INTERNALLY DISPLACED PERSONS (IDPs) HAVE RIGHTS

AN INFORMATION BOOKLET ON
LEGAL RIGHTS
OF IDPs
# Table of Contents

- Introduction ...................................................................................... 3
- Editorial ............................................................................................ 4
- Who is an Internally Displaced Person (IDP) .................................. 5
- Causes of Internal Displacement ..................................................... 5
- IDPs have Rights ............................................................................... 5
- Rights of IDPs ................................................................................... 6
- Who in Kenya is responsible for IDPs ............................................. 11
- Who else offers services to IDPs ...................................................... 11
- Obligations of the Kenyan Government ......................................... 12
- Waiting for the Kenyan IDP Policy/Laws ....................................... 15
- Who is Kituo Cha Sheria ................................................................. 16
- Summary/Kiswahili Version ............................................................ 17
INTRODUCTION

Internally Displaced Persons (IDPs) in Kenya need urgent and unbureaucratic protection and assistance. They are entitled to protection and assistance under national and international law. Further displacement has to be prevented.

The disastrous impact of internal displacement on peace and stability in Kenya seems not to be understood. The duty to care for IDPs lies with the government of Kenya. Kenya has ratified the Great Lakes Protocol on the Protection and Assistance of Internally Displaced Persons (2006). Kenya is therefore obliged to domesticate specific IDP laws. So far, it has not fulfilled this obligation.

Displacement in Kenya is a complex and multi faceted social problem. To date, an unknown number of people who were violently displaced during the post election violence 2007/08 still live in camps across the country. Many others fled to big cities swelling the population of the urban poor.

Attempts to address causes of the 2007/08 mass violence, to reconcile the country and to prevent further violence led to the acknowledgement that internal displacement is a national problem that needs to be urgently addressed.

Non-governmental organisations have been working with the government in a co-ordinated forum to address protection needs of all displaced persons in Kenya.

It remains the duty of civil society to urge the government to find durable solutions to internal displacement.
EDITORIAL

This booklet aims at providing basic information to the Kenyan public on the existing but unfulfilled rights of IDPs.

We urge the Government to sign on to and ratify the Kampala Convention¹ on IDPs Protection. This legal framework borrowing from UN guidelines² would be very helpful to IDPs noting that international law has become part of our law in Kenya under section 2(5) and 2(6) of the new constitution.

It is a reminder and appeal to those responsible for the prevention of internal displacement and for the protection of displaced persons to take action immediately. More importantly the National Peace policy should be adopted in 2011.

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We are grateful to Martin Ouma Onyango, Carolin Herzig and Tobias Mwadime for their input in this publication.

Priscilla Nyokabi
Executive Director

¹ African Union Convention for the Protection and Assistance of IDPs
² United Nations guidelines on internally displaced persons (IDPs)
WHO IS AN INTERNALLY DISPLACED PERSON (IDP)?

DEFINITION by GREAT LAKES PACT³:

“IDP = persons or groups who have been forced to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effect of armed conflicts, situations of generalised violations of human rights or natural or human – made disasters and who have not crossed an internationally recognised state border.”

“IDPs = Persons who have been forced from their homes by large scale development projects.”⁴

CAUSES OF INTERNAL DISPLACEMENT

1. Armed conflicts.
2. General situations of violence, ethnic hostilities.
3. Natural calamities such as landslides, great floods etc.
4. Human made disasters.
5. Human rights violations.
6. Large scale development projects.

³ Art. 1 (4) Protocol on the Protection and Assistance to IDPs, International Conference on the Great Lakes Region.

⁴ Art. 1 (5) Protocol on the Protection and Assistance to IDPs
IDPs HAVE RIGHTS!

- Universal rights, that are rights for all people as defined in the Bill of Rights of the new Constitution of Kenya.
- Specific rights of IDPs giving rise to government obligations.

