

KENYA

# “To Live as Other Kenyans Do”: A Study of the Reparative Demands of Kenyan Victims of Human Rights Violations

Simon Robins

July 2011



Cover Image: **IDP tents at Ngiwa Farm camp, Rongai, Nakuru.** IDPs have been living here for almost three years since they fled their homes in parts of the Rift Valley worst affected by the postelection violence in early 2008. Many are still living in tents and lack any means of livelihood

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### **About the Author**

The author has worked with victims of conflict in a range of contexts in Asia and Africa over the last decade, with an emphasis on both the use of ethnographic methodologies to understand how victims' needs and priorities can drive processes to address legacies of violence and on victim mobilization.

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All photographs were taken by the author.

### **About ICTJ**

The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies.

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## ACRONYMS

CJPC	Catholic Justice and Peace Commission
COVAW	Centre on Violence Against Women
FIDA	Federation of Women Lawyers
HRW	Human Rights Watch
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
IDP	Internally Displaced Person
KNCHR	Kenya National Commission for Human Rights
KHRC	Kenya Human Rights Commission
NGO	Nongovernmental Organization
MUHURI	Muslims for Human Rights
TJRC	Truth Justice and Reconciliation Commission
UNDP	United Nations Development Program

## GLOSSARY OF TERMS

baraza	A public meeting (Kiswahili)
haki	Justice, right, lawfulness (Kiswahili)
KSh	Kenya shillings
mandazi	Form of fried bread (Kiswahili)
Mungiki	A Kikuyu politico-religious group, with roots in traditional culture but largely operating as a criminal gang
PEV	Postelection violence
shamba	Cultivated plot, farm or plantation (Kiswahili)
shifta	Term meaning bandit or outlaw, used to define Somali rebels fighting the Kenyan state in North-Eastern
squatter	Illegal occupant of land

## Executive Summary

Reparations are the most victim-centered of the various transitional justice mechanisms that have been used in different post-conflict and postdictatorship settings. In Kenya, early attention to transitional justice has focused on the Truth, Justice and Reconciliation Commission (TJRC). Victims saw the TJRC as the preeminent opportunity to narrate their experiences of human rights violations. However, the TJRC has been plagued by credibility questions owing to its chairman's dubious human rights record. This has significantly negatively impacted the commission's processes, raising victims' apprehensions about its ability to meet their reparative needs and demands. Since then, the investigations and proceedings initiated by the International Criminal Court (ICC) in relation to crimes against humanity that may have been committed during the postelection violence of 2007 have received more attention. Compared to these ongoing mechanisms, there has been relatively little discussion around reparations for victims of human rights violations that were committed during the various episodes of conflict and repression in the country. This study is an effort to ensure both that providing reparations to victims is accepted as one of the main goals of pursuing transitional justice in Kenya and that the outcomes of ongoing and future transitional justice mechanisms are informed by the views of victims. This report is a summary of what victims have described as steps that can be taken to repair the consequences as well as to address the causes of the human rights violations they suffered.

This study was undertaken with the intention of letting victims voice their opinions about the direction of Kenya's unfolding transitional justice processes. Victims were asked to articulate on their own terms the needs that arise from their victimization, without imposing any external vocabulary or framework. This was done through the use of qualitative research methods. Victims were met in individual interviews and through focus groups and were asked to describe the impact of violations and what they believed to be the most urgent steps that should be taken toward providing reparations. The study was conducted in 2010 and used a semistructured approach. Open discussions were held, permitting victims to emphasize their own priorities. Interviews and focus group discussions were conducted in six regions. In total, 376 victims of a wide range of violations participated.

The participating victims spoke of having experienced violations of either (and in some cases both) their civil and political or social and economic human rights. Some were survivors or had relatives who were victims of massacres, extrajudicial killings, and torture committed by both state and colonial security forces. Others suffered displacement as a consequence of interethnic as well as state-sanctioned election-related violence, often accompanied by sexual and gender-based violence. Many were survivors of both violence and displacement as a result of state-sanctioned dispossession from homes, land, and other sources of subsistence; others were victims of historical and ongoing marginalization. An emphasis was placed on the postelection violence of 2007–8 that catalyzed the current transitional justice process, victims of which constituted 44 percent of those met.

Two clear elements emerge from victims regarding their perceptions of what might constitute reparations. There is a backward-looking element that demands an acknowledgement by the state of what victims suffered, the undoing of the violation, and a restoration of the lives they led previously. The second element is forward-looking. The participants sought the cessation of the cycles of violence and conflict in Kenya, expressed their need for security in both their persons and access to livelihood and the assurance of nonrepetition of violations.

Access to the livelihood and sustenance provided by land has been at the center of many of the human rights violations brought up by victims involved in this study. From their perspective, the unjust distribution of access to land has been both the root cause and the

consequence of the massive and systematic human rights violations committed against them. The denial of access to land is often accomplished through violence and force, hence directly violating the victims' physical integrity. This invariably leads to the loss of livelihood or subsistence, hence violating the basic economic and social rights of victims. In other cases, access to land is taken away through corruption or "legalized" land grabbing that disregards the customary and possessory rights of the victims' communities.

Either way, human rights are violated. And in both cases, reparations for harm resulting from the use of force and violence—in the form of rehabilitation and compensation, for instance—may not be enough to repair the damage of violations of social and economic rights, such as the loss of livelihoods and subsistence. If possible, restitution may address some of these harms. But the state's guarantee of their nonrepetition, through measures that protect access to land would be a lasting and meaningful form of reparations.

Victims of violations of all types prioritized issues of livelihood, demonstrating that almost all violations have economic implications for survivors. Victims of the postelection violence who had lost homes emphasized the need for compensation, resettlement, access to land and support for businesses: a home and land or other means of livelihood were the minimum required for life to be restored. The displaced emphasized the need for resettlement and housing assistance above all else. Victims of sexual violence additionally sought medical support and counseling. Victims of state violence, such as the families of those killed in massacres in the northeast, prioritized compensation and prosecutions, seeing both as a route to acknowledgement of harm done. Truth and acknowledgement of violations were considered an essential step to countering histories of denial by the state and to make way for compensation.

A majority of victims met had been following the ICC's engagement in Kenya. They saw this as the essential complement to a Kenyan judicial process that was likely either to never happen or to be fatally flawed. Eighty two percent of respondents did not trust a Kenyan judicial process. Seventy four percent sought ICC involvement in prosecuting perpetrators. The desire to engage the ICC in the violations of which they were victims stretched far beyond the issue of postelection violence, demonstrating that the lack of faith in Kenyan justice went greatly beyond the postelection violence.

In specifying what might be meaningful and appropriate ways to repair the harm done to them, the participating victims identified measures that, in some cases, correspond to the forms of reparations described in the 2005 *United Nations Basic Principles and Guidelines on the Right to Remedy and Reparations for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*<sup>1</sup> (*UN Basic Principles*, for brevity), which are compensation, satisfaction, rehabilitation, restitution, and guarantees of nonrepetition. In other cases, they specified measures—such as livelihood support, peaceful access to agricultural land and natural resources, or the return to their community's settlement—that would require a more fundamental overhaul of social and economic relations among and between Kenyans of different classes and identities.

The recommendations in this report are centered on two goals. The first goal is the implementation of an urgent reparations program that will address the needs of the most vulnerable victims. The second goal is the establishment by the state of a process leading to a more comprehensive reparations program, in which the wide range of violations of civil and political as well as economic and social rights that victims have described are acknowledged and their consequences and causes addressed through a combination of symbolic as well as material reparations measures. In pursuing both goals, the recommendations emphasize the importance of providing victims and survivors the space and attention to express the kinds of views they have articulated in this study.

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<sup>1</sup> UN General Assembly, Basic Principles and Guidelines.



## Introduction

The report is divided into two parts. Part I discusses the context and history of human rights violations in Kenya from the perspective of the participating victims. Part II presents what victims seek in terms of reparative processes.

## Reparations and Transitional Justice

In international law, “reparation” first referred to the obligation of a wrongdoing state to redress the damage caused to another state.<sup>2</sup> In dealing with harm to individuals and groups other than states, the concept of reparations adheres to the same principle, obliging the perpetrator to repair the harm caused to the victim of a human rights violation, war crime or crime against humanity; but, as stated in the *UN Basic Principles*, the state has a greater role in fulfilling the victim’s right to reparations. Under those guidelines, for example, the state “should endeavor to establish national programs for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.”<sup>3</sup> In some postauthoritarian and post-conflict states, administrative reparations programs have been recommended or implemented to address victims’ needs, combining material, symbolic, individual as well as collective forms of reparations.<sup>4</sup>

The *UN Basic Principles* propose a typology of reparations consisting of: (a) restitution, which is meant “(to) restore the victim to the original situation” before the violation was committed; (b) compensation “for any economically assessable damage” that is “proportional to the gravity of the violation”; and (c) rehabilitation, which “should include medical and psychological care as well as legal and social services.”<sup>5</sup> These three types are generally meant to address many of the immediate, present and long-term needs of victims or their families.

In addition, the *UN Basic Principles* speak of satisfaction and guarantees of nonrepetition as types of reparations. These measures can be combined with the other types in a reparations program, but even when they are not, they can have reparative impact. Satisfaction can include official apologies, criminal prosecution and truth seeking, while guarantees of nonrepetition can range from reforms in the security sector or the judiciary to broader institutional reforms that might include, for example, constitutional changes such as those recently adopted in Kenya.

The reparations programs carried out in postauthoritarian Chile and Argentina as well as programs implemented after World War II by Germany, the United States (with respect to detained Japanese–Americans), and, more controversially, Japan (for victims of female sexual slavery) consisted of compensation and varying measures of restitution and rehabilitation. These countries could afford the cost of reparations and possessed the administrative and technical capacity to implement and maintain the different programs offered to victims. These were the paradigmatic programs that formed the basis for the drafting of the *UN Basic Principles* before they were finally adopted in 2005.<sup>6</sup> Since then, however, the contexts in which reparations and other transitional justice mechanisms have been considered have included post-conflict developing countries such as Sierra Leone,

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<sup>2</sup> Permanent Court of International Justice, *Chorzów Factory ruling*.

<sup>3</sup> UN General Assembly, *Basic Principles and Guidelines*, par. IX (16).

<sup>4</sup> For a general discussion on reparations in transitional justice, see Magarrell, “Reparations in Theory and Practice.”

<sup>5</sup> *Ibid.*

<sup>6</sup> For a discussion of reparations in contexts after the *UN Basic Principles* were adopted, see Carranza, “Right to Reparations.”

Liberia, Peru, Morocco, Nepal, and Timor-Leste. In these contexts, it would have been difficult to insist on the traditional approach to transitional justice, which is narrowly focused on physical integrity and civil and political rights violations. As in Kenya, the cycles of conflict and repression in these countries are inextricably linked to deeply entrenched social and economic inequality as well as to economic crimes, despoliation, and grievances over lack of access to land. Recognizing those factors, the mandates and reports of the truth commissions in some of these countries dealt with the root causes of conflict and proposed social and economic reforms that went beyond assigning responsibility for crimes, violence, or abuse.

But it is in the area of reparations where the dilemma of applying a transitional justice paradigm detached from the social and economic relationships among citizens, elites, and victims may emerge, as it might in Kenya. If the transitional justice mechanisms in Kenya that could lead to reparations become too focused on, say, the violence that followed the 2007 elections or the abuses committed by police officials against rival ethnic or political groups, then the reparations measures that follow from those mechanisms may end up ignoring the causes and consequences of those periods of violence and episodes of abuse.

Reparations are the one mechanism of transitional justice that should be intrinsically victim-centered, and such efforts will fail to be reparative if victims' needs are not considered. Whilst the rights of victims as outlined in legal instruments create reparative obligations for the state, victims' needs as they express them must drive the form that those reparations take. The *UN Basic Principles* are clear in stating that reparative processes must consider the impact of violations: "reparation should be proportional to the gravity of the violations and the harm suffered."<sup>7</sup> This is an acknowledgement that the needs victims articulate must play a role, and this drives the methodology of this study, in which victims are asked to define their reparative demands.

This study has asked victims of a wide range of rights violations in Kenya to articulate their demands for reparations on their own terms. Many of those met were unaware of their right to reparations, and as such victims' demands are constituted not in terms of restitution, compensation, rehabilitation, satisfaction, and guarantees of nonrepetition, but on the basis of perceived needs that emerge from their everyday lives.

## The Context of This Report

Kenya's transition has been characterized by a process through which the democratic space has been enlarged over a period of almost two decades, initiated by the move to multiparty politics in 1991. This process was then catalyzed by both national and international responses to the violence that followed the December 2007 elections, which led to 1,113 deaths and the displacement of an estimated 660,000 Kenyans.<sup>8</sup> This transition is perhaps most clearly exemplified by the writing of a new constitution, which was promulgated, following approval by referendum, in August 2010. While the 2007 postcrisis period has been accompanied by a number of efforts to address Kenya's violent past, domestic transitional justice processes remain limited.

As part of a National Dialogue and Reconciliation process following the 2007 election-related violence, the government appointed a Commission of Inquiry into Post-Election Violence, known as the Waki Commission (after its widely respected chairman, Justice Philip Waki). The commission produced a comprehensive report in 2008 in which it reported reasonable grounds to believe that crimes against humanity occurred. The

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<sup>7</sup> UN General Assembly, *UN Basic Principles*, par. IX (15).

<sup>8</sup> Waki, *Report of the Findings*, 341; Ministry of State for Special Programmes (MOSSP), "IDP Status Brief." While the Waki report confirmed 350,000 IDPs passing through camps, the MOSSP counted an additional 314,000 "integrated" into communities around the country, making a total of over 660,000 persons displaced following the December 2007 elections.

commission confidentially drew up a list of the names of those with greatest responsibility for the violence and recommended that a special tribunal be established to try such suspects. Following the failure of parliament to create such a tribunal or to initiate credible domestic investigations and prosecution of the alleged perpetrators of the postelection violence, in March 2010 the prosecutor of the ICC opened investigations into the occurrence of crimes within the court's jurisdiction. The ICC prosecutor sought for summonses against suspects on December 15, 2010, and the Pre-Trial Chamber named the six suspects in March 2011, all prominent Kenyans, including three government ministers. These developments have been followed closely by ordinary Kenyans. Parliament's initial response to the ICC action was an overwhelming vote for Kenya to withdraw from the Rome Statute. While this vote was never actualized, it was followed by similarly strong reactions, including an African Union resolution supporting a deferral by the United Nations Security Council of the cases against the six suspects, and most recently, an application by the government of Kenya challenging the ICC's jurisdiction to try the suspects. Given that two of the six persons charged are potential candidates in the 2012 presidential elections, the ICC case has become highly politicized.

The new constitution, which was promulgated in August 2010, contains provisions that should serve to strengthen the judiciary and increase its independence. It includes a Bill of Rights covering a range of political rights, rights to property, and basic social and economic rights,<sup>9</sup> all of which have implications for a reparations process. In many cases, it is exactly these rights that have been violated, either directly or as a result of other violations, and so it can be argued that a reparative process is mandated by the constitution through its obligation on the state and all its organs to observe, respect, protect, promote, and fulfill these rights.<sup>10</sup>

In November 2008 a TJRC was established by parliament with a mandate to investigate human rights violations that occurred between December 12, 1963 (when Kenya gained independence) and February 28, 2008 (when a power-sharing agreement was finalized). The mandate of the TJRC includes establishing a record of violations of human rights and international humanitarian law and their causes, and determining those responsible. The commission's mandate also includes recommending prosecutions and "determining ways and means of redress for victims."<sup>11</sup> The commission has, however, been gripped by crisis since its inception, notably around its chairman, who was eventually forced to step aside and has since come under investigation for alleged complicity in and linkage to past human rights abuses. The TJRC has collected statements from victims and witnesses of human rights violations and begun public hearings, but both its credibility and financial position remain unclear. Consequently, civil society has largely distanced itself from the TJRC while donors have largely declined to provide financial support to the institution. The prevailing situation poses a critical obstacle to and has raised victims' apprehensions about the TJRC's ability to deliver on its reparative mandate.

Limited forms of assistance to victims, unaccompanied by any measure of accountability, truth seeking or acknowledgement that the recipients are victims of human rights violations, have been offered. For example, some of those displaced by the violence following the 2007 election have received payments of KSh 10,000 and 25,000 (approximately US\$117 and \$293, respectively), provided for "basic needs" and for "reconstruction" following return to their homes. The government has also resettled some displaced victims in alternative settlements and supported the reconstruction of homes for victims who returned to their farms after the violence.<sup>12</sup> These measures have been characterized by the government as "assistance," and have been criticized by victims for

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<sup>9</sup> Constitution of Kenya, art. 43.

<sup>10</sup> *Ibid.*, art. 21(1).

<sup>11</sup> Parliament of Kenya, *Truth, Justice and Reconciliation Act*, part II: 4(l).

<sup>12</sup> See the United Nations Office for the Coordination of Humanitarian Affairs, "Kenya Humanitarian Updates."

being far from comprehensive—with only a “small percentage” of internally displaced persons (IDPs) having received them—and for their ethnically divisive and politically motivated distribution. The failure (or unwillingness) to frame this assistance within an overall state policy to encourage truth seeking, hold perpetrators accountable and assure victims that their experiences will not be repeated means that the government has not taken any responsibility for what the victims have suffered.

Some victims of violations under previous regimes have pursued redress through the courts. A number of victims of torture by state forces at Nyayo House during the Moi regime in the 1980s have been awarded damages by final judgment.

The processes initiated in response to the postelection violence of 2007 and 2008 have brought to the fore Kenya’s human rights history and the failed attempts at dealing with impunity. This includes the Akiwumi Commission, which reported in 1999 on interethnic violence in various parts of the country between 1992 and 1997,<sup>13</sup> and the Ndung’u Commission on the illegal allocation of public land, which reported in 2004.<sup>14</sup> The public’s great cynicism toward these inquiries comes from the failure of previous governments to act on the outcomes of these processes or to even officially acknowledge the harm and losses suffered by their victims.

This study seeks to use this time of transition to draw attention to the victims from these different episodes of massive and systematic violations. Often, advocacy around issues of transitional justice in Kenya has been narrow, with reparations little discussed and victims’ views rarely heard. Here, victims’ needs are articulated such that they can impact on the emerging processes on the transitional justice agenda.

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<sup>13</sup> Akiwumi, Report of the Judicial Commission.

<sup>14</sup> The Ndung’u report remains unavailable to the public.

## A History of Violations and Their Impact

Here, the history of rights violations in Kenya is briefly reviewed and the range of impacts on the lives of victims summarized using the words of victims as recorded in the data of the study.

### Human Rights Violations in Kenya

Since the founding of Kenya as a colonial possession of the British Empire, violations of fundamental rights have characterized the daily experience of ordinary Kenyans. British settlers were allocated lands that disenfranchised those who had occupied them for centuries, in the process creating both the concept of the “squatter”<sup>15</sup> and laying the foundation for intertribal grievances whose political exploitation continues today. Resistance to British rule and repression of the Mau Mau liberation struggle in the 1950s led to years of extreme and systematic abuse of the Kikuyu population.<sup>16</sup> The land issues that fueled such resistance have continued to impact Kenyans.

Land lies at the root of many of the violations discussed here, whether in the context of colonial-period conflict or in postcolonial periods of repression and violence. The space most vulnerable to land grabbing has been public land,<sup>17</sup> which has been stolen on a vast scale, particularly in the multiparty era, and has been used as a tool of political patronage around elections.<sup>18</sup> In Coast Province, where there is a history of a lack of formal land registration, this has led to well-connected outsiders grabbing prime plots and has stoked resentment of “upcountry” people. Settlement schemes, designed by the government to give the landless access to land, have been corrupted to permit those administering the process at various levels to award themselves, relatives, and friends large plots. At the apex of this structure of land grabbing have been the three postindependence presidents of Kenya, who have each accumulated huge estates, demonstrating that such violations emerge as a result of poor governance, corruption, and political power unconstrained by an independent judiciary.

Independent Kenya’s first significant security threat came from the so-called shifta wars, when secessionist Somalis from North-Eastern Province, supported by neighboring Somalia, fought for separation. The legacy of that conflict, which ended in 1967, was a deep mistrust between the government and Somali Kenyans that facilitated both a series of horrific violations by Kenyan security forces and the long-term marginalization of the entire Somali Kenyan community.

