while 32 per cent live in urban settings. Approximately 80 per cent of the land is considered arid or semi-arid.

6. The country is significantly impacted by natural disasters and the effects of climate change. An average of over 27,000 per million people are affected every year by natural disasters, almost 36 per cent of children under 5 years of age suffer from stunting due to environmental factors, and 31 per cent of the population live on degraded land.⁵ Temperature variations, environmental degradation, increased variability in rainfall, and global warming⁶ are all likely to represent a significant humanitarian, development and security challenge for the country, both domestically and in the context of region-wide impacts.

B. Human rights situation

7. Kenya is a State party to most core international human rights instruments.⁷ At the regional level, it has also ratified key regional human rights instruments, including the 1981 African Charter on Human and Peoples' Rights, and the 2006 Pact on Security, Stability and Development in the Great Lakes Region. Kenya participated in the Human Rights Council's universal periodic review process in 2010. In that context, concerns were expressed with regard to, inter alia: a legacy of impunity in the country which continued to contribute to persistent violence and conflict; the large number of street children, their vulnerability to exploitation and abuse, and lack of access to education and health; and violations of economic and social rights and the right to an adequate standard of living in a context of widespread extreme poverty.⁸ With regard to IDPs specifically, concern was expressed regarding the hundreds of thousands of IDPs in Kenya who lacked access to basic rights and services, and who are residing in environmentally and economically

¹ Kenya, 2009 Population and Housing Census Results, 31 August 2010, slides 34-35. Available from: www.knbs.or.ke/docs/PresentationbyMinisterforPlanningrevised.pdf.

² United Nations Development Programme (UNDP), *Human Development Report 2011—Sustainability and Equity: A Better Future for All* (New York, 2011), pp. 129 and 144.

³ National report submitted by Kenya under the universal periodic review (A/HRC/WG.6/8/KEN/1), para. 53.

⁴ *Ibid.*, para. 5; UNDP, *Sustainability and Equity*, p. 164.

⁵ UNDP, *Sustainability and Equity*, p. 152.

⁶ See *ibid.*, p. 156.

⁷ See www.ohchr.org/EN/countries/AfricaRegion/Pages/KEIndex.aspx.

⁸ Compilation on Kenya prepared by OHCHR under the universal periodic review (A/HRC/WG.6/8/KEN/2), paras. 36, 33 and 52.

vulnerable parts of the country. This diminishes their economic and durable-solution prospects and increases their vulnerability.⁹

8. Kenya has a number of specialized institutions with a specific mandate for human rights. Chief among them is KNCHR, a statutory body established under an Act of Parliament, and in conformity with the principles relating to the status of national institutions for the promotion and protection of human right (Paris Principles).¹⁰ The Commission is vested with a broad mandate of human rights promotion and protection, which includes the fundamental rights and freedoms of any individual protected under the Constitution and any international instrument to which Kenya is signatory (A/HRC/WG.6/8/KEN/1, para. 19). KNCHR is active with regard to the human rights of IDPs in the country, and is a member and co-chair of the PWGID. Also of note is the 2011 Constitutional Commission on Administrative Justice, which has a mandate to receive and document all complaints against public officers, and to enquire into allegations of incompetence, misuse of office, corruption and other unethical conduct in the public sector.

9. In addition to the above, a number of transitional justice mechanisms addressing human rights violations were set up in the context of the national reform agenda after the 2007/2008 post-election violence. These include:¹¹ the Commission of Inquiry on Post-election Violence (Waki Commission), which had a mandate to investigate the circumstances surrounding the post-election violence and to make recommendations on measures to eradicate impunity; the National Cohesion and Integration Commission, which has a mandate to investigate incitement and hate speech, analyse factors inhibiting harmonious relations between ethnic communities and participation in the life of the country, and to make recommendations and initiate prosecutions; and the Truth, Justice, and Reconciliation Commission (TJRC),¹² which seeks to address past violations since independence, within a broader context of building a democratic society based on the rule of law. During the country visit, the Special Rapporteur had the opportunity to meet with members of the TJRC, hear testimonies by IDPs, and attend hearings held in displacement-affected communities.

C. History, causes and extent of internal displacement

1. Ethnic clashes and land-related political violence as causes of internal displacement¹³

10. Kenya has suffered repeated waves of internal displacement in its recent history, due to political, ethnic and land-related disputes, as well as to a number of other causes. Land policies during the colonial period entailed the dispossession of the lands of many indigenous communities, especially in the Rift Valley, Nyanza and the Western and Central provinces. During this period, an individual freehold title registration system was imposed which effectively legalized the dispossession of these lands, and replaced the customary mechanisms of land tenure. The freehold land title system was maintained after independence, alongside the implementation of a number of market-based resettlement

⁹ Ibid., para. 65.

¹⁰ Ibid., paras. 8-9.

¹¹ For details on these and other mechanisms, see A/HRC/WG.6/8/KEN/1.

¹² See www.tjrkenya.org/.

¹³ This section largely draws on information provided in: Humanitarian Policy Group (HPG), "Crisis in Kenya: land, displacement and the search for 'durable solutions'", HPG Policy Brief 31 (London, Overseas Development Institute, 2008). Available from www.odi.org.uk/resources/download/1522.pdf.

schemes to deal with displacement. Neither of these policies and schemes questioned the injustice in the acquisition of the original land titles, nor compensated or assisted those who had been displaced and did not have the financial means to acquire lands under the market-based resettlement schemes.

11. Land-related issues and ethnic tensions were further aggravated due to a number of factors, including corruption and ethnic politics which favoured certain communities at the expense of others, during successive Governments. In the context of the rise of multiparty politics in the 1990s, and national elections in 1992 and 1997, ethnic identity was used as a political instrument, which led to ethnic clashes throughout that decade, leaving thousands dead and hundreds of thousands internally displaced. By the end of 2007, it was estimated that there were still 380,000 IDPs from the clashes of the 1990s.¹⁴

12. The land grievances of communities such as the Kalenjin, Kikuyu and Maasai, which had originally been dispossessed by the British, later became a key feature of national politics, successive election platforms and related violence and displacement, as communities were intermittently either favoured or evicted from contested lands, depending on the Government in power. These unresolved ethnic and land-related grievances, as well as their political instrumentalization have persisted, resulting in a pattern of violence and displacement, most recently re-experienced in the 2007/2008 post-election violence, in which 1,300 persons lost their lives, and nearly 664,000 persons were internally displaced. The new Constitution attempts to remedy these grievances by reclassifying land into public, community and individual lands, establishing land redistribution mechanisms, and redressing historical land injustices.