The specific rights/government obligations derive from the Great Lakes Pact: Protocol on the Protection and Assistance to IDPs and Protocol on the Property rights of Returning Persons, as well as the Kampala Convention.

RIGHTS OF IDPs

The Kenyan Constitution outlines universal rights, such as:

Respect of human dignity
Every person has inherent dignity and the right to have that dignity respected and protected.

Right to life
Every person has the right to life. This includes the right to physical security. IDPs shall be protected in particular against genocide, murder, arbitrary execution and enforced disappearances.

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5 International Conference on Great Lakes Region (Great Lakes Pact).
6 Binding multi-lateral instrument dedicated to the Implementation of the Guiding Principles on Displacement.
Right to physical, mental and moral integrity
No displaced person should be subjected to any assault either physically, mentally or morally. Kenyan authorities must protect IDPs against rape, torture, mutilation, degrading treatment, sexual exploitation, forced labour of children, terror etc.

Right to equality / freedom from discrimination
Every person is equal before the law:
- Every person has the right to equal protection.
- Every person has the right to equal benefit of the law.

Access to justice
The State must ensure access to justice for all persons and no fees shall impede access to justice.

Compensation
The court is empowered to grant appropriate relief, including compensation. This applies equally to IDPs for the loss they have suffered.

Freedom and security of the person
Nobody shall be deprived arbitrarily of freedom, subjected to any form of violence or tortured.

Right to vote
Every citizen has the right to a free, fair and regular election. Every adult citizen has the right to be registered as a voter, to vote by secret ballot and to be a candidate for public office.
Right to access information
Every person has the right to access information held by the state or held by another person and is required for the exercise/protection of any right or fundamental freedom.

Right to fair administrative action
Every person has the right to efficient, lawful, expeditious, reasonable and procedurally fair administrative action.

Right to adequate housing
Every person has the right to accessible and adequate housing and to reasonable standards of sanitation.
This right includes: secure tenure, special protection against forced evictions, available services and infrastructure, e.g. lighting, heating, energy for cooking, affordable housing costs. The house shall be located near to other basic services (schools or health care services) and employment options.
Special focus shall be on disadvantaged or vulnerable groups, cultural identity consideration and adequate safety standards for the house.

Right to health
Every person has the right to the highest attainable standard of physical and mental health.
This includes: Access to essential medical services, functional health care service and non denial of emergency treatment.
- Access to psychological and other social services.
- Within safe physical reach for the individual.
- Cheap: affordable to all (economic accessibility).
- Respect for culture, age and gender needs.
Right to adequate food: freedom from hunger!
Every person has the right to be free from hunger.
This means:
  • Kenyan authorities have to provide for and to ensure safe access to essential food.
  • Food must be provided in sufficient quantity and of acceptable quality.
  • Food must have affordable prices.

Right to clean and safe water
Every person shall have access at all times to sufficient safe potable water for personal and domestic use.

Right to education
Every person has the right to education.
  • Kenyan authorities shall ensure the access to education.
  • Free access to primary education for all children.
  • Access to affordable secondary education.
  • Full and equal education of women and girls.
  • Inclusion of (ethnic, linguistic, religious, cultural) minorities.
  • Near: school within safe physical reach.

Right to social security
Every human being has the right to recognition everywhere as a person before the law. Kenyan authorities shall issue all necessary documents such as: passports, ID-cards, birth- and marriage certificate.

Right to work
Every person has the right to seek freely opportunities for employment and to participate in economic activities.
This includes: Access to jobs, right to minimum social security guarantees, fair
salary, protection from exploitation and non-discrimination.

**Freedom of movement and residence**

Every person has the right to freedom of movement.

Every IDP has the freedom to choose his/her residence.

- Every IDP can move freely in or out of camps or other settlements.
- IDPs have the right to escape from danger zones.
- IDPs have the right to be protected against forcible return or settlement in any place where their life, safety, liberty and health would be at risk.