Worse, the damaged relationship of Somalis to their state has resulted in the continuing marginalization of their community and region. Ethnic Somalis face problems in merely receiving the identity cards that confirm their citizenship,<sup>19</sup> and they experience low levels of development and access to services that resemble nowhere else in the country. Violations of civil and political rights in the region have persisted under the current government. The Mandera incident of 2008, in which hundreds were physically abused,<sup>20</sup> left many Somali Kenyans perceiving that a consequence of the systematic and sustained violation of social, economic and cultural rights is an atmosphere in which state violence against the community can persist.

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<sup>15</sup> A squatter is a person living on land to which he or she does not have rights.

<sup>16</sup> Elkins, Britain’s Gulag.

<sup>17</sup> Both government land and trust land, held by county councils.

<sup>18</sup> Southall, “The Ndung’u Report.”

<sup>19</sup> Kenya National Commission for Human Rights, *An Identity Crisis?*

<sup>20</sup> Human Rights Watch, “Bring the Gun.”

That violations were committed in the northeast, at least during the conflict period, appears to have been indirectly confirmed by the Kenyan authorities through the passing of the Indemnity Act of 1972, which institutionalized impunity for offences committed in the northeast<sup>21</sup> between 1963 and 1967. The almost complete absence of accountability in Kenya for such violations has ensured that all arms of the state apparatus continue to repeat such behavior.

Torture and ill-treatment of those detained have occurred systematically in every regime of the postindependence era,<sup>22</sup> and remain routine in police custody. In particular, the Moi regime was responsible for illegal detention and torture of its opponents, most notably those held in the government-owned Nyayo House building. The police have continued to commit the most extreme violations including extrajudicial executions on a large scale, with hundreds of such cases concerning *Mungiki*<sup>23</sup> suspects reported in Central Province in recent years and evidence of high-level political complicity in these killings.<sup>24</sup>

The crisis of 2007–8, following the election of December 2007, triggered the ongoing transitional justice process. While centered in Central Province and the Rift Valley, ethnic violence around elections has also occurred in Coast and Nyanza Provinces and in Nairobi. The violence of 2007–8 had an ethnic component everywhere it occurred, with the greatest levels of violence seen in the Rift Valley. In many cases the police either took a passive role or actively participated in violence. In Kisumu, the majority Luo population was attacked by police using live ammunition, apparently as an ethnically driven response to the election situation.<sup>25</sup>

In addition to more than 1,100 deaths and a huge wave of sexual violence, hundreds of thousands were displaced throughout the country, leaving homes that were often destroyed and looted as their occupants fled. The violence also spread to the densely populated informal settlements of Nairobi, driving displacement to ethnically defined neighborhoods. The violence that followed the election—apparently incited by members of parliament and other politicians and either tolerated or fueled by members of the administration and security forces<sup>26</sup>—led to the destruction of the homes and livelihoods of hundreds of thousands of Kenyans, displacement on a massive and unprecedented scale, and to rape, disability, and death.

The experience of victims of postelection violence revealed in this study shows that its victims perceive nothing inevitable about the interethnic tensions that drive it: these tensions are created in communities at election time by leaders who seek to use them for political advantage.

[The Minister] instilled something bad in those people and they had been fully and completely armed. . . . The Chief and his administration police were moving around on top of a pick-up. They were the ones directing the houses belonging to Kikuyus that should be burnt. When I saw that it was the Chief that was directing

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<sup>21</sup> Section 3 of the *Indemnity Act* states that, “No proceeding or claim to compensation or injury shall be instituted or entertained by any Court or by any authority or tribunal established by or under any Law for or on account of or in respect of Act, matter or thing done within or in respect of the prescribed area, after the 25th December 1963 and before 1st December 1967. . . . If it was done in good faith or done in execution of duty in the Public interest by a Public Officer or member of the armed forces.” The “prescribed area” also covered the island of Lamu and the Tana River.

<sup>22</sup> KHRC, *Surviving after Torture*, 18–26.

<sup>23</sup> The Mungiki are a Kikuyu politico-religious group, often called a “sect,” and an illegal criminal organization, banned in Kenya, with roots in traditional culture but largely operating as a criminal gang. They are strongest in Nairobi’s slums.

<sup>24</sup> Kenya National Commission for Human Rights, *The Cry of Blood*.

<sup>25</sup> International Crisis Group, *Kenya In Crisis*.

<sup>26</sup> Waki, Report on Post-Election violence.

which homes should be burnt I knew that things were bad. (IDP, Camp in the Rift Valley)

This observation is confirmed by the fact that such violence has reoccurred consistently around election time, but rarely otherwise. The violence of 2007–8 was only the most recent and most serious of such postelection violence, with violence and displacement occurring in 1992, 1997, 2002, and in some areas around the referendum of 2005. While civilians are the principal authors of violence around elections, these occurrences do not simply represent the failure of the state to protect its people. In fact, institutions of the state and members of the administration have actively incited such violence.<sup>27</sup>

Sexual violence, used as an additional tool to terrorize and dehumanize victims, has accompanied almost all of the violations discussed here. In postelection violence, women from targeted ethnic groups have been raped by gangs of men, usually armed; in the northeast during security operations and accompanying the mass killings of the 1970s and 1980s, rape by members of the security forces appears to have been widespread. Women are also more likely to be the victims of a range of violations, such as displacement, as well as the indirect victims of violations that target men, leaving women alone to bring up children. In many of the communities studied, women are marginalized by cultures that exclude them from many aspects of political, economic and social life, representing systematic violations of women’s rights.

## Victims’ Experiences of Rights Violations

Here, the words of victims are used to make clear how lives have been transformed by repeated and systematic patterns of violation of the complete range (civil, political, social, economic, and cultural) of fundamental rights. Table 1 summarizes the range of violations to which victims met for the study reported being exposed.

**Table 1. Violations reported by those met for the study in interviews and focus groups; in many cases multiple violations are reported. The fourth column indicates the total number of victims in the focus groups where these violations were reported.**

VIOLATION	INTERVIEWS	FOCUS GROUPS	
	NUMBER OF VICTIMS REPORTING VIOLATION	NUMBER OF GROUPS REPORTING VIOLATION	NO. OF PARTICIPANTS IN GROUPS WHERE VIOLATION REPORTED
Killing and disappearance: state	17	8	67
Killings: other	4	5	42
Displacement	15	16	127
Serious injury/disability	7	5	34
Eviction/loss of land	3	12	102
Loss of property	20	19	145
Torture and beatings	11	6	53
Sexual violence	3	3	27
Marginalization	4	3	26

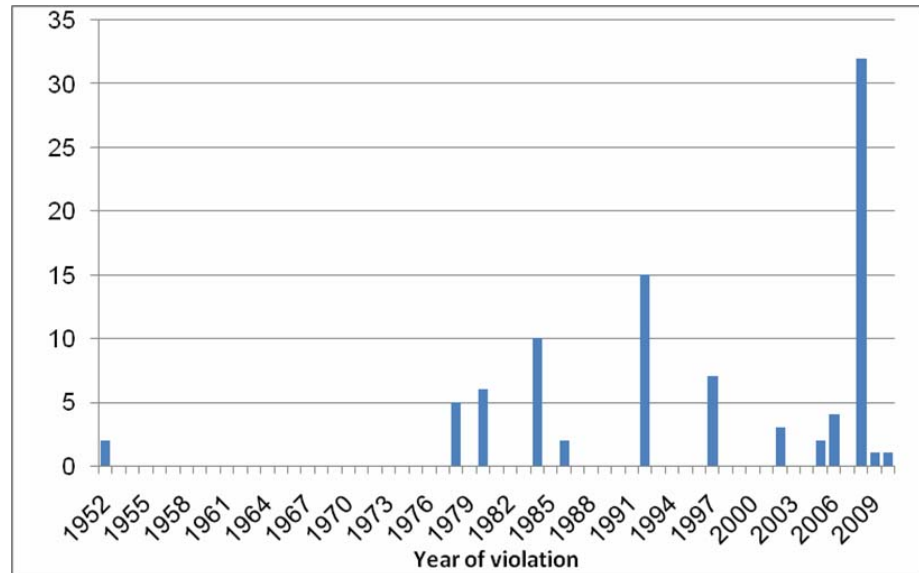
The year in which the violations reported by victims who were interviewed occurred is shown in Figure 1 . Peaks can be seen in years corresponding to violence around elections

<sup>27</sup> Ibid.; Akiwumi, Report of the Judicial Commission.



(1992, 1997, 2007–8), as well as those years corresponding to the Malka Mari (1978), Garissa (1980) and Wagalla incidents (1984) in North- Eastern. The earliest point represents victims of anti-Mau Mau repression.

**Figure 1. Year of violation for those met in the study.**



**Figure 2. Perpetrators of violations**

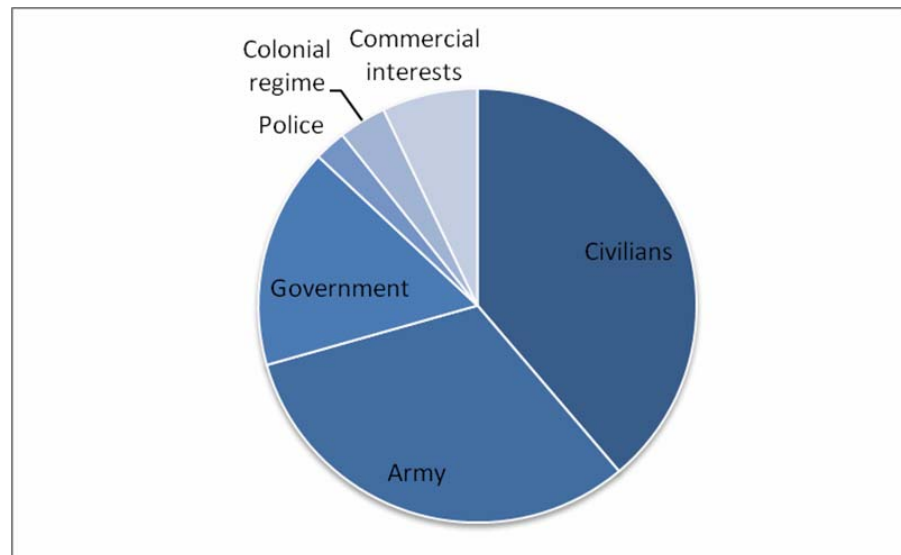


Figure 2 shows perpetrators of violations, as reported by victims. These categories were defined based upon what respondents reported:

- “Civilians” refers to those violations perpetrated by individuals with no formal relationship to the state, most notably those mobilized on an ethnic basis around postelection violence.
- “Police and Army” refers to violations ascribed by victims to these arms of the security forces, respectively.



- “Government” refers to violations perpetrated by Kenyan authorities but not linked to security forces; this notably includes land violations, the responsibility for which lies with national and local administrations.
- “Commercial interests” refer to violations where victims perceived that business was largely responsible; this refers to loss of land to and despoliation of natural resources by commercial enterprises. In most cases it is likely that the Kenyan Government at various levels was also complicit.

### **Postelection Violence Committed by State and Nonstate Actors**

This section describes violence, largely interethnic in nature, that has consistently occurred around elections in Kenya since the advent of multiparty politics. The violence following the December 2007 election was the most extreme of its type, resulting in killings and rape on an unprecedented scale, as well as the widespread destruction and looting of property, but characterized in most victims’ experience by displacement driven by the violence.

I even saw a family with a mother who had delivered the previous day trying to flee, but they caught up with them. They were asked if they thought whatever they carried was important and were asked to put down that infant and it was hacked into two. The infant’s brother was also hacked to death. They then stripped the man of his clothes and chopped his private parts, then forced the wife to eat it. They then put a mark on them; they would put a mark on whoever he killed because for every person killed the murderer earned 1,000 KSh, so they would try to kill as many people as possible; the more one killed the more he earned. (IDP, Nyanza)

I had been married to a Kalenjin; they told me that they were not going to leave me. I was shocked when many Kalenjins pulled me, many Kalenjins. . . . They told me that they did not have any use with Kikuyus. They began raping me. When the sixth person was raping me I screamed. . . . When I screamed, that is when men came. Young Kalenjin men came first. When they saw that it was a Kikuyu they begun beating me. (IDP, camp in the Rift Valley, raped by relatives of a government minister)

Large-scale displacement that has often become permanent has characterized such violence. In this study IDPs were met who remained living in camps and tented accommodation almost three years after the violence of early 2008, and others considered “integrated” who are living as part of communities, often staying with family members or renting modest homes.

A minority has been resettled by the authorities, most often given pieces of land and in some case assisted building houses. Some victims were met who had fled their homes during the violence and had returned, often living with the fear of future violence. Perhaps the greatest impacts of the violence were on families who had a relative killed or disabled, while many had seen homes and all their belongings stolen or destroyed, often including the small businesses that sustained them.

I did not think that I would ever go back to my home again, because when my home was burnt and I did not have a husband to restore even a small home so that I could go and live there, and my business has been burnt. You see I was nowhere. I seemed like a person who had lost the sky and the ground. (Victim of postelection violence [PEV], Rift Valley)

We had come together as women to bring together the affairs of the home but our houses were burnt, our husbands were killed. We were left without husbands and without houses. (Victim of PEV, Rift Valley)

### Human Rights Violations by the State

The largest-scale violations by the state reported by victims in this study were committed in the northeast by security forces, and were characterized by large-scale killing of civilians. These include the massacres at Garissa and Wagalla in the 1980s, and the largely undocumented killings at Malka Mari in 1978.

I lost my entire family in the [Wagalla] incident; my father, my brothers, maternal uncles and their children and paternal uncles and their children. I was raped that day and they took everyone in the neighborhood . . . and then tortured them, killed them brutally and disposed of their bodies in different places. (Family member of victims of Wagalla massacre, Wajir, North-Eastern)

Some got burnt in their houses while sleeping, they were killing and hiding the bodies, they used a tractor to push the dead bodies, burying some in the bushes, maybe some people were buried alive, who knows. Some were thrown in the river, they were in a hurry killing and disposing of the bodies. (Family member of victims of Garissa massacre, North-Eastern)

As we were milking the cows, the army men came for me. They beat me up thoroughly: they hit me on the head with a club, my head was swollen. They also kicked me and stepped on me, my hands were also swollen. My neck was on fire. It was like my whole body was set on fire. They took the other lady. She was a young lady of marriageable age. I searched for her for seven days. I finally found her dead with no bruise or scar on her body. There was a lot of water on her. I think they raped her before she died. . . . We also came across 73 bodies. Their heads were smashed using a huge piece of rock. (Victim and witness of Malka Mari incident, North-Eastern)

These violations, which were accompanied by killing of the livestock that sustained the pastoralists of the region, devastated livelihoods and forced many to give up their traditional nomadic lifestyle.

The targeting of political opponents of the government has been a common tactic for much of Kenya's independent history. Persons illegally detained and tortured in Nyayo House described the treatment to which they were subject:

It is so agonizing; agonizing in the sense that the torture, the intimidation—many times you are stripped naked before 10 to 15 men and women. Imagine that situation: you are dehumanized. . . . In the interrogation there is a lot of beating with all sorts of weapon, you name it. . . . You are blindfolded, taken back to the cells on the ground floor and put in a cell. And in that waterlogged cell you are hosepiped with cold water. (Victim of torture at Nyayo House)

Others held at Nyayo House reported beatings and being burnt with cigarettes.

Illegal detention and disappearance persist in Kenya. A number of wives were met in Central Province whose husbands were last seen with the police, and who remain disappeared:

It was in November 2008 when my husband had come to visit here in Nyeri, and he was called by a police inspector who was from Othaya who told him that he wanted to meet with him. When he went he told him where they would meet here

in Nyeri town. He went and bought him a bottle of soda and they stayed there talking and then after a while personal vehicles came and they entered. . . . He was forced to get in, but the inspector did not get into that car and he went back to town and it is two years now and we haven't seen him since. (Wife of disappeared man, Central)

### **Sexual and Gender-Based violence**

Almost all the violations reported in this study were accompanied by sexual violence against women, most notably by state forces against the Somali population during security operations and as part of postelection violence by gangs who selected victims by their ethnicity. It appears that such assaults are seen as a constituent component of any attack targeting a particular community, by both security forces and ethnic gangs. Such violations appeared to have been widespread during both security force operations and civilian violence, such as that following the December 2007 election.

I was trying to escape to Afraha Stadium when 12 men surrounded me. They told me to put the entire luggage I was carrying down, then they burnt all of it, then started raping me. One held my legs, the other my hands, with the rest raping me in turns until I lost consciousness. I was later carried to the hospital by Good Samaritans. After being medically examined I was taken to Afraha Stadium where gradually I came around to remember what had happened. I was violated so much until I still have pains under my belly and am also HIV positive as we speak. (Victim of postelection sexual violence, Rift Valley)

My husband fled in another direction and left me with these people who carried me to an old house, where they cut my underwear using their machetes and then started raping me. I was being raped and yet I had come from an operation not long before that day. (Victim of postelection sexual violence, Nyanza)

Sexual violence against women has also been reported during the Mau Mau resistance to colonial rule, and is currently part of a case being brought against the United Kingdom government in a British court.<sup>28</sup> Cases of forced circumcision or male castration reported during the 2007 election-related violence were used as a means of dehumanizing and humiliating victims belonging to an “uncircumcised” ethnic group.

### **State Failure to Protect**

In addition to the numerous violations directly perpetrated by state actors, violations have also arisen as a result of the failure of the state to protect citizens from harm inflicted by nonstate actors.

The following narrative comes from a member of the Ilchamus ethnic group. They were entirely displaced from their traditional lands by the Pokot using force of arms.

We lost a lot of property. They took our goats, cattle and killed 63 of our people. Others who sustained injuries are still at home, with many yet to recover and some just from hospital the other day. . . . The biggest problem is that those who sustained injuries are not the old but the young people, between the ages of 14 to 20 years, who are at the most productive stage yet are now unable to stand on their own because of the fighting. . . . Our homesteads were demolished and everything including iron sheets taken, leaving us with nothing. But we still strive to go back there as we have no other home apart from that. (Ilchamus community member, Rift Valley)

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<sup>28</sup> *BBC News*, “Kenya Mau Mau veterans to Sue UK”; High Court of Justice, Claim No. HQ09X02666.

In Central Province, state actors actively conspired with criminal elements, ultimately prompting the creation of vigilante groups that took the law into their own hands.

The gangs like the Mungiki gave the chief and the police at the station the money they had collected. We even knew how they operated. The money that was collected during the weekend would be handed to the chief and the police officers on Sunday, and the money would trickle down from the high offices to the offices down at the end of the command. . . . Some people have fled because they have nowhere to turn to for justice since corruption coupled with other vices have gripped the relevant authorities. (Community member, Kirinyaga, Central)

Many of the land-related acts of violence, including those in which political influence was used in land grabbing and forced displacement, can be characterized as a state failure to protect. In practice, however, land is grabbed by and for the benefit of those with senior positions in the local and central administrations and those for whom they offer financial or other benefits.

### **Marginalization and the Denial of Social and Economic Rights**

The combination of land grabbing, forced displacement, and overall marginalization has become a fact of life for many communities in Kenya. One consequence of these violations has been the effective denial of social and economic rights—such as the rights to health, education, and adequate food, housing, and clothing—guaranteed both by the International Covenant on Economic Social and Cultural Rights and the 2010 Constitution of Kenya.<sup>29</sup>

The impact of marginalization has been particularly prevalent among those who have continued to pursue traditional livelihoods such as pastoralism or hunting and gathering. In many cases, what those individuals considered their traditional lands have been substantially or entirely taken away over the last century.

I wonder how we the Ilchamus will fit into the Vision 2030 plan they keep talking about. How can we talk about Vision 2030 yet we don't even have good roads and hospitals? That is just a dream that will never be realized. We feel we have been left behind by the others in the country. (Ilchamus community member, Rift Valley)

Additionally, entire provinces, notably North-East and Coast, are marginalized through the discrimination they face, the lack of services relative to the rest of the country, and the perception that economic and political control in their regions lies with outsiders.

The Kenyan government made the Somali second class citizens, and when they were killing us they treated us that way—not like citizens. So that is when the Somali community was labeled bandits, and we have not been relabeled since. Our community is marginalized and the infrastructure is very poor in this region; this shows how the government is treating us as outcasts, not Kenyans. (Focus group participant, Wajir, North-Eastern)

Coastal people don't have control of this region. They have political control, led by sycophants but they don't have economic control of this country. You go to any government department here in the Coast Province it is overwhelmingly in the hands of outsiders, Kenyans, yes, but people not from this region. (Human rights activist, Mombasa)

The impact of marginalization is most often felt in terms of land, an area of life that is crucial to the vast majority of Kenyans. This is an issue throughout the country, but here

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<sup>29</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights.

cases from Coast are emphasized, since land-related problems there are most extreme. This is a result of the overlapping histories of a complex colonial past, a lack of title deeds, the recent expiration of 99-year deeds, and the high value of much land to tourism and industry.