2. Other multiple causes of internal displacement

13. In addition to the above, there have been various other causes of internal displacement in Kenya over the years. Some of these displacements affect relatively few people and are short lived (for example, over a few days), while others are large-scale and prolonged. Causes of these displacements include, inter alia: resource-based conflicts between communities; evictions related to development or environmental conservation projects; insecurity; urban disasters (such as fires); and natural disasters, including due to the effects of climate change.

14. Some displacements are due to a complex combination of causes. It is estimated, for example, that over the decades, thousands of pastoralists have been forcibly displaced from their homes in northern Kenya due to numerous causes, including violence, cattle raiding, land conflicts, natural and climatic disasters, human rights violations, border issues, activities of militant groups and the proliferation of small arms.¹⁵ Mass evictions, both from forest areas and urban centres, have also displaced significant numbers of persons, often without housing, humanitarian assistance or durable solutions being planned beforehand. In June 2005, up to 50,000 persons were reported to be forcibly evicted from the Mau Forest¹⁶ and a further 12,000 persons were evicted in the latter part of 2009. The history of settlement in the Mau Forest is complex, and includes the stripping of the land of residents during the colonial period, land allocations by subsequent Governments in the 1990s (many

¹⁴ United States Institute of Peace, "Moving beyond relief: the challenges of settling Kenya's internally displaced", p. 1. Available from www.usip.org/files/resources/USIP_0808_2.PDF.

¹⁵ Internal Displacement Monitoring Centre (IDMC), "Summary report of breakfast meeting on pastoralist displacement in northern Kenya: findings of a scoping study", 15 November 2011, pp. 1 and 3.

¹⁶ Centre on Housing Rights and Evictions (COHRE), "Submission to the United Nations Committee on Economic, Social and Cultural Rights on the occasion of Pre-session Working Group discussion, Kenya", p. 2, 5 November 2007.

now considered illegal or inappropriate),¹⁷ irregular settlement, and repeated waves of forced evictions.

15. In a context where the majority of urban residents in the country, such as in Nairobi, live in informal settlements and slums due to the unavailability of affordable housing for the poor, mass evictions in these areas are also likely to continue causing significant levels of internal displacement and homelessness. In the Nairobi area alone, where over 50 per cent of the city's 3.1 million population live in these informal settlements, thousands of households have reportedly been forcibly evicted without humanitarian assistance or alternative housing solutions, including from the Mitumba, Eastleigh, Kiang'ombe, KPA and Embakasi slums.¹⁸

III. Frameworks for the assistance and protection of internally displaced persons

A. Domestic response

1. Legal and policy framework

16. At the time of writing of the present report, the draft Internally Displaced Persons Bill (draft IDP bill), recently developed under the leadership of the Parliamentary Select Committee, had just been reviewed for consistency with relevant instruments and standards, including the 2010 draft National Policy on the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya (draft IDP policy), and finalized at a meeting in Mombasa in December 2011, by all the major stakeholders.

17. The draft IDP policy, which was elaborated through a process of collaboration between the Ministry of State for Special Programmes (MOSSP), the Ministry of Justice, National Cohesion and Constitutional Affairs (hereafter, Ministry of Justice), and the PWGID, and unveiled in March 2010, is largely based on existing international and regional instruments and standards on internal displacement. The policy, which is comprehensive in scope, encompasses all locations, phases of internal displacement and all its major causes, including displacement due to natural disasters; politically instigated or intercommunal hostilities; and forced evictions due to development or environmental conservation projects (when proper relocation and sustainable reintegration are lacking).¹⁹ Other central aspects covered by the policy, which has been pending before cabinet since March 2010, include: data collection on IDPs; relevant institutional frameworks, including monitoring and evaluation mechanisms; principles applicable to the prevention of internal displacement, and protection from arbitrary displacement; displacements occurring both outside and within an emergency context; protection and assistance during displacement; and durable solutions.

¹⁷ IRIN, "Kenya: Mau Forest evictees struggle in camps", 2 November 2010.

¹⁸ IRIN, "Kenya: City demolitions highlight urban-rural aid gap", 29 November 2011.

¹⁹ Kenya, Office of the President, MOSSP, draft National Policy on the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, 10 March 2010, art. 13.

18. The draft National Disaster Management Policy, developed in 2009 and which is aimed at institutionalizing disaster management and disaster risk reduction, and establishing coordination mechanisms, has also been pending for some time. However, this policy was followed by the National Disaster Response Plan, which by the end of 2010 had been mainstreamed into all Government ministries. The plan is in keeping with the Kenya Vision 2030, which articulates the country's concept of development, including the strengthening of its capacity to adapt to climate change.²⁰ The Government of Kenya has undertaken a number of other initiatives intended to prevent or minimize the extent and impact of internal displacement. These include, inter alia: the Evictions and Resettlement Guidelines (2009), the draft National Policy on Human Rights (2010), and the draft National Policy on Peace-building and Conflict Management (2009).²¹ The new Kenyan Constitution, with its Bill of Rights, is also expected to provide protection against arbitrary displacement, and human rights protection at the different stages of displacement. At the regional level, Kenya has ratified the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, which requires member States to implement the Guiding Principles on Internal Displacement, but at the time of writing the State had not yet ratified the African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention).

2. Institutional framework

19. Kenya did not formally recognize or register IDPs until the 2007/2008 post-election violence, when it also designated MOSSP as the institutional focal point responsible for internal displacement, including the mitigation and resettlement of IDPs, and the coordination of disaster risk reduction programmes. The draft IDP policy reaffirms this mandate and highlights the Ministry's policy-implementation and coordination role, envisages the establishment of a new national consultative coordination committee on internal displacement, and specifically affirms the role of a number of other actors, including civil society, IDP representatives and KNCHR.²²

20. Currently, MOSSP works closely with the Ministry of Lands, in the framework of the Inter-Ministerial Committee on IDPs, for the identification and purchase of land for the resettlement of IDPs; the Ministry of Finance, which makes the budgetary allocation for the purchase of the land; and the Ministry of State for Provincial Administration and Internal Security, which implements resettlement programme activities at the local level.²³ Within MOSSP, the Department of Mitigation and Resettlement is responsible for the assistance and resettlement of IDPs following the 2007/2008 post-election violence and the implementation of the National Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of Post 2007 Election Violence (hereafter, National Humanitarian Fund), set up in 2008 in order to support the resettlement of IDPs, and related livelihood and other programmes.²⁴ MOSSP has set up regional offices in Central Province and in the north and south of the Rift Valley Province, where District Commissioners are responsible for coordinating IDP protection and assistance needs at their respective levels with relevant Regional Commissioners, who co-chair the Nakuru and Eldoret PWGID meetings.

