

KENYA

by Public International Law & Policy Group (updated April 2018)

Summary of Reparations Efforts and Programs

Kenya has a reparations program to address the gross violations that occurred during the presidency of Daniel arap Moi (1978–2001) and the 2007–08 post-election violence (PEV). The reparations program stems from a robust legal framework, but the lack of political will has hindered implementation. As such, victims in Kenya had hoped to receive reparations through International Criminal Court (ICC) proceedings. However, all ICC cases regarding the situation in Kenya have been dropped or adjudicated without convictions, thus the likelihood of receiving reparations has substantially decreased. Kenyan victims of British colonial rule have sought reparations through civil litigation.

Context

Moi's 25-year-long rule was characterized by violence, repression, and allegations of torture.¹ Kenya offers reparations to victims of sporadic and isolated state-perpetrated violations committed since the country's independence in 1963.

More recently, in December 2007, PEV broke out after incumbent President Mwai Kibaki was declared the winner of Kenya's presidential elections. Despite allegations of election rigging, Kibaki was hastily sworn in for another presidential term, causing widespread, violent protests that pitted ethnic tribes against each other, killing 1,500 and displacing 300,000 more. Rape and sexual violence were also rampant.²

Sources of Reparations

Kenya's comprehensive reparations scheme is rooted in national legislation and international obligations, namely those emanating from the state's ratification of the Rome Statute of the ICC.³

Constitution of 2010: The Constitution includes numerous provisions on reparations for victims of certain human rights violations. The new constitution was adopted in order to prevent future PEV and other drivers of conflict in Kenya, such as corruption, abuse of power, and disregard for the rule of law.⁴

Kenya National Commission on Human Rights (KNCHR): The Constitution provides for KNCHR, which was established by the Kenya National Commission on Human Rights Act in 2011. The KNCHR is mandated to promote human rights and equality and to investigate human

rights violations perpetrated by government officials.⁵ It played a large role in both enabling Kenya's truth commission to hear victims' stories and designing a reparations policy to redress historical injustice.⁶

Truth, Justice and Reconciliation Commission (TJRC): Immediately after the PEV, the country's new coalition government signed various agreements establishing commissions of inquiry to examine allegations of PEV-related crimes. The TJRC was mandated to investigate state-perpetrated violations committed from independence in 1963 to February 28, 2008, when Kenya concluded a power-sharing deal, and to make recommendations on how to address such violations.⁷ In May 2013, the TJRC's final report proposed that the government develop a comprehensive reparations package, including individual and collective reparations, for PEV-related violations.⁸ Unfortunately, the government has not implemented many of the TJRC recommendations.⁹

Commission on Administrative Justice (CAJ): In 2011, Parliament created this commission to scrutinize the conduct of state officials and administrators following complaints of their abuse of power.¹⁰

Independent Policing Oversight Authority: Parliament devised this mechanism in November 2011 to provide civilian oversight, to monitor, and to investigate the police,¹¹ who were among the PEV perpetrators.

Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (IDP Act): Parliament passed this law in 2013 to facilitate the safe and voluntary return of persons displaced by the PEV.¹²

Victim Protection Act: In October 2014, Parliament passed this law, which entitles crime victims to compensation from the perpetrator(s).¹³

Operation Rudi Nyumbani (Operation Return Home): Operation Return Home was a policy through which the government offered money for transportation, rebuilding homes, and farming supplies to IDPs who were forced from their homes by the PEV that preceded the IDP Act.¹⁴

ICC: Kenya is a State Party to the Rome Statute, which grants the ICC jurisdiction over war crimes, crimes against humanity, genocide, and the crime of aggression in Kenya. The ICC is mandated to issue individual and collective material reparations in the forms of restitution, compensation, and rehabilitation.¹⁵ The ICC has a Trust Fund for Victims that can supply the financial resources to implement material reparations if the convicted defendant is indigent.¹⁶ The Court has maintained that it cannot make a decision on reparations in the absence of a

conviction.¹⁷ To date, the ICC has yet to make any convictions related to crimes during the PEV period (discussed further below).¹⁸

Reparations Efforts and Programs

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the United Nations General Assembly in 2005, directs states to provide victims with five forms of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.¹⁹

1. Restitution

Restitution aims to restore the victim to their situation before his or her rights had been violated. For example, enabling a victim's return to their place of residence, returning property, and restoring citizenship are acts of restitution.

