

# POLICY PAPER

## Towards a comprehensive response to internal displacement in Kenya: a roadmap for action

Internally displaced children in Keringet, Molo. IDMC/M. Caterina, May 2013



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This paper draws upon the findings of IDMC's analysis of normative frameworks relating to internal displacement in Kenya, a research project we conducted between February and June 2015 with the help of international and national institutions and civil society organisations working to respond to the phenomenon. The project aimed to identify gaps and inconsistencies in the country's laws and policies, and other possible challenges to implementation.

It culminated in a workshop held with our parent organisation, the Norwegian Refugee Council (NRC) in Nairobi in June, in which participants provided feedback on our analysis and recommendations. Organisations supporting the project included Amnesty International, the Danish Refugee Council, the German development agency GIZ, the Haki Centre, the Internal Displacement Policy & Advocacy Centre, the International Rescue Committee, the Kenya National Bureau of Statistics (KNBS), the NGO Kituo Cha Sheria, the Kenya National Commission for Human Rights (KNCHR), the Refugee Consortium of Kenya, the Regional Durable Solutions Secretariat, the UN Office for the Coordination of Humanitarian Affairs (OCHA), the UN Refugee Agency (UNHCR) and the Office of the UN Special Rapporteur on the human rights of internally displaced persons.

This paper examines three main areas of action that Kenyan institutions should take in order to ensure an effective response: ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, known widely as the Kampala Convention; adoption of the country's draft policy on internally displaced people (IDPs) and implementation of its internal displacement act.<sup>1</sup> It highlights challenges that in the long run could derail the progress made so far, and makes clear recommendations for overcoming them.

<sup>1</sup> IDMC, *A review of the legal framework in Kenya relating to the protection of internally displaced persons in the context of the Kampala Convention and other supranational normative frameworks*, to be published and accessible at: <http://www.internal-displacement.org/publications>.

The analysis also identifies areas where different normative frameworks, already in place or in the making, especially those that are to govern disaster and land management, are not coordinated and may clash. Lack of harmonisation of the normative instruments considered is particularly evident in relation to use of different categories and notions not in line with the IDP definition, identification of responsible authorities and allocation of budgets. The paper looks at the potential for these shortfalls to undermine some of the guarantees enshrined in the internal displacement act, and the need to ensure that the newly created National Consultative Coordination Committee (NCCC) operates effectively and in harmony with national and local government institutions, UN agencies and civil society organisations.

### Background

Since Kenya's independence in 1963, political, ethnic and land-related violence, disasters and development project have all repeatedly triggered internal displacement. Political violence in the aftermath of the disputed December 2007 presidential election forced 664,000 people to flee their homes.<sup>2</sup> The causes of displacement tend to be interlinked, and unresolved tenure issues are often a complicating factor. The displacement of pastoralists is common in arid and semi-arid areas.<sup>3</sup> It is difficult, however, to provide an accurate overall picture of displacement in the country, given the absence of official, comprehensive and up-to-date data on IDPs and their protection and assistance needs. The newly established NCCC, which is tasked with coordinating responses, will hopefully help to address this gap.

The violence associated with the 2007 presidential election was a defining moment in the evolution of the Kenya's approach to displacement. The phenomenon had previously been largely neglected, government efforts to respond were

<sup>2</sup> OHCHR, *Report of the Special Rapporteur on the human rights of internally displaced persons, mission to Kenya*, February 2012, available at: <http://goo.gl/Fvuoyf>.

<sup>3</sup> IDMC/NRC/Nansen Initiative, *On the margin: Kenya's pastoralists*, March 2014, available at: <http://goo.gl/Rni9uc>.

fragmented and interventions ad hoc.<sup>4</sup> Faced with the scale displacement the violence triggered, it adopted measures specifically designed to assist IDPs for the first time. Through the Ministry of State for Special Programmes (MoSSP), it initiated Operation *Rudi Nyumbani*, or Return Home; Operation *Tujenge Pamoja*, or Build Together; and Operation *Ujirani Mwema*, or Good Neighbourliness.

