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In Search of a Durable Solution

An Analysis of the Implementation of Durable Solutions Provisions in Kenya

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Introduction

Durable solution as a concept has not been fully grasped in practice in Kenya. During the period of monitoring missions conducted in Marsabit, Lamu, Malindi and Kisumu, the issue of access to durable solutions among internally displaced populations was observed. This was either due to lack of recognition as IDPs, non extant structures of internal displacement profiling and lack of a clear cut policy on access to durable solutions for internally displaced populations. This policy position paper looks into the specific cases of internal displacement in the aforementioned areas in the context of access to durable solutions and makes recommendations to stakeholders in the sector.

What are durable solutions for internal displacement?

Section 2(1) of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Host Communities Act, 2012 (IDP Act) defines durable solutions for IDPs. It states that it is the achievement of durable and sustainable solutions for IDPs through informed and voluntary choice of return to area of origin, local integration in area of refuge or relocation to another area. This provision is given the force of law under section 9(1) of the IDP Act that places the onus of creating conditions for IDPs to access durable solutions on the Government. Central to these provisions are the rights of IDPs to make voluntary and informed decisions and access the available durable solutions in safety and in dignity.



These provisions do not necessarily provide a clear understanding of what durable solutions are. Does it mean that when an IDP has been merely relocated to another area of the country that they have achieved a durable solution for their internal displacement? Or is it when they have been locally integrated that their internal displacement woes have ended?

According to the Inter-Agency Standing Committee's (IASC) framework on durable solutions for IDPs the answer to these questions are no. 'Mere physical movement, namely returning to one's home or place of habitual residence, moving to another part of the country or choosing to integrate locally often does not amount to durable solutions....'¹ This means that there is more to achieving a durable solution than mere movement of IDPs from areas of risk to areas of relative safety.

Internal displacement is deemed to end once the displacement specific needs and attendant human rights concerns have been addressed. This is according to the IASC framework on durable solutions for IDPs. It means that over and above the physical movement of IDPs, there needs to be a satisfaction of the needs and human rights concerns that are connected to the fact of displacement. Therefore if a farmer was internally displaced, that individual achieves a durable solution where not only his physical safety is secure but also his access to livelihoods is secure as well. This broad based outlook is captured in section 9(2) of the IDP Act. But is this happening on the ground?

How is it implemented in Kenya?

The Refugee Consortium of Kenya (RCK) in partnership with the Great Lakes Programme (GLP) of the Danish Refugee Council (DRC) set out on fact finding missions in four counties in Kenya affected by drought, conflict and development induced displacement. The areas visited were Marsabit, Kisumu, Kilifi and Lamu counties where discussions were held with some Government officials, local civil society organizations (CSOs), IDPs and affected communities. The aim of these missions was to look at how durable solutions for IDPs, if any, have been implemented in these areas.

Marsabit County

Marsabit County was chosen for a mission visit because it was initially thought that the main cause of displacement was drought. However it was soon discovered that inter-communal clashes accounted for more of

the displacement than drought based on the interviews conducted with some displaced persons in the county. Moreover it was also impossible to determine the exact number of people displaced by drought as the county office in charge of drought management did not have these figures.²

The situation of IDPs in Marsabit County was found not to be within the protective scope envisioned by the IDP Act. The cause of displacement in the area was mainly due to perennial inter-communal conflict between the Gabra and the Borana communities. Victims of this displacement are the Gabra community who indicated that they did not receive any assistance from the central Government. Furthermore, they took charge of seeking out their own solutions to their displacement situation.

This was clearly witnessed in 2010 there were inter communal clashes between the Gabra and the Borana communities. This is the latest clashes that occurred in the area and saw the displacement of approximately 500 households in the area.³ Members of the Gabra community were the most affected by the clashes as they saw their properties razed to the ground. They were also evicted from their lands and lost their sources of livelihood. They are mainly farmers who depended on their land for their sustenance.