Enjoyment of human rights, identity, family life, and citizenship

The Constitution and subsequent domestic legislation enshrine the enjoyment of human rights. The Constitution requires Parliament to “enact legislation providing for the protection, rights and welfare of victims of offences.”²⁰ The Victim Protection Act is an example of this, as it intends to specifically protect victims from further discrimination and victimization while safeguarding their dignity, cultural values, and beliefs.²¹ Critics have commented that it has not adequately safeguarded victims of sexual and gender-based violence.²²

The government has specifically recognized the importance of citizenship rights. The TJRC recommended that communities or other groups that were victims of state-perpetrated violations should be eligible to receive citizenship documents.²³ Furthermore, the government has worked with civil society organizations to grant citizenship rights to stateless groups and individuals marginalized by the government. Nevertheless, laws continue to permit the government to revoke citizenship rights without clear cause.²⁴

Return to one's place of residence

The IDP Act guarantees PEV victims the right to return to their place of residence. The IDP Act requires the government to “establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.”²⁵ Prior to the passage of the IDP Act, Operation Return Home resettled persons displaced by the PEV,

covered the costs of transportation, and distributed building and farming materials. Through the operation, victims have also received money for relocation costs, although less than what they were promised.²⁶

Because there is no up-to-date data on IDPs in Kenya, it is difficult to evaluate the implementation of the IDP Act.²⁷ As of March 2016, the government claimed that all IDP camps for persons displaced by the PEV have closed.²⁸ However, it is unclear whether former camp residents were able to—and did—return home.²⁹

Return of property

Land-related issues have been a major driver of conflict in Kenya. The TJRC recommended “resettlement and/or access to alternative community lands” for victims of historical land injustices and contemplated restitution for those who unjustifiably lost their land. Related TJRC recommendations proposed compensation for lost land and benefit-sharing schemes for land that was developed since the original owners’ loss.³⁰

In addition, the National Land Commission, established under Article 67 of the Constitution, is empowered to deliver restitution and resettlement in land disputes.³¹ Its strategic plan, released in 2013, laid out a comprehensive roadmap for land reform and emphasized the importance of utilizing traditional dispute resolution mechanisms to resolve land conflicts.³² Unfortunately, both the TJRC and the National Land Commission have failed to effectively grant such reparations.³³ For example, the National Land Commission has lacked the on-the-ground presence necessary to undertake reforms and the government has not executed TJRC recommendations on land restitution.³⁴ Consequently, broader land reform has been limited.

In the absence of national-level programs, civil society organizations have been initiating community-level land restitution programs. For example, the institutional author of this chapter, the Public International Law & Policy Group, piloted a project in which communities use alternative justice systems to address property crimes and other offenses that occurred during the PEV.

2. Compensation

Compensation is typically a monetary award given to a person for loss occurred by an injury. States should provide compensation when damage is economically assessable.

General compensation

According to the Constitution, persons who experienced violations of their fundamental freedoms or rights are entitled to compensation.³⁵ In such instances, the Constitution gives “every person” the right to “institute court proceedings” and gives victims the opportunity to gain “an order for compensation.”³⁶ This legal framework has given courts wide discretion in ordering compensation.³⁷

In 2012, Kenya attempted to implement the Victims of Gross Human Rights Violations (Compensation) Commission Bill (Victims Compensation Bill), which called for the creation of a commission to establish a record of the victims of gross human rights violations in Kenya from 1963 through 2008 and to determine compensation for those victims.³⁸ Parliament never passed the Victims Compensation Bill.³⁹

Additionally, the TJRC recommendations proposed “monetary compensation in the form of a standardized ten-year annual payment (pension)” for the highest priority victims of state-perpetrated violations from 1963 through 2008.⁴⁰ It also suggested that victims who are neither vulnerable nor in need of expedited reparations obtain compensatory relief through a “standardized five-year pension.”⁴¹ However, Kenya continues to lack the comprehensive transitional justice framework recommended by the TJRC.⁴² Despite promising in 2015 to set aside \$110 million for reparations in acknowledgment of state-perpetrated violations, President Uhuru Kenyatta has yet to fulfill this commitment.⁴³ Instead, victims have been left to pursue compensation through the domestic court system.⁴⁴