²⁰ Elizabeth Ferris, Erin Mooney and Chareen Stark, *From Responsibility to Response: Assessing National Approaches to Internal Displacement* (Washington, D.C., Brookings Institution - London School of Economics Project on Internal Displacement, 2011), p. 233.

²¹ *Ibid.*, p. 234.

²² Kenya, draft national IDP policy, chap. III.

²³ Ferris, Mooney and Stark, *From Responsibility*, p. 244.

²⁴ *Ibid.*

21. MOSSP further works to address potential displacement related to natural disasters, and implements disaster relief and rehabilitation programmes, through the distribution of food and emergency shelter. While mainstreaming activities relating to disaster risk reduction have taken place, at the time of writing, the Ministry had only two staff dedicated to this field. Other key actors responsible for responding to natural disasters include the Kenya Red Cross Society, the Crisis Response Centre and the Interim Coordinating Secretariat within the Office of the Prime Minister, which also responds to forest evictions.²⁵

22. The national PWGID brings together the key stakeholders working in the area of IDPs, including the Government, civil society, United Nations agencies and IDP networks, with the objective of enhancing the capacity of the Government and its overall response to internal displacement in the country. It is co-chaired by the Ministry of Justice and KNCHR. Beyond co-chairing the PWGID, KNCHR has maintained a strong focus on the human rights of IDPs in the country since becoming operational in 2003. It has established regional offices and field monitors; investigates allegations of human rights violations against IDPs; advocates on their behalf; monitors the situation of IDP camps, areas of returns and other sites through visits; and investigated Government management of the IDP Humanitarian Fund in 2009, when it found evidence of embezzlement.²⁶

23. More recently, the Kenyan Parliament set up the Parliamentary Select Committee on Internally Displaced Persons, with a broad mandate to look into existing institutions, policies, laws and programmes relating to IDPs, the main causes of internal displacement, and an estimate on the number of IDPs; and to make comprehensive recommendations to address internal displacement.

24. According to official figures, the Government has spent, inter alia: over 4 billion Kenya shillings on the IDP resettlement program; K Sh 377 million in the repair of IDP houses and infrastructure; and approximately K Sh 1.3 billion on relief food for IDPs during the financial years 2008-2011.²⁷

B. International response

25. The response of the international community to internal displacement in Kenya has included a comprehensive range of activities, such as contributing to the monitoring of the peace process which stopped the last post-election violence, and current community peacebuilding and reconciliation efforts at the national and provincial levels. Through the Kenyan Red Cross Society and other operational partner organizations, and with the coordination of MOSSP, the United Nations and international non-governmental organizations (NGOs) provided emergency assistance (for example shelter, water, education and sanitation facilities),²⁸ and contributed to durable solutions through funding and expertise, including to the IDP resettlement programme, to which the African Development Bank also provided funding.²⁹

²⁵ Ibid.

²⁶ Meeting between the Chairperson of KNCHR and the Special Rapporteur, 21 September 2011.

²⁷ MOSSP, "Update on the resettlement of IDPs", presentation to the Forum on Internal Displacement Situation in Kenya, Mombasa, 5 December 2011.

²⁸ IDMC, "Kenya: speedy reform needed to deal with past injustices and prevent future displacement", 10 June 2010, p. 11.

²⁹ MOSSP, "Update on the resettlement"; Ferris, Mooney and Stark, *From Responsibility*, pp. 256-257.

26. International expertise and other types of support have also aimed to strengthen the capacity of the Government of Kenya to respond to internal displacement and its root causes. These included: a United Nations cluster system (which later became the PWGID) set up in January 2008 to support the Government in addressing internal displacement during the post-electoral emergency phase; collaboration in 2008 between the Government and UNHCR on a profiling exercise to determine the number of IDPs; collaboration with the United Nations Development Programme (UNDP) and OCHA on disaster management and early recovery; and the participation of international experts in a number of relevant Commissions, such as the Waki Commission, the Committee of Experts on Constitutional Review, and the TJRC.³⁰

IV. Protection of internally displaced persons

A. Protection from forced displacement

27. In addition to the initiatives discussed above in section III, the Government of Kenya, with the support of the international community, has taken a number of other significant measures to prevent future forced displacement, in particular due to political, ethnic and electoral violence. The National Dialogue and Reconciliation Accord, which ended the 2007 post-election violence, identified four action areas to address the causes of the crisis, reconcile affected communities, and prevent such conflicts in the future. Some of these areas specifically refer to issues related to internal displacement, such as agenda 2, which articulates the need to address the humanitarian crisis and promote reconciliation and reconstruction, and agenda 4, which relates to the root causes of the violence which induced internal displacement, such as land, poverty and inequality.³¹ A subsequent impact assessment of the Accord, undertaken in October 2009, highlighted priority actions for avoiding future violence and displacement, including the adoption of a new constitution; judicial and police reforms; and a transparent electoral process.³²

28. Efforts to implement such actions and the Accord have included legislation criminalizing hate speech and imposing penalties for the mobilization of violence (2008); the setting up of the National Cohesion and Integration Commission in 2009, the institutional body responsible for operationalizing the above legislation and monitoring relevant activities; the establishment of the TJRC, described above; and the adoption of the new Constitution in 2010. Other initiatives aimed at preventing and mitigating the impact of internal displacement have included the establishment of early warning and response mechanisms to deal with conflict and natural disasters.³³ One such mechanism is the national chapter of the Conflict Early Warning and Early Response Network (CEWARN), coordinated by the National Steering Committee on Peace-Building and Conflict Management and a network of District Peace Committees, which bring together representatives from the Government, civil society, the United Nations and other actors.³⁴ Joint conflict-mapping initiatives by the Government, civil society and the United Nations have also taken place. Considered particularly successful, one such joint initiative deployed

³⁰ Ferris, Mooney and Stark, *From Responsibility*, pp. 256.

³¹ IDMC, "Kenya: Speedy reform needed", pp. 9-10.

³² *Ibid.*, p. 8.

³³ Ferris, Mooney and Stark, *From Responsibility*, p. 235.

