**Call for inputs**

***Internal displacement in the context of the slow-onset adverse effects of climate change***

**Report of the Special Rapporteur on the human rights of internally displaced persons**

**Deadline: 17 June 2020**

**Questionnaire**

1. **Examples of national and/or regional laws and policies relevant to internal displacement in the context of disasters and climate change.**

The following are the policies, laws and strategic documents that apply in the Kenyan context[[1]](#footnote-1):

1. **National legal frameworks:**
2. **The Constitution of Kenya[[2]](#footnote-2):** Chapter 5 deals with land and environment. This identifies sustainable development as an integral value and principle of governance and the right to a clean and healthy environment to all citizens as provided for under Article 42. Of importance is that a clean and healthy environment contributes to reduction in climate based internal displacement. Article 70 outlines enforcement measures relating to the environment and the attendant rights referenced in Article 42.
3. **The Climate Change Act, 2016[[3]](#footnote-3)**. The Act provides a regulatory framework for enhanced response to climate change; to provide for mechanisms and measures to achieve low carbon climate development and for connected purposes.
4. **The National Policy for Disaster Management, 2009[[4]](#footnote-4):** The policy seeks to establish and strengthen the disaster management institutions, partnerships, networking and mainstreaming of Disaster Risk Reduction in the development process. Equally to strengthen the resilience of vulnerable groups including IDPs to cope with potential disasters emanating from a range of triggers including drought and floods that disrupt people’s livelihood.
5. **The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012[[5]](#footnote-5):** The legislation makes provision for the prevention, protection and provision of assistance to internally displaced persons and affected communities and further gives effect to the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, and the United Nations Guiding Principles on Internal Displacement and for connected purposes.
6. **National Climate Change Response Strategy 2010[[6]](#footnote-6):** The strategy outlines comprehensive measures necessary to address most of the challenges posed by climate change. For instance, it recommends vulnerability assessment, impact monitoring and capacity building framework needs as a response to climate change and recommends robust adaptation and mitigation measures needed to minimise risks associated with climate change such as internal displacement, while maximising opportunities.
7. **Green Economy Strategy and Implementation Plan 2016 – 2030[[7]](#footnote-7):** This is meant to enable Kenya to attain a higher economic growth rate that is consistent with Vision 2030 and to support a global competitive low carbon development path through promoting economic resilience and resource efficiency, sustainable management of natural resources, development of sustainable infrastructure, and promoting support for social inclusion.
8. **Regional framework:**
9. **The Protocol on Environment and Natural Resources Management[[8]](#footnote-8):** A regional procedure that governs the Partner States’[[9]](#footnote-9) cooperation in the management of the environment and natural resources over areas within their jurisdiction and across borders.
10. Kenya participated in the formulation and signing of the **African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) and Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons. However, the two are yet to be ratified**[[10]](#footnote-10). Both instruments aim at ensuring the member states establish legal frameworks and implement the United Nations Guiding Principles on Internal Displacement. They also call for the member states commitment to prevent and eliminate all causes of internal displacement including those emanating from climate change.
11. **Available data and evidence on internal displacement linked to slow-onset natural hazards in the context of the adverse effects of climate change (globally or in a specific region or country), trends and/or challenges and gaps with regards to data collection, analysis and use.**

There is a dearth of data specific to climate change induced internal displacement as evidenced from the official government reports by the Kenya National Bureau of Statistics which lacks such detailed and issue specific data.

1. **The impact of climate change-related internal displacement on the enjoyment of human rights by specific groups, such as indigenous peoples, minorities, children, older persons and persons with disabilities.**

Climate Change has manifested through lack of water and grazing pastures especially in the arid and semi-arid lands of Kenya. The impact of this has been acute impacts on vulnerable groups such as children, women, the elderly, people with disabilities and indigenous and marginalized groups. Due to this displacement, children cannot access education, women cannot access maternal health (pre and post-natal care), while PWDs cannot move with ease or be facilitated to move comfortably. Indigenous communities are under constant threat of eviction due to climate change such as has been experienced along the rift valley due to swelling of Lakes and also forest degradation (for example Mau Forest Evictions). KNCHR has also been engaged in ensuring protection of the rights of the Sengwer community living in Embobut forest and who have been in continuous threats of evictions and displacement.[[11]](#footnote-11)

1. **Analysis of the response of States and the international community to:**
   1. **Prevention of the conditions that might lead to displacement and preparation for internal displacements related to climate change, including development of monitoring and early warning systems and climate change mitigation and adaptation measures.**

At the national level, the government of Kenya has enacted a legislation on IDPs. Part II of the legislation outlines an elaborate prevention, protection and assistance strategies for the displaced persons through a human rights-based approach. However, this does not explicitly speak to climate change induced displacement but in general. The provisions however are applicable in drought and floods displacement scenarios. The Kenya Red-Cross Society provides quick contingency mitigation strategies in the event of displacement and also works with the government to give appropriate interventions to safeguard the rights of affected persons. The Meteorological Department forecasts the weather and advises government ministries, departments, agencies and non-state actors accordingly for appropriate interventions. The counties under ASAL have developed County Integrated Development Plans (CIDPs), development programmes and interventions in the event of displacement, with support from the national government.