Poor groups or communities are not viewed as important. That is the reason why thousands of people are evicted from a piece of land to pave way for it to be occupied by just one rich individual. From 1963 to date, most people in Coast do not have title deeds for the land they occupy. You may have heard about an area in Junda where 500 people were evicted to make space for just one person to settle on a piece of land. It seems the Coast people are seen as being worthless of owning any land. (Political activist, Mombasa)

Eviction is carried out, often with violence, by the state, with police enforcing judgments. In many cases, police are supported by private security forces hired by those taking control. (See the section “Impact of Loss of Land” on page 36). The communities that were met for the study had either been evicted and were struggling to survive in illegal occupation elsewhere (as squatters), or were fighting to maintain their residences in the face of the powerful and politically connected forces ranged against them.

We were born and brought up there, and we were living there until the 1960s when the white man evicted us and we fled into the forest. Some of us scattered to Chepalungu and some went to Lenguruone but we went back to the Kipuerere forest and stayed there until 1978, when the government evicted us from there, and once again we scampered for safety in the forest. (Ogiek elder, Rift Valley)

The impact of eviction for agriculturalists is a complete loss of livelihood: entire communities are forced to leave their traditional homes and often survive as casual laborers on others’ farms. The most extreme examples are of historical injustices that have seen entire communities gradually lose almost all their ancestral land— an experience typified by the Maasai, who are now restricted to tiny reserves that represent a fraction of their traditional lands and gain little benefit from the tourist industry that now exploits the land they have lost. In this study, historical injustices will be understood as all of those that are long-standing and that impact an entire people or community: they typically involve issues of the loss of land in the colonial era left unaddressed by the postindependence Kenyan state.

## PART I. UNDERSTANDING VICTIMS' PRIORITIES

### Victims' Priorities for Reparations

Victims were asked an open question about what action they sought from the authorities in light of the violation they experienced. Table 2 summarizes the responses for the entire range of violations, where the percentages represent the fraction of victims who mentioned this issue, with most mentioning several priorities.<sup>30</sup>

**Table 2. Victims' reparative priorities**

PRIORITY	%
Compensation/economic support	56
Resettlement/housing	34
Access to land	33
Judicial process	20
Recognition/acknowledgement	19
Livelihood	15
Peace/security	8
Medical support	5

The table demonstrates clearly where victims' priorities lie. There is an overwhelming emphasis to approaches that serve to reestablish living conditions and economic security. In many cases the livelihoods of victims have always been marginal and the impact of violations serves to further undermine these. Access to land and livelihood support, typically to sustain a small business, are both income-generating demands. Security, understood as an environment where nonrepetition of violations can be guaranteed, is crucial for many, particularly those displaced by postelection violence. Those unable to afford treatment of injuries resulting from violations emphasize medical support. A smaller fraction of victims mentioned issues such as the need for apology and memorial, and these were discussed in detail with many victims. It should be understood that when a victim does not prioritize an issue such as judicial processes, it does not necessarily indicate that they consider it unimportant (see the section "Victims' Attitudes Toward Criminal Justice" on page 51): where a parent is struggling to feed, clothe, and educate children, this will take precedence over less immediate aspects of justice. It should also be noted that victims' priorities change with time, and this study represents only a snapshot of evolving concerns.

### Victims' Concepts of Reparation

Almost no victims met were familiar with either the concept of reparation or their right to receive it from the state. As a result, victims' demands were typically articulated either in terms of what they need or of what they perceive the government should do. However, in their statements many victims made telling comments about the nature of what they sought, revealing the reparative impulse behind their demands.

My expectations are that our lives be restored to normality. We live a life at the very bottom right now. We can barely feed ourselves; we want the lives that we lived before to be restored. (Victim of PEV, Mombasa)

<sup>30</sup> As a result, all the tables of victims' priorities sum to more than 100%, since in most cases there is more than one entry for each victim.

We would like to appeal to the government to get back our land because if we get back the land we will be able to live the way we used to be. We want to live the way we used to live and not the way we are now. (IDP, camp in the Rift Valley)

We would like the government to help us, especially those who lost everything, because we never used to live like this before. When you walk around here everybody knows that you were raped, so you don't have a good reputation and you don't have a normal life. I still have pains in my stomach up to now and I was never used to just idling, I used to depend on myself and I had my own salon and I also sold earrings and panties yet all of this was burnt. I used to take very good care of myself, but right now I don't even look like a human being, and I used to live well with my children and husband. I had a husband and four children. (Victim of sexual violence during PEV, Rift Valley)

These remarks very strongly communicate the demand for a return to the situation that existed before the violation, firmly placing responsibility for this restoration with the government. A large number of those met, particularly those who had been victims of postelection violence, had lost relatives, often a husband and breadwinner, as well as homes and the businesses or farms that sustained them. Typically, their demands were for the opportunity to restart their lives, in new homes, potentially in new places, but with the resources they needed to make a living. The idea of undoing the damage of the violation was also expressed in terms of rehabilitation, particularly for those who still needed medical care or were disabled and unable to work. But many women who had been raped, as well as victims belonging to marginalized minorities, made it clear that restitution alone was insufficient: many felt no desire to return to a status quo ante where they had been marginalized and discriminated against.

Compensation was the form of reparations most commonly referred to by victims who expressed the need to be “restored” to their previous lives:

The compensation that we should receive should bear in mind that there were some people who had their family members killed, had their property burnt; some people were burnt and some were disabled. The government does not think about these people. Can there be anything so that one can have his normal life restored? Even though we shall not receive everything we should be given back our normal lives so that we can be able to live in this country of ours. (Victim of PEV, Rift Valley)

Financial compensation was overwhelmingly considered the most appropriate response to a whole range of violations, beyond purely addressing the loss of property. Only a small minority of victims who were financially secure (and largely educated and urban) saw issues of truth and justice as of a higher priority than compensation. Somali Kenyans saw compensation for killings and other offences against the person as mandated in Islam, while others prioritized financial compensation because they considered money empowering for victims.

There was evidence in the data that truth and acknowledgement are important components of reparation. Truth was perceived as being a prerequisite for the delivery of compensation, but this idea was articulated as “acknowledgment” In most cases, victims are well-aware of what they and their communities suffered: what they seek from the government is admission of the harm and clarification of the details and the reason for the violation.

They have to be sincere and admit everything that they did on that day. (Family member of victims of the Garissa massacre, Garissa, North-Eastern)

Only the government can know the truth of what really happened on that day. It happened at night, we were very young, and that is the truth we know. What led to



the massacre, we don't know. Who was responsible we don't know either. We believe the government knows; we demand justice and the truth from them. (Family member of victims of the Garissa massacre, Garissa, North-Eastern)

In many cases, demands for truth led to the demand for criminal justice and were considered the most formal type of recognition, of both the violation and its victims.

You know the pain of losing a wife and a mother at the same time. It was very hard to accept the departure of my dear wife. The lives of my children changed, and it's a pain that I still feel today. What we need today is justice, compensation, and those responsible for this massacre should be judged in court. That is how we can be relieved. . . . Those people responsible should be tried in court, and the victims of this incident should be compensated. When these two things are done the people here will feel assisted and recognized. (Family member of victims of the Garissa massacre, Garissa, North-Eastern)

For many IDPs, particularly those who had not fled to camps and others who had failed to be registered by the authorities, recognition of IDP status is seen as the most important part of acknowledgment, because that will permit them access to official assistance.

You should beseech the government never again to say that there are no IDPs. We have a lot of problems whose source is the government; they are the ones who caused us all these problems. (Urban IDP, Kibera, Nairobi)

## Victims' Priorities by Violation

The range of violations addressed here reveals that different victims have different needs and expectations of reparations. The needs arising from their experience of violations is discussed according to the violation to which victims were subject.

### Victims of Forced Displacement

The displaced were the single most-well-represented group of victims in the sample. Their displacement was a result either of violence committed directly by state security forces or violence committed by nonstate actors that was perceived as encouraged by the government's failure to protect victims. For almost half of those affected, this was not their first displacement.

We have been chased away four times now. In 1992, 1997, 2005 during the referendum . . . ] and the recent one was the last one and we had the hardest time. I'm a Kikuyu. The Kalenjin did not want us there, and they were saying Rift Valley is theirs. It was not even about the election or anything else; they wanted us to go back to Central Province. I wondered, since I was born in Kuresoi in Molo, where was I supposed to go? (IDP, camp in the Rift Valley)

Of those met, half the displaced considered themselves "integrated," that is living in a community in a home they considered permanent, although often facing great economic hardship and livelihood challenges. Some are in the Kibera and Mathare slums of Nairobi. Thirty nine percent remained living in camps—in some cases in mud houses built by the government or NGOs, but in many cases still in tents—almost three years after they fled their homes.

I have a wife and child. My wife got a child something like two months ago, but the child had been sick with pneumonia because of the cold because my tent is completely tattered. It has a paper to cover on top, and the government does not help. (IDP, camp in the Rift Valley)



This shows that for many victims of postelection violence there remains a demand to end what are continuing violations. A number reported that children and the elderly had died as a result of the cold and damp in the camps. Those still living in camps receive food aid, and some are able to find casual work. But overall their experience is dominated by a lack of livelihood.

All those currently in camps as well as 85 percent of all the displaced participants said they felt unable to return home due to insecurity. There is a deep fear of ever living again in the areas they came from, demonstrated by the deaths of some who have returned:

Recently my son went back to see the shambas where they had been living, but when he was seen by those people, being seen only, that he was going there to check, he was butchered. He was brought back dead here . . . a few days ago.  
(IDP, camp in the Rift Valley)

There is also a reluctance to return to communities where families would have to live with those who stole their property and killed their relatives and neighbors; some appear simply too traumatized to ever return. Government efforts to return people to these areas, is perceived as at best misguided and at worst as a ploy to ensure that someone else can take the land assigned to them. The fear IDPs have, particularly around the 2012 election, is summarized by an explanation of why so many of their camps are close to the road:

Personally, if you ask me I will tell you that in 2012 we will be beaten yet again, and I am staying alert and that is why we are waiting here. We are living near the road so that when we hear the fighting coming closer I can take my husband and the children, board a vehicle and go to Kiambu. It is not that Kiambu is home, we are going there to build yet another camp. (IDP, camp in the Rift Valley)

IDPs and victims of the postelection violence see security as an important reparative demand, whether provided in their original homes, to permit return, or where they now live so that they can build lives there.

**Table 3. Reparative priorities of the displaced**

PRIORITY	%
Resettlement/housing	65
Compensation/economic support	48
Access to land	36
Livelihood support	32
Peace/security	16

In the short term, those still living in camps seek proper houses, and in the long term they seek to be resettled to areas where they feel secure, where they can have access to land that can yield a livelihood. For those who are now living in other communities, they seek either resettlement to areas where they can farm or support such that they can start businesses where they now live. Most IDPs also lost property and had houses and businesses burned and looted; as such, many demand compensation for their losses.

You asked what we would like the government to do for us. My wish is for them to give us the land they promised us and to build for us just as they built for other people, and then compensate us. We had things like livestock, . . . furniture; and if possible they should give us loans so that we can take our lives back to normal, as they were previously. (IDP, camp in the Rift Valley)

Although the government claims to have assisted IDPs with payments of KSh 35,000 (US\$409), 52 percent of IDPs met had received nothing; 28 percent received only the initial

payment of KSh 10,000 (US\$117) supposed to address “basic needs”; and 21 percent had received both the KSh 10,000 and the KSh 25,000 KSh (US\$293) for “reconstruction.”

We have some people who were compensated KSh 10,000, and if you follow closely you will find that these were not actual victims. The Provincial Administration just liaised with their friends, signed for that money then came and gave them part of the money. (PEV victim, Nyanza)

Others reported that they had to “pay” to receive the assistance they did, reducing the amount they received. Broader questions remain about corruption around the billions of Kenyan shillings reportedly spent on IDPs. Almost half of the 660,000 IDPs enumerated by the Ministry for Special Programmes are so-called integrated IDPs<sup>31</sup>. These IDPs, who never passed through a camp, staying instead with relatives or fleeing to ancestral homes, have never been registered or acknowledged in any way and as such have received nothing. Despite believing that the state has the capacity to identify genuine IDPs, this has become an issue of recognition for victims, who feel the truth of what happened to them is being denied (see the section “Registration as a Form of Recognition” on page 42). This is particularly so in places such as Nyanza, where most IDPs never passed through camps.

### Victims of State Violence

Those persons met in this study who have been subject to violence from the state are mostly victims (or the relatives of victims) of operations of the security forces in North-Eastern Province, notably of the massacres at Garissa and Wagalla. Smaller numbers met were victims of police criminality, including disappearances and extrajudicial killings—which remain at epidemic levels in parts of the country—and of illegal detention and torture. A significant fraction of the 2007–8 postelection violence was perpetrated by agents of the state, including the police and local administrators; this is discussed below.

**Table 4. Reparative priorities of families of those killed in massacres in North-Eastern**

PRIORITY	%
Compensation	84
Prosecution	60
Recognition/acknowledgement	40

The many Somali Kenyans met who lost family members in massacres at the hands of the security forces in the 1970s and 1980s prioritized compensation and judicial process (see Table 4).

We the orphans are seeking and hoping that those responsible will be prosecuted and punished, and we know it’s the government and they are still in the government. After they are prosecuted and punished then the government should compensate us for the shedding of our father’s blood. (Family member of victims of the Wagalla massacre, Wajir, North-Eastern)

The important thing is for the government to accept the problems they caused the people of Wajir, and to acknowledge and allow the truth to determine justice. After acknowledgement it should compensate the orphans, for the houses it burnt, for the injuries and the deaths. Also they should compensate those women who were raped by the army, and the widowers. (Family member of victims of the Wagalla massacre, Wajir, North-Eastern)

While most families met were poor, and in some cases the impact on livelihood of the loss of both men and livestock persists, desire for compensation was driven not by economic

<sup>31</sup> Ministry of State for Special Programmes, “IDP Status Brief.”

need but by Islamic tradition and practice; this is discussed further in the section “The Somali Tradition of ‘Blood Money’” on page 47. The demand for prosecution appears to be motivated by the simple desires that the lives of those who died be considered to have value and to see an end to denials in the form of an acknowledgement of what the state did. Both compensation and prosecutions form part of that desired acknowledgement. Even for violations that occurred many decades ago, a significant fraction of those met sought medical support to address the physical and mental impacts on those who survived the massacres.

#### Box 1: A family destroyed by the Wagalla massacre

Many families were literally wiped out by the mass killings of civilians by the army in the Wagalla massacre, carried out near Wajir in North-Eastern Province in 1984. To understand however how families can benefit from reparations, it is instructive to consider the case of a young man who has suffered more than most. “AB” was two years old at the time of the massacre and the firstborn of his family. Seven of his uncles were killed in the massacre; his father had a rope tied around his genitals and was dragged by soldiers behind a jeep, leaving him impotent and bedridden for the rest of his life. AB’s mother witnessed her family’s home burned to the ground and her mother burned to death in front of her. Since that time she has been largely disabled by mental illness, unable to communicate and prone to acts of violence and removing her clothes.

AB has been denied a family life by the violations of Wagalla, having not only seen both parents disabled, but also having been left an only child. From an early age AB had to support his family, working in hotels, fetching water, and fitting in his education where he could. His father died 20 years after the events at Wagalla, and so for him reparations will come too late. But for AB and his mother, reparations can address some of the impacts that continue to degrade their lives. His mother has received some medical treatment, but a lack of resources prevents AB taking her to the best facilities in the country, which could potentially aid her. AB himself cannot afford to take his education further, and reparations could give him access to the schooling that the massacre has denied him. More than this, however, AB wants to see his community, and in particular the Degodia clan that was targeted at Wagalla. He wants to be supported to permit its development, socially, economically, and culturally. He perceives that the state can best make amends for the gross violations of Wagalla by addressing the backwardness of the community relative to the rest of Kenya in a way that also aids the individual families affected. AB talks of a trust fund for victims and of microcredit to assist victims to establish livelihoods that will enable them to continue with their lives.

### Victims of Postelection Violence

Although displacement was the most wide-spread violation of the postelection violence of 2007–8, it was driven by acts of extreme violence that left many dead, wounded, disabled, and raped. Victims of postelection violence saw relatives killed, and many were themselves beaten and seriously injured by a range of weapons, including bows and arrows. Since violations were usually accompanied by displacement, the reparative priorities of such victims also reflect those of the displaced. In addition to demands for compensation, access to land, and livelihood support, these victims demand medical support to help them pay hospital bills that in many cases they are still incurring. Beyond the physical injuries sustained at the time of the violence, there were many reports of trauma and emotional impact that remain unaddressed.

They should follow up on the people that were beaten and are not physically or mentally in shape. There are people who were disabled; there are people who seem as though they became mentally ill; there are orphans; and there is nobody who came to see how they are. (IDP, Camp in the Rift Valley)

## Marginalization

The term “marginalization” is used to indicate that a community does not enjoy all the rights and services to which a Kenyan citizen is entitled from the state. As a result, their social and economic rights are violated, usually systematically. The obvious example of this phenomenon is the ethnic Somalis of the northeast, who have long been subject to discrimination and exclusion from the services that other Kenyans expect. Similar marginalization was also experienced by other minorities. The first point that northeasterners make is the challenge they face in gaining access to an identity card, the very symbol of Kenyan citizenship, that in some communities almost no one possessed.<sup>32</sup>

Let me tell you something, getting an identity card in Kenya is very hard. Right from the time you apply for it all through to getting it is very hard. . . . There is a man who has a waiting card from 1997 to date! And if he complains about it he will be told he is a refugee so he better keep quiet about it and live in hiding.  
(Local official, Wajir county, North-Eastern)

**Figure 3. Marginalization in the northeast**



An extreme example of the lack of services was seen in Tarbaj, north of Wajir. The only water source there is a water pan that, at the time of the ICTJ visit, was a pool of mud into which people dug to collect the dirty water that accumulated there (see Figure 3). The only alternative was to pay hundreds of shillings for a jerry can of water trucked from Wajir.

Water and poverty are our biggest challenge. . . .] Our government just like other governments has a responsibility to provide water for its citizens. . . . If there was water, people would even invest in this region. They should start developing this region soon because we are hardworking people; all we lack is proper infrastructure. (Local official, Wajir county, North-Eastern)

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<sup>32</sup> KNCHR, Identity Crisis.

The perceived separation of the northeast region was clear during the study: local people talked about “going to Kenya” when they left the province, and soldiers manning the many checkpoints along the road—whose very presence indicates the region’s special status—greeted the research team with shouts of “Welcome to Kenya” as we drove south. The lack of services is seen in terms of a shortage of schools, the absence of tertiary education institutes, poor roads, and a lack of health facilities. Similar complaints are made by indigenous communities, who find that their nomadic life or remote location has ensured that they do not enjoy good public services, with poor roads, few schools near communities, and poor access to water.

The reparative demands of marginalized communities are clear: they seek to be treated as other Kenyans and want the areas they occupy to receive their fair share of the nation’s resources.

They should develop our region and make it similar to other regions; they should accept the truth and acknowledge us as a community. (Community elder, Mandera county, North-Eastern)

The marginalized saw the issue as being one of recognition, and believed that the history of violence against the Somali community was enabled by marginalization.

The Kenyan government made the Somali second class citizens, and when they were killing us they treated us that way—not like citizens. So that is when the Somali community was labeled bandits, and we have not been relabeled since. Our community is marginalized and the infrastructure is very poor in this region; this shows how the government is treating us as outcasts, not Kenyans. (Family member of victims of Wagalla massacre, North-Eastern)

## Reparations and Basic Needs

The basic economic needs that drive the reparative demands of victims can be summarized in terms of homes and livelihoods: without these, particularly the latter, victims perceive the impact of the violation as continuing. The displaced and those who have lost breadwinners have been forced to find coping mechanisms over the years since the violation, dominated by intermittent manual labor and food aid. The implications for those who have failed to find any livelihood were made clear:

Right now my children have gone to school, but there is nothing for them to eat when they come back because I leave the house very early in the morning to go and look for some casual job, doing people’s laundry just to feed them. My children have also been sent away from school because I have not yet paid their exam fees, and the money I get is only enough to feed them. (Victim of PEV, Nyanza)

Most of the days they just stay like that so that they are at least able to get something in the evening. They go to school without taking breakfast and the school is so far away and some even faint in school because they have not eaten. When a child doesn’t eat he will not even be able to study. (IDP, camp in the Rift Valley)

When I was sick I was prescribed a drug costing KSh 5,000 and another one for KSh 30. I went to Makadara and I was sold the drug for KSh 30 as I had KSh 30, but I did not have the KSh 5,000. . . . I have not used the drugs to date, and if there was no God I could have deteriorated; I have just kept faith. (IDP, Mombasa)

One of the basic needs most often referred to as unaddressed was that for education: 14 percent of those interviewed mentioned education as part of the reparations they sought. A range of victims, including IDPs, evictees, and families of those killed by the state said that their children were dropping out of school as a result of the violation. While state primary school is formally free to attend, it comes with many additional costs. Secondary education is always expensive for the poorest.