The programmes were unprecedented in their scope and reach, but they had major shortcomings.<sup>5</sup> Coordination among national institutions and civil society organisations was poor, the profiling of IDPs and short-term planning inadequate, and the government failed to allocate sufficient resources. The lack of coordination highlighted the need for a comprehensive legal and policy framework on displacement, and helped to drive its development.<sup>6</sup>

The country is a member state of the 2006 Pact on Security, Stability and Development in the Great Lakes Region. Known widely as the Great Lakes Pact, its protocols include one on IDPs, based on the Guiding Principles on Internal Displacement.<sup>7</sup>

## Legislation and policy

### *Kenya and the Kampala Convention*

Kenya is yet to sign and ratify the Kampala Convention. Ratification was delayed by the fact that the country's new constitution, adopted in 2010, changed the legal procedure for adhering to international obligations, which in turn meant that a law on the domestication of treaties was required.<sup>8</sup> The adoption of the Treaty Making and Ratification Act in December 2012 cleared the way for the process to proceed.

Some argue that ratification is unnecessary, given that Kenya has made significant progress in establishing a comprehensive legal and policy framework that is largely compliant with international standards as part of its efforts to implement its commitments under the Great Lakes Pact. There are, however, still a number of good reasons for it do so.

- Ratification would reaffirm the government's responsibility for responding to displacement, demonstrate its credibility and showcase its approach in international forums.
- It would integrate and uphold additional protection standards contained in the convention.
- It would hold all those, including non-state armed groups, who cause displacement accountable by requiring of them to contribute to addressing IDPs' needs.
- The conference of state parties would serve as a mechanism for monitoring compliance. It would provide a platform for the government to report on its progress in assisting IDPs and facilitating durable solutions for them, and to share its experiences and best practice in the development of legal and policy frameworks as an inspiration to other countries in the region and beyond.

- It would make resources, capacity building and training available from various sources.

### *Kenya's act and draft policy on internal displacement*

The protection working group on internal displacement (PWGID) was established in 2009 to replace the protection cluster as the coordinator of humanitarian assistance in Kenya. Its members worked closely with MoSSP, the Ministry of Justice and Constitutional Affairs and a technical advisor from the office of the special rapporteur on IDPs' human rights to draft a national policy on IDPs. The document, which was finalised in April 2010, is based largely on international and regional instruments and standards.<sup>9</sup>

It provides for a comprehensive approach to addressing displacement caused by conflict, other forms of violence, disasters and development projects. It outlines institutional frameworks, roles and responsibilities for state and non-state parties during all phases of displacement, and sets out measures to prevent, manage and mitigate risks, protect IDPs and assist them in achieving durable solutions. The cabinet endorsed the draft National Policy on the Prevention of Internal Displacement, Protection and Assistance to Internally Displaced Persons in Kenya in October 2012,<sup>10</sup> but there has been no subsequent progress in adopting the draft.

Stakeholders had identified the need for legislation on displacement in 2007, but momentum only really picked up in November 2010, when parliament established a select committee with a mandate that included the preparation of a bill.<sup>11</sup> The ensuing Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act received presidential assent on 31 December 2012. It establishes an institutional framework for IDPs' protection and assistance throughout their displacement, in particular by providing for the setting up of NCCC as an inclusive implementation committee. NCCC finally came into operation in February 2015 with the appointment of its chair and other members.<sup>12</sup>

The special rapporteur on IDPs' human rights, Chaloka Beyani, recommended fast-tracking implementation of the act, adoption of the national policy and ratification of the Kampala Convention following his 2011 mission and 2014 official visit to Kenya.<sup>13 14</sup> The country's Truth, Justice and Reconciliation Commission also included the same recommendations in its final report.<sup>15</sup>

Some feel that the act on IDPs has superseded the need to adopt the draft policy, which would now have less added value. Adoption, however, would help to facilitate implementation of the act by articulating the roles of the state and other stakeholders' in the three phases of response, and measures to be taken to uphold IDPs' rights. As such, both instruments are essential.

The cabinet endorsed the draft policy as a sessional pa-

4 RCK/DRC, *Behind the scenes: Lessons learned from developing a national policy framework on internal displacement in Kenya*, January 2013, p.8, available at <http://goo.gl/XIBFzG>.

5 IDMC/NRC/IDPAC, *The potentials of the Kenyan policy and legal framework for addressing internal displacement*, January 2015, unpublished.