**Protection of family**

The family as the fundamental unit of society should be respected, protected and assisted to the widest possible extent.

- Families shall be protected from separation and have a right to family reunification.
- Everybody has the right to know the fate and whereabouts of missing members of the family.
- People have the right to have grave sites protected and have access to such sites of deceased relatives.
- Special protection for families of mixed ethnicity.

**Rights to Property (Possession)**

Every person has the **right to acquire and to own** property.

The right to peaceful enjoyment of property includes the right not to be deprived of property (land, houses) and possession.
WHO IN KENYA IS RESPONSIBLE FOR THE IDPs?

The Kenyan Government has the primary responsibility to protect and provide assistance for IDPs.

The Ministry of State for Special Programmes (MOSSP) has the coordinating responsibility over IDP affairs.

Other ministries which also play key roles include:
- Ministry of Lands: purchase of land for resettlement.
- Ministry of State for Provincial Administration and Internal Security: food supply, security, relocation, distribution of seeds and relocation.
- Ministry of Finance: budgetary allocation.
- Ministry of Justice, National Cohesion and Constitutional Affairs: draft of policy and laws.

WHO else offers services to IDPs?

UN-agencies and international and national Non-Governmental Organisations (NGOs) also play a big role in offering assistance to IDPs.

National Protection Working Group on Internal Displacement (PWGID):
The PWGID is a national coordination forum addressing the protection needs of all displaced persons in Kenya. It is co-chaired by the Ministry of Justice, National Cohesion and Constitutional Affairs and the Kenya National Commission on Human Right. Members include UN-agencies, national and international NGOs. The forum aims at urging the adoption of an appropriate legal framework for the assistance and protection of IDPs, supports the capacity building and sensitization on IDP matters at all levels and to achieve durable solutions for Kenyans. The PWIGID coordinates protection with the field based Protection Working Groups in Nakuru and Eldoret.
1. Prevention

- Enactment of national laws, policy programmes relating to internal displacement.
- Refrain from activities that result in arbitrary displacement.
- Addressing historical injustices leading to displacements.
- Ensuring that all the persons responsible for acts that cause internal displacement are held accountable.
- Monitoring and preventing illegal possession of weapons.
- Preventing the formation of illegal groups and operations that could lead to further displacement.
- Stationing security forces to provide security to areas where people or social groups are at risk of being displaced.
- Training the security forces to conduct operations without causing displacement of people.
- Encouraging and strengthening inter-community interaction.
- Conserving the environment to protect people.
- Equitable development of all parts of the country.

2. Protection & Assistance

The Government must act immediately and take the following steps:

- Provide IDPs with accessible basic needs such as water, food, shelter and medical care.
- Ensure supplies are distributed without discrimination.
- Create a national data base for the registration of IDPs.
- Carry out accurate profiling to identify and locate IDPs in order to determine and meet their needs.
- Ensure safety in the camps for IDPs.
- Provide shelter for the displaced.
- Continuous follow-up until a lasting solution is obtained.
3. Other obligations of the government:
   - Grant immediate and quick access of IDPs to all organisations providing humanitarian assistance.
   - Ensure that goods and services meant for IDPs reach them without diversion (e.g. iron sheets, tents, houses, food).
   - Respect and protect organisations and members of staff who assist IDPs.
   - Monitor and ensure all organisations offering aid to IDPs act in a manner that protects and secures IDPs human rights and freedom.
   - **Prosecute everyone who is responsible for displacement and human rights violations against IDPs.**
4. Durable solutions

The Kenyan Government is responsible for:

- The allocation of money for resettlement.
- Ensuring equal and easy access to institutions of justice.
- Reconstruction/recovery of (destroyed) property.
- Creation of employment opportunities.
- Ensuring security in the areas where IDPs are resettled.
- Replace all necessary documents to IDPs.
- Address the root causes of displacement.
WAITING FOR THE KENYAN IDP POLICY/LAWS

The government of Kenya has made efforts to domesticate its international obligations.

