



german
cooperation

DEUTSCHE ZUSAMMENARBEIT

INFORMATIVE REPORT

ON INTERNAL DISPLACEMENT IN KENYA

TABLE OF CONTENTS

PREFACE.....	iii
ABSTRACT.....	iv
ACRONYMS.....	v
1. INTERNALLY DISPLACED PERSONS.....	1
2. IDPs VERSUS REFUGEES.....	1
3. ASSISTANCE AND PROTECTION.....	1
4. THE IMPACT OF DISPLACEMENT ON AFFECTED POPULATIONS.....	2
5. HISTORY OF DISPLACEMENT IN KENYA.....	2
6. GENERAL CAUSES OF DISPLACEMENT	3
7. DRIVERS OF DISPLACEMENT IN KENYA.....	3
7.1 Displacement due to political and ethnic violence.....	3
7.2 Displacements due to disasters.....	4
7.3 Displacement due to development projects and environmental conservation.....	4
7.4 Pastoralist displacement.....	5
8. INTERVENTIONS ON INTERNAL DISPLACEMENT.....	6
9. LEGAL FRAMEWORK FOR DISPLACEMENT IN KENYA.....	9
9.1 UN-Guiding Principles on Internal Displacement (Guiding Principles) – 1996.....	9
9.2 Great Lakes Protocol on the Protection and Assistance to IDPs (IDP Protocol) – 2006.....	9
9.3 Kampala Convention.....	10
9.4 Draft National IDP Policy.....	10
9.5 The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities (IDP) Act, 2012.....	11
9.6 Lawful Occupation Of Land – Compulsory Acquisition Of Land - Land Act (2012).....	15
9.7 Unlawful Occupation Of Land - (Land Act, Sec. 152) – Eviction And Resettlement Procedures.....	16
10. DURABLE SOLUTIONS.....	19
SOURCES.....	21

This report is a compilation of factual and legal information about prevention of displacement, protection of affected populations, as well as durable solutions for Internally Displaced Persons (IDPs) in Kenya. Its contents are drawn from various sources which include publications, Acts of Parliament, newspaper reports, internet sources, an interview with a member of the National Consultative Coordinating Committee (NCCC) and our own experiences.

It aims at being a useful tool for persons working in the sector at the National Government, County and community levels. It is our hope that the reader finds this report useful in its provision of an overview of the framework and interventions with regard to internal displacement in Kenya.

The report shall clarify that displacement goes far beyond the evictions during the 2007/08 post-election violence. As droughts, floods and other natural disasters strike the country, ecological conservation is a necessary response. Similarly, large-scale development projects demand the vacation of inhabited land. Further examples are exhibited by conflicts among pastoralists. Taking all these into account, it is obvious that significant numbers of Kenyans are predisposed to displacement.

The GIZ-Civil Peace Service (CPS) has been implementing a peace building programme in Kenya since 2009, supporting the broader national peace, justice and reconciliation process as well as the implementation of democratic reforms. Central to its work has been the support of victims of violence including Internally Displaced Persons (IDPs) and non-violent methods of conflict resolution.

This report is neither exhaustive nor a comprehensive academic research analysis, rather it is a narrative document put together for purposes of disseminating available information on issues of internal displacement in Kenya.

iv ABSTRACT

Internal displacement is a global phenomenon whose experience in the Kenyan context dates back to pre-independence time. Whereas there is a general perception that the 2007/2008 Post Elections Violence (PEV) and politically instigated violence are the main causes of displacement in Kenya, there are other drivers too which in fact are increasingly prominent. Accordingly, this report not only highlights these other causes of displacement, but also informs on what populations have been affected over that time or are prone to future displacement.

Over the years, the government of Kenya has made efforts to address the challenges of internal displacement. Even though some of these mitigation procedures were implemented arguably on *ad hoc* basis, there has been significant progress in the development of a legislative approach towards the prevention of displacement and the protection/assistance to IDPs. In this regard, this report seeks to inform the reader on the content of the IDP Act, 2012 and other existing legal instruments related to the topic. It not only informs about the institutions that are mandated to handle displacement issues in Kenya such as the NCCC, but also highlights the role of County governments in dealing with the challenge.

ACRONYMS

ANC- Amani National Congress

AU-African Union

CS- Cabinet Secretary

DP- Deputy President

ERP- Evictions and Resettlement Procedures

ICC- International Criminal Court

ICGLR- International Conference on the Great Lakes Region

CSOs- Civil Society Organizations

IDMC- Internal Displacement Monitoring Center

IDPs (Internally Displaced Persons)

KC- Kampala Convention

KHRC- Kenya Human Rights Commission

KPA- Kenya Ports Authority

LAPSSET- Lamu Port Southern Sudan-Ethiopia Transport

MoJNCCA -Ministry of Justice National Cohesion and Constitutional Affairs

MoSSP-Ministry of State for Special Programs

NCCC- National Consultative Coordination Committee

NLP- National Land Policy

OP-Office of the President

PEV- Post Elections Violence

PS- Principal Secretary

PWGID-Protection Working Group on Internal Displacement

RCK- Refugee Consortium of Kenya

UNHCR- United Nations High Commission for Refugees

1. INTERNALLY DISPLACED PERSONS

According to the **UN Guiding Principles on Internal Displacement (1996)**, Internally Displaced Persons (IDPs) are:¹

“Persons or groups of persons who have been forced or obliged to flee, or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”

The definition is even wider under the **Great Lakes Pact-IDP Protocol (2006)**: Here, it also includes “persons who have been forced from their homes by large scale development projects”.²

The Kenyan Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (IDP Act)³ that received presidential consent in 2012, reflects this contemporary aspect of displacement and therefore domesticates the Great Lakes Protocol in an exemplary way (Part I, Nr. 2, para.8):

... “internally displaced person” means a person or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, large scale development projects, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”

2. IDPs VERSUS REFUGEES

It is then clear that the only distinction between an IDP and a refugee is that, whilst the former are on the run within their home country, the latter crosses a border/ a recognized boundary into another country. In this regard, the international and national legal framework for refugees does not apply to IDPs. The latter do not benefit from specialized protection of international refugee law.

3. ASSISTANCE AND PROTECTION

The *UNHCR* was mandated by the General Assembly Resolution 428 (V) of 14 December 1950 to “lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems. The UNHCR is guided by the 1951 United Nations *Convention Relating to the Status of Refugees* and its 1967 Protocol.

Although UNHCR’s original mandate does not specifically cover IDPs, the organization uses its expertise to protect and assist them. Only since 2005 did the UNHCR assume lead responsibility for protection, emergency and camp management for IDPs. Walter Kaelin was appointed Special Representative on the Human Rights of IDPs. However, the situation is not comparable to the intervention catalogue for, and the budget allocated to refugees.

1 Introduction Nr. 2 of the *UN Guiding Principles on internal displacement, 1996*; Art I (4) *Great Lakes Pact – Protocol on the Protection and Assistance to IDPs adopted 2006, entered into force 2008*.

2 Art. I (5) *Protocol on the Protection and Assistance to IDPs adopted 2006, entered into force 2008*.

3 <http://www.kenyalaw.org/lex//actview.xql?actid=NO.56OF2012>

As already noted, IDPs stay within their own country and remain under the protection of their government, even if that very government is the reason for their displacement. As a result, these people are among the most vulnerable in the world.

The responsibilities of the Kenyan Government are outlined in the IDP Act, 2012 and other legal instruments (see Part III of the IDP Act, 2012 under chapter 9.5)

4. THE IMPACT OF DISPLACEMENT ON AFFECTED POPULATIONS

“Often the consequences of traumatic experiences with violent conflict, gross violations of human rights and related causes in which discrimination features significantly, displacement nearly always generates conditions of severe hardship and suffering for the affected populations. It breaks up families, cuts social and cultural ties, terminates dependable employment relationships, disrupts educational opportunities, denies access to such vital necessities as food, shelter, medicine, and exposes innocent persons to such acts as violent attacks on camps, disappearances and rape.