Victims of state-perpetrated violations have struggled to get their duly owed compensation. For example, although 21 victims of police shootings won a civil suit and were awarded compensation, the government has not paid out the court awarded sum to the victims.⁴⁵ Additionally, the authorities have failed to even initiate prosecutions in any of the 6,000-plus cases of alleged PEV-related crimes.⁴⁶

Positively, victims of pre-independence violations did receive compensation from the British government. Most victims that received compensation were Mau Mau fighters who were tortured for rebelling against colonial rule.⁴⁷ With the help of a British law firm, five elderly Mau Mau fighters in Kenya who had been detained during the colonial period filed for compensation in the British High Court of Justice in 2009. In 2013, the British government settled, agreeing to pay £19.9 million (approximately \$30 million at the time) to 5,228 claimants and construct a memorial in recognition of the victims.⁴⁸ The vast majority of the claimants obtained their compensation within two months, and the British government completed the memorial, located in Nairobi, in September 2015.⁴⁹

Physical or mental harm

Under the Victim Protection Act, civil or criminal courts may order the perpetrator to pay victims compensation for personal injury, medical treatment, economic loss, and damage to or use of property.⁵⁰

Lost opportunities, including employment, education, and social benefits

The TJRC recommended collective socioeconomic reparations for victims who lost opportunities due to gross human rights violations. The TJRC called for groups or communities of victims to “have access to a process in which they can collectively decide upon the use of the reparations funds for the community.” The TJRC highlighted how these reparations could be used, such as supporting libraries, microcredit centers, and childcare services.⁵¹ However, these TJRC recommendations remain unimplemented.

Under the Victim Protection Act, civil or criminal courts may order perpetrators to pay victims compensation for economic loss, among other things.⁵²

Material damages and loss of earnings, including loss of earning potential

The Constitution protects the individual right to property and guarantees compensation for state-appropriated property.⁵³ This provision, taken in tandem with national legislation standardizing the amount of compensation payments,⁵⁴ requires the government to pay fair amounts—to be determined by the Commissioner of Lands—for any land it seizes from citizens.⁵⁵

The TJRC recommendations expressly list compensation as a possible reparations measure for persons who lost their land.⁵⁶ Again, they have not been fully adopted.⁵⁷

Furthermore, under the Victim Protection Act, civil or criminal courts may require the perpetrator to pay victims compensation for damage to or use of property, among other harms suffered.⁵⁸

Costs required for legal or expert assistance and medical, psychological, and social services

Under the Victim Protection Act, civil or criminal courts may order the perpetrator to pay victims compensation for medical treatment.⁵⁹

3. Rehabilitation

Rehabilitation involves redressing victims through, for instance, the provision of medical, psychosocial, and legal services. Kenya does not deliver extensive rehabilitation-based reparations.

Medical and psychological care

The TJRC recommended that the government give vouchers for medical care and psychosocial services to the most vulnerable victims, including children, the elderly, and individuals who suffered urgent health or significant economic problems due to qualifying violations.⁶⁰ As of late 2016, the state has not delivered on providing such care.⁶¹

4. Satisfaction

Satisfaction includes a wide range of measures, such as ceasefires, truth-seeking and documentation,⁶² the search for missing or disappeared persons, and memorialization.

Effective measures aimed at the cessation of continuing violations

In 2008, the government passed the Agreement on the Principles of Partnership of the Coalition Government, ending the PEV and providing for the National Accord and Reconciliation Act (NARA). The NARA created a power-sharing government of national unity and called for an independent review commission and a commission of inquiry into the PEV that occurred.⁶³

Following reforms in 2010, the Constitution enshrines the dignity of individuals and communities and promotes social justice as a means of dealing with past injustices.⁶⁴ The Constitution also reduced the powers of the president while strengthening the independence of the judiciary and the police.⁶⁵ These important legal and institutional reforms have mitigated the risk of PEV occurring by combating corruption and enabling additional oversight of government institutions involved in violations. These reforms reportedly limited the violence after the 2013 presidential elections.⁶⁶