³⁴ *Ibid.*

field monitors across the country in order to identify warning signs (for example, forced movements, sexual and gender-based violence, destruction of property) and set up coordination centres in “hot spots” to respond to incidents of violence in advance of the 2010 referendum on the Constitution.³⁵ In anticipation of the 2012 national elections, the commissioners of an enhanced and reformed Independent Electoral and Boundaries Commission were sworn in on 14 November 2011.

29. While these constitute considerable achievements, many of the root causes of internal displacement have persisted. As of May 2010, and according to an audit of the reform agenda and assessments by civil society, many of the intended objectives of the Accord had not been achieved, including addressing the long-standing grievances related to land and historical injustices.³⁶ With regard to the much-awaited land reforms, the Special Rapporteur believes that these should, among other things, ensure the integration of and a cohesive approach to related internal displacement issues. He also believes that more information and attention is necessary with regard to incidents of sexual and gender-based violence in the context of the 2007/2008 post-election violence and other displacement situations, including with a view to prevention.

30. Moreover, significant internal displacements have taken place despite the above initiatives, including due to inter-ethnic clashes, conflicts over land, and State-led disarmament programmes related to pastoralist communities, such as the 2009 Government disarmament operations which led to several deaths and the displacement of hundreds of people from a number of communities, and a similar operation in the Mount Elgon region in 2008, which also resulted in the displacement of thousands of persons.³⁷ As detailed elsewhere in the present report, displacements have also taken place as a result of development and environmental conservation projects, with evictions often being conducted without effective redress and compensation mechanisms for affected communities and without sufficient assistance or alternative durable solutions in place.

B. Protection during displacement

31. Based on his country visit and on his field visits to sites of displacement, the Special Rapporteur believes that the lack of a clear policy and legal framework on IDPs and effective response systems has resulted in ad hoc approaches and uneven assistance and protection. This has been exacerbated by the different categorization of IDPs, namely IDPs affected by the 2007/2008 post-election violence who were profiled or registered in the national database (which has been restricted to the 6,800 households identified from the 2007/2008 post-election violence and formally recognized by MOSSP based on the data collected as of 31 December 2008), and all other IDPs who fall outside this category and are not formally recognized. With regard to registered post-election violence IDPs, the Special Rapporteur found that the protection and assistance extended to them has largely been inadequate, including due to the lack of sufficient or nutritious food, access to adequate shelter, water and sanitation facilities, and other services such as education and health care. In relation to the second category, he found that the large number of IDPs who are neither registered nor recognized have either been entirely excluded from any assistance and protection programmes or have received only sporadic emergency assistance, such as food relief.

³⁵ Ibid.

³⁶ IDMC, “Kenya: Speedy reform needed”, p. 9-10.

³⁷ Ibid., p. 8, 10.

1. Registered internally displaced persons and those assisted as part of Operation “Return Home”

32. According to Government figures, the 2007/2008 post-election violence resulted in the internal displacement of nearly 664,000 persons, 314,000 of whom sought refuge with host communities and were considered “integrated”, while the rest sought safety in 118 camps. In the immediate aftermath of the post-election violence, the Government of Kenya, with the support of the international community, provided emergency assistance to displacement-affected communities in the form of food and non-food assistance, emergency tents, water, sanitation, protection and health-care services. It also provided the 350,000 IDPs who left the camps and returned home as part of the Operation Rudi Nyumbani (or “Return Home”) with assistance during the transition period and until they could re-establish themselves on their farms.³⁸

33. However, at the time of the visit, 4,885 households registered in the national IDP database (out of the initial 6,800), were still living in camps.³⁹ The majority were small-scale business people from areas such as the Nakuru, Uasin Gishu and Eldoret counties, who were not included in Operation Return Home, which had been aimed primarily at the prompt return of farmers in May 2008. According to the Status Report of MOSSP, dated June 2011, there were also 6,978 households who did not own land previously but who organized themselves into self-help groups (registered with the Ministry of Gender, Children and Social Development) and purchased parcels of land by regrouping the individual cash payments received from the Government (K sh 10,000 as start-up capital). These households settled in 20 tented camps. A further group of 2,593 IDP households who returned to Turkana County after having been displaced from various parts of the Rift Valley Province are awaiting resettlement to 1,400 acres (567 ha) of land allocated by the Turkana County Council and Lodwar Municipal Council, and another group of 158 households, still living in eight transit camps, are awaiting the identification of land for resettlement by the Government.⁴⁰

34. The Special Rapporteur had the opportunity to visit the Mawingu and Pipeline IDP camps in the Central Province and Rift Valley Province, respectively. The Mawingu camp is the largest of the self-help IDP camps, with an estimated population of 2,000 households (12,000 persons). The IDPs purchased 160 acres (65 ha) of land by pooling the individual ex gratia Government payments of K sh 10,000. However, because the portion of land was deemed unsustainable for the IDP population (originally 3,308 households), the Government plans to resettle the remaining households. A number of issues touching on food and non-food assistance, shelter, health, sanitation, lack of access to education, and camp management were of concern to the IDPs in the camp. The distribution of food assistance, consisting primarily of maize and cooking oil, was reportedly irregular and the amounts insufficient, and was a source of tension in the camp due to allegations (under court proceedings) by some IDPs that the camp leader had been diverting IDP food supplies.

35. In the focus groups with IDP women, the lack of attention to the nutritional needs of special groups was highlighted, including the lack of supplementary food assistance to lactating mothers, persons taking HIV anti-retroviral drugs (estimated at 250 persons), and the absence of any infant-feeding programmes. Also mentioned was the lack of adequate access to health facilities, and primary education for the children, many of whom reportedly were out of school or could not attend regularly due to hunger and the lack of money to pay

³⁸ MOSSP, “Update on the resettlement”.

³⁹ Meeting between MOSSP and the Special Rapporteur, 20 September 2011.

⁴⁰ MOSSP, “Update on the resettlement”.

for school fees.⁴¹ IDPs, many of whom reported to be suffering from respiratory diseases, such as asthma and pneumonia, were living in generally deplorable conditions in small, worn-out tents which left them exposed to the elements and provided insufficient levels of privacy. In addition to addressing these concerns, the Special Rapporteur also believes that it is necessary to put in place an oversight system in order to ensure the proper management of assistance by camp leaders, and to ensure that IDPs who have invested their ex gratia funds into the purchase of the common parcel of land do not lose these funds and/or their share in the land when they are finally resettled.