According to the affected community, they did not receive any assistance from the Government after the displacement. They relied on family members from a neighbouring county to provide shelter and food assistance.⁴ They had to leave their area of habitual residence to settle owing to the clashes and settle in another area where land was provided by their tribesmen from the neighbouring county. Half of the money for the purchase of land to settle the displaced was provided by these relatives from the neighbouring Mandera County on condition that the displaced community raise the other half of the amount. To date the members of the community have not been able to pay off their half of the amount.

This population could also not access their lands that they were expelled from. They stated that their livelihoods were disrupted as the land in which they currently reside was not good for farming as they had been accustomed to.⁵ They claimed that they lacked food and were not compensated for the property they lost after the clashes.

¹ IASC & University of Bern, IASC Framework on Durable Solutions for Internally Displaced Persons, 2010 p.5

² Interview with an National Drought Management Officer on 28th of October, 2014

³ Interview with internally displaced persons in the area on 28th of October, 2014

⁴ Ibid

⁵ Interview with the Gabra community members on 28th of October, 2014



According to government officials, there are no IDPs in the area.⁶ This can be attributed to the lack of proper identification and profiling of the population that was displaced. This affected their access to durable solutions because the Government that is bestowed with this responsibility does not know the number or even their existence.

Kisumu County

In Kisumu county the story of the 'integrated IDPs' was prevalent. The term 'integrated IDP' is a misnomer owing to the fact that integration is one of the durable solutions for internal displacement. Therefore calling an IDP 'integrated' means that this IDP has already found a durable solution and therefore not an IDP at all.

The term 'integrated IDPs', according to the civil society organizations (CSO) based there, means those IDPs that never went into the camps. Instead, the IDPs went into towns or urban settings where they were hosted by friends and relatives during the violence that followed the 2007 General Elections. It is estimated that 300,000 out of the 650,000 displaced after the PEV constituted this category of IDPs.⁷ Since there was no proper IDP profiling done, these group of IDPs remained invisible and did not receive Government assistance that was provided to those IDPs in the camps.

Lamu County

Among the counties visited, Lamu was found to be affected by internal displacement caused by conflict and those triggered by development projects. Displacement in this area is deeply rooted in land injustice.⁸ Conflicts in the area are geared towards the removal of people perceived to be foreigners in the area while some of the development projects were deemed to be effected in an irregular manner.⁹

IDPs from the Mpeketoni attacks that occurred in June 2014 were among the IDPs interviewed in the county. They stated that they were attacked by unknown people on the night of 15th of June, 2014 with other attacks perpetrated on 18th of July. Non-Muslim men were rounded up and shot indiscriminately. It was made to 'look like a religious conflict but main issue here is land ownership

and what some locals perceive as their disenfranchisement.'¹⁰

About 1000 households (about 14,000 people) were displaced after the attacks.¹¹ They set up camps in various places in the county with Maporomoko, Mavuno and Hindi Prison compound hosting a majority of them. Conditions in the camps were not optimal particularly at the Mavuno IDP camp. The camp was muddy as it was during the rainy season and the sanitation situation was a health risk to the IDPs in the camps.¹²

The IDPs needed food, core relief items (CRIs) and non food items (NFIs).¹³ Some of them needed medical attention as they were injured either in the attack or during the flight from the attackers.¹⁴ The only statutory organization that responded to the humanitarian situation was the Kenya Red Cross Society.¹⁵ The level of Government involvement in the situation was mainly restricted to the overall security of the county but not the IDP camp. The Government promised the IDPs that it would set up a police post¹⁶ at the site but this was not done.¹⁷

Further to this, the Government was very keen to have the families return to their lands or otherwise resettled in other parts of the county. The return option as a durable solution appeared to work well for those in other IDP camps such as Hindi Prison. In Hindi Prison, IDPs used the venues for overnight boarding purposes and would leave in the morning to tend to their livelihoods.¹⁸ For this population the return option was feasible because much of their properties were not destroyed.

There were others, especially those in the Mavuno camp that lost all their properties in the violence. The solution for such IDPs appeared to be relocation where they were offered another plot of land by the District Commissioner. However they were not provided with either an allotment letter or title deed to these lands. Moreover there was no assessment done on the feasibility of relocation for all the IDPs.