Whether they cluster in camps, escape into the countryside to hide from potential sources of persecution and violence or submerge into the community of the equally poor and dispossessed, the internally displaced are among the most vulnerable populations, desperately in need of protection and assistance.” - Introductory note to the UN-Guiding Principles.

5. HISTORY OF DISPLACEMENT IN KENYA

Internal displacement in Kenya is a re-current phenomenon whose advent can be traced to years prior to independence. As the Executive Director of the Refugee Consortium of Kenya (RCK) Lucy Kiama and Fredrick Koome (Programme Manager RCK) postulate in their publication “Internal displacement in Kenya: the quest for durable solutions”, mass displacement of Kenyans arguably started in 1915.⁴ At the time, the British colonial regime enforced rules stipulating that all land belonged to the monarch and should be held in trust by the governor.⁵ This narrative was entrenched in the colonial land policies, and as such depicted outright favoritism towards the settlers. The indigenous population was then dispossessed of their land, marginalized and subsequently reduced to laborers in the now British owned farms. By replacing the customary mechanisms of land tenure with an individual freehold title registration system, the colonial regime essentially legalized dispossession of community land.

After independence, the freehold land title system was maintained, but there was also the implementation of a number of market based resettlement schemes that were meant to deal with displacement.⁶ Despite injustices which characterized acquisition of the original land titles, none of the adopted schemes, or/and policies sought to address the outcome of land dispossession in Kenya. But, even more appalling is that there was no compensation, or assistance advanced to the underprivileged displaced persons to facilitate them in acquiring new land under market based resettlement schemes. These original land owners thus became casualties of internal displacement and by extension, the initial cases of internal displacement in Kenya.

⁴ <http://www.fmreview.org/crisis/kiama-koome.html>

⁵ *Ibid*

⁶ <http://www.internal-displacement.org/sub-saharan-africa/kenya/2014/kenya-too-early-to-turn-the-page-on-idps-more-work-is-needed->

Even though the 1992 displacements happened under politically triggered circumstances, it is instructive to understand that land issues were critical to the ethnic tensions and consequent violence. These unresolved ethnic and land-related grievances, as well as their political instrumentalization have persisted, resulting in a pattern of violence and displacement in a larger portion of the country.⁷

6. GENERAL CAUSES OF DISPLACEMENT

- Armed conflict
- Situations of generalized violence, ethnically motivated hostilities
- Natural or man-made disaster such as landslide, great flood, drought
- Human rights violations
- Large scale development projects / environmental conservation projects

7. DRIVERS OF DISPLACEMENT IN KENYA

Internal displacement is caused by many factors. In some cases, these factors are interlinked, thereby making it difficult to identify a single, or independent causality. At the core of the incidents lies shortage of inhabitable and fertile land. In Kenya, inter-ethnic conflicts and politically instigated violence are distinct drivers of internal displacement. Moreover, disasters (which could be natural, or man-made: floods, draught, landslide, fire, etc.) and development projects equally have an immense contribution towards this misery.

7.1. Displacement due to political and ethnic violence

The advent of ethno-politically motivated violence in Kenya can be traced back to 1992 at the inception of multi-party political system. But, it also marked the beginning of what has become a protracted displacement paradigm that virtually occurs every election cycle. Between 1991 and 1996 alone, more than 15,000 people were killed and almost 300,000 displaced in Rift Valley, Nyanza and Western regions.⁸

Despite prior experiences of displacement in Kenya, it should be noted that 2007/2008 post-election violence (PEV) remains the only point in history when the Country recorded astronomical cases of internal displacement. But, even more captivating is the evolution of the IDP phenomenon from a 'normal' residual effect of an electoral process to a dominant component of the Kenyan political discourse and processes.

Within this isolated episode of intense violence, 1300 lives were lost, with another 664,000 persons displaced in just two months.⁹ Approximately 350,000 IDPs took refuge in 118 camps, and were consequently referred to as *camp* IDPs, while a further 300,000 sought refuge in their districts of birth/home districts or in rental accommodation, or sought for refuge among friends/relatives and were considered as *integrated* IDPs.

7 http://www.ohchr.org/Documents/Issues/IDPersons/A.HRC.19.54.Add%202_en.pdf

8 <http://www.internal-displacement.org/sub-saharan-africa/kenya/2014/kenya-too-early-to-turn-the-page-on-idps-more-work-is-needed->

9 http://www.ohchr.org/Documents/Issues/IDPersons/A.HRC.19.54.Add%202_en.pdf

The experience of PEV withstanding, ethnic vitriol, political turmoil and associated violence has not been conclusively contained. To this extent, ethno-politically instigated displacements have continued unabated. The period between 2009 and 2010 for example, was marred by displacements emanating from inter-ethnic clashes and government-led disarmament initiatives among pastoralists in northern Kenya.¹⁰ But, even more significant is that by the end of 2012 and 2013 alone, total occurrences of violence related displacements stood at 116,074 and 55,060 respectively.¹¹

7.2. Displacements due to disasters

Disasters, either man made or natural, have an acute contribution towards internal displacement. For natural disasters, the victims are generally comfortable with a return to their original homes once the situation normalizes. This happens, regardless of the frequency of such disasters. In 2013, floods destroyed homes, property and livelihoods throughout the country and displaced nearly 180,300 people.¹² Other disasters which may lead to displacement include: fires, mudslides, harsh climate realities, etc.

7.3. Displacement due to development projects and environmental conservation

Ideally, this causality should not be as messy, or even lead to spontaneous displacement as often witnessed. It should not only be organized and humane, but even more importantly follow the Land Act (2012) and eviction procedures (see PART VIII – Compulsory Acquisition of Interests in Land). Contrary to this expectation, the complexities around land issues in Kenya are, in effect the key determinants to this causality and subsequent management. In this regard, there are two facets to this kind of displacement:

- (a) They are usually forceful- evictions of squatters, or persons without title deeds;
- (b) And therefore low amounts are paid – if at all.

Whereas some displacements under this causality are for purposes of creating space for development projects, others are merely orchestrated by opportunistic and powerful individuals who cause displacement by virtue of economic speculation on such lands.

The proposed 1000 KM Lamu Port Southern Sudan-Ethiopia Transport (LAPSSET) corridor, one of the largest development projects in the country is expected to displace approximately 60,000 people.¹³ Despite the reality of a potential displacement of a sizeable population from the Coast, it is also notable that over the years, this region has constantly grappled with numerous unresolved issues of land making it (land) the single most overarching causality of violence.

In a bid to make this project a reality, the Kenyan government set aside 1,000 acres in Lamu alone, but it is hoped that further displacements due to this project would be done through a multi-stakeholder consultative process.¹⁴ One of the primary concerns of affected or potentially affected residents by this project is adequate compensation. People's suspicion and skepticism are well grounded on realities that predisposes them to exploitation. In the Coast region, for example, only 20% of the population holds title deeds. Adequate compensation

¹⁰ <http://www.internal-displacement.org/sub-saharan-africa/kenya/2014/kenya-too-early-to-turn-the-page-on-idps-more-work-is-needed->

¹¹ <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Eastern%20Africa%20Humanitarian%20Bulletin%2032.pdf>

¹² <http://www.internal-displacement.org/sub-saharan-africa/kenya/2014/kenya-too-early-to-turn-the-page-on-idps-more-work-is-needed->

¹³ <http://www.irinnews.org/report/96675/kenya-disquiet-over-lamu-port-project>

¹⁴ *Ibid*

of people without documentation for their land/property could be problematic. The Kenya Human Rights Commission (KHRC) fact finding mission revealed similar concerns by highlighting the insignificant political goodwill in securing communal land. The report also noted that most land in Milimani, Mangai, Bargoni, Kiangwe and Basuba, were unregistered, which then denies owners adequate legal protection for their land.¹⁵

Other development projects that have contributed to sizeable displacements are concentrated in mining (oil and titanium) in Turkana and Kwale Counties respectively.