There are children who cleared Class 8, but we have not been able to pay their fees because we depend on casual labor and working for the rich. One day you get it, the other you don't, and when you finally get something you have to think of food first. Now they are all home because we cannot afford the fees, so would only appeal to the government to provide us with some bursary for our children to be able to go to school. (IDP, camp in the Rift Valley)

In the discussions with victims around their basic needs, it became clear that these needs are not only basic but also urgent. This urgency challenges the approach to reparations perceived as the final stage of a transitional justice process, coming after the conclusion of a truth-seeking process or a criminal trial.

We don't know about tomorrow, all we know is what is happening now. All we want is someone to remember us as we are in the tents, someone to give us a mattress to lay our heads, blanket to cover ourselves and food to eat. Before they remember us the next day, month or year, whoever will remember us now should help us now because we don't know whether we will be here tomorrow. (IDP, camp in the Rift Valley)

## Gender Implication of Violations

The needs of female victims often differ from those of men, a fact reflected in the data of this study. While this is most obviously true where sexual violence is concerned, it is also seen in other circumstances. The majority of those killed or disabled by violations are men, and as a result women are faced with specific challenges such as being the sole breadwinner and having to raise children alone. In this sense, issues of compensation and livelihood support are gendered issues, with a greater impact on women and the children they have to support.

As for me I would say I have really struggled because my husband left me. I used to bake cake, now I am jobless and I have rent arrears of KSh 5,900, and I have a child whom we have to sleep hungry with. . . . I cannot even take tea in the morning. I am really suffering. (Victim of postelection sexual violence, Rift Valley)

For me I will not hide it from you, I am currently a prostitute and I will not be embarrassed because it feeds me as I don't have a husband and my first born is in Class 7. . . . Even if you ask my children they will tell you that I don't sleep there at night, I sell my body. I cannot keep asking for assistance, I just can't. (Victim of postelection sexual violence, Rift Valley)

Women living in poverty, for whatever reason, are forced to develop coping and survival mechanisms. This was apparent in the ethnic Somali community, where widows desperately sought to remarry to increase both social acceptance and livelihood prospects. Similarly, displaced young women living in IDP camps often engage in transactional sex as a result of their economic circumstances, demonstrating that women's life choices are narrowed in unique ways by the livelihood impacts of violations.

When the girls reach the age of 15 they are misused by men out there for them to be able to get some sugar and maybe mandazi [fried bread] for them to fill their



stomachs because they see things are not going well. (IDP, camp in the Rift Valley)

When we went to the camps to look for the women we didn't find them there because they had gone to the bars [to work as prostitutes] because they were not economically stable. If such women could be empowered to start their own businesses and those who do not have houses could be built houses then that would be very fair and helpful to them. Without that then I cannot assure you that prostitution among us will cease; we will just go to the bars because we cannot stay here when our families are starving. (Victim of PEV, Nyanza)

This demonstrates that violations considered civil and political, such as postelection violence or the massacres in the northeast, have had their greatest impacts through their secondary (largely social and economic) effects. This serves to partially explain why so many victims emphasize issues of livelihood as a reparative priority. The poverty that arises from the myriad violations the study encountered, and the continuing violation of social and economic rights this implies, exacerbates their impacts on women.

During verification meetings, a victims' representative from Coast Province made the point that marginalization of women on the basis of their gender is not caused exclusively by the state, but that in their communities many women find themselves excluded from many areas of life, including a range of economic activities, education, and much of decision making. When women become victims they become more liable to marginalization on the basis not only of their gender, but also as a result of their victimhood. This forms the basis for much of the stigma that female victims experience in both family and community. There is some evidence, particularly in Coast Province (see Table 9), that the respondents selected by partner NGOs for this study failed to adequately represent women, perhaps confirming the extent of such marginalization.

Since victims typically live in communities where many are affected, violations have social effects. The implications in many IDP camps of the loss of men folk and extreme and widespread poverty were a variety of social problems, including drunkenness and schoolgirl pregnancies. Socially, there were broader impacts on the family as a result of displacement and camp life, with wives having few resources on which to survive. The social impacts of the dislocations caused by the postelection violence and displacement affected women to a greater extent than men.

Many homes collapsed because the camps were overcrowded. There was a lot of immorality and again because of poverty wives were running away and other times they involved themselves in prostitution. You now see that marriage was being turned sour. Many who involved themselves with such kind of conduct contracted diseases, and there were many single mothers. (IDP, camp in the Rift Valley)

**Table 5. Reparative priorities articulated by victims**

PRIORITY	GENDER (%)	
	WOMEN	MEN
Compensation/economic support	50	67
Resettlement/housing	36	24
Access to land	27	24
Livelihood	14	18
Judicial process	18	24
Recognition/acknowledgement	18	30

Table 5 shows reparative priorities by the gender of respondents, including only single-gender interviews and focus groups (22 with women, 33 with men).

## Sexual Violence

Three focus groups met with women who had been victims of sexual violence during the postelection violence of 2007–8, and one victim was interviewed in an IDP camp. These victims had suffered extreme assaults and bore the scars in many ways, physically, mentally, and socially. A first priority for many victims is medical assistance, in order to treat injuries arising from the assault and to treat those who became HIV positive as a result, a condition exacerbated by the lack of money to pay for treatment.

I experience a lot of pain in that area where I was operated and I only survive on drugs to reduce the pain that I feel. I haven't received anything in reparation for what happened. . . . I am appealing to the government to assist us because we are suffering, especially those who are experiencing the same pain that I am because I have no money to take me to the hospital, yet I am experiencing terrible pain even now. (Victim of postelection sexual violence, Nyanza)

Since I was defiled the government should also help me get a thorough medical check-up because I don't feel well and I don't have money. I don't have the money to go for an x-ray, and sometimes I feel pain down there and the hospital sometimes gives me medicine, but I don't have money right now. So I need to be able to cater for my treatment, restock, and be able to live my former normal life. (Victim of postelection sexual violence, Rift Valley)

The emotional and mental impacts of sexual assault remain severe years after the events. Women talked of the torment they faced.

There are times I stay in the house and you might find me crying, all alone. There are times that I see that my children are a problem to raise and I think that to date I would not be around with my children, hide in the house and start crying. . . . I try to force myself [to work] so that those things will not come back or I stay with the radio on. . . . When I feel mentally disturbed I sometimes turn on the radio very loud, I might turn it on at 2 p.m., and my neighbors ask me what the problem is. I turn it on so that it can make noise to me so that I can forget about these things. (Victim of postelection sexual violence, IDP camp in the Rift Valley)

There are also social impacts, with women abandoned by husbands and stigmatized in communities as a result of both rape and HIV infection.

When you walk around here everybody knows that you were raped, so you don't have a good reputation and you don't have a normal life. (Victim of postelection sexual violence, Rift Valley)

Some of the ones who were raped were sent away from their homes by their parents when they found out. (Urban IDP, Mathare, Nairobi)

One woman linked the addressing of such impacts to her economic status, believing if she had her own business and could make a living, she would be better accepted by her community.

The government should at least assist us with building our own homes and establish our businesses so that we could be recognized as people in the society, because right now if you try to say anything nobody will hear you and instead they will just insult you, and some of them say that you cannot say anything and you were raped by some unknown number of unknown people. One feels like she is dead but still alive. So I am appealing to the government to please assist us with



that so that we could be recognized in the community. (Victim of postelection sexual violence, Nyanza)

This demonstrates that the impact of sexual violence on such victims is exacerbated by prevailing attitudes toward women in societies that have long discriminated against them. As a result, reparations go beyond the purely restitutive, creating demands from women—and others who are marginalized—for a process that is transformative. Addressing such impacts through a reparations process is challenging, but women themselves have identified what they believe helps them, in terms of counseling and peer support.

What can help and bring some kind of harmony in this process is just that counseling that might be one on one, then there should be that open forum where victims of a certain category come together and share openly so that I know so and so went through the same problem I went through and know how she is picking up. Through that sharing I think it can also bring some healing. . . . We can create the forums but the biggest challenge is lack of funds . . . unless we can get some funding such that we can have the meetings at different points so that we don't meet at one place. (Victim of PEV, Nyanza)

A reparative approach to such victims would thus be to support both counseling and victims' groups where women can meet other victims and gain resilience from sharing experiences. Creating mechanisms that enable solidarity by mobilizing victims can also begin a process of empowerment that can challenge broader societal attitudes. The natural reparative approach to this is to support victims' groups that exist at a grassroots level and challenge the isolation that prevents healing and perpetuates stigmatization.

Men who became victims of gender-based violence remain reluctant to talk about such issues, since they are so highly stigmatized. A result of this has been that such victims are largely unseen and unheard in their communities. Consequently, there are few efforts made to assist them; organizations that work with sexual violence confine themselves to working with women. Addressing the impact of such violence, including reparative approaches, first requires that this invisibility be challenged.

## The Difficulty of Individualized Reparations

In addressing such a broad range of violations and impacts it is clear that reparative processes must provide a wide enough choice of measures or at least sufficient flexibility that all these harms can be addressed.

Those who lost their businesses only need capital and stock to get their lives back on track, but those who were raped will need more attention, and not only capital. Like my sister who said she is HIV positive will need a special diet, and she doesn't even know whether her child is positive or not. They should cater to people based on the gravity of their violations; like those who were raped should receive better medical care than the rest of us. (Victim of postelection sexual violence, Rift Valley)

This suggests that a comprehensive reparations process should take into account a broad range of needs and be flexible enough to attempt to address all of them. One interviewee, a representative of victims of postelection violence in Nyanza, suggested that, more than this, reparative processes should be tailored to individual needs:

I think it would be advisable to take a list of all these people and their specific needs. We have those that are displaced and have nowhere to stay; these people should be given a piece of land and a house constructed for them. We have some of them who are have been privileged to return to their homes, yet their lives

cannot continue: they need at least some money to start some business to have their lives go on. We have these people with medical bills still outstanding; in fact the medical bills should be dealt with immediately. (Victim of PEV, Nyanza)

The challenges of providing reparations to hundreds of thousands on an individual basis are, of course, insurmountable. No reparations program in a post-conflict or postdictatorship setting has ever completely responded to every victim's needs and expectations. This does, however, reveal the complexity of attempting to ensure that a reparations process addresses victims' needs across the wide range of violations they have been subject to and the circumstances they find themselves in.

## Land and the Root Causes of Violence

Access to the livelihood and sustenance provided by land has been at the center of many of the human rights violations brought up by victims involved in this study. From their perspective, the unjust distribution of access to land has been both the root cause and the consequence of the massive and systematic human rights violations committed against them. The denial of access to land is often accomplished with violence and force, hence directly violating the victims' physical integrity. This invariably leads to the loss of livelihood or subsistence, hence violating the basic economic and social rights of victims. In other cases, access to land is taken away through corruption or through "legalized" land grabbing that disregards the customary and possessory rights of the victims' communities.

Either way, human rights are violated. In both cases, reparations in the form of rehabilitation or compensation for harm resulting from the use of political connections, force, and violence may not be enough to repair the violations of social and economic rights, such as the loss of livelihoods and subsistence. If possible, restitution may address some of these harms. But the state's guarantee of their nonrepetition through measures that protect access to land would be the most lasting and meaningful form of reparations.

## Loss of Land and Its Consequences

They took away many things from us, but the first thing is land . . . for if you do not have land you are eternally poor. (Squatter, Central)

Ethnic groups who have traditionally pursued nonagricultural livelihoods, such as pastoralists or hunter-gatherers, have faced the greatest challenges to keeping their land. Many have lost access to their traditional hunting or grazing grounds. The Maasai, for example, who lost much of their land during the colonial era, have continued to lose land and have failed to benefit from the lucrative game parks that now occupy much of it. More recently, entire communities have suffered eviction. The Endorois were removed in the 1970s from land they had occupied for centuries for a reserve,<sup>33</sup> and the Dorobo<sup>34</sup> were removed from the Mau forest reserve in recent years, despite having lived there for over a century. These communities have lost traditional livelihoods, are now living on land that is barely cultivable, and in many cases see no revenue from the significant income their traditional lands are now generating.

They were evicted from their land, and they haven't been compensated. If we could get that money, even if it is a little, our people would be able to get education like other people. We have a hot spring, flamingos, and many tourists visit here bringing a lot of money, yet we get nothing at all. . . . The Endorois are

<sup>33</sup> African Commission on Human Rights, Decision 276/2003.

<sup>34</sup> The Dorobos' marginalization is demonstrated by the fact that the name "Dorobo" is itself a derogatory name derived from the Maa term for "those without cattle" (Distefano, *Hunters or Hunted?*). The group met for this study, from the North Tinderet Forest, consider themselves to be Ogiek.

not benefiting from their own resources, it all goes to foreigners. (Endorois community member, Rift Valley)

ICTJ met farmers whose formal title to land had never been established and who faced loss of that land to individuals or businesses that were able to exploit their political connections. In Coast Province, where few possess title to land, the problem is extreme, and high-value plots have been grabbed by the politically well-connected. In one case encountered in this study, a government settlement scheme to formalize the tenure of a coastal community was corrupted to the point where huge beachside plots were assigned to the people administering the scheme; residents were left with tiny plots and in some cases assigned nothing and faced eviction. The most extreme cases of such land grabbing saw entire communities lose land:

EM used to be the minister for land during Kenyatta's tenure. He grabbed the entire constituency. He claimed he was holding it in trust on behalf of the community. He owns the entire place, even the police station. Now he has started to sell the land; the other day there was a water pumping station to be constructed. EM came and demolished the structure because he claimed it was his. The community thought the land was communal. That is how bad he is. (Member of evicted community, Voi, Coast)

Similarly, many small-scale farmers' tenure is threatened or has been lost as a result of encroachment by commercial interests. A number of cases were encountered in this study where powerful commercial interests were able to seize land and evict long-term occupants with no apparent legal or other constraint.

There is a pattern to the squatter problem here, in that when you really look at it you find that these people were moved from very fertile lowlands, so the whole thing was that the prime movers were interested in land that was being tilled by the squatters because it is extremely fertile. . . . When we came here as a settlement scheme you found that a thriving community, hundreds, thousands of people used to live there, and it is extremely fertile, it is well watered, so it is a well drained, but they were all evicted overnight and then [the company] moved in and established a eucalyptus plantation (Squatter, Central)

Companies who took control of land often trampled upon traditional grazing and water collecting patterns, and private security guards served to enforce ownership and ensure that the previous occupants did not trespass. Salt companies in Marereni have devastated communities by taking land that has traditionally been farmed by locals through corrupt contacts with the authorities.

Through fraudulent means they have been encroaching on community land, which has posed a lot of unrest. People are being told to leave. We are dealing with very affluent people who have money, and the indigenous people are poor, therefore the government processes and structures are compromised and a lot of injustices have been done. . . . This is a place we feel the government has wrongfully given what is ours to a developer through fraudulent means and the ultimate objective has been to impoverish so that they can continue manipulating us. (Community member, Marereni, Coast)

In the process, local environments have been greatly affected, with wells becoming unusable, saline waste killing fish and reducing yields for fishermen, and birth defects reportedly increasing.

### Box 2: Land grabbing in Coast Province: A settlement scheme in Kijipwa

“K” is a community in Kijipwa, on the coast, adjacent to the beach resorts north of Mombasa. Residents described how it had always been understood that land was communal; there was no perception that the absence of title meant they had no legal rights. Such cases occur throughout Coast Province. Older members of the community had always lived and cultivated in the area, with their parents and grand-parents buried there.

The first awareness that the state may have a different understanding of the ownership of the land came in 1981, during the Moi regime, when rumors swirled that the area’s 1,560 acres would be part of a settlement scheme, designed to formalize land tenure of those who were living on the land. Barazas, or public meetings, were held, in which it was said each of the 350 households would receive five acres, but by the time implementation came in 1992 this had shrunk to just two acres. Large plots were given to civil servants with no connection to the community, apparently on the understanding that these beachside plots were valuable. These plots included 120 acres given to the director of security, as well as plots to the undersecretary in the Office of the President, the provincial planning officer, and the Nairobi provincial commissioner. Since then some of these have sold the plots on, while others are building resorts on the land, in both cases leading to the eviction of local residents. When evictions occurred, buses of Mungiki gang members were brought from Nairobi to aid the new owners in clearing the land. While some residents received two-acre plots, others were given nothing and are now illegal squatters on the land that their families have long cultivated—or they are already evicted.

Cases are still in process in courts in both Malindi and Mombasa, but in many cases those who hold title deeds, however they received them, have had their rights upheld. Poor communities have spent huge amounts of money on such cases. Local police have enforced the rights of the titleholders, with local residents being beaten and jailed for allegedly grazing cows on the land. Residents seek only that their long-term occupation of the land be recognized such that they can continue to cultivate in peace.

Marginalization typically describes the process of social exclusion by which people are denied rights and property because of what or who they are. In Kenya, however, the process has been much broader, because poverty alone is sufficient for land to be lost to the rich, powerful, and politically connected or to state schemes that fail to consider the livelihoods of those who have traditionally occupied the land.

Lands Ministry officials used Baringo County Council to evict all of them from the 189-acre land. Where are they supposed to go? . . . As a community, there are three to four people who want to take the land for themselves as individuals, and that is what we are against. They are using money and influence to take away our land. (Endorois community member, Rift Valley)

Crucially, corruption is an integral part of the land-grabbing process at all levels.

We felt that as Taitas born and bred here our rights were being violated. The owner of the sisal plantation was keenly using his financial muscle to frustrate us. When we went to the members of parliament we would always find he had been there before us. He would even taunt us that should we dare go to the president, he would have been there before us. Even the representatives we elected—especially councilors—had been pocketed. (Taita community member, Mwatete, Coast)

Communities have tried to use the courts to fight such land grabs, but they lack resources and expertise, in contrast to the land grabbers. In most cases, because there is no

recognition that evicted communities possess formal rights to the land, no compensation is paid. Many victims reported that when evictions occurred they were given little notice, and much of their property was destroyed:

They came on 6th March, 2006, in the evening at around 6 p.m. . . . By 8pm they had burnt around 500 households, and there is nothing we could rescue, we lost everything. . . . We had maize in the stores but they burnt all of it. We were unable to save anything because it was also late in the evening. The children and the adults slept out in the cold. (Dorobo community member, Rift Valley)

### Impact of Loss of Land

The principal impact of losing access to land is that families and communities also lose their livelihoods. Whether or not such loss is accompanied by violence against the physical integrity of victims, human rights in their broadest sense—that is, civil and political rights as well as social and economic rights—are violated. While most victims seek assistance from the state, their situation as victims of violations gives rise to the obligation to provide reparations.

If we have land we can fend for ourselves for sure. Right now we live like the disabled because we have nothing. . . . It is land that we need, most then we can live better lives. That's it. All our property got burnt and we suffered major losses, so we would like the government to assist us in that regard. (Dorobo community member, Rift Valley)

Peasant farmers or pastoralists with no access to land have no means of earning a living and are reduced to seeking casual labor, usually on others' land, sometimes working the very land they have lost. With no land on which to live, those displaced in this way often have no alternative but to become squatters on others' land. One of the most extreme impacts of a community having no access to land is that it becomes impossible to bury the dead. A number of stories were heard of bodies being exhumed because they were buried illegally and of communities where bodies were buried at the base of the walls of homes due to a lack of open space. Communities were frequently forced to move, often as squatters, to poorer land in more remote areas.

The land from where they were evicted and taken to camps became the platform for expanding the interest of the multinational companies, and while in those camps they had no option but to work for the company because they had now been disenfranchised and disempowered, leaving them with no option but to work for [the company.] Most felt that they could not stand the indignity and they were forced to go to the Kakuzi Hills . . . where the terrain is very rough. They were forced to go there to escape the indignity of forced labor. (Squatter, Central)

In Mwatete, where a sisal plantation has taken over community land of the Taita people, villagers cling on in the area, increasingly hemmed in by sisal. Even their residual coping mechanisms are threatened by the company that has occupied their traditional land.