Despite legal guarantees, many constitutional protections have been ignored and unimplemented,⁶⁷ likely because historically corrupt institutions are responsible for enforcing the constitutional reforms. Some of the oversight mechanisms created by Parliament, like the Commission on Administrative Justice (CAJ) and the Independent Policing Oversight Authority (IPOA), have helped address this challenge. The CAJ has investigated complaints of abuse of power.⁶⁸ In 2015 alone, the CAJ handled 117,936 complaints of abuse, of which it resolved 101,882 and opened formal inquiries into 5,835.⁶⁹ Nevertheless, on account of limited funding, the CAJ has struggled to fulfill its mandate.⁷⁰ Regarding the police in particular, following the PEV, Parliament devised the IPOA, a civilian accountability mechanism to monitor the police,⁷¹ who have been accused of human rights violations, including extrajudicial killings, torture, and arbitrary detentions.⁷² The IPOA can call for prosecutions, internal disciplinary action, and other

appropriate sanctions.⁷³ The IPOA has investigated police abuse, causing politicians to claim it gives civilians too much power and to call for its dissolution. The IPOA is still operational.⁷⁴

Meanwhile, judicial reforms have renewed trust in the judiciary, as reflected in the 2013 election results being contested in the Supreme Court of Kenya instead of through violence. The judicial reforms that enabled the peaceful contestation of elections have been deemed the most effective investment in preventing future PEV in Kenya.⁷⁵

Verification of the facts and full and public disclosure of the truth

The TJRC aimed to establish an accurate and complete record of state-committed violations and their root causes; identify perpetrators responsible for violations; provide victims, perpetrators, and the general public a platform for non-retributive truth-telling; and compile and publicize a report with its activities and findings.⁷⁶ The TJRC produced 2,200 pages of findings and made numerous recommendations to the government in its final report, which was delivered to President Kenyatta in May 2013.⁷⁷ While the TJRC recommendations have yet to be fully executed, the historical record of the violations has contributed to verifying facts and publicly disclosing the truth.⁷⁸

Official declaration or a judicial decision restoring victims' dignity, reputation, and rights

The Office Director of Public Prosecutions (ODPP) has investigated over 6,000 cases of alleged crimes—such as murder, rape, and arson—that took place during the PEV, opening files on over 4,500 of them.⁷⁹ However, the ODPP determined that the police's inability to identify suspects or locate complainants precluded prosecutions. The ODPP did recognize that victims of the alleged crimes should have their grievances handled through “restorative approaches,”⁸⁰ which may constitute an official declaration regarding victims' dignity and rights. President Kenyatta informed Parliament of the ODPP's findings on March 25, 2015.⁸¹

Public apology

The TJRC recommended that the government issue a public apology for gross violations committed from 1963 through 2008 and specifically called on the judiciary to apologize for failing to “address impunity effectively” and deter human rights violations during the same timeframe.⁸² In 2015, President Kenyatta and then-Chief Justice Willy Mutunga both publicly apologized for “historical injustices” that citizens had suffered. Their statements represented the first time the government implemented a TJRC recommendation. Some have welcomed these apologies, but others felt they were too little too late, especially in the absence of justice.⁸³

President Kenyatta apologized during the president's annual state-of-the-nation address on March 26, 2015. He said he was conveying his regrets in accordance with his constitutional obligation to report on his government's performance in upholding its national values; he did not attribute his statement to the TJRC recommendation. President Kenyatta acknowledged historical massacres, political assassinations, detention without trial, and general repression as well as the more recent PEV.

On March 7, 2015, Chief Justice Mutunga apologized at an event marking the fiftieth anniversary of the unsolved assassination of Pio Gama Pinto, a socialist politician. Unlike Kenyatta, Mutunga clearly stated that he was speaking in response to the TJRC recommendation. That same month, he expressed remorse two more times on behalf of the judiciary at court building inaugurations in Nyandarua County and Bungoma County.⁸⁴

Judicial and administrative sanctions against persons liable for the violations

In 2010, the ICC opened an investigation into the PEV in Kenya, charging six individuals in two cases, including President Kenyatta and Vice President William Samoei Ruto. Ultimately, the Trial Chamber vacated the charges against Ruto and another defendant and withdrew the charges against Kenyatta and another defendant. Judges declined to confirm charges against the two other defendants in these cases. Since the cases were closed due to insufficient evidence, the prosecutor may initiate new cases against the defendants in the future with additional evidence.⁸⁵ Therefore, it remains to be seen if the ICC will convict any PEV perpetrators.

