

Internal displacement in Kenya: the quest for durable solutions

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Internal displacement in Kenya has been a challenge since the colonial era but only recently has a legal framework been developed to address IDP protection issues. The process of developing this framework offers some useful lessons for stakeholders in similar situations.

Displacement in Kenya can be traced to a variety of sources which have forced Kenyans to move away from their habitual places of residence in search of safety: the colonial thirst for land, the punishing effects of global warming, development-related displacement, clan clashes, cattle rustling and politically motivated violence. Historically, mass displacement of Kenyans can be argued to have started in 1915 when the British colonial power stipulated that all land belonged to the monarch to be held in trust by the governor. Many of the indigenous population were rendered landless and forced to work for European-owned farms.

It is with this background that the ethnic clashes of 1992 and 1997 should be understood. For instance, the violence witnessed in 1992 was as a result of the re-introduction of multiparty politics. Some politicians took advantage of discontent over land distribution and, hoping to deny their rivals a support base in 'their' electoral area, stoked ethnic flames of hatred which caused thousands of Kenyans

to be evicted from what they had hitherto called home, some since independence in 1963. In the post-election violence of 2007-08 the same issue of redistribution of resources, especially land, was a significant factor. In addition there have been mass displacements caused by natural and human-made disasters. Floods have destroyed homes and livelihoods in various locations in Kenya; early in 2013, for example, heavy rains in most parts of the country displaced an estimated 18,000 people.¹

Moreover, there are the clan/ethnic skirmishes – which at times are politically motivated – that perennially occur in some parts of Kenya. One community rises against another and that then leads to a revenge mission by those attacked, culminating in a vicious cycle of violence resulting in injuries, deaths and mass displacements.

Notwithstanding all these instances of displacement, Kenya did not have a coherent and comprehensive legal or policy framework to address the problem of internal

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displacement. There were numerous laws that could be used to address the problem of displacement but none of these directly focused on the protection of and provision of assistance to IDPs and affected communities. The government's response to displacement was ad hoc and reactive. For instance, during the 2007-08 post-election violence, the government launched Operation Rudi Nyumbani ('return home' campaign) and offered *ex gratia* [goodwill] payments to those affected. Although this quick intervention by the government helped to alleviate the immediate situation, it took no account of the need for durable solutions for IDPs as envisaged by the UN Guiding Principles or the Kampala Convention.² This is where international NGOs and local civil society organisations (CSOs) stepped in to fill the gap to champion the need for a rights-based approach to providing protection and assistance to IDPs and affected communities.

Development of policy and legal framework

The process of developing a legal framework on protection of IDPs began in earnest in 2009 when durable solutions and the establishment of a policy framework for IDPs were discussed at a meeting of stakeholders (including INGOs, CSOs, relevant government ministries, UN agencies, Kenya National Commission on Human Rights and IDP community representatives). A protection working group on internal displacement was formed with a mandate to enhance the capacity of actors to address the protection needs of IDPs throughout Kenya. This involved, among other things, capacity building for government actors on the UN Guiding Principles, lobbying, and developing an IDP legal and policy framework.

The protection working group set up a legal aid sub-working group to explore the gaps in the law in respect of protection of IDPs and to draft key provisions of an IDP policy. Following a national stakeholders' review forum in March 2010 the policy was finalised in partnership with the Ministry of State for Special Programmes³. Meanwhile a Parliamentary Select Committee on



Kibera slum, Nairobi, home to thousands of IDPs.

Resettlement of IDPs (PSC) worked on the legislative aspects of IDP protection, which provided an opportunity for the protection working group to engage with the legislators in crafting the first ever legal instrument in Kenya concerned with IDP protection.

The protection working group then decided to further influence the process by merging the processes of policy and legislative formulation. The Refugee Consortium of Kenya (RCK), as the chair of the protection working group's advocacy sub-group, convened a workshop for the PSC at which it was agreed that the advocacy sub-group would review the draft Bill that the PSC had developed. At the subsequent presentation of the draft Bill for validation in December 2011, the participation of the Minister of Special Programmes provided a strategic opportunity for the protection working group members to lobby in support of the Bill, and advocate for the fast tracking of the adoption of the IDP policy (which would set out objectives and implementation methods, within the new legal framework). The effect was evident when the Minister not only supported the Bill during its debate in the National Assembly but also introduced crucial amendments such as the creation of a state-funded humanitarian fund to assist IDPs.

RCK then organised a sensitisation workshop to ensure that members of the labour and social welfare committee appreciated the importance of the Bill. This was done to great effect as the Bill was passed in the National Assembly and given Presidential assent on 31st December 2012 despite a busy schedule on the legislative calendar. The IDP policy is yet to be adopted⁴ but the members of the protection working group are now lobbying the newly restructured Directorate of Special Programmes to present the draft policy in Parliament for debate.

Lessons from the process

The first lesson worth noting is that some government stakeholders need capacity building. Many actors outside government assume that those charged with making policy have the requisite tools to do their task but this may not always be the case.

There is also a need to identify local actors and establish a framework to coordinate their activities. The achievements in Kenya would not have been possible had it not been for the concerted and coordinated efforts of CSOs and INGOs. Numerous meetings under the aegis of the protection working group proved indispensable in organising activities for the lobbying of the enactment of the IDP Act and development of the IDP Policy.

Government involvement in the process of policy development is crucial. This was seen through the engagement with the Ministry of State for Special Programmes which proved instrumental in the passing of the IDP Act. A corollary of this involvement was the building and utilisation of crucial contacts which are still being used in efforts to get the IDP policy adopted by government.

At the same time, there needs to be comprehensive inclusion and participation of all stakeholders including the IDPs who are the beneficiaries of the legal framework – which was in fact lacking in the Kenyan experience. The result of this participation will be an outcome that is owned by all those

involved, leading to greater support in the implementation phase of both law and policy.

Sufficient resources must be mobilised. Through it all, the need to have resources (in terms of funds as well as staffing) for capacity building, training and lobbying presented a challenge particularly to those CSOs that had not foreseen impromptu activities in their annual plans. A lot of resources are needed in influencing policy and law.

Timing was a major issue. From the time of independence until the 2007-08 post-election violence there had never been an emergency of such proportions to warrant a debate on internal displacement; the post-election violence had devastating effects on the Kenyan populace but did provide an opportunity to review the current laws and propose policy and legislative processes to address the issue.

Conclusion

The Kenyan experience of finding durable solutions for internal displacement has been marked by both successes and challenges. The main success has been the passage of the IDP Act which has been enacted despite the delay in adoption of the policy. Enactment of this legislation, however, is a very positive step towards anchoring prevention of internal displacement and protection of IDPs within a comprehensive policy platform. This has also made Kenya one of the few countries within the region to have domestic laws on internal displacement.

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1. IDMC IDP News Alert 18 April 2013

<http://tinyurl.com/IDMC-Kenya-news-13-4-13>

2. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa

<http://tinyurl.com/AU-KampalaConvention>

3. The government ministry that was in charge of IDP protection at the time.

4. The delay in it being tabled for debate is due to the change of government in Kenya, as various ministries have been restructured.