

**FMR – GP10**

# TEN YEARS OF THE GUIDING PRINCIPLES

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# Can the Guiding Principles make a difference in Kenya?

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**Kenya has signed the Regional Pact on Security, Stability and Development in the Great Lakes Region<sup>1</sup> which includes legally binding IDP protection protocols based substantially on the Guiding Principles. Potentially, advocates could use the Pact to enhance efforts to assist those still displaced as a result of violence following elections in December 2007.**

Prior to the most recent bout of violence in Kenya, small steps were being made in pushing the Kenyan government to address long-standing internal displacement issues. A Task Force on Resettlement was set up and allocated some 1.3 billion Kenya shillings (approximately US \$16.5 million<sup>2</sup>) in the 2007-08 financial year to buy land on which to resettle the displaced. While there were serious problems with how the task force and resettlement money were handled, it was a step forward. Ratification of the Pact signified acceptance of the Principles as a framework for dealing with internal displacement.

Some 600,000 people were displaced and around 1,500 killed after the election on 27 December 2007. Many of these people had been displaced on previous occasions. Chronicling previous politically induced

displacements in 1992, 1997 and 2002, the Commission of Inquiry into Post-Election Violence described internal displacement as a “permanent feature” in Kenya’s history.<sup>3</sup>

The National Accord and Reconciliation Agreement signed on 28 February 2008 prioritised dealing with the displacement crisis, mandated an investigation into the post-election violence that caused mass displacement and put together a team to forge a National Reconciliation and Emergency Social and Economic Recovery Strategy. Determined to encourage rapid and premature return, the government announced its intention to close IDP camps situated in stadia and public showgrounds by June 2008. However, IDPs were not adequately profiled or disaggregated into categories according to needs and

as a result of lack of consultation the government failed to recognise the substantial category of people unable or unwilling to return home.

In May 2008, the government launched Operation Rudi Nyumbani (Operation Return Home). To put pressure on IDPs, essential services such as water were cut off – in clear violation of the Guiding Principles. Sums of 10,000 Kenya shillings (approximately \$127) were offered to those who agreed to go back home. IDP associations raised a number of concerns about Rudi Nyumbani, noting the lack of:

- compensation or business support loans
- preparations for security and reconciliation in places of return
- planning for those who did not wish to return or had no access to land
- provision for vulnerable groups such as HIV/AIDs patients and displaced children in foster families and in school

- communication with IDPs about the programme, leaving them with no information about their entitlements.

While some IDPs successfully returned home, many others decided not to return to places where tensions were still high. The Kenyan government claims that over 90% of IDPs have been resettled but it is estimated that up to 220,000 IDPs were still in camps in September 2008.<sup>4</sup> Many IDPs have ended up in urban slums without any formal support. Community-based organisations and already poor community members are absorbing the cost of assisting

10,000 Kenya shillings return grants were, at times, given to perpetrators of violence. Rudi Nyumbani has been narrowly focused on the Rift Valley, while other places like northern Kenya continue to suffer massive displacements with little recognition or assistance.

### The way forward

It was unfortunate that, just as Kenya seemed to be moving towards official endorsement of the Guiding Principles, electoral violence led to such massive new displacement. Without the Principles, however, things would have been worse. Training and workshops have led to wider awareness of the

of the need to embed the Great Lakes Pact into the constitution.

While Kenya has a relatively well-organised National IDP Network and an active civil society, few organisations focus on IDP issues and engage in outreach to policymakers. The UN, donors and regional bodies could do more to stress the Principles in their interaction with the government and to encourage greater public discussion. Capacity building, especially for IDP-focused civil society organisations, is essential.

It is important to challenge the prevailing view among Kenyan policymakers that displacement

issues fall within the realm of humanitarian relief. Over many years this has meant that as episodes of violence and displacement give way to reconstruction the government is left to manage IDP issues. What is urgently needed is sustained policy focus on assisting and reintegrating the displaced through strategic redress, reconciliation and reconstruction initiatives. If displacement is to stop being a recurring theme of Kenyan history, the Guiding Principles, along with the voices of the IDPs themselves, must structure and guide this process.

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- Exchange rate as of November 2008.
- Commission of Inquiry into Post Election Violence, p271. <http://wikileaks.org/leak/wakireport-2008.pdf>
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Bernard Thomas Barrett

Displaced families prepare meals, Elburgon Primary School, near Molo in Kenya, January 2008.

largely neglected displaced people. The Kenyan National Commission on Human Rights has argued that implementation of Rudi Nyumbani involved violations of the Guiding Principles as IDPs were not consulted on resettlement options.<sup>5</sup> UNICEF and the Child Welfare Society of Kenya have noted the rise of child-headed households in urban centres as parents fear for their safety in places of return or abandon them out of desperation at being unable to take care of them.<sup>6</sup> The incoherent application of Rudi Nyumbani lent credence to charges of ethnic favouritism and allegations that the

Principles and the government does claim that its policies are based on recognition of them. Media and civil society are increasingly aware of the Principles and using them to hold the government to account.

Yet clearly much more needs to be done. One of the recommendations of the Commission on Post-election Violence is that the government should create a clear national IDP policy that includes the Guiding Principles as a legal framework. This would be in line with Kenya's obligations under the Regional Pact. It is also important to raise awareness among Kenyan parliamentarians