This has contributed to the underdevelopment of this area since we have to rely on handouts. The problem has been that we were not crippled; rather, our arable land has been taken away. We also know that the dead were disturbed when their graves were turned into sisal farms. In fact all the crops that were found there in 1991 were destroyed. You cannot keep any chicken or cattle or even plant any crops. If you want to build a good permanent house they will take you to court claiming that is their land, though they have no certification. (Taita community member, Mwatete, Coast)

During the research, families shared their experiences of eviction. In the case of the Tarda people from Garsen, in Coast Province, near the Tana River, the ICTJ team arrived as bulldozers waited at the edge of community land, and the people tried desperately to salvage what they could from their homes under the eyes of the police (see Figure 4; bulldozers await just out of the picture).

Yesterday they told us we have till Thursday to move or else they will burn our houses then demolish them . . . if we do not move by tomorrow. That is our biggest worry. . . . This is our land. I am now 41 years old, and I was born here. If I was told to move out of this place I do not know where I would go. (Tarda community member, Tana River, Coast)

**Figure 4. Preparation for eviction, Tarda community of the Tana River**



Nearly all land in the Tana River and Tana Delta districts is trust land, and an overwhelming majority of the occupants do not have title deeds to their ancestral lands. They are considered squatters by the authorities, although they may have lived in the same place for generations.<sup>35</sup>

The Dorobo people, evicted from forest land four years earlier, told of how their homes and all their contents were destroyed, leaving them wandering in the rain with small children and the few belongings they could carry. This was typical in that many evictions involved a high level of violence, including burning of homes and destruction of property. Compensation was rarely paid, and insufficient notice was given. Relocation was not always offered, and, when it was, relocation involved communities moving to remote areas with little agricultural potential and far from services. Many of the forced evictions described to the ICTJ team clearly violate the Kenyan Constitution's guarantee of "accessible and adequate housing."<sup>36</sup> These acts are violations of international human rights law as well,

<sup>35</sup> FIAN, *Land Grabbing in Kenya and Mozambique*.

<sup>36</sup> Constitution of Kenya, art. 43(1)(b).



since they violate the right to an adequate standard of living that includes adequate food, clothing and shelter.<sup>37</sup>

In many cases eviction had not yet occurred, but residents were aware that local politicians and business interests had begun action to claim land. In such cases, communities were paralyzed by their predicament, lacking the resources to build a new life somewhere else but unable to guarantee that they could stay where they were.

You know we have settled and we would like to develop and build houses, but we cannot because we fear that after all that we may get evicted and then we would lack the funds to construct other houses elsewhere. We have small children and some small income-generating activities that we run, and should we be evicted now where would we go or what would we do? Where would you move to with the children? (Squatter, Coast)

## Reparative Justice Demands

Whether loss of land is viewed in the context of the violence and civil and political rights violations often accompanying it, or whether the loss itself is seen as a precursor to social and economic rights violations, victims' demands in all cases were similar: they sought either to return to part or all of their traditional lands or to gain access to alternative land that could guarantee them a livelihood.

It is very simple what we need. We don't need anything from them, what we need is our own land, in our own place, to be given the chance like any other Kenyans, you understand. Why should a Mijikenda not be given [land] when there are 300,000 hectares of land in the hands of the government? Why don't you subdivide this land and give the land to the Mijikenda who are the real Coastal people who came here before you and give them the title deeds? (Human rights activist, Mombasa)

What we are demanding is that the land of our forefathers be returned and we be compensated for the loss incurred on our lives. We did not encroach on anybody's land. We have been contributing as a community. We have more than 3,000 people who need to be resettled. Many people left the land after they were threatened. (Taita community member, Mwatete, Coast)

In some cases, such as that of the salt factory in Malindi County, businesses with substantial revenue have been lost, and those affected demand compensation on an appropriate scale.

On the island I built a small restaurant and employed some people so that I can get something small when the tourists and the other guests come, and I have been blessed to be able to also add a guest house and an airstrip to attract more tourists to come all the way from Mombasa and Nairobi to stay over for a few days. With those developments I used to get KSh 30,000 to 40,000 per day. . . . When I was given an eviction notice I refused to vacate, but when I went to Malindi, the area DO [district officer], chief, assistant chief and a contingent of not less than 40 policemen invaded my land and burnt down all that was in there from the lodge, bar, and everything else in my absence. . . . The kind of reparations I want is KSh 10,000 per day, so you can do the math from when they started destroying my business and I get all that is due to me. (Community member, Marereni, Coast)

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<sup>37</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, art. 11.

Some communities had the resources, both financial and intellectual, to take legal action. In many cases, however, communities had no understanding of the processes required and no support to undertake a case in court. Many insisted that the short-term support they most needed was legal.

We need legal representation whenever anything comes up, and the community does not have the financial capacity to engage a lawyer. In that case the organizations should be ready to provide a lawyer for us. They should not come here to build our capacity because we have already had enough of that. All we now need is representation at the courts. (Squatter, Coast)

In those cases where ethnicity had led to marginalization or where evictees had been forced to live in a remote area, there was a demand for access to the services and infrastructure that other Kenyans might have.

We should be given back our rightful land where our ancestors used to live so that we may also be like the other people and feel that we are recognized. We would also like to be built schools, hospitals, and infrastructure so that we may also get involved in the development process like other communities. (Ogiek elder, Rift Valley)

## Land Issues and Kenya's New Constitution

Kenya's new constitution has given victims some hope that the violations leading to and caused by the loss of access to land can be repaired through newly available constitutional mechanisms. For example, widows can now inherit land, in principle benefiting women who lost husbands in the 2007–8 crisis. Some victims placed great hope that the new dispensation can help address land issues:

We came to the conclusion that we have to align our activism with the current constitution because it captures our aspirations, especially on the bill of rights and on the chapter on land. The way forward that we developed is this: beginning from early this year we now begin using the new constitution as the basis for our activism as an instrument that we are going to use to hold accountable the state actors. . . . Land, again when you come to that issue of devolution, just having that devolved unit at the county level in itself has significant gains for the marginalized people. (Squatter activist, Central)

The constitution commits to the establishment of a National Land Commission (NLC) that will bear the responsibility of addressing many of the issues raised by victims, with a mandate to investigate “present or historical land injustices and recommend appropriate redress.”<sup>38</sup> This implies that the NLC will have a transitional justice role in attempting to resolve the injustices described here. Such a role can fulfill a gap in reparations policymaking and implementation, which often focuses only on the harms resulting from violence and physical-integrity violations and fails to address the causes of the violence and the rights violations that do not necessarily involve violence, such as social and economic rights violations.

Whether or not the NLC process will be one of “land-tenure reform,”<sup>39</sup> the situations discussed here can be addressed through this process as well as through separate but related reparations measures. For example, the constitutional process might finally recognize and protect the customary rights to land of indigenous communities, even as the restitution of their access to land is given as a form of reparations.

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<sup>38</sup> Constitution of Kenya, art. 67(e).

<sup>39</sup> Huggins, “Linking Broad Constellations.”



In general, the resolution of the many cases of illegally confiscated land can complement a broader land-reform process once the proposed constitutional limits on land holdings are confirmed. The previous truth-seeking attempts in Kenya, as well as the ongoing, credibility-challenged TJRC process, have always had a proposed focus on land grabbing and measures to repair its harms. It was an explicit recommendation of the Mutua Commission that a Kenyan truth commission should include land grabbing and land rights in general among subjects to be investigated.<sup>40</sup> A credible truth-seeking process or the constitutional land-reform process can play the role of facilitating an official public disclosure of the nature and scale of illegal land acquisition since independence, building on the work of the Ndung'u Commission, and can acknowledge historical injustices where communities have lost land.

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<sup>40</sup> Mutua Commission, Report of the Task Force.

## PART II. AVENUES FOR REPARATIVE JUSTICE

### Truth Seeking and Satisfaction

Truth telling is considered part of the right of victims to satisfaction, through being told what happened, how, and often why. For victims in Kenya, truth with an official sanction carries a much greater value than unofficial initiatives at exposing the truth. For victims, an official process is seen as an avenue to material reparations, to confirmation of identity as a particular type of victim, and to giving value to the memory of victims.

Yes, the truth must be told before anything is done because nothing can happen if the truth is not known. All we said is nothing else but the truth; we are aware the government is denying the truth since that day, they killed us and destroyed our animals and that was their happiness. . . . God will guide you in this, you don't have to be afraid of anyone because their days are limited now and the truth will be known to the world soon. (Community elder, Mandera county, North-Eastern)

Victims talked of the need for them to be given a space to tell “their” truth and saw this report as an example of providing such space.

### Truth Seeking as Acknowledgment

Truth seeking is also seen by victims as an avenue for the acknowledgement of their experiences and as recognition by the state of responsibility for harms suffered. Nineteen percent of victims met felt that they had been recognized by the government, largely through receipt of IDP assistance. The great majority of victims had received no official recognition, and many were confronted with official denials that violations had ever happened. Acknowledgement is crucial for victims because it represents external confirmation of what happened, the first step in both assigning value to their experience as victims and in taking concrete action to address the needs discussed in Table 2.

[Recognition from the government] is the beginning of the truth; the government didn't acknowledge the truth about that day. No one acknowledged it, and I think you're the first people; it's the first time I am talking about this issue. (Family member of Wagalla massacre victim, Wajir, North-Eastern)

What most frustrates victims are denials from government that the violations they suffered ever took place:

Anyway, personally I can say that if these complaints from Mathare have been publicized so much then why is it being hidden and said that nothing happened in Nairobi? From where do I come? I do not come from Nakuru, I am from Nairobi. If I am called once again, I can ask the question why is it being said that nothing happened in Mathare? I was not involved in an accident neither did I chop off my own hand: these things happened. (Urban IDP, Mathare, Nairobi)

They must accept it because it is them who do that and they know it and they know one another even those who did that are still with us to date. And they are the ones in parliament now and they are the ones with fast mouths and loud voices, they are in government. (Urban IDP, Kibera, Nairobi)

The government should admit that it oppressed innocent persons. It was in October 2008, but the government is still denying it. (Victim of “Mandera operation,” Mandera county, North-Eastern)

Acknowledgement involves the government accepting responsibility for what happened, confirming as publicly as is feasible what it did. Victims made suggestions for how this should be done:

By acceptance I do not mean that [Former Kenyan President Daniel arap] Moi should take his walking stick and walk from one house to the other apologizing, but I know it is easy saying sorry. But before that they have to acknowledge their mistakes. They can say it on television, they can write in the papers, basically they should let everyone know, the whole world should know. (Family member of victims of Wagalla and Malka Mari massacres, Mandera county, North-Eastern)

Admitting the violation begins to restore value to victims, because the lies that Government told, for example about shiftas in the northeast, are demonstrated to be false.

The most painful thing is the government excuse, killing your innocent father, grandfather, and brother and telling you that they were wanted and they were thugs. . . . That is an insult and it's more painful than knowing they killed him. (Family member of victims of Wagalla massacre, Wajir, North-Eastern)

The recognition considered most appropriate by victims was in the form of paid compensation, representing the linking of the acknowledgement sought with a tangible contribution to victims' livelihoods. One victim described this as “acknowledgement by action,” going beyond simple words and recognizing victims through a concrete act.

## Documenting Violations

Although some of the violations from Kenya's past have become well-known, the research for this study revealed that for many victims the truth of what happened has never emerged publicly. In the northeast, victims told horrific stories of an incident in Malka Mari in 1978, in which Kenyan troops crushed the heads of local civilians between rocks, apparently killing more than 70. Witnesses and survivors desperately sought to tell their stories and family members forced lists of names of family members who had died into the hands of the research team. Similarly, veterans of the Mau Mau struggle who feel that their story has never been told seek to ensure that their experiences are recorded before it is too late for the old people involved.

## Registration as a Form of Recognition

Many IDPs fled their homes in fear in early 2008 but did not go to the camps that sprang up, staying instead with relatives or making their own arrangements wherever they ended up. Such IDPs, typically called “integrated” by the authorities, since they are living as part of the community, rarely received either the status of registered IDP or the assistance that flows from that status. Similarly those IDPs met in Mathare and Kibera, who either fled there from the Rift Valley or were forced out of their homes elsewhere in the slums, remain unacknowledged. In Kisumu, where some IDPs were described as “returnees” and denied IDP status, victims seek that the truth be told. For such IDPs, this denial of both their identity and the assistance to which they are entitled is infuriating:

We should be recognized so that the government may not say that there are no IDPs in Nairobi: we are here. (Urban IDP, Mathare, Nairobi)

Of the displaced met in this study, less than half received assistance from the government. The lack of official recognition is thus perceived to have cost IDPs the KSh 35,000 they were due.

For victims, truth is not an abstract concept; rather, it goes to the heart of their demands for reparations. To offset the political and ethnic politicking that has led to IDP assistance being denied to many genuine victims, a comprehensive and unbiased list should be made that properly recognizes victims.

They should register and list all of us IDPs; whether integrated, in a camp or anywhere else. As long as you are an IDP, you should be compensated by the government as was done for the others. If the same thing is done for us we will also feel like we are sailing in the same boat. Because we suffered the same calamity, so we should all be considered and not separated. (IDP, camp in the Rift Valley)

### **The Fate of the Disappeared**

One class of victim that has a very particular investment in truth is the families of the disappeared. Wives who do not know if their husbands are alive or dead, for instance, desperately seek the truth so that they can move on.

We think they are still alive because we have never seen the bodies. We wait to see the bodies, but we cannot see bodies and we do not see the people. We thus have hope, we are not yet comfortable. We would therefore like the government to make a step to help us in any other way. If they died they should inform us, but if they are alive they should let us know. Again when someone is constantly being asked a question by a child how can you answer the child? “Where is dad? Where is dad?” (Wife of disappeared man, Central)

### **Attitudes toward the TJRC**

The contact with victims that the study permitted allowed ICTJ to understand their perceptions of the TJRC. Data was collected at a time when the TJRC’s process of taking statements was concluding, and these results demonstrate the challenges that confront the TJRC in both satisfying its mandate and convincing victims of its value.

When victims were asked what they knew of the TJRC, 23 percent had never heard of it; 40 percent knew something of it; and 37 percent knew it well. These figures indicate the outreach challenges the body faces. Of those met, 80 percent had had no contact with the TJRC; three victims met for this study had given statements; five had refused to give a statement (as part of a boycott of TJRC statement takers in Wajir); and one reported that “when I went to see them they refused to take my statement” (family member of victim of Wagalla massacre, Wajir, North-Eastern). Only nine percent of those met said they had faith that the TJRC could address their demands.

While most national civil society organizations remained implacably opposed to the TJRC, some of those working with victims in the provinces saw it as potentially the only opportunity at the time for ordinary victims to tell their stories. In many areas the TJRC employed both victims and their representatives, largely as statement takers, although in many cases these people were themselves skeptical about what the TJRC would be able to achieve. Many of those victims who were aware of the commission saw it as the latest in a long line of failed commissions.

Where victims have been mobilized there was a more critical attitude toward the TJRC, perhaps most typified by Wajir, where an awareness of Chairman Bethuel Kiplagat’s alleged role in the Wagalla massacre led to statement takers being chased away from the town.

They [the TJRC] came to the town, and all the people of the town demonstrated against them, and we rejected them. . . . We don’t want Kiplagat, and if we see

him, we are going to stone him. (Family member of victim of Wagalla massacre, Wajir, North-Eastern)

The better-informed victims met all echoed the criticism that has been leveled against the chairman, as someone who is himself implicated in past violations and as a member of governments that were responsible for violations.

So tell me, how will Kiplagat be questioned and accused by the commission if he is the chairman? Maybe when his day to face the panel comes he will let his vice chairman take his chair and then he goes to sit in the middle, answer all the questions he is asked, and when the interrogation is over, he comes back and takes his seat to chair the commission again. (Urban IDP, Mathare, Nairobi)

Mau Mau veterans opposed the temporal mandate of the TJRC, which excludes the colonial period, and described this as a “cover-up” to protect senior establishment figures who would be exposed as “collaborators” under a longer mandate.

## Memorialization as Reparations

Memorialization is a formal way of assigning value to victims of violations, particularly the dead and disappeared. In this process, the memory of victims is institutionalized and endorsed by the state. For Somali victims from the northeast, memorialization is part of the process of truth telling, as building a memorial both physically refutes any effort to deny violations such as the Wagalla massacre and gives solace to the community.

It's important because it's part of acknowledging the truth, and for those children who lost their father while in their mother's womb it will give them an identity, seeing their father's name there. And for generations to come it will be part of the history of our community and of the world. (Family member of victim of Wagalla massacre, Wajir, North-Eastern)

Similarly, the victims of torture at Nyayo House see a historical benefit to the country in formalizing the site as a memorial:

[The Nyayo House cells] are a monument of shame that can be used to depict the rot that was the regime of that time. . . . It is important to me and to all Kenyans because many people lost their lives in that place. That would be a great explanation and part of history that can be shown to the children, not just being in books. (Victim of torture at Nyayo House, Central)

The community of victims met in this study who feel most abused by history are the veterans of the Mau Mau resistance to British colonial rule. Although a case for reparations for Mau Mau victims of torture is currently being adjudicated in a British court, veterans felt most strongly about the fact that their Kenyan enemies who remained loyal to the British dominate among those who assumed power in independent Kenya. As a result, not only has the Mau Mau story not been told, but the organization remained formally illegal until 2003. While veterans also seek support to counter the poverty experienced by many, seeing their story told in Kenya's schools is a priority, as is seeing the heroes of that resistance celebrated. The first “Heroes' Day” in 2010 was a start, but it remains insufficient for those who fought.

## Restitution and Compensation

Victims' material demands, as seen in Table 2, revolved around a need to establish a new home and a new livelihood. This is reflected in victims' demands for compensation (see

Table 6), which is meant to allow them to recover what they lost. In a few cases however, compensation is seen as improving the damaged relationship between the state and victims:

Yes, [compensation] will be recognition from the government. It will mean that the government has accepted the problems they caused us and they have compensated. Yes, it will serve as recognition. (Family member of victim of Garissa massacre, Garissa, North-Eastern)

People receive compensation in order to forgive the hard feelings they have inside, and in the process they receive back part of what they lost. . . . Compensation is made to heal victims. (Family member of victim of Garissa massacre, Garissa, North-Eastern)

A minority, mostly among the wealthier and educated, saw limits in what compensation could achieve:

Okay, everybody wants money, but there's no money that is going to compensate, there is no money that is going to help my family recover from what I underwent for 45 days at the torture chambers. For two years I was at Kamiti, Kodiaga Main Prison. (Victim of torture at Nyayo House, Western)

**Table 6. Victims' demands for compensation**

COMPENSATION DEMAND	%
Cash	67
Land	33
Livelihood (business support)	25
Education	14
Shelter	11
Medical support	10
Collective compensation	8
Loans	7

Table 6 indicates that the elements that support basic needs—such as shelter and livelihood—dominate expectations of compensation, notably cash, land, and support for the establishment of businesses. Education is seen as the single service that most requires explicit additional support, reflecting the priority Kenyans place on schooling children.

The first and biggest problem many of us have had since the violence started is housing and daily needs, because housing and daily needs go hand in hand. Most of us had our property destroyed totally and were left with nothing; many of us lost our jobs and cannot get any job and cannot be employed anymore. So housing is our greatest requirement as well as daily needs: how someone will be able to take care of himself. (Urban IDP, Mathare, Nairobi)

They should give us land, they should provide the means through which our children could go to school, and they then give us something, let us say money to start businesses, even though it is a small amount someone can be self reliant. . . . I want to be able to help myself in all other things. (IDP, camp in the Rift Valley)

## Compensation

In many cases, while victims met saw compensation as a form of reparations, they also made it clear that the amounts they might receive would not necessarily restore them to their previous status.

The compensation that we receive should bear in mind that there were some people who had their family members killed, had their property burnt; some people were burnt, and some became cripples. The government does not think about these people. Can there be anything so that one can have his normal life restored? Even though we shall not receive everything we should be given back our normal lives so that we can be able to live in this country of ours. (PEV victim, Rift Valley)

Similarly, the assistance that IDPs are supposed to receive (and many have not), was discussed in the light of actual losses, as something that could not be considered compensation because it does not correspond to what was lost.