6 RCK/DRC, *op.cit.*, p.17.

7 IDMC/NRC/IDPAC, *op.cit.*

8 IDMC/NRC/AU, *The Kampala Convention one year on: Progress and prospects*, December 2013, available at: <http://goo.gl/KzEu2M>.

9 RCK/DRC, *op.cit.*

10 RCK, *2012 Annual report and financial statement*, 4 October 2012, p.12, available at: <http://goo.gl/Mzho3C>.

11 RCK/DRC, *op.cit.*, p.10

12 Kenya Gazette, Volume CXVI-No. 118, 3 October 2014, available at: <http://goo.gl/UOVhZl>.

13 OHCHR, 2012, *op.cit.*

14 OHCHR, *Solutions for Kenya's displaced require urgent action determined by reality – UN expert*, 7 May 2014, available at: <http://goo.gl/OeBXh3>.

15 TRJC, *Full report of the truth, justice and reconciliation commission*, May 2013, available at: <http://goo.gl/RsW7iw>.



Members of the Kenya Red Cross Society talk to women and children, to get a better understanding of their needs and concerns. Credit: UNICEF/Minu Limbu, January 2013

per, meaning that parliamentary approval is needed for its adoption. A number of measures could be taken to ease the process, such as:

- the identification of amendments needed to bring the policy in line with the act on IDPs
- sensitisation initiatives by PWGID's advocacy sub-working group to fine-tune the text with parliamentary and senate committees, principal secretaries and clerks
- the establishment of a high-level forum to raise awareness and enhance support for the revised draft before it is tabled in cabinet and paving the way for its subsequent implementation

The implementation of the act on IDPs raises important questions about the need for amendments to its current text. Our analysis reveals that "surgical" interventions may be required to ensure that the act's objectives are achieved, but consideration will also have to be given to whether legal amendments are practical. Further normative action may prove difficult, but a series of other measures could be taken to support its implementation. These include:

- the mapping of "non-state actors"<sup>16</sup>, line ministries and other government departments and agencies to facilitate central planning
- the development of guidelines to ensure coordination with peripheral NCCC structures and establish clear links between county-level institutions and central government
- the setting up of an oversight mechanism to monitor the use of the fund established by the act
- ensuring that arrangements are put in place for the regular collection of data on IDPs, particularly at the county level
- considering the adoption of a regulatory framework, providing it does not create more stumbling blocks than it removes

#### Other relevant frameworks

The government has introduced a number of laws and

<sup>16</sup> The act on IDPs defines "non state actors" as "persons or organisations who are not attributable to the state and whose actions are generally not attributable to the state". However, the interpretation that has been given to this term seems to indicate a narrower scope, mostly national and international civil society organisations. This would therefore seem to exclude non state armed groups. A comprehensive domestication of the Kampala Convention instead, would require a specific reference to the latter.

policies in recent years which, while not specific to IDPs, are relevant to the prevention and addressing of displacement. Frameworks governing disaster management are particularly so. A national disaster response plan is already in place, linked to the Vision 2030 development strategy for northern Kenya and other arid lands, and a 2009 draft National Disaster Management policy<sup>17</sup> and a Disaster Management Bill are both pending. The 2011 national policy on peace building and conflict management also aims to prevent or minimise the extent and impact of displacement.<sup>18</sup>

Kenya has also made significant progress in developing a comprehensive framework on land, which is also highly relevant. It adopted a National Land Policy in 2009 and a series of new laws - the Land Act, the Land Registration Act and the National Land Commission Act – in 2012.<sup>19 20 21</sup> Two important pieces of legislation are still pending, however, the Evictions and Resettlement Procedures Bill and the Community Land Bill.<sup>22 23</sup> The adoption and thorough implementation of these frameworks is fundamental to ensuring that IDPs' rights are properly protected and future displacement prevented.<sup>24</sup>

As PWGID has highlighted, there is a risk that unless they are harmonised, Kenya may end up with a number of frameworks applicable to IDPs' protection that are disjointed, overlapping or conflicting.<sup>25</sup> This in turn could also make implementation of the act and draft policy on IDPs more difficult. None of the frameworks relevant but not specific to displacement refer to the act on IDPs, or its parameters for defining people as internally displaced.