Through the National Protection Working Group on Internal Displacement (PWGID) a draft National IDP policy was developed (March 2010). The draft policy has been adopted by stakeholders and awaits cabinet approval and ultimate adoption by parliament (Feb 2011).

When adopted and implemented, the National Policy will provide a clear framework for coordination and management of internal displacement in Kenya:

- Creation of an institutional focal point.
- Oversight: National Consultative Coordination Committee.
- Clear rules on prevention and protection from arbitrary displacement, preparedness mitigation and emergency response.
- Finding durable solutions.

Mt. Kenya - resettled IDPs (year 2010)
WHO IS KITUO CHA SHERIA?

Kituo Cha Sheria (KITUO) is the oldest and largest legal aid organisation in Kenya with offices in Nairobi, the Headquarters and the Urban Refugee Intervention Programme (URIP) centred in Eastleigh, and a regional office in Mombasa. Kituo is further involved in outreach through legal aid clinics, and its Community Justice Centres in Kamukunji, Kibera, Mombasa and in Nyando. KITUO also engages in advocacy and community partnerships for policy and legislation changes in Kenya.

Traditionally, our interventions have been in Land, Labour and Housing matters. In response to the dynamics of human rights challenges, Kituo is currently engaged in Urban Refugees Protection and in the Transitional Justice Processes in Kenya under its new Peace Justice and Reconciliation Project.

The Peace Justice and Reconciliation Project (PJRP) of Kituo cha Sheria was designed in cooperation with the Civil Peace Service/Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ) GmbH to support the participation of Kenyans in the proceedings of the different Transitional Justice Mechanisms. The PJRP identifies Internally Displaced Persons (IDPs) and other post 2007/8 general election violence victims as key focus groups for the intervention and works closely with them in promoting Peace, Justice and National Reconciliation in Kenya.

UNDER THE PJRP PROJECT KITUO OFFERS THE FOLLOWING SERVICES:

a) Legal advice and representation in court.

b) Assistance in preparation for appearance before the Truth Justice and Reconciliation Commission.

c) Documentation to approach the National Cohesion and Integration Commission.

d) Assistance to register as a victim before the International Criminal Court.

e) Research on IDPs.

f) Referral to humanitarian organisations for other needs.
Waliofurushwa Makwao (IDP) ni nani?

Waliofurushwa makwao (IDP) ni watu ambao wamelazimishwa kuyaacha makao yao ili kuepuka athari za vita, ukiukaji wa haki za kibinadamu, kuepuka majanga, na ambao hawajavuka mpaka unaotambulika kimataifa (kuingia nchi nyingine).

HAKI ZA WALIOFURUSHWA MAKWAO (IDP)
IDPs wanastahili kupata haki zote na uhuru wote unaohakikishwa chini ya Katiba ya Kenya, na wanapewa ulinzi zaidi chini ya makubaliano ya kimataifa kuambatana na hali yao ya kuweza kudhurika kwa urahisi.

A view of Kibera where urban IDPs live
HAKI KWENYE KATIBA
Heshima kwa hadhi ya Mwanadamu.
Haki ya Uhai: IDPs wamelindwa dhidi ya mauaji na kufukuzwa makwao kwa lazima.
Haki ya usawa/ uhuru kutokana na kubaguliwa
Uhuru wa Kupata Haki:Hali hii inajumuisha ada zisizopita kiasi au uwezo wa kupata huduma za mahakama bila malipo.
Kulipwa fidia kwa hasara iliopatikana na kufurushwa
Haki ya kupiga kura
Haki ya kupata habari

Haki ya Kupata Makao ya kuridhisha:Haki hii inajumuisha:
- Haki ya usalama wa kipekee dhidi ya kufurushwa kimabavu.
- Uwepo wa huduma na miundo msingi kama za afya, shule na umeme.
- Makao unayoweza kuyagharamia.