Commemorations and tributes to the victims

Despite detailed TJRC recommendations on this point, the government has done little to make and manage commemorations and tributes for victims. The TJRC proposed that commemorations or tributes be established for the victims of human rights violations committed in the 1963–2008 timeframe. More specifically, the TJRC called for two memorials and a National Human Rights Day.⁸⁶ Kenya observes Human Rights Day on December 10, but the government has not created a National Human Rights Day as per the TJRC recommendations.⁸⁷ Kenya does, however, have numerous memorials and tributes,⁸⁸ including some of those identified in the TJRC's final report.⁸⁹

There is also a memorial to the victims of torture under the colonial British government. In 2013, the British government settled a lawsuit, agreeing to pay £19.9 million (approximately \$30 million at the time) to 5,228 claimants and construct a memorial in recognition of the victims of torture during colonial rule.⁹⁰ In 2015, the British government revealed the memorial, which surviving Mau Mau fighters have embraced as acknowledging their harms suffered and serving as a symbol of reconciliation and healing.⁹¹

5. Guarantees of non-repetition

Guarantees of non-repetition center on institutional reform, such as vetting and lustration processes.

Effective civilian control of military and security forces

The Constitution and subsequent legislation provide for civilian control of the military and other security forces. The Constitution named the President “Commander-in-Chief” of the military and created a cabinet Secretary for Defence to lead the Defence Council, which oversees the military.⁹² The Kenya Defence Forces Act (KDFFA), passed in 2012, reiterates the Constitution’s guarantees and grants parliamentary oversight over KDFFA activities,⁹³ including deployments abroad.⁹⁴

Due process, fairness, and impartiality in civilian and military proceedings

The Constitution and the KDFFA affirm due process, fairness, and impartiality in civil and military proceedings.⁹⁵

Independence of the judiciary

In 2009, Kenya established the Task Force on Judicial Reforms (the Task Force) to consider steps to ensure the independence of the judiciary.⁹⁶ The Task Force submitted its final report in July 2010, recommending that the new constitution strengthen judicial independence. This suggestion is reflected in the Constitution,⁹⁷ which also set forth new rules for vetting judicial appointees and establishing a Supreme Court.⁹⁸ However, according to some, like then-Chief Justice Mutunga (in 2016), corruption and bribery were entrenched in the judiciary.⁹⁹

Vetting and lustration

Kenya has vetting and lustration procedures for state employees, codified in national legislation and agency guidelines. Under domestic law, public service departments must design and maintain individual codes of ethics and conduct that dictate their department’s specific hiring and employment practices.¹⁰⁰ Furthermore, the TJRC recommended that perpetrators of human rights violations should be banned from holding public office. The TJRC even named specific individuals that should be barred from public office due to implication in human rights violations,¹⁰¹ but the government has not implemented these recommendations.¹⁰²

Human rights education and training for law enforcement officials and security forces

The KNCHR has conducted human rights trainings for security forces in the hopes of reducing the occurrence of state-perpetrated violations.¹⁰³ Nevertheless, reports have indicated the continuation of human rights violations by security forces.¹⁰⁴

Observance of codes of conduct and ethical norms by public servants

In addition to departmental standards, the Public Officer Ethics Act of 2003 requires public officers to meet various benchmarks,¹⁰⁵ such as professionalism standards, rule of law standards, conflict of interest guidelines, and political neutrality rules.¹⁰⁶ Nevertheless, the level of professional integrity in the public sector has remained questionable.¹⁰⁷

Mechanisms for preventing and monitoring social conflicts and their resolution

The KNCHR aims to promote the respect, protection, and observance of human rights; bolster equality; monitor and report on human rights issues; receive complaints of alleged human rights violations; ensure state compliance with human rights standards; and examine abusive state conduct.¹⁰⁸ The KNCHR has investigated abuses by security forces,¹⁰⁹ trained security forces to respect and uphold human rights,¹¹⁰ raised awareness for human rights issues and violations, and even directly pushed back against the government via social media, radio, and grassroots organizing.¹¹¹ Unfortunately, the KNCHR has struggled due to limited funding and a lack of political will.¹¹²

Review and reform of laws contributing to human rights violations

The momentum following the NARA and its commissions paved the way for the creation of the TJRC,¹¹³ a new constitution,¹¹⁴ and a number of other legal and institutional reforms to address the laws and structures that contributed to or enabled human rights violations.¹¹⁵

¹ Gray Phembeah, “Moi’s Legacy to Kenya,” *BBC News*, Aug. 5, 2002, <http://news.bbc.co.uk/2/hi/africa/2161868.stm>; Korwa Adar and Issac Munyae, “Human Rights Abuse in Kenya under Daniel arap Moi, 1978–2001,” *African Studies Quarterly* 5, no. 1 (2001): 5–13, <http://sites.clas.ufl.edu/africa-asq/files/Adar-Munyae-Vol-5-Issue-1.pdf>.