As such, the following steps need to be taken:

- Legislation and other frameworks relevant but not specific to displacement should be harmonised, so that gaps and overlaps in language that could undermine IDPs' protection are addressed. The term "squatters", for example, should be avoided and substituted with those used in instruments relevant to IDPs.
- Policies and legislation not specific to displacement should refer to the act on IDPs, to ensure protection is consistently referred to and coherently addressed across the national framework.
- Pending normative frameworks on land tenure and disasters should be finalised by ensuring they are in line with international standards, and immediate steps towards their adoption and implementation should be taken. The National Disaster Management Bill and draft policy, the Evictions and Resettlement Procedures Bill; and
- the Community Land Bill is particularly important to

<sup>17</sup> Government of Kenya, draft national policy for disaster management, February 2009, available at: <http://goo.gl/sUQ3SB>.

<sup>18</sup> Government of Kenya, national policy on peace-building and conflict management, December 2011, available at: <http://goo.gl/Qkovlv>.

<sup>19</sup> Government of Kenya, Land Act, May 2012, available at: <http://goo.gl/i4xPpr>.

<sup>20</sup> Government of Kenya, Land Registration Act, May 2012, available at: <http://goo.gl/Dnec4l>.

<sup>21</sup> Government of Kenya, National Land Commission Act, May 2012, available at: <http://goo.gl/YU5Mll>.

<sup>22</sup> Government of Kenya, evictions and resettlement procedures bill, August 2012, available at: <http://goo.gl/nJq7NV>.

<sup>23</sup> Government of Kenya, community land bill, November 2013, available at: <http://goo.gl/rfjQgZ>.

<sup>24</sup> IDMC/NRC/KNCHR, *Unfinished business: Kenya's efforts to address displacement and land issues in the Coast region*, July 2014, available at: <http://goo.gl/3Qh8il>.

<sup>25</sup> IDMC/NRC/IDPAC, *op.cit.*



ensure protection also for informal land title holders and should be adopted without further delay.

## National and local structures for response: risks and opportunities

### Government responsibility

Despite the adoption of the 2012 act on IDPs, the exact roles and responsibilities of the institutions responsible for preventing and addressing displacement and protecting those affected remain unclear, as does the way in which they should interact.

The act stipulates that the government shall exercise its functions through the cabinet secretary for the government department responsible for matters relating to IDPs, which is currently the Ministry of Devolution and Planning's special programmes directorate, formerly MoSSP. The draft policy on IDPs reaffirms the government's primary responsibility for the response to displacement and aims to clarify institutional responsibilities.<sup>26</sup>

The act establishes NCCC as an unincorporated body under the special programmes directorate to support its work.<sup>27</sup> It also stipulates that the government shall establish a mechanism to prevent displacement, charged with monitoring areas inhabited by people at risk, periodic reporting and the issuing of early warnings to the cabinet secretary and NCCC chair for further action.<sup>28</sup>

The act states that the government "shall create the conditions for and provide internally displaced persons with a durable solution in safety and dignity" and recognises IDPs' right "to make a free and informed choice" about the settlement options available to them.<sup>30</sup> The draft policy mandates the special programmes directorate as the national institution responsible for durable solutions, and allocates duties to other national entities and authorities at the county and more local levels in terms of responding to IDPs' needs and vulnerabilities.<sup>31</sup>

If the government is to fulfil its role effectively, steps will need to be taken to clarify the exact scope of NCCC's responsibilities, and to ensure that the devolution of duties in terms of preventing displacement, protecting IDPs and facilitating durable solutions is accompanied by the adequate allocation of resources and the establishment of mechanisms to ensure accountability at the local level.