36. During his visit to the Pipeline IDP camp, which had a total population of 916 households (approximately 6,000 persons), the Special Rapporteur found IDPs living in similarly deplorable, emergency-like conditions four years on, including: leaking tents; latrines which were full and reported to overflow when it rained; irregular food assistance; lack of access to primary education for most children; and serious health concerns. Some IDPs in the camp reported being repeatedly displaced since 1992. The visit of the Special Rapporteur to the camp coincided with community meetings in the camp by the TJRC, which he was invited to attend. During these meetings, concerns were raised regarding the health of camp residents, including those with HIV/AIDS, respiratory and other diseases resulting from the harsh living conditions, which, according to the IDPs, have led to early deaths, including of young children. It was also reported that many IDPs in the camp who had been injured in the 2007/2008 post-election violence had not received any or adequate treatment, and most still suffered from psychological trauma.

37. Some IDPs also raised concerns regarding the lengthy process of resettlement, and the discrepancies between the local IDP databases and the central database system maintained by MOSSP, which resulted in the names of many “bona fide” IDPs being left out of the resettlement programme. Without proper verification, this group will be considered by MOSSP as “fake” IDPs. The camp had a large number of widowed women, which exacerbated livelihood issues, and many residents had lost personal identification documents during the displacement. In the cases of both the Mawingu and the Pipeline camps, the IDPs did not consider return to their places of origin to be a viable durable solution due to the trauma and violence they had suffered.

2. Non-registered internally displaced persons

(a) *Post-election violence IDPs*

38. The Special Rapporteur is concerned by the de facto exclusion of various groups of post-election violence IDPs from any assistance, protection or durable solutions. These include post-election violence IDPs who did not register by the cut-off date, those whose registration was rejected by the national database due to discrepancies with registration systems at the local level, and the estimated 314,000 “integrated” IDPs who were not profiled or registered and sought refuge in host communities. Although little information is available regarding the situation of integrated IDPs, a large percentage are believed to have sought safety within host communities, with friends or relatives or to have rented their own accommodation in urban areas,⁴² including Nairobi. The Special Rapporteur has received

⁴¹ While primary school is in principle free in Kenya, the lack of sufficient teachers and supplies in schools often results in IDPs being turned away unless they can pay the informal fees required to hire extra teachers or pay for other additional expenses within the framework of the Parents and Teachers Association.

⁴² Victoria Metcalfe and Sara Pavanello, with Prafulla Mishra, “Sanctuary in the city? Urban displacement and vulnerability in Nairobi”, HPG Working Paper, September 2011, p. 5.

reports that more recently some have been forming into groups and coming forward to ask for assistance and durable solutions.

39. Moreover, he believes that the lack of government assistance, protection or monitoring of the situations of these IDPs, particularly vulnerable groups, such as children and female-headed households, has resulted in serious human rights concerns and the lack of durable solutions for many. In the course of his country visit, the Special Rapporteur received reports and had the opportunity to speak to street children and affected families, whose cases illustrate specific vulnerabilities, the lack of durable solutions and the fragility of unsupported hosting arrangements. In one case, the Special Rapporteur interviewed a mother taking care of several children on her own, who had found herself destitute and living in makeshift housing in Eldoret after family hosting arrangements, which had supported her during her displacement, had broken down. Four of the children with her, some as young as 5 years of age, had to resort to living on the street due to hunger, and some lacked any personal identification documents.

40. The Special Rapporteur has also received more general reports of an increase in the number of separated and unaccompanied children, child-headed households, and children connected to the street, many of whom are believed to be IDPs, in a number of towns and cities in the aftermath of the post-election violence, including in Molo, Kitale, Naivasha, Nakuru and Eldoret. In this regard, he was pleased to learn that a street-children profiling project was undertaken in the Rift Valley Province (under the auspices of the national PWGID and its child protection subgroups) in order to identify why children were joining the streets, assess their situation, find durable solutions, and enhance emergency preparedness for vulnerable children ahead of the 2012 elections.⁴³ Findings from the project, as of December 2011, found that 37 per cent of children profiled were IDPs, and that of those, 44 per cent had lost livelihoods, and 97 per cent had dropped out of school. It was also found that of those who entered street life more recently in 2011, 23 per cent cited the drought as the push factor.⁴⁴

41. According to information provided to the Special Rapporteur, the experience of the 2007/2008 post-election violence revealed important gaps with regard to protection mechanisms for internally displaced children, including the lack of a viable system for the identification, registration and tracing of separated children in Kenya. This led to serious concerns in the context of the post-election violence, including with regard to: child-headed households, such as in Molo in 2008, where children as young as 7 years of age were left caring for younger siblings, and exposed to serious protection risks (including survival sex); and children placed in Charitable Children's Institutions (CCIs) across the country, either because they had become separated or because the parents felt unable to secure their safety or provide for them after being displaced. In the case of the latter, children were often handed over to CCI recruiters, with little or no information and procedures, raising concerns about possible criminal intent. Also of concern, was that most of these CCIs were unregistered institutions,⁴⁵ and did not keep accurate records of parents and guardians, making family tracing/reunification difficult. The Special Rapporteur is pleased to note that since 2008, the Government, in collaboration with a number of partners, including the United Nations Children's Fund (UNICEF), has begun to establish mechanisms relevant to separated children, including the national Inter-Agency Database on Separated Children, and that by August 2009, a total of 5,769 children out of 7,010 had been reunified with their

⁴³ Plan of Action: Street Children Profiling in Rift Valley Province, 1 July 2011, p. 11.

⁴⁴ UNICEF, Save the Children, and Kenya, "Profiling of Children Connected to the Street" presentation to PWGID, 13 December 2011.

⁴⁵ Out of an estimated 2,500-3,000 CCIs in the country, only 300 CCIs were duly registered in 2008.

families.⁴⁶ However, he urges the Government, with the support of other stakeholders, to address reports from recent protection assessments in drought-affected areas, such as Turkana and the North Eastern Province, revealing similar child protection problems, and to put in place child-protection preparedness plans ahead of the 2012 national elections.

42. During his visit, the Special Rapporteur met with IDPs who had experienced unassisted and sometimes multiple and secondary displacements, including since the 1990s. In this respect he underlines the compounded vulnerabilities that have affected these IDPs, and in particular vulnerable groups, and the need to address their remaining protection, assistance and durable-solution needs.

(b) *Other categories of non-identified/non-registered IDPs*

43. Other categories of IDPs who have been displaced over the years due to a variety of causes (including natural disasters, conflicts over resources, inter-clan/communal conflicts, and forced evictions due to development and environmental conservation projects) have not been eligible for registration in the IDP database, nor been acknowledged as IDPs in most cases, and received either limited (food aid, for example) or no assistance. While internal displacements due to factors such as natural disasters have traditionally been for short periods, their increased frequency and severity, including due to climate change, point to more chronic situations likely to involve new, more prolonged or definitive displacements – and requiring more comprehensive displacement responses.