Lastly, the government is supposed to compensate us, leave alone the KSh 35,000 they are talking about. Someone maybe had 12 heads of cattle, had plenty of produce in the farm, then you are told to settle for KSh 35,000 and told it's enough to cover for all you lost. The government should recognize that we deserve to be compensated but the 10–20,000 is not compensation. (IDP, camp in the Rift Valley)

In contrast, a number who did not receive this assistance reported that KSh 35,000 would be enough to begin a business that could deliver a decent livelihood. There is a concern, particularly among IDPs, that the great losses they incurred as a result of violations will not be compensated by the authorities, and as such some demands are consciously modest in comparison to what has been lost. The priority is a need to end dependence.

The government cannot pay for every single thing that got lost, but let's have something so that we can stop depending on relatives and friends. (IDP and victim of PEV, Mombasa)

A number of victims made the point that money was empowering. Not only does it have the flexibility to address a very wide range of needs, but it gives victims agency in determining what they do with it.

The best thing about money is that supports a lot of things. You can be given money and you can keep your own business, and you can be given money and you are able to buy a plot of land, and you build and you will be getting money just like other people, you can be given money and you buy land and you will be getting your daily bread there. Money supports a lot of things. (IDP, camp in the Rift Valley)

Individual compensation would be something that that person would use for so many purposes, it would empower them. (Family member of victim of Garissa massacre, Garissa, North-Eastern)

Where compensation is given as a consequence of a killing or death, victims understood that this amount would not in fact compensate for the permanent loss. But because most victims met were poor and desperate, they accepted payments offered simply because they needed the money, and in those cases understood the payments as providing redress for income and opportunities lost to the family due to the death of breadwinners.

When someone is dead, it is hard to compensate for that. Maybe let us say that we who are still alive and getting on with life at least need that support. Because we had someone on whom we depended, but now there is nobody to support us and there are those lives that are dying and deteriorating because they do not get support from anywhere. (Urban IDP, Mathare, Nairobi)



### The Somali Tradition of “Blood Money”

Discussion with the families of those killed in the series of violations against the Somali community of the northeast invariably led to demands for compensation according to local understandings of Islamic practice.

We are Muslims, and Islam gives us three options, and you can only choose one of the three: one is forgiveness, the second is you punish the killer by killing him in the same manner he killed your relative, and thirdly you ask them to pay you blood money. . . . Forgiveness is out of the question and killing the killer is also close to impossible; it would not help us anyway. (Family members of victims of Wagalla and Malka Mari massacres, Mandera county, North-Eastern)

By tradition, compensation prescribes that the death of a man demands payment of 100 camels and that of a woman 50 camels.

They should follow the law. In the Islamic law compensation for a man is 100 camels while for a woman it is 50 camels. That is what God (through his prophet, peace be upon him) has intended for us. (Community elder, Mandera county, North-Eastern)

This “price” can then be readily translated into a financial sum, using the current value of a typical camel. One camel costs approximately KSh 50,000–70,000; therefore, each male death demands payment of KSh 5–7 million. The community acknowledges that there is no assault on the person that cannot be compensated for in this way:

Yes, [the raped] must be compensated. The girls are also “living blood”: if a dead woman is equivalent to 50 camels, the living one should get half of that. (Family members of victims of Wagalla massacre, Wajir, North-Eastern)

For every finger damaged he was paid five camels. Anyway it all added up to 300 camels, yet he was alive. Every tooth is equivalent to five camels. So you can calculate the number of camels one would get from all his teeth. . . . Every crime has a punishment. (Family members of victims of Wagalla and Malka Mari massacres, Mandera county, North-Eastern)

The challenge for a reparations scheme in this region is to attempt to satisfy community demands while also following international standards and maintaining a consistent approach nationally. This brings into focus the tension between the very local demands of victim communities and a universal approach, as well as the need for “foregrounding culture” when creating reparations schemes.<sup>41</sup> Traditional processes have become a part of transitional justice in other cases, but they have tended to take the form of truth telling, as in Timor-Leste,<sup>42</sup> or in retributive processes, as in Rwanda’s Gacaca.<sup>43</sup> While reparations in some transitional justice processes have been discussed in terms that emphasize local concepts, rather than universal rights-based approaches,<sup>44</sup> these have not constituted part of any state-driven transitional justice mechanism.

A local activist expressed his skepticism over such traditional approaches and their cost, emphasizing the need to educate the community on rights. The activist believed this was quite possible.

This needs education of the community: those people who were killed there are many, about 3,500 people, so if we say each 100 camels, and one camel costs

<sup>41</sup> Lykes and Mersky, *Psychosocial Interventions*.

<sup>42</sup> Babo-Soares, “Nahe Biti.”

<sup>43</sup> Clark, *Gacaca Courts*.

<sup>44</sup> Viaene, *Life Is Priceless*.

about KSh 70,000, then it will be impossible to pay them. We interact in our daily lives so we can discuss about this and find a solution. (Victim of Wagalla massacre and local activist, Wajir, North-Eastern)

Any practical solution that can satisfy the Somali community and remain feasible will have to be built on both compromise and trust, and must be both rights-based and resonant with local community understandings. A likely effective strategy would be for a state committed to reparations to engage with religious and other community leaders to ensure that they can work with the authorities in finding a solution that satisfies victims. Such an approach will require education of and interaction with the community, and the most important component will be to consult communities about the nature of reparative processes. An additional factor to consider will be how reparations can be used as a tool of transformation to challenge marginalization within communities, notably concerning the treatment of women. Rather than accepting discrimination in benefits that are greater where a man has been lost, a reparations scheme can provide greater benefits to women to address the imbalance in gender power relations, as was done in Morocco.<sup>45</sup>

## Rehabilitation

Those who suffered injury, trauma, or illness as a result of violations see rehabilitation as the form of reparations they need to permit them to resume their previous life. This was most obvious among those who had been victims of sexual violence:

I also seek medical attention since I found out that I was infected [with HIV]. If they helped me in that way then I would be free of stress and would have my business to take care of and medication to take. . . . I default on the drugs I take because I may not have the money to buy them, since there are times when we are told to go and buy them. Once you default the drugs even for a day you will be drawing closer to your grave. I take seven different drugs per day, and there are some times when I am told to go and buy them outside the hospital, yet I don't have the money. When one is taking drugs the person needs proper meals for the drugs to be effective, and yet there are times when there is no food. (Victim of postelection sexual violence, Nyanza)

There are very many people who were raped in this place, and they contracted diseases that are still here; there are orphans who are here whose parents were killed. I can show you some people who behave as though they became mad because of the things that they saw. They are here and nobody cares about them. (IDP, camp in the Rift Valley)

Many victims were also disabled as a result of violations, having lost limbs or been blinded, and who are now unable to work. There are huge challenges in providing reparations for such people, many of whom may never be able to earn a living again.

The psychological issues described by victims primarily concerned children, many of whom appear to have been traumatized by their experience of violations, but few of whom have access to professional care.

There is even one child who hallucinates and always raises the alarm, claiming "They are coming! They are coming!" as a result of what the child saw in Kibera. The child is in standard six here in Kibera and is 13 years old. (Urban IDP, Kibera, Nairobi)

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<sup>45</sup> Morocco's Equity and Truth Commission apportioned benefits among family members of deceased victims in a way that departed from the sharia-based law of inheritance, giving a larger share to women rather than everything to the eldest son (Rubio-Marin and de Greiff, "Women and Reparations").

When I came here my daughter was clearing Class 8 waiting to go to Form 1. At one point she told me that she was contemplating committing suicide to pave the way for the others because of all the suffering we were going through. I counseled her against it telling her that at some point God will help us, but we later found she had consumed poison and was in a critical condition. Through God's grace she survived. (Victims of sexual violence, Rift Valley)

Reparations for all those suffering physically and mentally are likely to involve ensuring access to appropriate care, potentially in the long term.

## **Marginalization and Violations of Economic and Social Rights**

Marginalization and violations of economic and social rights have distinct consequences for individual victims; however, many of those who took part in this study also recognized that membership in their ethnic group or community was a common reason for the harm inflicted on them and that community-wide harms have arisen from those violations.

### **Collective Reparations**

Many of the violations encountered in this study affected entire communities as well as individuals and families. Although there are still contested aspects in the concept of collective reparations,<sup>46</sup> the study sought the participants' views on the possibility of designing collective reparations programs for their communities. The concept of collective reparations can overlap or even be conflated with development, and the participants' views and expectations sometimes reflected these ambiguities.

For the Somali community in the northeast, there was a perception that ensuring the development of the region was both reparative and would serve to end their historic marginalization.

Yes, if such compensation is in terms of doing infrastructure that is going to be a very positive thing for the entire community. It will assist the entire community. That is going to be a generally positive thing done in terms of compensation. . . . We welcome that general idea of compensation in terms of general development. (Family member of victims of Garissa massacre and local activist, Garissa, North-Eastern)

Others linked the delivery of particular infrastructure projects with memorialization, combining ideas of countering the lack of facilities in the region with remembering victims of violence.

Compensation is not all about money. I would like them to build a university college in that field, and it will also serve as a memorial place. So the orphans will know that their fathers were killed there, and they will always remember them in their memories, and also the whole world will know the truth. For us mothers, that will help us to accept what happened, to heal and move on with life. (Family member of victims of Wagalla massacre, Wajir, North-Eastern; talking of the site of the massacre)

A minority of those met rejected collective reparations, seeing development and services as an entitlement of the community as Kenyans.

We have the right to receive all those things without compensation—we are Kenyans. [Addressing] the poor infrastructure in this region is not equivalent to

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<sup>46</sup> Guillerot and Carranza, "Concept and Challenges"

compensation, and the victims should be compensated in their own ways. (Family member of victims of the Garissa massacres, Garissa, North-Eastern)

There was also a suspicion that a commitment to collective reparations could be used by the state to avoid its obligations to individual victims.

The target was the whole clan, but the whole clan did not suffer as a result of the incident. Some people lost their loved ones and all their property, while others didn't lose anything. So I think the problems differ, and they should be compensated individually. (Woman who lost relatives in the Wagalla massacre, Wajir)

Other ethnic groups subject to marginalization were enthusiastic about infrastructure as reparations for their exclusion, since this would serve to both “undo” histories of discrimination and provide redress.

### **Representation and the Marginalized**

Marginalized communities understand that their marginalization is sustained by their lack of representation in state institutions, in the central and local governments and in the civil service.

When all the leadership positions are held by other communities then it would be difficult to be recognized. But if they are your own then you would be recognized. Whenever anything comes for the people and you have a chief of your own, that is when you get recognized. (Ogiek elder, Rift Valley)

The smaller indigenous groups feel that their lack of numbers reduces their ability to influence their own lives, and this is ascribed to their lack of access to education at secondary and higher levels.

The reason these people are ruling us is because their population is greater than ours. There are very few of us and hence the level of education, and that makes them not eligible to apply for positions such as that of chief. (Ogiek elder, Rift Valley)

Representation is seen as the solution to this, meaning that members of their communities occupy positions of authority and can thus represent the communities' interests.

They understand representation is having their own representative in parliament and their issues must be resolved, and also all the problems and conflicts they are having in the grassroots will be resolved. So they feel they will be secured this way rather than having someone from another community because they feel that if they express their feelings to that person he doesn't feel what we do. (Ilchamus community member, Rift Valley)

It is also clear, however, that marginalization itself contributes to lack of representation, since the indigenous have poor access to schools. The solution is thus two-fold: improve social services and increase representation in various levels of government:

We would also like you to convey this to the government that we would also like our people to get jobs in the government with the dispensation of the new constitution so that they may be able to defend our rights. We should be given direct appointment or nomination to the civic, parliamentary, and governing position since we are a small community that needs representation by our own people who may voice out concerns and fight for our rights. (Ogiek elder, Rift Valley)

Some, however, saw that corruption and influence peddling would ensure that others would end up benefiting from such schemes.

## Criminal Prosecution and Reparative Justice

Victims met were asked what they understood by justice for themselves as victims, using a broad understanding of “justice” as offered by the Swahili word “haki.”<sup>47</sup> The responses given are shown in Table 7.

**Table 7. Victims’ understanding of justice**

UNDERSTANDING OF JUSTICE	%
Prosecution	49
Compensation	21
Return of land and property	13
Livelihood	11

About half of the victims who were interviewed or took part in focus groups agreed that prosecution is a form of justice. The other half saw justice in terms of reparations, that is, compensation, restitution, or some form of employment or other material support. This suggests that victims seek a range of reparative measures that includes prosecuting perpetrators but that also addresses the economic and social impact of the violations on victims.

### Victims’ Attitudes toward Criminal Justice

When asked explicitly whether anyone should be prosecuted for the violations they suffered, 82 percent of victims supported prosecutions, either of the actual perpetrators or of those who directed or organized the violations. Fourteen percent did not believe that anyone should be prosecuted. The majority are very clear about the need for the guilty to be punished:

Action should be taken against the people who caused that. Not only those who caused it but also those who fought so that it may become a lesson to the others. . . . The bigwigs should go and meet [ICC Chief Prosecutor Luis Moreno] Ocampo and as for the other small ones tribunals should be established in the country for them. (Victim of PEV, Mathare, Nairobi)

In many cases victims explicitly link continuing impunity to the repetition of violations, in particular with regard to violence around elections.

From 1992 it has been the same people and if you say we forgive them they will still do it again. Let action be taken against them for them to know there is a law. (IDP, camp in the Rift Valley)

There is something else that is a problem: the people who use these people so that violence can erupt and things can be destroyed, none is pursued. The problem that we thus have—and it is the reason why violence erupts every five years—is that there is no one who is pursued. . . . The person who has perpetrated this act, the government states that it has a long arm, is it incapable of arresting the people who kill in this place and the person who steals and burns houses? We have never seen even a single person who has been prosecuted. (Victim of PEV, Rift Valley)

<sup>47</sup> Haki is defined as “justice, right, lawfulness” (Johnson and Madan, *Madan's English-Swahili Dictionary*).

If I were asked I could have said that they should have been arrested so that we could go to trial so that they could state why they did this to me, and I have never wronged them and then they beat me making me leave these children suffering. . . . If measures can be taken against them, they can never repeat such an act, because they did this to me while on the next round they will do this to my daughter. (IDP and victim of sexual violence, camp in Rift Valley)

### The Value of Prosecutions

IDPs and victims of postelection violence were highly aware that violence is cyclic, and made a direct link between the level of security they feel they will enjoy in their communities in the run-up to the 2012 election and the prosecution of the perpetrators, most importantly the ring-leaders, of the 2007–8 violence. In this sense, victims saw prosecutions as a reparative measure, because they are perceived to have a direct impact on the potential for repetition of violations, improving security, and the possibility of living in peace.

Prosecutions can have a reparative component, a view that emerged from victims' statements who mentioned both relief and satisfaction at the prospect of seeing perpetrators punished.

If these perpetrators are prosecuted we will be a bit relieved and we will feel that justice has taken its course. (Family member of victims of the Garissa massacre, Garissa, North-East)

Truth be told such massacres or human rights violations will not happen if justice takes place. . . . So we would appreciate if all perpetrators and humanitarian violators are brought to book, it is going to bring some sense of relief to the victims. . . . They will be recognized because they will feel a sense of belonging now and it will honor them and they will feel like they are being recognized and their plight is being addressed. They will feel a lot of recognition. (Family member of victims of the Garissa massacre, Garissa, North-Eastern)

### Who Should Be Prosecuted?

When asked who should be prosecuted, 25 percent identified the direct perpetrators, 30 percent the ringleaders,<sup>48</sup> and 27 percent both. This appears to demonstrate that victims understand well that greater responsibility is borne by those who gave orders or organized violations. However, more than half also seek to see those who they called the “foot soldiers” punished.

If you only deal with the people at the top and leave those on the ground, the poison is still there, it is not cleared. If he gets the one up there and the one down here, tomorrow I will be afraid because justice will be applied to the big and the small. (Urban IDP, Mathare, Nairobi)

Victims were forthright in naming those who should be taken to trial, with victims of the most recent postelection violence reporting that responsibility went to the very top.

At that time one person was trying to acquire power while the other was trying to protect it. That is the issue, so if they will try to target others without dealing with the issues. . . . To me the two principals should be at The Hague because that is the start for all these issues. (Victim of PEV, Nyanza)

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<sup>48</sup> Victims referred to a range of those responsible for organizing, financing, leading, or ordering violations, including military commanders, officials of the Provincial Administration, and local and national politicians.

Similarly, for earlier violations, such as the massacres in the northeast, victims sought the most senior individuals involved to be tried.

The people who did this are not a group of bandits, it was not tribal clashes . . . it was the government itself. It was the government and its army. The persons who controlled the army were the government of Moi and Maj. Gen. Mahamud. So it is these two who are responsible for the killings. (Family member of victims of the Wagalla and Malka Mari massacres, Mandera County, North-Eastern)

### **Against Prosecution**

A significant minority, almost all of them victims of postelection violence, oppose any prosecutions related to the violations of which they were victims. There appear to be several motivations for this attitude. They were expressed as religious motivations for forgiveness, or that “punishing the most senior perpetrators is simply not possible,” or that prosecutions will “propagate further hatred and encourage revenge,” or that “even when someone is punished this fails to aid victims.”

I think the Bible says that we should forgive those who trespass against us, and those people never knew what they were doing. So I think that we should only pray for them and forgive them. (Victim of PEV, Nyanza)

Even if [the perpetrator] was to be found, of what help is it to the more than 500 who were killed? He might be given 20 years in prison, and that will not have helped the victims. . . . We do not have an interest in seeing that. We do not find it useful at all. (Family member of victims of the Wagalla and Malka Mari massacres, Mandera county, North-Eastern)

### **Domestic Prosecution and the ICC**

A majority of victims met had been following the ICC’s engagement in Kenya. They saw this as the essential complement to a Kenyan judicial process that was likely to either never happen or be fatally flawed. Of respondents, 82 percent did not trust a Kenyan judicial process, and 74 percent sought ICC involvement in prosecuting perpetrators. Individuals’ desire to engage the ICC in the violations of which they were victims stretched far beyond the issue of postelection violence, demonstrating that the lack of faith in Kenyan justice goes greatly beyond simply the postelection violence.

There are things that we do not trust in the government, because we can think that those people will face justice here, but it will not be done because the government has shown that it has many ways that it hides the bad people. It has been mentioned that some of the cabinet ministers were the ones who were involved in the skirmishes. So they will protect each other. Let people be taken to The Hague. (Victim of PEV, Rift Valley)

A little over 20 percent thought there was a possibility that suspects could be tried in local courts, but for many this was contingent upon judicial reforms foreseen in the new constitution.

Those who played a major role in the violence should be left to the International Criminal Court and the small ones, because personally I know who took my cow, we should be assured that the government with its organs, since we have judicial reforms, will be able to follow up the cases well. (IDP, camp in the Rift Valley)

A formal constraint on potential legal action is the Indemnity Act of 1972, which provides blanket immunity to all security forces serving in the northeast, as well as Marsabit, Isiolo, Lamu, and Tana River districts for violations that occurred between 1963 and 1967, up to the present day. There have been claims that, technically, the act also bars residents of



North-Eastern from testifying to the TJRC about violations that occurred during the shifta wars and the subsequent campaigns.<sup>49</sup>

## Reconciliation

Victims were asked in this study about their understanding of and attitude toward reconciliation. Victims see the need for reconciliation not at the national level, but rather at the grassroots level, where communities have clashed.

For victims of state-sanctioned violence, reconciliation is seen as the repairing of their relationship with the state, which means seeing the state satisfy the range of reparative demands, for acknowledgement, compensation, and prosecutions.

Reconciliation can be earned when we see the government taking action to acknowledge the truth of what happened in those incidents: Malka Mari, Bulla Joan, and Garsen. When the government recognizes the massacred, admits its lies, and takes the right action that victims want, that is when our trust in government will return. And as long as the government is silent and denying the truth, we will also be silent with our distrust and will never heal. (Community elder, Mandera county, North-Eastern)

Among those who have become the victims of their fellow Kenyans, respondents are evenly divided between those who believe that reconciliation is impossible and those who believe there must be a dialogue between the concerned parties to achieve it.

What can make me trust them [the Kalenjin] is, let us say it is only communication, because for all the things that they have taken from this place we have told them time and again to bring them back, but they have never returned them. But dialogue can create trust, because for us Kikuyus we do not usually have any quarrel with them because, you know, we are a people who are self-dependent, but they are not self-dependent because they love free things, but we are self-dependent. If they would state that they want peace and that should be true peace there would be no problem we would come together. (Victim of PEV, Rift Valley)

Those displaced from their communities see reconciliation as impossible. They feel unable to return because of real or perceived threats to their lives; they have abandoned hope of living together with those they blame for the loss of their homes and property.