² “Truth Commission: Kenya,” United States Institute of Peace, July 1, 2009, <http://www.usip.org/publications/truth-commission-kenya>; Jennifer Cooke, “Background on the Post-Election Crisis in Kenya,” Center for Strategic & International Studies August 6, 2009, <https://www.csis.org/blogs/smart-global-health/background-post-election-crisis-kenya>; Human Rights Watch (HRW), “*I Just Sit and Wait to Die*”: *Reparations for Survivors of Kenya’s 2007–2008 Post-Election Sexual Violence* (New York: HRW, 2016), 4, https://www.hrw.org/sites/default/files/report_pdf/kenya0216_web.pdf.

³ Rome Statute of the International Criminal Court (ICC), art. 75(2), *entered into force on July 1, 2002*, https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

⁴ Abdullahi Boru Halakhe, “*R2P in Practice*”: *Ethnic Violence, Elections and Atrocity Prevention in Kenya* (New York: Global Centre for the Responsibility to Protect, 2013), 9, http://www.globalr2p.org/media/files/kenya_occasionalpaper_web.pdf.

⁵ CONSTITUTION OF KENYA, art. 59 (2010), available at <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>.

⁶ “Engagement with the TJRC,” Kenya National Commission on Human Rights (KNCHR), accessed January 19, 2017, <http://www.knchr.org/OurWork/TransitionalJustice/EngagementwithTJRC.aspx>.

⁷ “Truth Commission: Kenya.”

⁸ Kituo Cha Sheria, *Summary of the Truth, Justice, and Reconciliation Commission (TJRC) Report* (Nairobi: Kituo Cha Sheria, 2014), 3, <http://kituochasheria.or.ke/wp-content/uploads/2016/04/TJRC-Report-2013-GS-with-isbn1.pdf>; International Center for Transitional Justice (ICTJ), “Kenya TJRC Final Report Deserves Serious Analysis and Action,” May 19, 2014, <https://www.ictj.org/news/ictj-kenya-tjrc-final-report-deserves-serious-analysis-and-action>.

⁹ Rawlings Otieno, “Raila Odinga: Uhuru Kenyatta Has Failed to Implement TJRC Report,” *Standard Media*, November 30, 2016, <https://www.standardmedia.co.ke/article/2000225219/raila-odinga-uhuru-kenyatta-has-failed-to-implement-tjrc-report>; Gabrielle Lynch, “Individual and Symbolic Reparations,” *East African*, October 15, 2016, <http://www.theeastafrican.co.ke/OpEd/comment/Individual-and-symbolic-reparations-for-past-sins-434750-3418236-gocwap/index.html>.

¹⁰ “About Us,” Commission on Administrative Justice, <http://www.ombudsman.go.ke/ombudsman/about-us-page/>.

¹¹ “IPOA Profile,” Independent Policing Oversight Authority, accessed April 18, 2018, <http://www.ipoa.go.ke/ipoa-profile/>.

¹² IDMC, *A Review of the Normative Framework in Kenya Relating to the Protection of IDPs* (Geneva: IDMC/Norwegian Refugee Council, 2015), 8, <http://www.internal-displacement.org/assets/publications/2015/20150827-af-kenya-review-of-normative-framework-relating-to-protection-of-idps-en.pdf>.

¹³ Victim Protection Act, (2014) art. 23(1) (Kenya), available at <http://www.kenyalaw.org/lex/actviewbyid.xql?id=KE/LEG/EN/AR/V/NO.%2017%20OF%202014>.

¹⁴ HRW, “*I Just Sit and Wait to Die*”, 83; Internal Displacement Monitoring Centre (IDMC), *Kenya: No Durable Solutions for Internally Displaced Yet* (Geneva: IDMC/Norwegian Refugee Council, 2008), 6, <http://www.internal-displacement.org/assets/library/Africa/Kenya/pdf/Kenya-Overview-23Dec08.pdf>.