On environmental conservation, the government carried out evictions within the Mau forest complex between 2004 and 2006. In 2004, a cabinet decision was reportedly taken to commence evictions of 10,290 forest inhabitants who were residing in Maasai Mau and Mau Sururu parts of the larger Mau forest complex.¹⁶ Amidst the ongoing evictions, the government was compelled to halt the exercise in Maasai Mau when seven individuals sought legal intervention through a court orders on the account that they were in possession of legitimate title deeds for the lands in question.¹⁷ The evictions which, later on resumed in May 2005 led to the displacement of at least 50,000 people.¹⁸ In Sururu forest, up to 2,000 families were evicted, and not offered any alternative place to live.¹⁹ In 2008, an inter-ministerial task force chaired by then Prime Minister Raila Odinga endorsed these evictions (Mau forest).²⁰ After months of political stalemate, an eviction order was issued and effected. A number of evictees were resettled for example in Banita (Nakuru County); other affected populations lived in camps until they were compensated. The government promised humane resettlement.

7.4. Pastoralist displacement

Pastoralists are always in movement in search of pasture and water for their livestock. It then becomes difficult to associate pastoral mobility with displacement, if the movement is instigated by the very factors. Environmental conditions such as draught are normal reasons for pastoral migration, but when an element of coercion is involved and the pastoralists are forced to flee, then it ceases to be a normal migration routine. Pastoralists become IDPs when violence and conflict over pasture and water resources, or inter-ethnic conflict over these resources drive them out of their habitual grazing areas.²¹ In some cases, people are forced to move because of fear of attacks linked to rustling, whether from across the borders or internally.²²

In Kenya, pastoral communities are more concentrated in the northern part of the country. It is not only an isolated and expansive area, but also borders Uganda, Ethiopia, Sudan and Somalia. In this regard, the presence of crucial government structures such as security is scarce. Given these conditions, the populations are very vulnerable to incidences of insecurity and in particular, cattle raids. This kind of forced migration is common in areas such as: Isiolo, Tana River, Moyale, Mandera, and Wajir counties.²³ Nonetheless, such incidences are neither highlighted, nor are the victims compensated.²⁴

15 <http://www.khrc.or.ke/mobile-publications/economic-rights-and-social-protection-er-sp/47-forgotten-in-the-scramble-for-lamu-a-position-paper-in-the-case-of-the-aweer-and-the-fisherfolk/file.html>

16 This is partly confirmed in *Maasai Mau Forest Status Report (2005)*, p. 7.

17 <http://www.knchr.org/Portals/0/GroupRightsReports/Mau%20Forest%20Evictions%20Report.pdf>

18 *Ibid*, p. 9

19 *Ibid*, p.10

20 <http://www.capitalfm.co.ke/news/2008/07/raila-meeting-endorses-mau-evictions/>

21 <http://www.irinnews.org/report/96669/kenya-pastoralists-too-can-be-displaced>

22 *Ibid*

23 *Ibid*

24 *Ibid*

8. INTERVENTIONS ON INTERNAL DISPLACEMENT

As highlighted earlier, the discourse on internal displacement in Kenya only gathered momentum after PEV. In the aftermath, the local and international outcry pressured the government and other stakeholders to restore the country to a sense of normalcy. This narrative is then critical in evaluating the nature and steps put forward as response mechanisms towards the crisis. Like past displacements which were rather addressed on an *ad-hoc* basis, the PEV catastrophe was not any different. Essentially, intervention strategies which were put in place to address the emerging challenges could only be summed up as reactionary. Moreover, interventions were barely sufficient, poorly coordinated and often lacked the basic principles of conflict sensitivity.

In the Kenyan context, efforts to resume normalcy - with regard to the huge number of displaced persons - can be categorized into four key pillars namely:

- (1) Home return mechanism;
- (2) Resettlement;
- (3) Monetary compensation;
- (4) Protection through legislation.

However, the link between internal displacement, PEV and by extension the Kenyan cases (then) at the International Criminal Court (ICC) have rendered this discourse susceptible to politicization.

One of the earlier initiatives undertaken by the government was Operation *Rudi Nyumbani*, (Kiswahili for Return Home) which was launched in May, 2008. It has to be acknowledged that Operation *Rudi Nyumbani* was the first of its kind and that it was remarkable that the government took this step. The effort was initiated to facilitate home return, or resettlement of displaced persons.²⁵ The initiative attracted multi-stakeholder engagement which helped mobilize humanitarian funding to address transport needs (for home returnees), (re) construction of houses, livelihoods (in particular farming) and reconciliation initiatives.²⁶ In the overall exercise, provision of other essential services including; food, shelter, schools, health facilities was spearheaded by the international community.²⁷

On its part, the government, through the Ministry of Devolution and Planning Ministry continued to underscore the major accomplishments emanating from the Operation *Rudi Nyumbani* initiative (implemented by the then Ministry of State for Special Programmes). While answering questions before the Senate on March, 10th, 2016, the CS for Devolution and Planning noted the following as the milestones of the exercise:²⁸

74,847 households were successfully persuaded to voluntarily return to their previous farms. All of them were paid start-up capital of Kshs10, 000. In addition, 37,843 household among them were paid Ksh. 25,000 each to reconstruct their partially damaged houses, while a total of 71,473 low cost houses were constructed for those whose houses were totally destroyed.

²⁵ <http://www.internal-displacement.org/sub-saharan-africa/kenya/2014/kenya-too-early-to-turn-the-page-on-idps-more-work-is-needed->

²⁶ *Ibid*

²⁷ http://reliefweb.int/sites/reliefweb.int/files/resources/D925666D168061D64925753300256FA5-Full_Report.pdf

²⁸ Kenyan Senate. (2016, March 10). *The Hansard on Status of Internally Displaced Persons*. p14

The affected population and other actors involved also evaluated the intervention. The services that actually reached the affected populations were either inadequate, or too slow in arrival. As late as 2013, for example, a 101 year old Julia Mwangi told the Daily Nation that: “I sit here, hoping someone will give me some food, and that some government officials will come and allocate to me a piece of land.”²⁹ *Rudi Nyumbani* was neither participatory, nor inclusive and therefore did not take the tenets of DO NO HARM into perspective. The unilateral decision by the government to purchase resettlement land without due regard to, or the input of intended beneficiaries and host communities is one such example. To this extent, Operation *Rudi Nyumbani* was viewed as coercive, and therefore put undue pressure on IDPs to vacate the camps.³⁰

The IDP’s compensation plans by the state have gone through a tardy implementation phase partly because of insufficient political goodwill, allegations of embezzlement of funds earmarked for the project and favoritism. Moreover, compensations schemes are also susceptible to abuse by so called fake IDPs. Queries on the authenticity of those who have benefited, or expect to benefit have not been convincingly addressed. In the “final leg of resettling IDPs”, the state expected to close down all IDP camps by the end of September 2013 through a compensation regime that was to resettle the remaining 8,298 households through provision of Ksh. 400,000 to facilitate land purchasing.³¹ This, the state intended to achieve through a Ksh. 3.3 Billion fund it had set aside for the exercise in the 2013/2014 budget.³² On February, 4th of 2016, the government released a further Ksh. 1 Billion meant for resettlement of 5,261 households, the last group still living in camps.³³ While addressing IDP representatives in the presence of Devolution and Planning Cabinet Secretary (CS) Mwangi Kiunjuri, Principal Secretary (PS), Josephat Mukobe (National Land Commission Chairman), Muhammed Swazuri and members of the task force appointed to coordinate the resettlement of IDPs (led by chairman, Adan Wachu), the Deputy President (DP) William Ruto said the government did not expect to see any more camps since all those who were affected had been resettled.³⁴ On his part, the CS for Devolution and Planning noted: “Today’s exercise concludes the government’s effort to resettle all those who have been living in camps either on account of [the] post-election violence or eviction from forests.”³⁵ But, only a week after the DP had disbursed the Ksh. 1 Billion for compensating the “last” camp IDPs, members of the Senate demanded for a breakdown on who the beneficiaries were and where they were located.³⁶

Regardless of these efforts, four cardinal questions related to all these state sponsored compensation programs have not been conclusively addressed:

- (1) How much money has the state spent on resettlement so far?
- (2) Who are the beneficiaries of these programs?
- (3) How many benefitted?
- (4) Are they genuine IDPs or not?