### Coordination at the national level

NCCC is made up of 13 members, four from civil society and non-state participants, one from KNCHR and eight state officers.<sup>32</sup> Its inclusive and diverse nature is designed to facilitate coordination among stakeholders. It is mandated under the act on IDPs to establish channels and procedures for engagement and cooperation between government departments, UN agencies and non-state responders in their efforts to protect and assist IDPs until they achieve durable

solutions, to help host communities and to prevent and prepare for displacement.<sup>33</sup>

The draft policy on IDPs states that NCCC's work should be supported by the principles of good partnership between all those involved in responding to displacement. They should cooperate, collaborate and complement each other to ensure the efficient use of resources and avoid duplication, and all activities should be transparent and predictable.<sup>34</sup>

In practice, however, the division of responsibilities and the mechanisms through which NCCC should coordinate with other domestic bodies remain largely undefined, and institutional fragmentation and the duplication of roles still exist.<sup>35</sup>

The identification of all of the current institutions and their responsibilities in terms of addressing displacement is a challenging task in itself. Frameworks related to disasters, most of which have been pending adoption for years, would set up myriad new institutions with diverse ranges of responsibility. Most deal with disaster prevention and management in general but some, such as the National Drought Management Authority (NDMA), work with specific risks.

There are also local level institutions, but the 2013 National Disaster Management Bill 2013 does not stipulate the duties and responsibilities of the many agencies across the country. The 2009 draft national disaster management policy, on the other hand, aims to establish and strengthen local institutions and elaborates on their roles in more detail. It also envisages a new National Disaster Management Agency (NADIMA) in charge of all day-to-day disaster management activities in Kenya.

Other structures relevant to preventing and responding to displacement include the National Steering Committee on Peace-Building and Conflict Management (NSC), an inter-agency body that brings together civil society, government institutions and the president's office, and is mandated to coordinate not only peace-related activities, but early warning and response initiatives as well.<sup>36</sup> As such, the steering committee, NCCC, NADIMA and NDMA are all responsible for monitoring disaster risks.

Given such fragmentation and overlap, there is a risk that efforts may be duplicated and resources and capacity scattered or wasted. There is also the potential for tension between institutions, particularly with the paucity of funds available for efforts to prevent and respond to displacement. The current system of parallel structures poses challenges in terms of ensuring transparency and accountability as well.

If the government is to create a coherent institutional framework, it will have to harmonise draft legislation relevant to IDPs to establish institutions that work together.<sup>37</sup> In particular it is recommended that:

- NCCC establish clear channels and operating procedures for engaging and collaborating with government departments and intergovernmental bodies as a matter of urgency
- the institutions that deal with disaster prevention, preparedness and response coordinate at the national and county level, including via NCCC, to improve the protection afforded from the displacement that disasters cause and to those who are forced to flee their homes

26 Government of Kenya, draft national policy on the prevention of internal displacement and the protection and assistance to internally displaced persons, October 2012, section 19(a),(b)-(d).

27 *Ibid*, section 20.

28 Government of Kenya, Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, December 2012, article 12(1)-(2), available at <http://goo.gl/VfUPWw>.

29 *Ibid*, article 5(4).

30 *Ibid*, article, 9(1).

31 Government of Kenya, draft national policy on IDPs, Section 104.

32 Government of Kenya, IDP Act, article 12(3)(b)-(l).

33 *Ibid*, article 13(c).

34 Government of Kenya, draft national policy on IDPs, principle 17(a)-(c).

35 IDMC, 2015, *op.cit*.

36 Government of Kenya, national policy on peace-building and conflict management,

37 IDMC/NRC/IDPAC, *op.cit*.

- overall governance is rationalised by structures with more operational capacity subsuming some of those with more auxiliary mandates

#### *Coordination between central and local levels*

Kenya's act on IDPs makes both central and county governments responsible for its implementation, but it fails to make clear how and to what extent the functions assigned to the former should be delegated to the latter. It states that the national government "shall bear ultimate responsibility for the administrative implementation of this Act", but at the same time that 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".<sup>38 39</sup>

Schedule four states that the national government bears overall responsibility for formulating counties' housing policy and general principles of land planning and the coordination of county-level planning.<sup>40</sup> County governments are tasked with the implementation of planning and development policies, including land surveyance, mapping and housing.<sup>41</sup>

The act on IDPs is explicit about local authorities' responsibilities in terms of awareness raising, education and information campaigns, but it fails to make such clear distinctions between the roles of national and county governments in many other aspects.<sup>42</sup> It also authorises NCCC to establish sub-committees at the national level, and if it deems appropriate to perform the duties it sets out, at the county level too.<sup>43</sup>

The sharing and allocation of human and financial resources between national and local authorities also requires consideration. The national government may be ultimately responsible for addressing displacement, but local authorities also have an important role to play. Municipalities do not, however, receive funding specifically for programmes to protect and assist IDPs.