This battle was between neighbors. Neighbors killed their own neighbors. They also stole cattle from us, cattle that they milk up to today. How can you go back to live with the same people? Some people killed so many neighbors you cannot imagine living with them ever again. (Integrated IDP, Kiambu)

I think the hatred will always be there. You see it's a matter of Kikuyus hating Nandis, and vice versa. You may not even expect people who killed each other to really live together in peace. It is a little difficult. These conflicts have been there for ages, so I think the government should just obtain land for the IDPs in a neutral place. (Integrated IDP, Central)

An additional 19 percent take a middle line, insisting that reconciliation is the responsibility of perpetrators, who must come forward, apologize, and make amends. This paints a complicated picture of reconciliation in communities that remain divided.

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<sup>49</sup> Daily Nation, "Truth Commission."

Reconciliation like I mentioned it involves a lot more than just sitting down and forgiving each other. It's about putting in place sustainable peace strategies. We need to have leaders who recognize we matter. It's on an individual-to-individual and also community-to-community level, for example Kikuyu to Kalenjin. We need reconciliation that is free of politics. (Victim of PEV, Mombasa)

We in the grassroots should be provided with joint counseling meetings so that we don't resort to violence again and we know that we are all human beings and can live anywhere in the country as provided for by Kenyan law. (IDP, camp in the Rift Valley)

It is instructive to contrast victim needs on the ground with the mechanisms that have been put in place to deliver reconciliation, notably the TJRC. The TJRC initially planned to undertake community dialogues to facilitate reconciliatory processes. However, this effort fell through and there seems little possibility that the centralized TJRC will play a large role in delivering to communities divided by violence the mediating and reconciling role they seek.

But some victims are also aware that ethnic hatreds were incited by leaders, and some call for a reconciliation at that level, since that is where they perceive problems always start.

What I can say is that the government should try all it can for the leaders to be at peace with each other because I believe from my experience that were it not for these leaders we could not fight with each other. The people that we fight are in the next house, and if my child gets sick he is the one that I am going to call so that we can take the child to hospital. (Urban IDP, Kibera, Nairobi)

Others understand the potential harm polarization can do and seek to find a way where children from different communities can learn to live together.

There is nothing worse than a child who grows up with hatred. If that stays in his mind it becomes a disease. Whenever he sees that other person in his mind he will be seeing an enemy. Their children too are the same. There will thus be a generation that, the same way we speak to each other as adults, there will be a generation that we have raised knowing that our parents and our fathers have lived saying that there will never be a time that these people will reconcile. (Victim of PEV, Rift Valley)

A number of victims, mostly of postelection violence, spoke of forgiveness. While almost half said they could not forgive perpetrators, one-third said they could, and another 20 percent said they could if stolen land and property were returned or if the truth about violations was told. Given the often extreme violations involved, the fact that such language is so widely employed suggests that reconciliation in these communities is possible at some level.

That is what I am telling you, that we are told to reconcile and go back to the way we were living, but will we ever forget? . . . I cannot forget, but I have already forgiven them. (Victim of PEV in 1992, Kibera, Nairobi)

A significant minority saw value in an apology by perpetrators for violations committed by both the state and other actors.

[An apology] would be a good thing. I would equate that to admitting that the government has recognized we exist and that we too matter. (Victim of torture in Nyayo House, Central)

I really want the government to come out clearly and apologize to us. Why should a government officer shoot a 21-year-old with eight bullets? The first action I want is for the government to come out and take responsibility and apologize for the actions it took. (Victim of PEV, Nyanza)

## Institutional Reforms

In addition to the actions that victims demand of the state discussed above, victims were also asked what they sought in order to rebuild their trust in the government. The elements mentioned most often involve reforms in the judicial system and the security sector.

Restoring confidence is a process. . . . The police for the past seven to eight years have been changing, and the training should be changed to be in line with that fact that the police should protect you as a citizen and not intimidate and harass you. . . . That process I don't think will take months but years for confidence to be restored. We have made tremendous steps in the opening up of democratic space compared to 15 years ago. (Victim of torture in Nyayo House, Western)

Many emphasized the role that improving police training could play and wanted to ensure that tribalism played no role in their operations. This attitude was linked to the fact that the police, like many other state institutions, are considered thoroughly corrupt, permitting money and politics to taint their work.

Others described reparations themselves as the single demand (or set of demands) that would most restore trust, since this requires the state to acknowledge violations and compensate victims.

What can make us have some trust or faith in them is when they do the things we are asking and help us address all our problems and take us back to the way we were. Those who were shot, those who lost their parents or children, like I was affected, my life should be returned to the way it was. (Victim of PEV, Nyanza)

Some victims mentioned that the new constitution gives them faith for the future, but that there is still uncertainty as to what difference it will make. Victims said that they need to be told more about what the new constitution brings to victims and how it can support their advocacy.

## Conclusions

Throughout the discussions and interviews with victims, the demands and expectations they spoke about revolved predominantly around having the harms committed against them addressed through material reparations that can meet their most basic needs. For this to happen, these harms must be acknowledged by the state. So far, only a fraction of IDPs have received compensation; the rest of the population of victims of human rights violations have not been acknowledged, let alone given reparations.

The emphasis that victims placed on their basic needs and on the urgency of having their livelihoods restored raises questions about the extent to which transitional justice processes currently ongoing in Kenya are responding effectively to victims' needs. Victims seek official acknowledgment since this acknowledgment leads to material reparations. A majority of the victims met also seek and support efforts to hold perpetrators accountable in criminal proceedings, including in the ICC.

This study demonstrates that, if the ongoing transition is to serve those who have suffered most from Kenya's long history of violations, the issue of reparations must be put firmly

on the agenda. For this to happen, those who are most vocal about the need to address the legacies of violations—notably civil society, the international community, and donors—must ensure that the issue of reparations receives the same attention as criminal prosecution and truth telling, to which it is inextricably linked. A comprehensive reparations program will generally benefit from the findings and recommendations of a credible truth-seeking process and, in some cases, from the outcomes of court proceedings. But some of the needs articulated by victims require immediate attention that cannot wait for truth seeking to conclude or for a case to reach judgment. In this sense, an urgent reparations program that addresses the immediate needs of the most vulnerable victims is one of the most immediate steps that Kenya needs to take.

Two clear elements emerge from the words of victims concerning their perceptions of reparations. One is backward-looking, demanding an undoing of the violation and a restoration of the life that victims had before. The second element is forward-looking, something to stop the cycle of violence and deliver security; this is articulated through demands for acknowledgement of violations, judicial processes to deter future offences, and fundamental reform of many elements of the Kenyan state, from the behavior of senior politicians to the attitudes and performance of the police in the community. In many cases, these demands represent a challenge to the existing order in the country, demonstrating that satisfying the reparative demands of victims requires new sets of norms and institutions to emerge in the country, as promised by the ongoing transition and the new constitution. In this sense, a reparative process for victims is not only a product of the transition, but it can also become a driver of it, linking victims' rights to reparations with the transformation of Kenya's institutions.

When victims repeatedly stated that they wanted to “live as other Kenyans do,” meaning to enjoy the dignity of a livelihood that permits them to feed and clothe themselves and give their children the opportunities they deserve, it is clear that all these victims seek is action that demonstrates that they are valued as citizens of Kenya. This is as true for squatters and indigenous people who have lost their land as it is for the IDPs still living in camps, or women who have had to bring up their children without a father. While this can be done symbolically, through apology and recognition, the most concrete benefit, and most tangible acknowledgement, for victims involves addressing their basic needs.

## A Route to Reparations

There are several potential routes through which a comprehensive reparations process could be initiated by the Kenyan authorities, including its direct establishment independent of any other mechanism. The only route that currently exists is through the TJRC, whose constitutive law requires that it suggest ways and means of redress for victims and recommend reparations. In principle, and as required by the TJRC Act, the final report of the TJRC could include recommendations for a comprehensive reparations scheme with the intention to address the wide range of reparative demands made by victims. That, however, is contingent upon the commission having effectively undertaken outreach, statement taking, public hearings, and research to ensure impartial consideration of victims' reparative demands and their engagement with a commission whose credibility is severely damaged.

This study met with several hundred victims in six regions of the country in an effort to understand their demands of reparation. By comparison, it is an obligation of the commission to do a complete job of identifying the widest possible range of victims and their needs. However, the commission faces critical obstacles toward achieving this mandate. First, the TJRC Act provides that the commission may make recommendations for reparations after considering applications for the same from “any person who is of the opinion that he has suffered harm as a result of a gross violation of human rights.” This limits the commission's ability to consider the entire range of the pattern of human rights

violations in making its recommendations for reparations and raises questions as to whether only those who apply to the commission can reasonably expect reparations. Second, given the short time remaining in the commission's mandate, the credibility issues that still surround it, and the lack of awareness of its existence by a majority of victims, it will be an arduous task for the TJRC to comprehensively map, analyze, and meaningfully capture the information needed to comprehensively recommend reparations.

Apart from the TJRC, there is no other formal government route currently identified through which victims can expect to see a reparative process emerge. Litigation in regular domestic courts might lead to reparations judgments for the relative few who have the resources to pursue their cases. But the experience in Kenya as well as in comparative experiences elsewhere demonstrate that courts are not necessarily an effective and meaningful route in cases of massive and systematic human rights violations.

The same can be said of the potential for reparations from the ICC and the ICC Trust Fund for Victims. The cases they will address are only a portion of the larger set of human rights violations that Kenya as a state is expected to address.

### **Sequencing Reparations as Part of Kenya's Transitional Justice Process**

In other settings, reparations were recommended or implemented as the final step in addressing the impact of legacies of rights violations, usually following a process of truth telling and, in some cases, judicial processes against perpetrators. Indeed, some Kenyan victims articulate a desire for exactly this approach:

We can get compensation after prosecution and the government has accepted the truth, and acknowledges what they did. Those responsible must be punished and the same court should decide on how they should pay us back. (Family member of victim of Garissa massacre, Garissa, North-Eastern)

However, many victims emphasized their urgent need for reparations. In the time since violations occurred children have died as a result of their living conditions, and others have seen their education suffer irreparably. Given the political challenges to seeing a comprehensive process to try perpetrators of the range of violations discussed here and the obstacles that continue to confront the TJRC in telling a truth that can serve victims, victims may face a very long wait for reparations. This suggests that an urgent reparations scheme may be appropriate to address the needs of victims who are facing the greatest immediate challenges.

Any effort to design an effective and comprehensive reparations program should be based on credible and reliable information covering a broad range of human rights violations, including violations of social and economic rights, economic crimes, and land grabbing, and should take into account victims' experiences of violations and their impacts. This will allow the government to design a comprehensive reparations program that might include elements of individual and collective reparations as well as measures that deal with victims' demands for livelihood, access to social services, and other material needs.

## **Recommendations**

These recommendations are informed by the views expressed by participants in the focus group discussions. The interviews and focus group discussions yielded demands for a wide range of symbolic and material measures by victims, depending on the nature and impact of the human rights violations that the participants experienced and their current circumstances.

These recommendations are meant to be neither comprehensive nor representative of all forms of reparations that may be appropriate in Kenya's context. They are presented here as possible bases for advocacy, policy formulation, and assistance that government, civil society, other policymakers, and donors might consider and undertake.

1. **The government should implement an urgent reparations program (URP).** Such a program should focus on the most vulnerable victims with immediate needs arising from more recent violations, notably violations committed in the postelection violence of 2007–8. The URP should:
  - 1.1 prioritize the elderly, widows, single mothers, orphans, children with special needs, victims of sexual and gender violence, and victims with physical or mental disabilities in the distribution of modest compensation and rehabilitation services;
  - 1.2 offer collective forms of urgent reparations, including services to communities and land, for those who are unable to access their traditional means of subsistence;
  - 1.3 include medical assistance, including surgery, for those with conditions that are life-threatening or that physically prevent them from performing labor or going to school, or which are a result of sexual violence; and
  - 1.4 include legal assistance for the displaced and for victims needing government-issued identification, certificates relating to civil status, death or disappearance, and other documents that may be needed in seeking assistance.
  
2. **A credible truth-seeking process should be ensured,** since effective reparations can only be achieved through reliable findings about the occurrence and patterns of violations and the actual victims of these violations. The TJRC's credibility issues mean that the government must ensure the integrity of truth seeking within Kenya's transitional justice process. In so doing, the government must:
  - 2.1 enhance victim participation by listening to and incorporating the views of victims from across a broad range of ethnicities and communities;
  - 2.2 consult victims not only of more recent violations but also of historic injustices, of social and economic rights violations, of land grabbing, forced displacement, and other forms of marginalization;
  - 2.3 enable women to present distinct experiences of victimization and survival not only in relation to sexual violence but also in relation to the impact of human rights violations on their roles in their families and communities; and
  - 2.4 reflect the views of victims in the formulation of reparations policy.
  
3. **Constitutional reforms dealing with land issues should be linked to victims' demands for reparations,** including restitution and reparations for violations of social and economic rights of marginalized families and communities.
  - 3.1 The government should adopt a comprehensive approach in acknowledging and rectifying the long history of the abuse of land allocation and should ensure respect for the constitution's intent to resolve land-related historic injustice and the rights of victims in addressing demands for restitution and land allocation.
  - 3.2 The government should consider any credible findings and recommendations of the TJRC and other documentation efforts and should act on the

recommendations of the Ndung'u Commission involving the illegal and irregular allocation of public land when drawing up recommendations on land issues.

3.3 The National Land Commission to be established under the constitution should be given an explicit role in addressing historic injustice in land matters and in addressing disputes over traditional ownership and occupation as well as rectification of land titles misallocated due to corruption.

**4. The government should consider implementing a comprehensive reparations program.**

4.1 Such a program could utilize the data of state institutions that have separately addressed the needs and concerns of victims, including the Kenya National Commission on Human Rights (KNCHR); state agencies and NGOs involved in providing shelter and services to IDPs; and state and nonstate institutions that have provided material, legal, and other forms of assistance to victims of various periods of violence and displacement. That data can serve as a framework for a more comprehensive effort to assess victims' needs.

4.2 An independent institution should oversee the needs-assessment, victim-consultation, and registration processes that precede reparations design and implementation. Representatives of victims' groups and civil society, selected in a manner that includes different communities, categories of victims, and periods of victimization, should be a formal part of the institution's governance and policymaking.

4.3 Should a truth commission or court recommend or order reparations for any specific category of victims, the government should factor that recommendation or order into the design and policy of the reparations program and ensure that victims and beneficiaries receive the reasonable and appropriate forms of material and symbolic reparations that are feasible under the circumstances.

4.4 Funding and other resources for the reparations program should be allocated by the state directly and annually. Additional resources may be provided through legislation, including from foreign debt reduction, the recovery of assets obtained through corruption and other economic crimes by public officials, and resources provided by donors.

4.5 With respect to IDPs, a comprehensive and transparent process of registration of the distribution of assistance to IDPs should be carried out, along with the development of a resettlement policy that addresses all those still displaced as a result of violence, containing a timeline by which all displacement will have ceased.



## Appendix I. Methodology

The methodology of this study is driven by the understanding that victims of human rights violations know better than anyone else both the impact of violations on their lives and the needs those violations create. The study therefore employed qualitative research methods, including semistructured interviews and focus group discussions, which gave victims the greatest opportunity to articulate those needs on their own terms. While responses to violations are traditionally framed in terms of rights, it has been seen that many Kenyan victims know little of rights and instead articulate needs—often urgent needs that confront them on a daily basis.

### Qualitative Research Methods

Qualitative research methods permit the victims' perspectives to be the lens through which the impact of violations and the reparative needs they create are understood. The views expressed by respondents are collected with a minimum of external assumptions and reflect the social worlds victims occupy.

### Semistructured Interviews

Interviews provide the opportunity for respondents to present information on their own terms: an interview combines structure with flexibility. Using a script to guide the interviews (see Appendix II), victims were asked to talk about their experience of violations and the circumstances that they found themselves in as a result, and were then asked an open question about what they sought from the Kenyan authorities in response to their victimhood. This was followed by more-specific questions about particular impacts of the violation, the nature of individual response mechanisms sought, and any responses made by the authorities. Most interviews were with a single victim and in some cases several family members or neighbors subject to the same violation were met together.

### Focus Group Discussions

A focus group discussion is essentially a group interview, with each participant given the chance to express himself or herself, but with the additional dynamic of intragroup discussion. Traditionally, such groups consist of peers—that is, individuals with similar viewpoints or demographics—and in this study they were victims of similar violations. The questions used to initiate discussion were open, inviting participants to discuss their experience of violations and then to articulate the responses sought from the authorities. For individuals who may feel vulnerable a focus group can create a more secure environment for the expression of feelings, particularly where all members feel some solidarity, as was seen, for example, in groups of victims of sexual violence.

### Modalities and Analysis

The average length of interviews and focus group discussions was around one hour, with some shorter and others, particularly some focus group discussions, much longer. Interviews and focus group discussions were recorded, with the verbal consent of respondents, on the understanding that names of individuals and communities would remain anonymous. Interviews were conducted in a range of languages, including Swahili, Kikuyu, English, Luo, Maasai, Somali, Borana, and Ilchamus, and interpretation was provided either by ICTJ staff or representatives of partner agencies. The resulting audio files, constituting almost 100 hours of contact with victims, were translated and transcribed into English and formed the raw data to be analyzed. Analysis proceeded through iterative coding of topic data by frequency, and the selection of all text segments relevant to the topics under study.

## Sampling

The selection of regions was made to allow contact with victims of the broadest range of violations, including issues of marginalization and historic injustice, massacres carried out by security forces, torture and beatings, disappearances and extrajudicial executions, sexual violence, and postelection violence (from both 2007–8 and earlier periods) often resulting in displacement and land issues.

This led to the selection of the Rift Valley, North-Eastern, Coast, Nyanza, Nairobi, and Central Provinces as the regions in which the study would be performed. For issues such as marginalization, where entire communities are impacted, representatives of the community were met such that issues of collective reparation could be discussed. Otherwise, individual victims and groups of victims were met, including direct victims and relatives of those killed. Once a particular geographical region and violation of interest was identified with the collaboration of partners, partner agencies would make a selection of victims to be met.

Explicitly excluded from the study were economic crimes, including corruption and instances of public land being illegally acquired, that have no direct victims. Also largely absent from the study were high-profile violations such as political assassinations and reactions to alleged coup attempts, where relatively smaller numbers of victims are directly affected.

The final selection of regions where data was collected and the particular violations addressed are shown in Table 8, together with the partner organizations that made interviews and focus groups possible, and the number of sessions made with victims.

**Table 8. Summary of interviews and focus groups**

PROVINCE	VIOLATIONS	PARTNERS	INTERVIEWS	FOCUS GROUPS
Rift Valley	PEV, displacement (historic and 2007–8), and associated violations	Victims' network (IDPs) FIDA	9	5
	Mau forest evictions	Ogiek group	1	1
	Indigenous marginalization	Baringo HR Consortium/Women's Rural Development Network/Maasai group	1	4
	Sexual and gender-based violence	COVAW/Women in Crisis	-	1
Coast	PEV, displacement (historic), and associated violations	MUHURI	5	9
	Land grabbing/historic marginalization			
	Indigenous marginalization			

<b>North-Eastern</b>	Massacres and associated violations	Truth Be Told Network KNCHR	20	6
	Marginalization			
<b>Nairobi &amp; Central</b>	Displacement, PEV, and urban IDPs	CJPC Victim's network (IDPs) FIDA Mt. Kenya HR Network	5	5
	Squatters	KHRC/Ndula CRC	-	1
	Extrajudicial killings and disappearances (Mungiki)	KHRC Mt. Kenya HR Network	-	2
	Mau Mau victims	Mau Mau War Veterans' Association	1	-
	Torture	KHRC Victims' Network (Torture)	2	-
<b>Nyanza</b>	Displacement and PEV	CSOs Network	1	4
	PEV sexual violence		-	1
<b>Total</b>			45	39

Interviews and focus group discussions were carried out either in the affected communities, often in the homes of victims, or in a nearby population center, to which victims from the surrounding area would be invited. In most cases the modality of collaboration with a local partner allowed a relationship of trust to be built with victims, since partner agencies were themselves known to and trusted by victims.

The numbers involved in each session are shown in Appendix III. Interviews were made with individuals, pairs of victims, and small groups. In this report sessions involving three or fewer victims are considered interviews, while those with four or more victims are considered focus groups. On average, focus groups contained nine persons.