29 <http://www.nation.co.ke/news/Promised+Land+turns+into+nightmare/-/1056/1978806/-/sxd08d/-/index.html>

30 <http://www.internal-displacement.org/sub-saharan-africa/kenya/2014/kenya-too-early-to-turn-the-page-on-idps-more-work-is-needed->

31 <http://www.nation.co.ke/news/State+embarks+on+final+leg+of+resettling+IDPs/-/1056/1981662/-/3sl187/-/index.html>

32 *Ibid*

33 <http://www.nation.co.ke/news/politics/Govt-gives-IDPs-Sh1bn-closes-camps/-/1064/3062636/-/3q74fl/-/index.html>

34 *Ibid*

35 *Ibid*

36 <http://www.nation.co.ke/news/Senators-demand-breakdown-of-IDP-funds/-/1056/3070828/-/wtcwnb/-/index.html>

It is postulated that since 2008, the government has spent Ksh. 17.5 Billion in IDP compensation exercises.³⁷ Notably, these resources have barely benefitted integrated IDPs.

It should be recalled that in 2013, the government expected to compensate the “remaining” 8,298 households through a Ksh. 3.3 Billion budgetary allocation. In 2016, the government released an extra Ksh. 1 Billion to resettle the “last” 5,261 households.

The obvious discrepancies in government’s statements at different times have raised pertinent concerns on why the exercise was not finalized through the initial budget of Ksh 3.3 billion, or why the latest allocation of Ksh. 1 Billion is expected to aid in resettlement of more IDPs (5,261). But, even more worrying is the reality that after “concluding” the compensation program (as announced by the state), camps like New Canaan in Pipeline, Nakuru still exist.³⁸

Whereas tangible discussions and government mitigation priorities have focused on camp IDPs, there are insignificant attempts to address the plight of integrated IDPs. This, in part is explainable by two factors: (a) the conception that camp IDPs are in dire need and their situation is more emergent than integrated IDPs; (b) the fact that integrated IDPs are scattered all over the country, which not only confines every survivor to his/her own suffering, but also makes it hard for them to amplify their issues through groupings and organization of demonstrations. Integrated IDPs are therefore invisible and can only air issues through their disjointed representation, relevant Civil Society Organizations (CSOs), or through isolated incidences of political intervention. Furthermore, this would make it also difficult for the government to profile them and to verify their status.

In a country so polarized along ethnic lines as Kenya, it is only natural that the IDP compensation debate would assume a similar trajectory. In November, 2015, the Amani National Congress (ANC) Party Leader, Musalia Mudavadi, warned the government against “stocking up ethnic

animosity through a misguided IDP compensation and resettlement policy.”³⁹ He not only admonished the government for ignoring integrated IDPs when coming up with a compensation register, but also underscored the need for treating all victims of PEV equally, noting that there are no special IDPs.⁴⁰

In Siaya County, Governor Cornel Rasanga, at some point threatened to sue the national government over what he termed “unfair distribution of funds meant for resettlement of PEV victims.”⁴¹ The Governor was quoted saying: “The government has been allocating funds for IDPs, but left out some from Nyanza. This disregards regional balance since the post-election violence affected every community and not just two groups that have been given priority by the Jubilee government.”⁴² By the “two” groups, he implied the Kikuyu and Kalenjin communities who were the majority in camps as either PEV victims, or forest evictees. This argument is further highlighted by the fact that the two communities have superior representation in the Jubilee administration, which then makes it easy to draw such claims as: The compensation initiatives advanced to *camp* IDPs were as a consequence of their “privileged” political position.

37 Ibid

38 <https://citizentv.co.ke/news/nakuru-idps-threaten-to-march-to-nairobi-to-stop-anti-iebc-protests-129382/>

39 <http://www.nation.co.ke/news/politics/Treat-all-IDPs-equally/-/1064/2954618/-/92g1iy/-/index.html>

40 <http://www.nation.co.ke/news/politics/Treat-all-IDPs-equally/-/1064/2954618/-/92g1iy/-/index.html>

41 <http://www.standardmedia.co.ke/article/2000198518/why-have-you-neglected-us-idps-cry-out>

42 Ibid

To this moment, the government's intervention priorities have so far focused on PEV IDPs and forest evictees. Any other IDPs in the period that preceded PEV, or those due to other factors have not been at the core of the resettlement agenda. Confirming this stand, the CS for Devolution and Planning decried the lacking of a comprehensive data and information on displacements that occurred prior to PEV. Some of the historical displacement cases, he noted, "are so old and lacking in documentation that tracing their details will be extremely difficult and would open up the process for abuse."⁴³

9. LEGAL FRAMEWORK FOR DISPLACEMENT IN KENYA

9.1. UN-Guiding Principles on Internal Displacement (Guiding Principles) - 1996

The United Nations Guiding Principles on Internal Displacement are anchored on existing international humanitarian law and human rights instruments, it is the most comprehensive and universal document that serves as a standard for provision of assistance to, and protection of IDPs. However, the Guiding Principles are a legally non-binding document.

Notably, the 3rd principle requires national authorities to take responsibility in providing protection and humanitarian assistance to IDPs within their jurisdiction.⁴⁴ Kenya is a signatory to the 1998 UN-Guiding Principles, and consequently should provide the necessary assistance and protection to IDPs.

9.2. Great Lakes Protocol on the Protection and Assistance to IDPs (IDP Protocol) - 2006

Working under the umbrella of the International Conference on the Great Lakes Region (ICGLR), the heads of State and Government ⁴⁵signed the Pact on Security, Stability and Development in the Great Lakes Region on 15th, December 2006. Other than providing a legal framework that governs relations between member-states, the Pact also contains a Protocol on Protection and Assistance to Internally Displaced Persons- the IDP Protocol. This Protocol compels nations to abide by existing legal standards and therefore required to respect the United Nations Guiding Principles on Internal Displacement as well as domesticate them into national law.⁴⁶ To this extent, the IDP Protocol is the first legally binding international instrument providing protection specifically for the displaced.

The uniqueness of the IDP Protocol which was enforced in 2008 is further highlighted by its explicit recognition of persons displaced due to development project. Accordingly, the states are obliged to consult with the affected populations, explore alternatives to displacement and provide compensation in incidences of justifiable displacement. In fact, this part of the protocol is clearly captured in article 6(3) of Kenyan IDP Act, 2012 that states: Displacement and relocation due to development projects shall only be lawful if justified by compelling and overriding public interests and in accordance with the conditions and procedures in Article 5 of the Protocol, Principles 7—9 of the Guiding Principles and as specified in sections 21—22 of this Act.⁴⁷

⁴³ Kenyan Senate. (2016, March 10). *The Hansard on Status of Internally Displaced Persons*. p16

⁴⁴ <http://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>

⁴⁵ Angola, Burundi, Central African Republic, Democratic Republic of Congo, Kenya, Congo Brazzaville, Rwanda, Sudan, Uganda, Tanzania and Zambia

⁴⁶ <http://www.refugee-rights.org/Publications/RRN/2008/May/V4.I3.GLAct.html>

⁴⁷ IDP Act, 2012

9.3. Kampala Convention-2012⁴⁸

The Convention for the Protection and Assistance of the Internally Displaced Persons in Africa, also known as The Kampala Convention (KC) is the first regional convention that comprehensively addresses internal displacement. Its content includes: prevention of, response to and durable solutions to displacement. It explicitly protects the rights of people displaced by natural disasters, armed conflict, generalized violence, human rights violations and development projects.