Similar issues apply in terms of data collection, the upshot being that municipal authorities know little about the number of people living under their jurisdiction. Reliable population data, however, and ward-level information are vital for the planning and budgeting of social service delivery.<sup>44</sup> The inadequate allocation of resources at the local level has been a significant factor in crippling disaster preparedness efforts to date.

As such, it is essential that the national government take measures to specify the role of county authorities in addressing displacement more clearly. It should:

- clarify national and county government responsibilities for disaster management
- clarify the division of duties between the sub-committees NCCC may set up at the county level and other local institutions
- ensure cooperation and coordination between national and county governments in the planning and delivery of

services that address issues specific to displacement, including the allocation of adequate resources

#### *Coordination between NCCC, UN, regional organisations and "non state actors"*

The response to the urgent humanitarian crisis triggered by the post-election violence of 2007 and 2008 was coordinated through the cluster system, which was activated in Kenya in January 2008. The protection cluster was led by UNHCR and brought together more than 30 responders, including UN agencies, KNCHR, national and international NGOs.

In 2009, they agreed that the cluster should become PW-GID, a national coordination forum co-chaired by the Ministry of Justice and Constitutional Affairs and KNCHR. Its members are currently revisiting its terms of reference in order to guide their engagement on displacement matters at all levels. They highlight the need to better understand the current status of such issues to inform future interventions, and to develop a consolidated work plan.

The UN cluster system is no longer active in Kenya, but the government-led sectoral approach is well established and supported by global cluster lead agencies. The UN Development Programme (UNDP)'s resident representative also serves as the UN resident and humanitarian coordinator. The resident coordinator leads UN efforts to support the government in promoting human rights and good governance and improving Kenyan's quality of life and wellbeing by reducing poverty, with a focus on the most vulnerable groups and regions. The humanitarian coordinator leads the Kenya humanitarian partnership team (KHPT), a liaison point between the government and the humanitarian community.

The act on IDPs mandates NCCC to serve as an official, impartial and humanitarian focal point. As such, it is expected to manage relations between the government, bilateral and multilateral organisations such as the African Union, the Intergovernmental Authority for Development and UN agencies, and other non-state participants to improve the country's response to displacement.<sup>45</sup>

Both the act and the draft policy on IDPs stipulate that the government should actively seek to cooperate with the international community, including the humanitarian, development and human rights sectors, particularly if it does not have the capacity to provide IDPs with adequate protection and assistance.<sup>46</sup> It is up to NCCC to clarify how it will relate to multilateral organisations, UN agencies operating in the country, and those designated "non-state actors" in the act on IDPs.<sup>47</sup> To this end, it is vital for NCCC to:

- formalise its lines of communication between the government, humanitarian agencies, multilateral organisations, civil society organisations and other stakeholders
- maintain existing mechanisms that enable it to work closely with IDPs and communities affected by displacement, with a view to facilitating the flow of information and ensuring their meaningful participation in decision-making processes

38 Government of Kenya, IDP Act, article 11(1).

39 *Ibid*, article 11(3).

40 Government of Kenya, Constitution of Kenya, 2010, schedule four, part 1, section 20-21, available at: <http://goo.gl/m5aJFf>.

41 *Ibid*, part 2, section 8(b) and (d).

42 Government of Kenya, IDP Act, sections 19-20.

43 *Ibid*, article 5 (1).

44 Brookings, *Municipal Authorities and IDPs Outside of Camps: The Case of Kenya's 'Integrated Displaced Persons'*, May 2013, available at: <http://goo.gl/qvv2ni>.

45 Government of Kenya, IDP Act, section 13(a)-(b).

46 *Ibid*, article 11(6)(a); Government of Kenya, draft national policy on IDPs, sections 32-33.

47 *Ibid*, article 13(b).

## Promoting a common understanding of displacement: a priority

Despite the comprehensive legal definition adopted in national legislation, not all stakeholders share the same understanding of what constitutes internal displacement. Those working on forced evictions and disaster management, for example, tend not to view the issues involved through a displacement lens. Nor do they refer to the act on IDPs as a source of protection. In practice, the government's response has also varied between different groups of IDPs.