¹⁰ Ibid

¹¹ Interview with a Government official in Lamu on 27th of October, 2014

¹² There were two toilets that served the 1000 households and there were reports of two children suffering from water borne diseases such as cholera

¹³ Interview with a Kenya Red Cross Society branch coordinator on 27th of October, 2014

¹⁴ Ibid

¹⁵ Interview with an officer from Centre for Justice and Peace in Mpeketoni on 28th of October, 2014

¹⁶ Ibid

¹⁷ Interview with an IDP at the Mavuno Camp site on 28th of October, 2014

¹⁸ Interview with an officer from the Centre for Justice and Peace in Mpeketoni

⁶ Interview with a police officer in Marsabit on 29th October, 2014

⁷ Internal Displacement Monitoring Centre, Kenya IDP Figures, at <http://www.internal-displacement.org/sub-saharan-africa/kenya/figures-analysis> accessed on 3rd of November, 2014

⁸ Interview with an officer from the KNCHR on 30th October, 2014

⁹ Ibid

Kilifi County

Displacement in Malindi, Kilifi County is mainly as a result of development projects initiated by private investors. Many individuals interviewed during the course of the Malindi mission in this county acknowledged that they had little knowledge of applicable land laws. In this situation of ignorance, private investors took advantage of the situation to acquire dubious land documents.¹⁹ These investors pushed out the inhabitants of the lands they were interested in, some who had resided on these lands for two or three generations, to other lands elsewhere.

The salt industry in the area was particularly singled out. Since it started its activities in the early 1980s, residence of the area noted that that have suffered multiple displacement. As the companies expanded, they took more land away from the locals leading to the multiple displacement situations. Further, a number of the locals interviewed stated that some people were given a paltry kshs 2,000 as 'compensation' for the land that they would lose to the salt companies.

Such displaced persons are often not seen as IDPs because of the land ownership question. In many instances, they are deemed to be squatters whereas the case is that they cannot establish ownership through the formal channels. This in turn leads to displacement and loss of livelihoods as the locals interviewed stated that their crops were destroyed as they were being ejected from the area.

The fact that such situations are often seen as merely a matter of land ownership raises the issue of finding a durable solution for the persons displaced. If they are not recognized, like those IDPs that sought refuge in urban areas rather than in camps in areas such as Kisumu, then it means that they will not get the assistance that they require to rebuild their lives. Owing to the sensitive nature of land and its ownership in Kenya, it is crucial to have in place a mechanism to look at claims to land ownership and adjudicate them in order to have fair compensation and prevent displacement. There also needs to be a proper profiling done for those who have been displaced in order to ascertain the authenticity of their claim so that they can access durable solutions.

Conclusion

Internal displacement in Kenya is a problem that is unlikely to abate in the future. As long as there will be conflict, development projects and natural disasters there will always be displacement. This means that efforts need

to be enhanced in pursuing durable solutions. Such measures should begin with a proper profiling of internally displaced persons with the idea of permanently solving their internal displacement needs and attendant human rights concerns.

Recommendations

Government

- To come up with a comprehensive section on the IDP policy that addresses the procedures for seeking a durable solution for IDPs;
- To initiate country wide IDP profiling that will ensure that critical IDP data that would be useful in obtaining a durable solution is captured;
- To consult IDPs in the pursuit of a durable solution for their internal displacement so that they can be able to make an informed decision;
- To fully constitute the National Consultative Coordination Committee that is the focal governmental organization for registration of all IDPs in Kenya;
- To recognize non-camp based IDPs in order to create an enabling environment for their pursuit of a durable solution.

Civil Society Organizations

- To advocate for the implementation by the Government of a proper plan on obtaining durable solutions for IDPs in Kenya;
- To lobby the Government to fully constitute the National Consultative Coordination Committee that is the focal governmental organ tasked with registration of all internally displaced persons.

Community

- To actively seek out information about their rights as far as conflict and development based displacement is concern;
- To be proactive in asserting their rights especially land rights.

¹⁹ Interview with a human rights advocate in Malindi