The KC asserts existing international law, including human rights and international humanitarian law standards. It not only asserts existing human rights and international humanitarian law standards, but also combines these norms into a unique legal framework that seeks to address the specificities of internal displacement on the African continent, and provides a clearer and stronger legal basis for IDPs' protection.⁴⁹ It should be noted that the KC is the first independent, and legally binding regional instrument in the world to impose on the states the obligation to protect and assist IDPs.

9.3.1 Ratification of the KC

At a special summit in Kampala, Uganda on 23rd, October, 2009, the African Union (AU) Heads of State and Government adopted the Convention for the Protection and Assistance of Internally Displaced Persons in Africa. Having been ratified by 15 AU member states, the convention entered into force on 6th, December, 2012.

9.3.2 Why Kenya is yet to ratify the KC

Kenya has not yet signed the convention which in essence highlights the autonomy of each country. The justification for Kenya's lack of action in this regard was initially advanced by the adoption of a new constitution in 2010 that had changed the legal procedure for adhering to international obligations. This, in effect implied that a law on domestication of treaties was a pre-requisite to be able to incorporate a ratified treaty into the national law. In December 2012, a Ratification Act was eventually adopted thereby clearing legal barriers for the ratification of the KC. Since the assent to the IDP Act in 2012 (see below), the Kenyan government argues that the ratification of the KC would only imply duplicity as the IDP Act, 2012 essentially incorporates the rights, obligations and principles for the prevention of displacement, the protection of IDPs and the need for durable solutions into the national framework.

9.4. Draft National IDP Policy

Inadequate and uncoordinated responses to internal displacement related to 2007/2008 PEV situation prompted the need for a framework to act as a platform for collaboration and coordination.⁵⁰ The Protection Working Group on Internal Displacement (PWGID) members worked closely with the Ministry of State for Special Programs (MoSSP) and the Ministry of Justice National Cohesion and Constitutional Affairs (MoJNCCA) to draft (in March 2010) a National Policy on Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya.⁵¹

⁴⁸ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (entered into force 2012)

⁴⁹ <http://www.internal-displacement.org/assets/publications/2010/2010-making-the-kampala-convention-work-the-matic-en.pdf>

⁵⁰ RCK/DRC, January 2013

⁵¹ Ibid

The national policy was to advance substantial protection to IDPs by preventing future displacement and fulfilling the country's obligations under the international and regional instruments on internal

displacement. Some of the pivotal elements of this policy included: seeking durable solutions for IDPs; criminalizing arbitrary displacement and enacting laws to address historical injustices as stipulated, for example in the national land policy 2009.

Even at its unveiling, there was skepticism with regards to implementation. According to analytics, the successful implementation of this policy was particularly dependent on its harmonization with other relevant legislation, noting that it could not be effective as a stand-alone document.⁵² In the end, the draft policy was endorsed by the Cabinet (in October 2012), but, there has not been any subsequent progress towards its final adoption.⁵³

When the President assented to the IDP Act, 2012 (on 31 December 2012), it (the Act) effectively overtook the draft policy, thereby propping an argument that justified the non-consequential effects of the yet to be adopted policy.

This narrative withstanding, the adoption of the IDP policy would certainly facilitate the implementation of the Act,⁵⁴ which even the government has taken note of. As part of his response to the Senate on how much the government has spent on resettlement of IDPs, the CS for Devolution and Planning underscored the need for an IDP policy to aid in addressing resettlement issues.⁵⁵ However, the draft policy would require further review, harmonizing it with the IDP Act and other factual and legal developments.

9.5. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities (IDP) Act, 2012

9.5.1 History of the Act

In November 2010, a Parliamentary Select Committee on the Resettlement of IDPs was established mandated to prepare a draft bill on forced displacement. Through this committee, the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, otherwise known as the IDP Act, 2012 was born and received presidential assent two years after the inception of the process.

Today, four years after the enactment of the IDP Act, Kenya is equipped with a solid instrument which has the potential to provide an adequate response to displacement. The IDP Act not only outlines pertinent protection guidelines for displacement processes, but also establishes an institutional framework for protection of, and assistance to the IDPs.

However, little progress has been consolidated towards its implementation even after creating the National Consultative Coordination Committee (NCCC). To this extent, there is limited awareness raising, or publicity about the Act with responsible authorities, the public, or IDPs themselves.

⁵² Nuur Mohamud Sheekh, former analyst with the Internal Displacement Monitoring Centre (IDMC).

⁵³ Kenya Cabinet, October, 2012

⁵⁴ <http://www.internal-displacement.org/sub-saharan-africa/kenya/2014/kenya-too-early-to-turn-the-page-on-idps-more-work-is-needed->

⁵⁵ <http://www.standardmedia.co.ke/article/2000199481/government-has-spent-sh17b-on-idps-says-cs-mwangi-kiunjuri>

Assenting to the IDP Act was a significant step forward. However, potentially competing and uncoordinated normative frameworks, especially in the areas of disaster and land management, carry the risk of pre-empting some of the guarantees and envisaged outcomes. A study by Internal Displacement Monitoring Centre (IDMC) in 2015 outlines the missing milestones that would need to follow: “Harmonizing the different pieces of legislation (those in place or pending adoption) and ensuring coherence between the IDP Act and other sectoral frameworks is an integral part of the implementation efforts that are required of the Kenyan authorities. The adoption of the IDP policy does not only represent the conclusion of a process that started in the aftermath of the greatest IDP crisis suffered in Kenya in recent years, but is also a crucial component of the creation of a credible and functioning response framework.”⁵⁶

After all, the lack of an IDP policy is a constant hindrance to the operationalization of the IDP framework. It is then critical to highlight the complementarity principle with which these two instruments should work in improving government’s response to the needs of IDPs and affected communities. As it is, the non-operationalization of neither the IDP Act, 2012 nor the Policy constitute a challenge to an effective intervention regime on issues related to IDPs.

9.5.2 The Six Parts of the Act

Part I determines the interpretation of used terms such as “internally displaced person”⁵⁷, “Humanitarian Fund”⁵⁸ or “protection”⁵⁹.

Part II includes the principles of prevention, protection and assistance. Art. 4 for example highlights the “rights based response to internal displacement”. Here, the duties of the Government are clearly outlined, e.g. Art. 6 (1): “The Government shall protect every human being against arbitrary displacement.”

Part III deals with the administration. On the basis of Art 11 (1) it is the National Government that shall bear ultimate responsibility for the administrative implementation of this Act.

Part IV highlights the necessity for public awareness, sensitization, training and education and Part V introduces specific provisions relating to development and displacement.

Part VI provides sanctions for offences and giving false information.

Further, the Great Lakes Protocol (First Schedule) and the UN-Guiding Principles (second Schedule) are annexed and therefore now fully incorporated into National law.

⁵⁶ IDMC Study: “A review of the normative framework in Kenya relating to the protection of IDPs” (August 2015), Executive Summary, page 8; <http://www.internal-displacement.org/publications/2015/a-review-of-the-normative-framework-in-kenya>

⁵⁷ “internally displaced person” means a person or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, large scale development projects, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border;

⁵⁸ “Humanitarian Fund” means the Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of Post-2007 Election Violence established by regulation 3 of the Government Financial Management Regulations, 2008;

⁵⁹ protection” means all activities aimed at obtaining full respect of the rights of internally displaced persons in accordance with the letter and spirit of the fundamental rights and freedoms under the Bill of Rights of the Constitution of Kenya and applicable regional and international human rights and humanitarian law instruments;

9.5.3 Responsibilities of institutions at the County level

Art. 11 (3) County Governments shall bear responsibility for the administrative implementation of the provisions of this Act in accordance with their functions and powers accorded by Article 186 and the Fourth Schedule of the Constitution

County Governments shall promote public awareness, sensitization, training and education on issues related to internal displacement (Art 19). Every County executive committee, in collaboration with the Committee, shall conduct a public awareness, educational and information campaign on causes, impact and consequences of internal displacement as well as on means of prevention, protection and assistance to internally displaced persons within its area of jurisdiction in the manner contemplated under sections 17 and 18.