44. The figures are telling. For example, while an estimated 16,000 persons were affected by drought and required food aid in 1975, this figure reached 4.4 million during 1999-2001, and an estimated 3.5 million during 2004-2006.⁴⁷ In 2011, a combination of drought-induced crop failure, poor livestock conditions, rising food prices and eroded coping capacities led to a food crisis, rendering 3.75 million people in Kenya food insecure, and to the worst malnutrition records in a decade.⁴⁸ In 2010, an inter-agency mission to Maasai areas found displacement patterns induced by climate change.⁴⁹ Increasingly severe and more frequent droughts, affecting in particular northern pastoralist communities, have eroded traditional livelihood strategies, made such communities increasingly dependent on aid, resulted in conflicts with other communities over resources and encroachment on lands, and forced many to search for new forms of livelihoods, including in urban areas.⁵⁰ However, there has been a tendency in Kenya to consider that these groups are not displaced, since they are by definition mobile. Moreover, increased patterns of encroachment on lands (in search of increasingly scarce water and pasture) belonging to other communities, the commercialization of cattle rustling, and the proliferation of small arms, have led to more frequent and violent conflicts and State-led disarmament programmes, which have framed many of the issues primarily in relation to security and criminality.⁵¹

45. The Special Rapporteur believes that strategies to respond to these increased vulnerabilities, potential new displacements, and current displacement trends already affecting pastoralist communities and others, will need to be more comprehensive and

⁴⁶ UNICEF, report of cumulative progress from April 2008-August 2009, provided to the Special Rapporteur.

⁴⁷ Metcalfe and Pavanello, "Sanctuary in the city?", p. 6.

⁴⁸ United Nations, *Kenya 2012+: Emergency Humanitarian Response Plan* (2011), p. 1.

⁴⁹ OCHA, "Frequently asked questions on IDPs in Kenya", February 2010, p. 2.

⁵⁰ Metcalfe and Pavanello, "Sanctuary in the city?", p. 6.

⁵¹ *Ibid.*; IDMC, "Kenya: Speedy reform needed", p. 8; OCHA, "Frequently asked questions", p. 2.

systematic in the future. These should include: profiling of vulnerable and affected communities, disaster risk reduction, prevention and mitigation of displacement, adaptation strategies (e.g. regarding alternative livelihoods and land use) and development policies that include displacement considerations. Similarly, more comprehensive and precautionary strategies will need to be employed to address intra-city displacement, particularly in Nairobi. While difficult to monitor, displacement within Nairobi, due especially to political and ethnic violence and forced evictions, appears to be significant. In the wake of the last post-election violence, many IDPs fled to the city, but there was also displacement among city residents themselves, who fled to an estimated 34 IDP sites in the city or stayed with relatives and friends.⁵²

46. Forced evictions, primarily by Government for development projects (e.g., transport, slum upgrading projects, or other infrastructure development) and by private landlords, have increased significantly since 2004.⁵³ This has more recently begun to raise concerns, including by the international community, about the humanitarian gap in responding to emergencies and displacement in urban settings, including those relating to demolitions and evictions. For example: no humanitarian assistance was reportedly provided to the 3,025 households displaced following the demolition of the Mitumba slums in November 2011; residents of the Eastleigh slums bordering the military base were rendered homeless; and others displaced from the Kiang'ombe, KPA and Embakasi slums were similarly affected.⁵⁴ Given the estimated 168 informal settlements in Nairobi which house over 2 million people, and the rapid increase in urbanization, mostly into informal settlements due to the lack of adequate low-cost housing,⁵⁵ the Special Rapporteur is concerned by the potential for increased intra-city displacements and homelessness due to forced evictions and urban violence, and the increased risks of tragic man-made (e.g. fires) or natural disasters in slum/informal settlement areas. In addition to the need to respect relevant human rights, internal displacement and eviction standards,⁵⁶ he stresses the need for improved planning and preparedness by the Government in order to ensure an adequate response to the humanitarian impact on concerned populations and clear resettlement plans in advance of evictions.

47. The Special Rapporteur is also concerned by the situation of many forest evictees, who have been displaced due to environmental conservation projects.⁵⁷ During the country visit, he had the opportunity to visit displacement sites of IDPs who had been evicted from the Mau Forest complex in the latter part of 2009, when an estimated 12,000 people were displaced into makeshift camps in the periphery of the forest. That population is now spread over seven IDP satellite camps. In one such camp, the Tiriya camp, with a population of approximately 868 persons, he found that people, who are largely of the Ogiek community, were living in emergency-like conditions, years after having been displaced, under worn-out tents which no longer offer any real shelter from the harsh climatic conditions, receiving small amounts of food aid at irregular intervals, and had no meaningful access to health or educational facilities. According to reports received, the conditions in the other Mau Forest IDP camps were very similar. Like the Tiriya camp,

⁵² Metcalfe and Pavanello, "Sanctuary in the city?", p. 7.

⁵³ COHRE, "Submission to the United Nations" (footnote 16 above).

⁵⁴ IRIN, "Kenya: City demolitions" (footnote 18 above).

⁵⁵ Ibid.

⁵⁶ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/4/18); Committee on Economic, Social and Cultural Rights general comment No. 7 (1997) on the right to adequate housing: forced evictions.

⁵⁷ Including the Sururu, Mau, Eburu, Mount Elgon, Kipkurere, and Emborout forests. Metcalfe and Pavanello, "Sanctuary in the city?", p. 6.

most were isolated, and nearly inaccessible due to the lack of any adequate roads, making it extremely difficult for the IDPs to access services and assistance, and to effectively draw attention to their situation. In order to supplement food aid, women and children relied on obtaining scarce work in neighbouring farms.

48. Focused discussion groups with women in the camp further highlighted: the fact that many children could not attend school at all or on a regular basis due to hunger, the need to work or the inability of families to pay school fees; the dangers of collecting firewood (e.g. attacks by men or animals); the lack of bedding, clothing for children, and infant-feeding formulas (for those unable to breastfeed); maternal and infant health care; and the needs of vulnerable groups and the sick. There were also reports of deaths among children due to the very difficult life conditions, and exposure to cold and rain. The Special Rapporteur stresses that there is an urgent need for humanitarian assistance to address these gaps, and ensure basic life conditions until durable solutions are identified. He further notes that, to date, the residents of the camp had received no compensation or monetary allowances. According to information and documents provided by some families in the camp, members of the community had been evicted under the British administration, and in some cases later sold or reinstated small plots of land by the Government of Kenya, but they had all suffered multiple displacements afterwards.