The emphasis on those displaced by the post-election violence of 2007 and 2008 can be justified in part by the sheer number of people involved, but as Beyani pointed out after his May 2014 visit to Kenya, "causes of internal displacement are many and recurrent, and solutions must be pursued more rigorously for all IDPs in an equal manner".<sup>48</sup> <sup>49</sup> The draft national policy on IDPs acknowledges this as a primary issue and includes "the creation of a common understanding in Kenya of who an IDP is" as a specific objective.<sup>50</sup>

### Awareness raising and training

Significant steps need to be taken to raise awareness among national and local authorities and the general public of the causes and consequences of displacement, ways of preventing it and means of protecting and assisting those affected. Improving IDPs' awareness of the displacement act, their rights and how to access them is equally important.



IDMC-NRC organised a workshop in June 2015 on normative frameworks relating to internal displacement in Kenya, June 2015, NRC/ Nashon Tado

KNCHR and other members of PWGID have carried out such activities with both state and non-state participants at the national and county level. At times, however, training sessions have been based on activities planned by individual institutions, and as a result they have been uncoordinated and overlapping. In some cases communities have resisted taking part on the basis that it would only serve to rekindle bitter enmity between people who have put the post-election violence of 2007 and 2008 behind them and moved on. Initiatives have also been hampered as funding for work on displacement has declined in recent years and donors have turned their attention elsewhere.

Both the act and draft policy on IDPs highlight the need

<sup>48</sup> IDMC/NRC/IDPAC, *op.cit.*

<sup>49</sup> OHCHR, 2014, *op.cit.*

<sup>50</sup> Government of Kenya, draft national policy on IDPs, objective 2.

for awareness raising and sensitisation. The act envisages activities targeting schoolchildren and students, members of the security forces, prisoners and communities across the Kenyan social spectrum. It also states that the government should collaborate with NCCC to target public sector employees in all of its relevant departments, authorities and agencies, private and informal sector employees, community and social workers, journalists, teachers and other stakeholders who disseminate information to the public.

As such, it is essential that NCCC:

- allocate funding for awareness raising and training initiatives, including a percentage for non-state organisations to carry out activities
- design an annual awareness raising plan that covers different aspects of the response to displacement. This should be done in partnership with ministries and international and civil society organisations to improve efficiency and coordination<sup>51</sup>
- establish a multidisciplinary curriculum and regular training sessions for all officials involved in responding to displacement

### Collecting comprehensive data on IDPs

The collection of high-quality data on the number of IDPs and their location and situation is a prerequisite for promoting a common understanding of displacement and an effective response. Currently, however, there is no official, comprehensive and up-to-date information available. The government has never carried out a comprehensive profiling exercise, and there is no centralised system for tracking IDPs' needs over time.

Any data gathering that does take place tends to focus on new displacement caused by violence and rapid-onset disasters. Little quantitative or qualitative information exists on dynamics after IDPs' initial flight.<sup>52</sup> A registration exercise was undertaken for those displaced by 2007 and 2008 post-election violence, but the methodology was inaccurate and inefficient and the data collected was not disaggregated. As a result, MoSSP was only able to identify and formally recognise 6,800 displaced households, whose details were entered in the national database.<sup>53</sup>

In the absence of updates, OCHA has referred to there being 309,200 IDPs in Kenya since 2012, but the figure comes with many caveats. It includes an unverified number, thought to be around 250,000, who have fled ethnic, political and land-related violence since the 1990s and continue to live in protracted displacement. It also includes around 50,000 registered IDPs who fled the 2007 and 2008 post-election violence and are assumed not to have achieved durable solutions.

It does not include people forced to flee their homes since 2008, although new displacement has continued to take place. Around 112,000 people were reported as newly displaced in 2012, 55,000 in 2013, more than 220,000 in 2014 and over 216,000 in the first six months of 2015 alone - mostly as a result of inter-communal violence.<sup>54</sup>

<sup>51</sup> Government of Kenya, IDP Act, Article 19.

<sup>52</sup> IDMC, *Kenya: too early to turn the page on IDPs, more work is needed*, 3 June 2014, available at: <http://goo.gl/xZ40TJ>.