In case the capital needed or the recurrent expenditures exceed resources available, the County Governments are entitled to cover the costs through the Humanitarian Fund.

The NCCC can establish sub-committees at the county level.

9.5.4 Functions of the National Consultative Coordination Committee (NCCC)

Section 12 of the IDP Act, 2012 establishes the National Consultative Coordination Committee (NCCC) on internal displacements. The Committee assume such functions as⁶⁰:

- (a) Serve as the official impartial and humanitarian focal body liaising between Government Departments, the United Nations, non-State actors, the Secretariat of the International Conference of the Great Lakes Region, and where appropriate the African Union;
- (b) Determine and establish procedures and channels of engagement and cooperation between Government Departments, the United Nations, non-State actors, the Secretariat of the International Conference of the Great Lakes Region and where appropriate the African Union in order to enhance the effectiveness of the response to internal displacement;
- (c) Coordinate prevention and preparedness efforts, protection and assistance to internally displaced persons throughout their displacement until a durable and sustainable solutions is found, and to host communities as needed, among relevant Government Departments, the United Nations, and non-State actors;
- (d) Ensure the registration of all internally displaced persons in order to maintain a national data-base of such persons which registration shall—
 - (i) Commence and conclude within thirty days of the occurrence of internal displacement;
 - (ii) Be declared by the Cabinet Secretary through the issuance of a Gazette notice;
 - (iii) Be only for reasons of ascertaining the identification, profile, conditions, and numbers of internally displaced persons for the sole purpose of protection and assistance in accordance with article 3 (4) of the Protocol;

⁶⁰ IDP Act, 2012 section 13

-
- (e) Raise national awareness, sensitize and facilitate and coordinate training and education on the causes, impact and consequences of internal displacement and means of prevention, protection and assistance as provided for in sections 18–21 of this Act;
 - (f) Oversee the management and use of the Fund provided for in section 15 of this Act;
 - (g) Prepare an Annual Report relating to the fulfilment of its functions for tabling before Parliament on the situation of internally displaced persons;
 - (h) Monitor and supervise the operational implementation of the Protocol and the Guiding Principles by virtue of this Act;
 - (i) Advise the Cabinet Secretary on the exercise of his or her powers and functions under this Act.

9.5.5 NCCC from inception to date

Since assuming duty, the NCCC Secretariat has adopted a guarded approach to its undertaking. Therefore, much of the available information regarding its activities have only been brought forth by the media. To get an insight into workings of the committee, this author interviewed Mr. Patrick Githinji who is Chairman of the National IDP Network and a member of the NCCC Secretariat, as well as the PWGID. This interview focused on two areas, namely: Emerging issues/challenges and achievements of the NCCC. The succeeding segments on the NCCC are therefore a representation of the status of the committee through Mr. Patrick Githinji's perspective.

9.5.6 Achievements of the NCCC

Mr. Githinji started by outlining the accomplishment of NCCC amidst glaring insurmountable challenges. In his assessment, there are positive outcomes the committee has so far realized and those that it is in the process of achieving. Accordingly, NCCC:⁶¹

- Has identified, profiled camps, and vetted IDPs in those camps;
- Has resettled all camp IDPs;
- Has officially closed all the camps;
- Is in the process of identifying integrated IDPs, harmonization of records for, and vetting for payment;
- Is consulting with various stakeholders, including the PWGID (2015), meeting leaders, addressing what the IDPs raised, met with the special rapporteur on internal displacement early this year.

9.5.7 Emerging issues/challenges

- The NCCC is cognizant of the reality that displacement in Kenya is a continuum process and has been ongoing for years. It is then cumbersome to define a timeframe within which those who were displaced are considered for compensation. In the country, there are those

⁶¹ Information gathered through a telephone interview with Patrick Githinji on Thursday, 9th, July 2016

-
- who were displaced prior and post 2007. For clarity purposes, the NCCC sought legal advice from the Attorney General who in turn advised that due consideration shall be given to the 2007/2008 IDPs onwards. This development, however has triggered a debate in Parliament and consequently led to a private member motion which is seeking the extension of the NCCC mandate to consider persons displaced prior to 2007.
 - In a bid to discharge its duties at the grassroots, the NCCC is expected to liaise with Regional Commissioners, County Commissioners and Sub-County Commissioners. Notably, the committee executes its mandate under the Devolution and Planning Ministry. This arrangement has not augured well with the administrators who are not comfortable being answerable to the Ministry of Devolution and Planning, while theirs is Ministry of interior. To mitigate this challenge, processes are in place to facilitate relocation of the NCCC from Devolution and Planning Ministry to Office of the President (OP) which is under the Ministry of Interior. This is expected to facilitate smooth coordination of grassroot engagement of the NCCC.
 - Like many other commissions in the country, the NCCC is gravely underfunded and therefore struggles to keep its programs afloat. Monetary inadequacy not only affects awareness creation, sensitization and even IDP profiling, but also administrative operations of the Secretariat. Currently, the Committee is understaffed and any field engagements by staff members literally implies closure of the offices. Further, it is even harder for the Committee to establish its field offices as per the IDP Act, 2012.
 - The NCCC lacks authenticated data on internal displacement. Whereas the Committee is in custody of data from different sources, the varying figures are not only a source of confusion, but also warrant legitimate concerns about both authenticity and credibility. The Parliamentary Committee on Justice and Legal Affairs recently sought data on displacement from Molo, Enoo Supukia, Western and Coast regions between 1992 and 1998, but neither the government nor NCCC has such data. This narrative ascertains how unreliable data or unavailability of it impedes the NCCC's ability to execute its mandate.
 - Regardless of what the challenges of NCCC are, in the end, its overall working would be without technicalities if there was sufficient political goodwill to help drive the IDP agenda.

9.6. Lawful Occupation of Land – Compulsory Acquisition of Land- Land Act(2012)

The displacement or forceful eviction of a lawful occupants of a land, is illegal. The investor or the government shall attempt to buy the land or use the procedures of compulsory acquisition. The rules governing compulsory acquisition are provided in Part VIII, Section 107 to 133 of the Land Act 2012. The process involves:

The government may acquire land for public purposes, including for development, or utilization.

9.6.1 The process

1. National Land Commission (NLC) receives a request from the institution that wants the land (acquiring body),
2. Acquiring body provides NLC with details of the land(s) for consideration,
3. If the request is certified in writing, NLC publishes the intention to acquire in a gazette notice and delivers copies to interested parties,
4. The land's suitability for the public purpose is ascertained, through the authority of NLC, and consent of or notice to the occupier,
5. NLC sets a date of inquiry, notifies interested parties, receives claims of compensation before date of inquiry and hear the claims,
6. NLC prepares written and separate award of compensation and serves the offer of compensation to every person NLC has determined to have an interest in the land,
7. If the award is accepted, NLC pays promptly,
8. If award is not accepted, the amount of compensation is put in a special compensation account held by NLC where it earns interest till time of payment,
9. Land may be given instead of receiving compensation award upon agreeing with NLC,
10. NLC takes possession of the land after payment of the amount of the first offer and after notifying interested person(s).