## Follow-up and Capacity-Building Approach

### Verification Process

After the two month data-taking period and the initial analysis of the data, a draft report outlining victims' reparative demands was taken back to the regions where the research was made and discussed with representatives of all those victims met for the study.<sup>50</sup> These verification meetings were held in all six regions of the study and were attended by the partners who had facilitated contact with victims, by victims' representatives, and by a range of victims themselves. The verification exercise permitted victims to confirm that the output of the research reflected their own priorities. The validation component of the meetings took the form of inviting those present to discuss in small groups both their understandings of peace, justice, and compensation for victims, and the mechanisms that they saw as potentially delivering these.

<sup>50</sup>In social science research, "the process of returning analyses to informants for the confirmation of accuracy, [is] termed *member checking* or *respondent validation*," Angen, "Evaluating Interpretive Inquiry."

## Ways Forward on the Basis of the Study

A second element developed around the study was to consult victims as to how the study could be used to move forward victims' demands for reparation. This was done at the verification meetings by asking victims, in an open way, what they sought for themselves and their organizations to advance their agendas.

The launch of this report was perceived by victims as an opportunity to attempt to advance some of these aims through both national and local media strategies and through attempting to build a national network of victims that could serve to represent them. The concept of a "victims' network" was the single idea for action that emerged most consistently from the verification meetings around the country.

## Profile of Victims Met

In total, 376 victims were met, 51 in interviews and 325 in focus group discussions. The victims met for the study were both young and old and represented a huge variety, including first-time victims and those who had repeatedly experienced violations. Most of those met were rural, typically dependent on small-scale agriculture or livestock farming for their livelihoods, but the study also included urban populations from informal settlements, educated elites, such as some of those detained in Nyayo House, and local community leaders in various regions.

Of the 84 sessions (that is, interviews and focus groups) with victims, 37 (44 percent) involved those victimized by postelection violence, largely in 2007–8, but also in previous episodes.

The ethnicity of respondents is shown in the list of those met in Appendix III, while the regions where respondents were met is shown in Table 9. Ethnically, Somali Kenyans and Kikuyu are well represented owing to the selection of regions where they are predominant. Most of the focus groups where an ethnically mixed set of victims were met were those conducted in Nyanza with non-Luo and in Coast with upcountry victims of the postelection violence. Indigenous people met include the Ilchamus, Endorois, Ogiek, Maasai, Dorobo, Taita, and Tarda.

**Table 9. Gender representation in interviews and focus groups**

REGION	WOMEN MET	MEN MET	TOTAL SESSIONS	WOMEN-ONLY SESSIONS
Nairobi	15	5	7	3
Central	24	23	9	2
Nyanza <sup>51</sup>	33	10	6	2
North-Eastern	39	40	26	8
Coast	16	75	14	2
Rift Valley	37	59	22	5
Total	164	212	84	22

Of the 376 victims met, 164 (43.6 percent) were women.<sup>52</sup> This relatively low number, despite efforts of the research team to include women, is a result of both the highly patriarchal societies in which the study was done and the lack of both representation and priority given to such issues by some partner agencies. In many cases, partners sought to

<sup>51</sup> Some of the victims met at the sessions in Nyanza came from Western.

<sup>52</sup> Of the 45 individual interviews, 12 were with women, 30 with men, and 2 mixed; for focus groups, 10 with women, 7 with men, and 23 mixed.

ensure that representatives of victim communities, such as camp chairmen, councilors, and local chiefs, were met, and this led to the overrepresentation of men.

Regional differences in gender representation thus arise largely as a result of the modality of respondent selection with partners and their own attitudes concerning those to be met. In some regions, there was an impression that local partners did not believe women could deliver the message about community needs as effectively as men. This resulted in women's concerns being reduced to that of gender-based violence, with little input on broader issues. This can be seen in the small number of women-only sessions, in which women's perspectives on all issues are most easily accessed. In all communities there were real challenges in ensuring the discussion of issues of sexual violence, due to the stigma associated with it. Such issues were only effectively addressed in women-only focus groups where a partner agency had already been working in the long term with such victims. No partner was found explicitly addressing the issue of sexual violence against men, and so this issue was largely not discussed.

## Participating Partners

The following agencies facilitated the contact with victims that made this study possible (listed alphabetically):

**Table 10. Partners who made victim contact possible**

PARTNER	REGION
Baringo Human Rights Network	Rift Valley
Catholic Justice and Peace Commission	Nairobi, Central
Coalition On Violence Against Women (COVAW)	Rift Valley
CSOs Network, Kisumu	Nyanza, Western
FIDA (Federation of Women Lawyers, Kenya)	Central
The IDP Network	Rift Valley
Kenya Human Rights Commission	National
Kenya National Commission on Human Rights	National
Malindi Rights Forum	Coast
Mau Mau Veterans' Association	Central, Rift Valley
Mt. Kenya Human Rights Network	Central
Muslims Human Rights Forum (MUHURI)	Coast
Ndula Community Resource Centre	Central
Northern Aid	North-Eastern
Ogiek community	Rift Valley
Truth Be Told Network	North-Eastern
Victims' Network	Nairobi
Women's Rural Development Network	Rift Valley

## Appendix II. The Research Instrument

### 1. Introduction

Wish to understand what victims of rights violations in the past seek in terms of reparation

We are not the TJRC, but aim to influence it.

Aim is to produce a public report discussing reparative needs such that Govt., TJRC and others are better informed; cannot guarantee that action will be taken

Understand frustration at having spoken to many others already, but we aim not to take testimony but to understand the needs of victims.

All information will be confidential: would like to record and quote, but without naming or identifying [informed consent will be oral only]

If you don't want to talk about some issues that is fine; can choose to stop whenever you like – don't want to upset.

### 2. General Information

Aim is that interviews / focus groups will be a discussion, led by the priorities of the victim

- **The Interviewee**

- Name, age, gender
- Ethnicity
- Region / district

- **The violation**

Want to understand the nature of the violation, but do not need all the details that would constitute traditional testimony

- What happened?
- When / who / what
- What has happened to the victim since the violation?
- Has the victim suffered any additional violations since?

### 3. General Priorities

Aim to understand what families articulate as their needs of reparation, without prompting of possibilities.

- What are the greatest problems that they face as a result of the violation?
- What action would the family like to see in the light of the violation?

#### 4. Understanding of reparation

- **What do you understand by reparation?**
  - Seek articulation of both understanding of the word (if known) and of the concept of reparation
- **What is expected from the authorities concerning the violation? [If not answered above]**
- **What is understood as a victim's rights?**

#### 5. Compensation

- **What do they understand by compensation?**
  - Why is compensation important?
  - Compensation/ reparations – is a need for truth and/or admission of responsibility important?
  - Would they accept compensation with no admission of responsibility?
- **Have they received anything from the authorities?**
- **What should compensation consist of?**
  - Money? In kind? Access to services?
- **Who should receive compensation?**
- **Where community has suffered:**
- **How should compensation be given? To individual families, to communities?**
- **How could compensation / reparation be given to the community?**
  - Infrastructure? Memorial? Truth?

#### 6. Truth, acknowledgement and memorial

- **Has their situation has been recognized / acknowledged by the authorities?**
  - Has there been any acknowledgement from authorities (trial, compensation etc)?
  - What would they seek as acknowledgement? Why is it important?
  - What about acknowledgement from others (NGOs etc.)? Is this important?
- **Is an apology important? Is truth about what happened part of reparation?**
  - Do people in Kenya know about what happened?
- **Does the family consider some sort of memorial appropriate? What? Where?**
- **How should Kenya try to record and remember its history of violations?**

#### 7. IDPs and victims of land grabbing

- **Have they been resettled? What is their attitude towards this?**
  - If not where are they living? {Main camp / transit camp / settlement camp}
- **Do they believe it possible to return to home / to land? Do they want to?**
  - If not why not? [Political pressure, security, access to schools?]
  - If not what could substitute for return? Where else would they seek to be relocated?
- **Do they feel secure where they are?**
  - What would make them feel more secure?



- What could the authorities do to increase security?
- **Has there been any legal or other process to address the issue?**
  - Have they been compensated or assisted (KSh 10,000 / 25,000)?
- **Who do they believe has benefitted from their displacement / loss of land?**
  - Do they believe there was an ethnic or political component to their displacement?
  - What is their attitude to those living there now?
  - Is there a dispute over the property? Do they have documentation? Have they received any legal support?

## 8. Justice

Start with an open question and then ask details, depending upon what emerges.

- **What does the family understand by justice?**
  - Acknowledgement, compensation, prosecutions?
- **Do they believe that someone should be punished for what has happened?**
  - Who should be punished? (direct perpetrators, instigators, politicians?)
  - Why is such justice important for you?
  - Where should judicial process be? (local, Nairobi, international?)
  - Is the Kenyan justice system capable of such process?
- **Do traditional justice systems have any relevance?**

## 9. TJRC and the response of the state

- **What do they know about the TJRC?**
  - Do they understand what its role is?
  - Have they had any contact with the TJRC?
  - Do they believe that it will be able to give something to victims?
  - What should the TJRC do for victims?
  - Are they happy with the Commissioners chosen?
- **Have you yourself (or someone from your family) reported or registered the violation?**
  - **If yes:** To whom? When?
  - **If not:** why not?
- **What is the family's opinion of the perpetrators (Govt., security forces, ethnic groups etc.) now?**
- **What is their opinion of the authorities' involvement around the violation, then and now?**
- **What could be done that would give you confidence in these institutions / groups?**
  - Should people who have committed violations be permitted to hold public office or political positions?
  - Does the new Constitution address their needs in this respect?
- **What does reconciliation mean for victims like you?**
  - Between whom?
  - How could this be done?
  - How is reconciliation linked to reparation?
- **Could they forgive perpetrators?**
  - What would be required to do this?

## 10. Economic situation

Note, particularly for the poor seek to understand impact of violation on economic security; how urgent are these material needs?

- **Describe the household: number of persons, status, sex, including children, sick, elderly or handicapped people, dwelling**
- **What are the main sources of income (e.g. agriculture, salary, etc.) ?**
  - If rural how much land owned/ accessed.
  - Other sources of income?
  - Any debt?
- **Do/did you encounter economic problems because of the violation?**
  - Explain how/why
- **Did/Do you receive economic support from:**
  - Extended family, neighbours, friends and/or other community members
  - Non Governmental Organizations
  - Received compensation or assistance from Govt?
  -
- **Does your income cover your basic needs?**
  - How many meals a day does the family eat?
  - What does the family go without as a result of financial hardship?
  - What is access to schooling (primary, secondary) and healthcare?
  - If no: how do you make ends meet?

## 11. Health and Psychosocial issues

- **From a general point of view, how did the violation change something in your life? What would be different if it hadn't happened?**
  - - "Your" life here can be that of the individual, the family or the community, as the subject chooses
- **What effect did the violation have on your emotional and mental state?**
- **Has your health changed since the violation?**
- **Has the violation affected the situation within your family?**
  - This targets women especially, and may be worthwhile asking only where in laws are not present.
- **Did the violation change something in your relations with others: friends, peers, neighbours, community, etc? If yes, how?**
- **Is the community divided in any way due to the conflict? Does this affect you / your family?**
- **Does your community have needs arising from the violation?**
  - Are there social problems in the community as a result of the violation (drinking, prostitution, criminality)?

## 12. Feedback

- **Are there any issues that have not been discussed that are important to you?**
- **Do they have any questions or comments?**

## Appendix III. Individuals Interviewed and Focus Groups

The following tables list all interviews and focus groups made. In total, the study met 376 victims. To maintain anonymity, codes have been used to represent individuals met during interviews and focus group discussions. The precise locations of communities and IDP camps are also not disclosed, where this was expressly requested.

**Table 11. Interview details**

CODE	PROVINCE	ADDRESS	ETHNICITY	AGE AND GENDER	VIOLATIONS
NA01	Nairobi	Kibera	Kikuyu	55F	Urban IDPs and other violations (Nairobi slum)
NA02	Nairobi	Kibera	Kikuyu	42F	
NA03	Nairobi	Kibera	Kikuyu	50M	
NA04	Nairobi	Kibera	Kisii	68M	
NA05	Nairobi	Kisii	Kisii	M50s	Political detainee/torture victim
NA06	Central	Kiambu	Kikuyu	M58	Political detainee/torture victim
NA07	Central	Thika	Kikuyu	M86	Mau Mau veteran
RV01	Rift Valley	Marigat	Ilchamus	M50s	Ilchamus victims of interethnic conflict
RV02	Rift Valley	IDP camp, Naivasha	Kikuyu	M25	Displacement (PEV)
RV03	Rift Valley	IDP camp, Naivasha	Kikuyu	M39	Displacement (PEV)
RV04	Rift Valley	IDP camp, Molo	Kisii	M25	Displacement (PEV)
RV05	Rift Valley	IDP camp, Molo	Kisii	M30s	Displacement (PEV)
RV06	Rift Valley	IDP camp, Molo	Kikuyu	F40s	Displacement (PEV)
RV07	Rift Valley	IDP camp, Molo	Kikuyu	M74	Displacement (PEV)
RV08	Rift Valley	IDP camp, Molo	Kikuyu	M30s	Displacement (PEV)
RV09	Rift Valley	Community, Molo	Kikuyu	M76	Ex-Mau Mau/ Displacement and PEV
RV10	Rift Valley	Community, Molo	Kikuyu	F40	Displacement and PEV
RV11	Rift Valley	Dorobo forest evictees	Dorobo	F40	Eviction and marginalization
NE01	North-Eastern	Garissa town	Somali	M36	Garissa massacre
NE02	North-Eastern	Garissa	Somali	F60, M40	Garissa massacre
NE03	North-Eastern	Garissa town	Somali	M65, F40	Garissa massacre
NE04	North-Eastern	Garissa town	Somali	F29	Garissa massacre
NE05	North-Eastern	Garissa	Somali	F50	Garissa massacre

		town			
NE06	North-Eastern	Wajir town	Somali	F50	Wagalla massacre
NE07	North-Eastern	Wajir town	Somali	M81	Wagalla massacre
NE08	North-Eastern	Wajir town	Somali	M50s	Wagalla massacre
NE09	North-Eastern	Wajir town	Somali	F56 & 40	Wagalla massacre
NE11	North-Eastern	Wajir town	Somali	M50s	Wagalla massacre
NE12	North-Eastern	Tarbaj	Somali	M40s	Marginalisation
NE13	North-Eastern	Rhamu	Somali	3F50s	Malka Mari
NE14	North-Eastern	Rhamu	Somali	M40 & 50	Malka Mari / Wagalla
NE15	North-Eastern	Rhamu	Somali	M45 & 50	Malka Mari
NE16	North-Eastern	Rhamu	Somali	M86	General
NE17	North-Eastern	Rhamu	Somali	2M60s	Malka Mari
NE18	North-Eastern	El Wak	Somali	M40	Mandera operation
NE19	North-Eastern	El Wak	Somali	M25	Mandera operation
NE20	North-Eastern	Wajir town	Somali	2M50s	Wagalla massacre
NE21	North-Eastern	Wajir town	Somali	M28	Wagalla massacre
NY01	Nyanza	Kisumu town	Luo	M50s	PEV
CO01	Coast	Likoni	Kikuyu	F50s	Interethnic and PEV: 1992, 1997, 2008
CO02	Coast	Mombasa	Coastarian	M50s	Rights activist
CO03	Coast	Garsen	Tarda	M30	Evictees: Tarda community
CO04	Coast	Mwatete	Taita	F25	Evictee: commercial impact
CO05	Coast	Mombasa	Coastarian	M60s	Rights activists

**Table 12. Focus group details**

CODE	PROVINCE	FOCUS GROUP TYPE	ADDRESS	ETHNICITY	NUMBERS AND GENDER	VIOLATIONS
NAFG01	Nairobi	Mathare IDPs: youth	Mathare	Mixed	2M, 2F	Urban IDPs and other violations (Nairobi slum)
NAFG02	Nairobi	Mathare IDPs ladies	Mathare	Kikuyu	11F	
NAFG03	Nairobi	Mathare IDPs: men	Mathare	Kikuyu	4M	
NAFG04	Nairobi	Integrated IDPs, Limuru	Limuru	Kikuyu	3F	Integrated IDPs (PEV)
NAFG05	Nairobi	Ndula squatters	Ndula, Thika	Mixed	3F, 4M	Land and eviction
NAFG06	Nairobi	Kiambu integrated IDPs	Kiambu	Kikuyu	4M, 4F	Displacement
NAFG07	Nairobi	Kiambu integrated IDPs	Kiambu	Kikuyu	4M, 4F	Displacement
NAFG08	Nairobi	Nyeri disappearances	Nyeri	Kikuyu	7F	Disappearance and extrajudicial killings
NAFG09	Nairobi	Victims of Kirinyaga Mungiki violence	Kirinyaga	Kikuyu	3F, 5M	Killings, theft, etc.
RVFG01	Rift Valley	Endorois community	Baringo	Endorois	5M, 2F	Marginalization
RVFG02	Rift Valley	Ilchamus community	Baringo	Ilchamus	10M, 2F	Interethnic conflict
RVFG03	Rift Valley	IDPs, Naivasha	IDP camp, Naivasha	Kikuyu	3F, 4M	Displacement (PEV)
RVFG04	Rift Valley	Maasai community, Naivasha	Naivasha district	Maasai	2F, 7M	Marginalization/ Interethnic conflict
RVFG05	Rift Valley	IDP camp, Molo	Molo district	Mixed	5F, 5M	Displacement (PEV)
RVFG06	Rift Valley	IDP camp, Molo	Molo district	Kikuyu	7F	Displacement (PEV)
RVFG07	Rift Valley	Community, Molo	Molo district	Kikuyu	1F, 6M	Displacement & PEV
RVFG08	Rift Valley	Women victims of sexual and gender-based violence	Nakuru	Mixed	8F	Sexual and gender-based violence
RVFG09	Rift Valley	Dorobo forest evictees	N. Tinderet forest	Dorobo	2F, 7M	Eviction & marginalization
RVFG10	Rift Valley	Ogiek elders	Nakuru town	Ogiek	4M	Marginalisation
RVFG11	Rift Valley	IDP camp, Nakuru	Nakuru	Kikuyu	3M, 1F	Displacement (PEV)
NEFG01	North-Eastern	Garissa massacre	Garissa town	Somali	M3, F4	Garissa massacre
NEFG02	North-	Wagalla	Wajir	Somali	F13	Wagalla

	Eastern	massacre	town			massacre
NEFG03	North-Eastern	Wagalla massacre	Wajir town	Somali	F9	Wagalla massacre
NEFG04	North-Eastern	Begalla massacre	Wajir town	Somali	F5	Begalla massacre
NEFG05	North-Eastern	El Wak elders	El Wak	Somali	M8	Mandera operation
NEFG06	North-Eastern	Rhamu elders	Rhamu	Somali	M11	Malka Mari killings
NYFG01	Nyanza	PEV victims	Kisumu town	Luo	4F, 3M	PEV
NYFG02	Nyanza	PEV victims: women	Kisumu town	Luo	6F	PEV & Displacement
NYFG03	Nyanza	PEV victims: non-Luo	Kisumu town	Mixed	6F, M4	PEV
NYFG04	Nyanza	PEV victims	Kisumu town	Mixed	F9, M2	PEV: Killings, IDPs, SGBV
NYFG05	Nyanza	PEV victims: : SGBV Women	Kisumu town	Luo	F8	Sexual violence
COFG01	Coast	Likoni IDPs	Likoni	Mixed	F3, M7	Inter-ethnic and PEV: '92. '97, 2008
COFG02	Coast	Political movement of coastal people	Likoni	Coastarian	M9	History of marginalization
COFG03	Coast	Squatters	Mombasa	Mixed	F5,M5	Squatters: Lack of land title
COFG04	Coast	Squatters	Mombasa	Mixed	F2,M12	Squatters: Lack of land title
COFG05	Coast	Tarda indigenous evictees	Garsen	Coastarian	M8	Indigenous people, being evicted
COFG06	Coast	Victims of salt industry	Marereni	Mijikenda	F1,M11	Marereni salt industry violations
COFG07	Coast	Mwatate evictees	Mwatete	Taita	F3, M6	Ethnic Taita displaced by sisal business
COFG08	Coast	Voi park displacement	Voi	Mijikenda	M5	Community displaced from Nat.Park
COFG09	Coast	Kikambala squatters	Kikambala	Mijikenda	M8, F1	Corrupt settlement scheme

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