¹⁵ ICC, *Understanding the International Criminal Court* (Hague: ICC, 2011), 31, 38, <https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>.

¹⁶ “The Trust Fund for Victims,” Trust Fund for Victims, accessed April 19, 2018, <https://www.trustfundforvictims.org/>.

¹⁷ *Prosecutor v. Ruto & Sang*, Case No. ICC-01/09-01/11, Decision on the Requests Regarding Reparations, ¶ 7 (July 1, 2016), https://www.icc-cpi.int/CourtRecords/CR2016_04798.PDF.

¹⁸ *Situation in the Republic of Kenya*, International Criminal Court, accessed May 21, 2018, <https://www.icc-cpi.int/kenya>.

¹⁹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, U.N. Doc. A/RES/60/147 (December 16, 2005), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

²⁰ CONSTITUTION, art. 50(9).

²¹ Victim Protection Act, art. 4.

²² Agency for Cooperation and Research in Development (ACORD), *Our Bare Minimum: A Comprehensive Reparations Mechanism for Sexual and Gender Based Violence Survivors in Kenya* (Nairobi: ACORD, 2014), 8, <http://www.acordinternational.org/silo/files/kenya-sgbv-policy-brief.pdf>.

²³ Truth, Justice and Reconciliation Commission (TJRC), “Reparation Framework,” in *Report of the Truth, Justice and Reconciliation Commission*, vol. 4, chap. 3 (Nairobi: TJRC, 2013), 114, available at <http://digitalcommons.law.seattleu.edu/tjrc/7>.

²⁴ Kenya Human Rights Commission (KHRC), *Annual Report April 2014-March 2015: Enhance Human Rights-Centered Governance at All Levels* (Nairobi: KHRC, 2015), 20–21, accessed January 19, 2017, <http://www.khrc.or.ke/publications/109-khrc-annual-report-2014-2015/file.html>.

²⁵ The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, No. 56 (2012), KENYA GAZETTE SUPPLEMENT No. 220 § 5, Principle 28 [hereinafter IDP Act], available at https://www.brookings.edu/wp-content/uploads/2016/07/Kenya_IDP_Act_2012.pdf; IDMC, *A Review*, 8.

²⁶ HRW, “*I Just Sit and Wait to Die*”, 83.

²⁷ IDMC, *A Review*, 37.

- ²⁸ Prisca Kamungi, *Municipalities and IDPs Outside of Camps: The Case of Kenya's 'Integrated' Displaced Persons* (Washington, D.C.: Brookings Institute, 2013), 6, <https://www.brookings.edu/wp-content/uploads/2016/06/IDP-Municipal-Authorities-Kenya-May-2013-FINAL.pdf>; Oliver Mathenge, “All 2007 IDP Camps are Closed – Kiunjuri,” *Star*, January 19, 2017, http://www.the-star.co.ke/news/2016/03/02/all-2007-idp-camps-are-closed-kiunjuri_c1304671.
- ²⁹ IDMC, *A Review*, 37; HRW, “*I Just Sit and Wait to Die*”, 84.
- ³⁰ TJRC, “Reparation Framework,” 108–09.
- ³¹ National Land Commission Act, No. 5 (2016), art. 15(9) (Kenya), available at <http://www.kenyalaw.org/lex/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/N/National%20Land%20Commission%20Act%20Cap.%205D%20-%20No.%205%20of%202012/docs/NationalLandCommission5of2012.pdf>.
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- ³³ “Opposition Leader Raila Odinga Renews Calls for Government to Implement TJRC Report,” *Standard Media*, September 23, 2016, <http://www.standardmedia.co.ke/article/2000217150/raila-renews-calls-for-government-to-implement-tjrc-report>; Lynch, “Individual and Symbolic Reparations”; Rebecca Marlin, “The Endorois Decision” – Four Years on, the Endorois Still Await Action by the Government of Kenya, *TerraNullius* (blog), September 23, 2014, <https://terra0nullius.wordpress.com/2014/09/23/the-endorois-decision-four-years-on-the-endorois-still-await-action-by-the-government-of-kenya/>.
- ³⁴ Lynch, “Individual and Symbolic Reparations.”
- ³⁵ CONSTITUTION, art. 23(3)(e).
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