9.6.2 Factors Considered for Compensation Valuation

1. Market value of the land and improvements,
2. Damage sustained or likely to be sustained,
3. Expenses incurred due to change of residence or business,
4. Expenses incurred due to decreased or loss of business,
5. 15% statutory disturbance allowance,
6. Other expenses incurred, including professional fees, due to acquisition.

9.7. Unlawful Occupation Of Land - (Land Act, Sec. 152)⁶²- Eviction And Resettlement Procedures

It is debatable if an unlawful occupant of land acquires in any case the status of an IDP, when evicted. Forceful eviction can be justified when they are carried out in a lawful, reasonable and proportional way. There should be appropriate protection of the affected population and due process must be followed by government or private developers. In other terms, also in case of the vacation of unlawful occupied land, there are procedures that have to be followed. This

⁶² See *Land Amendment Bill 2016; Nr 98 amending Sec 152.*

chapter was incorporated for the purpose of completeness and clarification as the IDP Act and Art. 43 (1) b of the Kenyan Constitution⁶³ protect Kenyan citizens from arbitrary displacement.

Most cases falling under this chapter, are cases of evictions in the context of large infrastructure projects, such as road, railway, and pipeline projects. The corridors of those projects often lead in parts through community land, grabbed land or land that is claimed by more than one “owner” (buyer, perceived ownership, and autochthonous claim) in many instances it is difficult to establish rightful ownership due to the lack of a land register or issuance of title deeds and corruption. With this in mind and the fact that arbitrary displacement is criminal offence under the IDP Act, forceful evictions should be in any case only a last resort.

9.7.1 Applicable rules

The process to develop a legal framework for eviction and resettlement procedures was already initiated by the National Land Policy (NLP) in 2009, and respective bills have been introduced in Parliament in 2012 and 2013. Finally, the Eviction and Resettlement Procedures Bill (ERP Bill; Government of Kenya, 2012b) did not come as a stand-alone bill but instead was reduced to address eviction procedures only and took the form of an amendment to sec. 152 of the Land Act included in the omnibus Land Laws Amendment Bill, 2016 (sec. 98). This Bill was passed by Parliament in May 2016 and signed by the President in August 2016.

9.7.2 The eviction procedures read as follows

Sec. 152A

A person shall not unlawfully occupy private, community or public land.

Sec. 152 B

An unlawful occupant of private, community or public land shall be evicted in accordance with this Act.

Sec. 152C

The National Land Commission shall cause a decision relating to an eviction from public land to be notified to all affected persons, in writing, by notice in the Gazette and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction.

Sec. 152D

(1) The County Executive Committee Member responsible for land matters shall cause a decision relating to an eviction from unregistered community land to be notified to all affected persons, in writing, by notice in the Gazette and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction.

(2) In the case of registered community land, the procedure prescribed in section 152E shall apply.

⁶³ Art. 42 (1) b of the Constitution: Right to adequate housing.

Sec. 152 E

(1) if, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.

(2) the notice under subsection shall -

(a) be in writing and in a national and official language;

(b) in the case of a large group of person, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land;

(c) specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and

(d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area

Sec. 152F

(1) Any person or persons served with a notice in terms of sections 152C,152D and 152E may apply to Court for relief against the notice.

(2) The Court, after considering the matters set out in sections I52C, l52D and152E, may -

(a) confirm the notice and order the person to vacate;

(b) cancel, vary, alter or make additions on such terms as it deems equitable and just;

(c) suspend the operation of the notice for any period which the court shall determine; or

(d) order for compensation.

Sec. 152G

(1) Notwithstanding any provisions to the contrary in this Act or in any other written law, all evictions shall be carried out in strict accordance with the following procedures-

(a) be preceded by the proper identification of those taking part in the eviction or demolitions;

(b) be preceded by the presentation of the formal authorizations for the action;

(c) where groups of people are involved, government officials or their representatives to be present during an eviction;

(d) be carried out in a manner that respects the dignity, right to life and security of those affected;

(e) include special measures to ensure effective protection to groups and people who are vulnerable such a women, children, the elderly, and persons with disabilities;

(f) include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;

(g) include mechanisms to protect property and possessions left behind involuntarily from destruction;

(h) respect the principles of necessity and proportionality during the use of force; and

(i) give the affected persons the first priority to demolish and salvage their property.

(2) The Cabinet Secretary shall prescribe regulations to give effect to this section.

Sec. 152H

The competent officer of the Commission or County Government, community owning a registered community land or owner of private land shall at least seven days from the date of the eviction, remove or cause to be removed or disposed by public auction, any unclaimed property that was left behind after an eviction from private, community or public land.

Sec. 152 I

Where the erection of any building or execution of any works has commenced or been completed on any land without authority, the competent officer shall order the person in whose instance the erection or work began or was carried, to demolish the building or works, within such period as maybe specified in the order.

10. DURABLE SOLUTIONS

10.1 What is a durable solution for an IDP?

Regardless of where IDPs are settled, neither human rights concerns, nor specific needs of IDPs cease to exist at the end of a conflict or a disaster. Resumption to a normal way of life is therefore a gradual process that incorporates all components of their lives prior to displacement. A durable solution can then be achieved when “internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement.”⁶⁴

10.2 Components of durable solutions to IDPs⁶⁵

- Sustainable reintegration at the place of origin (hereinafter referred to as “return”);
- Sustainable local integration in areas where internally displaced persons take refuge (local integration);
- Sustainable integration in another part of the country (settlement elsewhere in the country)

⁶⁴ <http://www.unhcr.org/50f94cd49.pdf>

⁶⁵ *ibid*

In a bid to achieve durable solutions for IDPs, there is need for an all-inclusive and consultative process. From past Kenyan experiences, IDPs are not brought on board on any issue that seeks to address their needs. Land, monetary compensation, or legislation are critical aspects of durable solutions that the government has so far undertaken. Notably, there has neither been any significant input from the IDPs nor an attempt to broaden participation to include their input.

For IDPs who are resettled in other areas, there is need for adequate consultation with, and sensitization of both the IDPs and host communities. In many IDP resettlement areas in Rift Valley, there is sustained tension between IDPs and host communities. The government simply bought land and resettled IDPs with complete disregard of the opinion of host communities. The tensions and potential conflicts in these areas are more to the detriment of the minority (IDPs), than it would be to the hosts. One has to bear in mind that these interventions happen in generally poor environments. Community driven approaches such as reconciliation and peacebuilding initiatives at the grassroots could be critical in resolving conflict induced displacement and help achieve durable solutions.

Under circumstances where forcible evictions are not farfetched, there is need for legal representation of the victims. In the LAPSET corridor project, for example, the courts restrained Ministry of Lands, Housing and Urban Development and Kenya Ports Authority (KPA) from commencing any construction until certain concerns were clarified. This was necessitated by six persons who filed a petition on the account that part of the land on which the port was to be constructed was theirs, on this basis, they needed information regarding resettlement and compensation modalities.⁶⁶ Whereas there exists isolated cases in which the aggrieved seek legal redress on their own, it should be appreciated that there are also those who lack information regarding juridical intervention, or lack resources for such processes, or even due to distant justice institutions.⁶⁷ To help these IDPs attain durable solutions, they should be assisted to get the legal representation they need.

To ascertain the extent to which durable solutions for IDPs have been achieved, there are pertinent considerations which need to be taken into place:⁶⁸

- They should have access to, at minimum, adequate food, water, housing, basic education, health care;
- There should be a mechanism that guarantee them safety, security and enables freedom of movement;
- They should have access to a means of livelihood and employment;

They should be compensated for their losses or provided with a mechanism that restore their housing, land and property.