<sup>53</sup> OHCHR, 2012, *op.cit.*

<sup>54</sup> OCHA, *Kenya: Inter-communal conflict and AOG related incidents by county (January - June 2015)*, 4 August 2015, available at: <http://goo.gl/ujDdoU>.

OCHA's estimate also excludes people displaced by disasters and development projects, and the country's so-called "integrated" IDPs – people who fled to urban and peri-urban areas during the 2007 and 2008 post-election violence and took refuge with host communities or in rented accommodation. "Integrated" IDPs are thought to make up around 300,000 of the 664,000 people displaced at the time.

The act on IDPs mandates NCCC to register all people who become displaced and maintain a national database on them.<sup>55</sup> It stipulates that registration "shall commence and conclude within 30 days of displacement" and be used exclusively "for reasons of ascertaining the identification, profile, conditions and numbers of internally displaced persons", with the ultimate aim of providing them with protection and assistance.

The draft policy on IDPs includes substantive procedural guidelines on the identification of IDPs and acknowledges profiling and registration among various methods of doing so. Mindful of the less than comprehensive practices adopted in the past, it calls on the government collect data on all IDPs "whether or not they are staying in or outside camps and irrespective of the cause of their displacement". It specifically mentions those living with host communities for inclusion. It also states that the government should respect "the right to privacy and protection of data of the individual concerned in accordance with the law".

The act on IDPs establishes NCCC's central role in data collection, but it does not determine either the institutions that would carry out the exercise or the method for doing so. Nor does it envisage the gathering of information on IDPs more than 30 days after their flight, or on those already living in displacement.

As such, it is essential that:

- the government consider amending the act on IDPs so that it provides for the regular collection of the data necessary to inform IDPs' adequate protection and assistance beyond an initial 30-day period
- NCCC clarify the way it will interact with other bodies such as KNBS, and work with them to establish and institutionalise systems and tools for data collection and protection
- the government undertake a comprehensive data collection exercise at the earliest opportunity, to determine how best to identify, assess and respond to IDPs' assistance and protection needs and facilitate durable solutions, with particular attention paid to vulnerable groups. KNBS could work with other partners to this end, but any request should come from those such as NCCC and PWGID members, who will ultimately use the data
- displacement stakeholders engage in preparations for

the next Kenyan census, due to be held in 2019, to ensure that the opportunity is taken to collect specific information on IDPs, and that it incorporates the best methodology for doing so

## Conclusion

Three years after the act on IDPs entered the statute, Kenya can claim to have a legal instrument that is, for the large part, tailored to the real needs emerging from the country's displacement situation. It also regulates the phenomenon and the response to it comprehensively, the result of a process that has benefitted from the involvement and endorsement of a wide range of stakeholders.

That said, NCCC only became functional in February 2015, implementation of the act is still in its very early stages and the process faces a number of challenges that have the potential to undo the progress made so far. Much will need to be done to ensure that NCCC and the numerous government structures involved in responding to displacement operate effectively and in harmony.

The scope of NCCC's activities has still not been comprehensively defined, nor have its relationships with ministries, entities working in the areas of disasters and land, and county-level institutions set up as part of the country's devolution process. Uncoordinated and potentially competing normative frameworks, especially those pertaining to disasters and land management, also pose a risk to some of the guarantees envisaged under the act on IDPs.

Steps will have to be taken to bring terminology and normative categories into line with the act's definition of an IDP, to rein in the proliferation of national institutions with overlapping mandates and to harmonise the different degrees of protection they afford. The failure to adopt a national policy on internal displacement that articulates government action and substantiates IDPs' rights may also continue to hamper an effective response.

Advocacy to fast-track the adoption of the draft policy will be instrumental in underpinning IDPs' ability to exercise their rights, regardless of their location or the cause of their displacement.

Ratification of the Kampala Convention could provide an opportunity to relaunch such discussions at the institutional level and recreate the conditions that generated the policy-making process in the first place. By endorsing a pluralistic approach that encourages cooperation between government institutions and other stakeholders, and requires IDPs' and host communities' participation in processes that directly concern them, ratification would not only reaffirm Kenya's commitment to abide by supranational standards. It could also reinvigorate the kind of collaborative approach essential for the translation of laws and policies into realities.

55 Government of Kenya, IDP Act, article 13(d).

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