C. Durable solutions

49. In the aftermath of the 2007/2008 post-election violence, the Government launched Operation “Return Home” in May 2008, five months after the violence had slowed down, in order to close the camps and facilitate the return of 350,000 IDPs back to their pre-displacement areas. The National Humanitarian Fund was established in order to support this process, including through funds for the logistical movements, the reconstruction of homes (households were entitled to K Sh 25,000, or approximately US\$ 350), and the replacement of basic household and farming items.⁵⁸ The wider humanitarian community also provided assistance in the form of, inter alia: non-food items, food assistance, and support to re-establish basic services, such as schools, and the reconstruction of homes in return areas. The programme targeted mostly farmers who owned land they could return to, with a view to effect returns in time for the sowing of the next harvest.

50. Other programmes initiated by the Government (with the support of the international community) to facilitate durable solutions included various initiatives to promote reconciliation and the peaceful reintegration of returnees; programmes providing assistance with housing and livelihoods to returning farmers; and the establishment of new police stations and increased patrols in affected areas. As of February 2011, MOSSP, with the support of the African Development Bank, was still running a four-year project to reconstruct houses in return areas and provide fertilizers and farm inputs to returnees, and a project with UNDP on sustainable livelihoods in violence-affected regions.⁵⁹

51. Despite these initiatives, a significant number of IDPs remained in IDP camps, in transit camps, and in camp-like self-help groups at the time of the visit. They included groups who feared return for security reasons, those who had no land to return to, such as artisans and small-scale business people, squatters, farmers who had been renting land, and others who could not effectively take part in the 2008 Operation Return Home, which was directed primarily at land-owning farmers. This, as well as other factors, sparked

⁵⁸ OCHA, “Frequently asked questions”, p. 3

⁵⁹ Ferris, Mooney and Stark, *From Responsibility*, p. 250.

controversy with regard to Operation Return Home, including criticisms that it favoured land-owning IDPs; that undue pressure and incentives were employed to move IDPs out of camps and to return, raising questions about the voluntariness of returns; and that the operation should have been complemented early on with confidence- and peacebuilding activities in areas of return. There were also allegations regarding the misappropriation of funds from the National Humanitarian Fund.⁶⁰

52. In the course of the country visit, the Special Rapporteur had the opportunity to visit a number of sites of return and resettlement, including Burnt Forest returnee farms in the Lelmolok, Lorian, Ndugulu and Muchorwe areas, and the Giwa resettlement farm. In returnee farms he found that there was often a lack of basic services, such as sanitation facilities, access to water and health facilities; infrastructure such as roads; assistance with livelihoods; and sustained psychosocial services. The lack of teachers, many of whom left the area after the violence, and the inability of families to pay for school fees, were noted in various returnee communities, as well as the situation of vulnerable groups, including significant numbers of widows, who lacked livelihoods and the ability to support their children.

53. In some locations, discussions with affected communities revealed a perception by some that reintegration assistance should assist both host communities and IDPs, that non-farmer IDPs were not assisted despite being poorer, and that important gaps in the profiling and reconstruction process for returnees meant that many had not received assistance to reconstruct their homes. Problems related to the latter were reportedly often due to the fact that when the reconstruction of housing was being planned, receiving families needed to be on site at the location in order to undergo a verification exercise (often undertaken by the construction agencies) as a condition for qualifying for house reconstruction. Potential beneficiaries who were away at the time of verification were thus ineligible for the housing reconstruction, and were still living in tents at the time of the visit.

54. The Special Rapporteur noted with satisfaction the community peacebuilding and reconciliation activities being undertaken at the national and provincial administration levels, and encouraged both the Government and civil society to continue supporting these programmes, many of which may be at risk of being cut due to insufficient funding, but which are critical to the sustainability of durable solutions and the prevention of future internal displacement.

55. With regard to resettlement activities, the Special Rapporteur is concerned by reports regarding the lack of information and meaningful consultation processes undertaken with IDPs and host communities in advance of the actual resettlement. He notes that in many cases, land was reportedly purchased by the Government without any prior consultations with IDP communities, and that in most instances these had not been afforded the possibility to see the site of resettlement, to ensure its viability and security or to become acquainted with the host community, in advance of being moved. He further highlights that a process of consultation and sensitization of host communities is also essential to ensure sustainable solutions and promote a community-based approach. At the Giwa resettlement farm (one of the first sites of IDP resettlement), he found that there was a lack of any sanitation facilities, but was pleased to note that IDPs had access to fertilizers and seeds, had most of their houses reconstructed, in addition to a primary school, and had not been subject to any tensions with the host community.

⁶⁰ Ibid., p. 251-252; Kenya Human Rights Commission, *Tale of Force, Lies and Threats: 'Operation Rudi Nyumbani' in Perspective* (Nairobi, KHRC, 2008).

V. Conclusions and recommendations

A. Conclusions

56. Kenya has experienced repeated waves of internal displacement in its recent history due to political, ethnic and land-related disputes, as well as a number of other causes. Addressing the root causes provoking many of these displacements is essential to the prevention of forced displacement in the future, including the repeated post-election violence displacement episodes that have impacted the country in the last two decades. The Special Rapporteur is pleased to note that under the agenda 4 reforms, the Government is putting in place frameworks, mechanisms and institutions to address the root causes of displacement in the country. However, the Kenyan population is also affected by multiple other factors likely to exacerbate internal displacements, including, *inter alia*: more severe and frequent natural disasters, both sudden and slow onset, due to the effects of climate change and other factors; environmental conservation and development projects; land and resource-based conflicts; and forced evictions, especially in urban areas.

57. Moreover, pre-existing conditions, such as the high percentage of persons living below the poverty line, poor access to rights and services, and important challenges related to governance, render populations less resilient and more vulnerable to internal displacement. The situation of many IDPs currently displaced has revealed these vulnerabilities, important gaps in data collection and institutional responses, and an urgent humanitarian need to address their dire living conditions and human rights. Some of dynamics of internal displacement in the country have also pointed to a risk of multiple and secondary displacements. While the Government of Kenya, with the support of the international community and civil society, has taken significant steps to address internal displacement, the magnitude and variety of internal displacement challenges in the country underline the need for a more concerted, effective and comprehensive response, with a view to resolving current displacement situations and preventing and managing future ones.