⁶⁶ <http://mobile.nation.co.ke/news/Lamu-port-project-halted-in-land-row/-/1950946/2537336/-/format/xhtml-1/-/104dpey/-/index.html>

⁶⁷ <http://www.internal-displacement.org/sub-saharan-africa/kenya/2014/kenya-too-early-to-turn-the-page-on-idps-more-work-is-needed->

⁶⁸ *Ibid*

Amnesty International, COHRE, Hakijamii, Kenya Land Alliance and Kenya National Commission on Human Rights. (April, 2007). Nowhere to go: Forced evictions in Mau Forest, Kenya. Retrieved from KNCHR: <http://www.knchr.org/Portals/0/GroupRightsReports/Mau%20Forest%20Evictions%20Report.pdf>

AU, ECOSOCC and IDMC. (July, 2010). Making the Kampala Convention work for IDPs. Retrieved from Internal Displacement monitoring Centre: <http://www.internal-displacement.org/assets/publications/2010/2010-making-the-kampala-convention-work-thematic-en.pdf>

Brookings Institution. (April, 2010). Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons. Retrieved from UNHCR: <http://www.unhcr.org/50f94cd49.pdf>

Capital FM. (2008, July 15). Raila meeting endorses Mau evictions. Retrieved from Capital News: <http://www.capitalfm.co.ke/news/2008/07/raila-meeting-endorses-mau-evictions/>

DPSS. (2016, February 4). Govt. gives IDPs Sh1bn, orders camps closed. Retrieved from Daily Nation: <http://www.nation.co.ke/news/politics/Govt-gives-IDPs-Sh1bn-closes-camps/-/1064/3062636/-/3q74fl/-/index.html>

DRC and RCK. (January, 2013). Behind the Scenes: Lessons Learnt from Developing a National Policy Framework on Internal Displacement in Kenya. Retrieved from Danish Refugee Council-Great Lakes Programme: <https://drc.dk/media/1354866/behind-the-scenes-kenya-idp-report.pdf>

IDMC. (2014, June 3). Kenya: too early to turn the page on IDPs, more work is needed. Retrieved from Internal Displacement Monitoring Centre: <http://www.internal-displacement.org/sub-saharan-africa/kenya/2014/kenya-too-early-to-turn-the-page-on-idps-more-work-is-needed->

IDMC. (August 2015). A review of the normative framework in Kenya relating to the protection of IDPs. Retrieved from Internal Displacement Monitoring Centre: <http://www.internal-displacement.org/publications/2015/a-review-of-the-normative-framework-in-kenya>

IRIN. (2012, October 31). Disquiet over Lamu port project. Retrieved from IRIN News: <http://www.irinnews.org/report/96675/kenya-disquiet-over-lamu-port-project>

IRIN. (2012, October 31). Pastoralists, too, can be displaced. Retrieved from IRIN News: <http://www.irinnews.org/report/96669/kenya-pastoralists-too-can-be-displaced>

Kajilwa, G. (2016, April 25). Government has spent Sh17b on IDPs, says CS Mwangi Kiunjuri. Retrieved from The Standard: <http://www.standardmedia.co.ke/article/2000199481/government-has-spent-sh17b-on-idps-says-cs-mwangi-kiunjuri>

Kenya Human Rights Commission. (2014). Forgotten in the Scramble for Lamu: A Position Paper on the LAPPSET Project In the Case of the Aweer and the Fisherfolk. Retrieved from KHRC: <http://www.khrc.or.ke/mobile-publications/economic-rights-and-social-protection-er-sp/47-forgotten-in-the-scramble-for-lamu-a-position-paper-in-the-case-of-the-aweer-and-the-fisherfolk/file.html>

Kenyan Senate. (2016, March 10). The Hansard on Status of Internally Displaced Persons. Pp 12-25

Kiama, L. and Koome, F. (February, 2014). Internal displacement in Kenya: the quest for durable solutions. Retrieved from FMR45: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/crisis/kiama-koome.pdf>

Kibui, R. (2013, September 3). 'Promised Land' turns into nightmare. Retrieved from Daily Nation: <http://www.nation.co.ke/news/Promised+Land+turns+into+nightmare/-/1056/1978806/-/sxd08d/-/index.html>

Kiplang'at, J. (2013, September 3). State embarks on final leg of resettling IDPs. Retrieved from Daily Nation: <http://www.nation.co.ke/news/State+embarks+on+final+leg+of+resettling+IDPs/-/1056/1981662/-/3sl187/-/index.html>

Kiplang'at, J. (2016, February 10). Senators demand breakdown of IDP funds. Retrieved from Daily Nation: <http://www.nation.co.ke/news/Senators-demand-breakdown-of-IDP-funds/-/1056/3070828/-/wtcwnb/-/index.html>

Machuhi, E. (2014, November 27). Lamu port project halted in land row. Retrieved from Daily Nation: <http://mobile.nation.co.ke/news/Lamu-port-project-halted-in-land-row/-/1950946/2537336/-/format/xhtml/-/104dpey/-/index.html>

Murimi, M. (2016, June 17). Nakuru IDPs threaten to march to Nairobi to stop anti-IEBC protests. Retrieved from Citizen Digital: <https://citizentv.co.ke/news/nakuru-idps-threaten-to-march-to-nairobi-to-stop-anti-iebc-protests-129382/>

Njagi, J. (2015, November 12). Treat all IDPs equally, says Mudavadi. Retrieved from Daily Nation: <http://www.nation.co.ke/news/politics/Treat-all-IDPs-equally/-/1064/2954618/-/92g1iy/-/index.html>

OCHA Humanitarian Bulletin Eastern Africa. (2014, January 20-February 11). Food security stable, but crises emerging. Retrieved from Reliefweb international: <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Eastern%20Africa%20Humanitarian%20Bulletin%2032.pdf>

OCHA Kenya. (2008, December 4). How many people were displaced in Kenya as a result of the post-election violence? Retrieved from Reliefweb International: http://reliefweb.int/sites/reliefweb.int/files/resources/D925666D168061D64925753300256FA5-Full_Report.pdf

OHCHR. (2014, May 7). Solutions for Kenya's displaced require urgent action determined by reality – UN expert. Retrieved from United Nations office of the Commissioner for Human Rights: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14575&LangID=E>

Refugee Rights News Volume 4, Issue 3. (May 2008). Great Lakes Pact Enters into Force. Retrieved from Refugee Rights News: <http://www.refugee-rights.org/Publications/RRN/2008/May/V4.I3.GLPact.html>

Republic of Kenya. (2012, December 31). Act N0.56 of 2012: Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities. Retrieved from Laws of Kenya: <http://www.kenyalaw.org/lex//actviewbyid.xql?id=KE/LEG/EN/AR/P/NO.%2056%20OF%202012#KE/LEG/EN/AR/P/NO.56OF2012>

Standard Team. (2016, April 17). Why have you neglected us? IDPs cry out. Retrieved from the Standard digital: <http://www.standardmedia.co.ke/article/2000198518/why-have-you-neglected-us-idps-cry-out>

United Nations General Assembly. (2012, February 6). Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani. Retrieved from OHCHR: http://www.ohchr.org/Documents/Issues/IDPersons/A.HRC.19.54.Add%202_en.pdf

UNHCR. (2004). Guiding Principles on Internal Displacement. Retrieved from UNHCR: <http://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>

INFORMATIVE REPORT ON INTERNAL DISPLACEMENT IN KENYA

Imprint

Published by the
Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
Bonn and Eschborn, Germany

Civil Peace Service Kenya
Kush Offices, 91, Rhapta Road
P.O. Box 41609, 00100 Nairobi
T +254 (0) 20 4228 000
verena.waldhart@giz.de
www.giz.de/www.ziviler.friedensdienst.org.en

As at
December 2016

Layout, design and print
Stormsky Graphics Ltd
P.O. Box 74 - 00515, Nairobi
Tel: 020 263 6419
Email: info@stormskygraphics.co.ke

Text
Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH / Civil Peace Service Kenya

GIZ is responsible for the content of this publication.

On behalf of the
German Federal Ministry for Economic Cooperation and Development (BMZ)