Haki ya kupata huduma za afya:Haki hii inajumuisha:
- Uwezo wa kupata huduma muhimu za afya zinazoweza kugharamiwa na kufikika.
- Kutonyimwa huduma ya matibabu ya dharura.
- Kuheshimu mahitaji ya kitamaduni, ya kiumri, na kijinsia.

Haki ya kupata chakula cha kutosha.
- Watawala wa Kenya sharti wawezeshe uwepo wa chakula muhimu kinachoweza kugharamiwa na ya kutosha

Haki ya maji safi na salama.
- Uwepo wa kutosha (wa maji) na kwa kila wakati
- Vifaa na huduma sharti ziwe kwenye eneo ambalo linafikika na salama

Haki ya Kupata Elimu
- Haki ya kupata elimu ya msingi bila malipo na ya sekondari inayo gharamika.
- Elimu kamili na yenye usawa kwa wanake, wasichana, wavulana na wario wachache.
- Mashule sharti yawe kwenye eneo ambalo linafikika na lililo salama.

Haki ya kupata Usalama wa Kijamii.
Uhuru wa kutembea na kuishi.
Kila IDP anaweza kutembea huru ndani au nje ya kambi au kwenye makazi mengine.

- IDPs wana haki ya kutoroka maeneo ya hatari.
- IDs wana haki ya kulindwa dhidi ya kurudishwa kimabavu au kupewa makao kwenye sehemu ambamo maisha yao, usalama, uhuru na afya yao itahatarishwa.

**Haki ya kupata msaada**

Kila mtu ana haki ya kupata msaada wa kisheria, kumiliki mali kisheria popote nchini Kenya na aweze kuifurahia mali hiyo kwa amani.

**MAJUKUMU YA SERIKALI YA KENYA**

Serikali ya Kenya inalo jukumu la kimsingi la kuwalinda na kuwapa msaada waliofurushwa makwao (IDPs). Majukumu haya ni kama ifuatavyo:

1. **Kuzuia kufurushwa kwa uma.**
   - Iunde sheria na sera juu ya hali ya kufurushwa.
   - Ijipushe na vitendo ambavyo huleta hali ya kufurushwa.
   - Ishughulikie ukiukaji wa haki kihistoria.
   - Iwahukumu wale wote waliotekeleza ufurushaji.
   - Izuiu uundaji wa makundi haramu.
   - Ilete usalama nchini kote
   - Ihimize na kuimarisha juhudi za kujenga amani.

*Resettlement of IDPs in Molo District*
2. **Ulinzi na Msaada kwa IDPs**  
*Serikali ina wajibu ufuatao.*

- Iwawezeshe waliofurushwa makwao (IDP) kupata mahitaji ya kimsingi kama vile maji, chakula, makao na huduma za kiafya bila mapendeleo.
- Iwasajili waliofurushwa makwao wote.
- Ihakikishe usalama kwenye kambi za waliofurushwa makwao (IDP).
- Iwape makao waliofurushwa makwao (IDP)
- Iwezeshe msaada wa dharura kuwafikia waliofurushwa makwao.
- Iangalie na kuhakikisha kuwa mashirika yote yanayotoa msaada kwa waliofurushwa makwao (IDP), yanatenda kwa njia haki na huro.

3. **Suluhisho la kudumu**

*Serikali ya Kenya inalo jukumu la:*

- Kufadhili IDPs wapate makao tena.
- Kuhakikisha usawa na wepesi wa kufikia taasisi za haki.
- Kuunda nafasi za ajira.
- Kuhakikisha usalama kwenye kambi za IDPs au makao mbadala.
- Kutoa tena stakabadhi zinazohitajika kwa waliofurushwa makwao (IDP).
- Kushughulikia sababu za kimsingi za ufurushaji.

![Poor living conditions in one of the camps across the country](image)