58. In view of the above, the Special Rapporteur makes the following recommendations.

B. Recommendations

1. Recommendations to the Government of Kenya

(a) *A comprehensive national strategy*

59. Develop a comprehensive national strategy on internal displacement based on a four-pronged programme and a human rights-based approach, supported by sufficient financial allocations, which includes: the adoption of a policy and legislative framework, consistent with international and regional standards; capacity-building, including in technical aspects such as registration, data collection, and assistance and protection-programme management; prevention and mitigation of internal displacement; and durable solutions.

(b) IDP legislative, policy and institutional frameworks

60. Adopt the draft national IDP policy and the draft IDP bill, and ratify the Kampala Convention at the earliest opportunity. In this regard, ensure that implementing legislation is in place, as well as relevant protocols and guidelines. In line with the above, strengthen national institutional frameworks and coordination mechanisms, including through, inter alia: the allocation of sufficient financial and human resources; capacity-building; strengthening participatory mechanisms for displacement-affected communities; and maintaining inter-agency mechanisms such as the Protection Working Group on Internal Displacement (PWGID). Adopt a national disaster management policy (currently in draft form) and strengthen relevant institutional and coordination mechanisms.

(c) Data collection

61. In cooperation with the international community and civil society:

(a) Develop accurate, efficient and disaggregated data-collection and database/registration systems which are comprehensive and inclusive of all categories of IDPs. Data-collection systems must be timely, adapted to the context, and aim to facilitate assistance, protection and durable solutions;

(b) In relation to IDPs currently displaced but not included in the present registration/database system, undertake at the earliest opportunity a comprehensive data-collection exercise (including data on IDPs uprooted due to post-election violence, natural disasters, and development or environmental conservation projects), with a view to considering how best to identify, assess and respond to their assistance, protection and durable-solution needs, with particular attention to vulnerable groups. With regard to post-election violence IDPs in particular, include in this exercise: vulnerable groups, persons who registered locally but were not accepted in the central data bank, those unable to register before the cut-off date, and those referred to as “integrated IDPs”.

(d) Address urgent humanitarian needs of current IDPs in camp-like and other settings

62. Review and address on an urgent basis the assistance and protection needs of persons currently displaced, with a view to ensuring their immediate humanitarian needs and human rights, until durable solutions are identified. Many IDPs who have been displaced for years and have been receiving inadequate assistance, including in camp-like settings, are living in deplorable conditions likely to have a detrimental impact on their health and general welfare unless their living conditions are improved. In particular, assess and respond to the urgent needs of vulnerable groups, including children, many of whom are too exposed to the elements, at risk of malnutrition, suffer from a variety of diseases, and have little or no access to education. Where IDPs live in remote or difficult-to-access areas, mechanisms should be put in place to ensure regular monitoring and response to their humanitarian situation, and their access to information and participatory processes. A similar exercise to address the urgent humanitarian needs should also be established for IDPs outside camp settings, including for post-election violence IDPs and other IDPs in a particularly vulnerable position, such as separated or unaccompanied children and child-headed households.

(e) Durable solutions

63. Adopt a broader, more flexible approach to durable solutions comprised of resettlement, return and local integration, and which includes but is not limited to land-based solutions, with a greater emphasis on livelihoods, documentation and access to basic services. Ensure that the choice of durable solutions by IDPs is informed, voluntary and safe; that they are provided with a meaningful opportunity for consultation and the opportunity to visit sites of return or potential resettlement before making a decision; and that a process of consultation and sensitization with host or return communities is undertaken in order to ensure sustainable durable solutions and a community-based approach.

64. Strengthen community peacebuilding and reconciliation activities at the national and local levels, with an emphasis on sites of return and resettlement for post-election-violence IDPs. These activities continue to be critical to sustainable solutions and the prevention of future internal displacement. In sites of return and resettlement, address the lack of basic services, such as sanitation facilities. Review and address cases of uneven application of compensation, housing and land allocation to post-election-violence IDPs, and identify potential beneficiaries who may have been excluded for various reasons.

65. With regard to unregistered IDPs, and with the support of the international community and civil society: undertake, on a non-discriminatory basis, programmes to facilitate durable solutions for IDPs, many of whom have been displaced for several years, such as forest evictees; take into consideration the claims of IDPs with a particular attachment to their land and area of origin; and assist non-registered post-election-violence IDPs, including “integrated IDPs”, with outstanding durable-solution needs. Ensure that efforts in the areas of urban planning, national development strategies and land reforms include a cohesive approach to internal displacement issues, and the rights of IDPs. With regard to the latter, consider the establishment of a national land commission.

(f) Prevention and mitigation of internal displacement

66. In addition to peacebuilding and reconciliation activities, continue supporting and strengthening other mechanisms, such as the National Cohesion and Integration Commission and early warning monitoring systems, and put in place contingency plans, as part of preparedness planning in advance of the 2012 national elections.

67. Strengthen overall national capacity with regard to natural disasters (both sudden and slow onset) and the prevention and mitigation of internal displacement, including through enhanced: research; monitoring; disaster risk reduction and early warning; operational and policy responses (for example, relating to livelihoods and food security); and related regional and international cooperation, including in the context of adaptation and responses to climate change.

68. Provide specialized support to urban planning and national or regional development processes, with a view to ensuring these are sensitive to the prevention and mitigation of internal displacement and the rights of IDPs, and adopt eviction guidelines in line with international standards.

(g) Vulnerable groups

69. Ensure that all IDP activities and data-collection mechanisms support assistance to vulnerable groups, including, inter alia: particularly vulnerable groups of women; IDP women more broadly, with regard to protection from discrimination

(for example, with respect to the right to information, participation, documentation, and all entitlements) and sexual and gender-based violence; internally displaced children; the chronically ill; and disabled or older persons. Share Government definitions of vulnerable groups/persons with the national and international response community.

2. Recommendations to the international community

70. Continue to support the Government of Kenya, through capacity-building, technical assistance, financial commitments, and participation in inter-agency IDP mechanisms and processes (for example, the PWGID), with a view to: strengthening national protection and response mechanisms on internal displacement; addressing the immediate humanitarian and protection needs of IDPs; and promoting durable solutions. In close collaboration with the Government and affected populations, continue to support peacebuilding and reconciliation activities, and contingency plans ahead of the 2012 national elections. Ensure the inclusion of IDP-related issues in development programmes of the United Nations and the international donor community. Coordinate closely with the United Nations Resident Coordinator/Humanitarian Coordinator in Kenya, regional mechanisms, the United Nations, and national and international organizations.