* 1. **Protect and assist those internally displaced by such disasters**

The government has several policies and agencies to help address disasters in Kenya. Examples include the National Drought Management Authority, National Disaster Management Unit. There is also the National Policy on Disaster Management (2009) and currently there is a bill in parliament on the same.

* 1. **Provide effective remedies, overcome protracted displacement and support durable solutions for them.**

The national and regional framework mentioned in part one affirms and obligates both the national and county governments to ensure the protection of displaced persons. The government of Kenya has taken steps to resettle the displaced households resulting from environmental conservation. Several households who were forcefully evicted from the Mau forest were resettled on government procured land within the County (Nakuru). To ensure the protection of the rights of those affected, among others, the government constructed houses, schools, boreholes and supplied electricity for them.

The government through the ministry of Devolution and Arid and Semi-Aric Lands has been supporting the families affected by floods across the country, such support has been in form of food relief and non-food items (NFIs).

1. **Responsibility of the business sector in the prevention, response and provision of remedy to climate change-related displacement, for example by including considerations relating to climate change and displacement in human rights due diligence processes, in line with the UN Guiding Principles on Business and Human Rights**.

In order to domesticate the UN Guiding Principles on Business and Human Rights, Kenya is developing a National Action Plan (NAP) on Business and Human Rights. The NAP will act as a reference point for both the state and businesses in carrying out business activities with a human rights lens. Businesses are required to carry out Human Rights Due Diligence in order to ensure that their impacts on climate and the environment, human rights violations such as internal displacement, economic, social and cultural impacts are addressed before activities are carried out. It is important to note that the UNGPs do not create any new obligations under international law, but rather consolidates and elaborates on the State duty to protect against human rights violations by businesses, the Business responsibility to respect human rights and access to remedy where human rights violations have happened.

1. **The role of National Human Rights Institutions in monitoring, reporting and promoting accountability for climate change-related internal displacement, handling complaints and gathering disaggregated data, supporting States in preventing the conditions that might lead to displacement and responding to displacement in line with their human rights obligations, and promoting sustainable development, in accordance with the Paris Principles.**

The Kenya National Commission on Human Rights (KNCHR) is the agency of state mandated to advise government on its obligations under international conventions and treaties. Further KNCHR is mandated to receive complaints against public and private institutions that abuse/violate human rights, carry out investigations and where appropriate either offer redress or require the relevant state agencies or organs to issue such redress.

KNCHR has been working together with the National Environment Management Authority (NEMA) to entrench human rights based environmental governance in order to mitigate impacts on human rights, which include internal displacement. The development of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 (IDP Act) was heavily informed by the work of the Commission on IDPs especially after the 2007/8 post elections violence. The Commission continues to advise the government through its membership in the National Consultative Coordination Committee on internally displaced persons in Kenya and has been a leading agency at the regional level during the development and subsequent advocacy for the adoption of the Kampala Convention.

1. **Examples of mechanisms used to hold States, companies or other actors accountable for climate change-related displacement, and to provide effective remedy to those affected.**

Kenya has a functional National Environmental Tribunal[[12]](#footnote-12) which is an independent arm of judiciary established under Section 125 of the Environment Management and Coordination Act 1999. Since inception, the court has made several determinations on environment related cases[[13]](#footnote-13) to hold actors accountable and offer redress to the affected. Other laws applicable include the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 that can be used to hold the actors accountable and offer remedy to those affected.

1. **The impact of health crises such as the current one related to COVID-19, and of the measures taken to respond to them, on climate change-related internal displacement, including their impact on: a) displacement patterns, b) climate change mitigation and adaptation strategies, c) preparedness and disaster risk reduction, and d) humanitarian assistance and protection to internally displaced persons.**

The rights of displaced population have been worsened by the impacts of COVID 19. For instance, the pandemic has affected the right to water and sanitation, housing, labour, education, and even civil and political rights such as freedom of movement, considering some if not all of these rights are seldomly enjoy by the internally displaced population.

The state and well-wishers have taken measures to protect some of the above rights including provision of relief food, water, soap and sanitizer, protection of jobs and wage subsidization and tax relief. These measures are however not adequate and the Commission is still recording complaints touching on lack of access to these vital economic and social rights. Also, in the recent months, climate change induced displacement has steadily complicated interventions to address COVID-19 pandemic.

1. **Any other information stakeholders wish to share regarding internal displacement in the context of the adverse effects of climate change.**

Climate change induced displacement has not been amplified and prioritized in Kenya thus victims always end up receiving little support from the state. In most cases, such population is usually considered for humanitarian support as a result of an outcry especially when life is lost as a result of hunger. There are no effective coordination, monitoring and reporting mechanisms in place on the part of the state towards securing durable solution on climate change induced displacement. There is need for the state to work with development partners and civil society to leverage on available capacities and capabilities on the subject matter. Climate change induced displacement is a global concern; therefore, there is need to emphasise on the “Nansen Protection Agenda” that is yet to be impressed by most states including Kenya. The development partners in Kenya are critical in this discourse thus harnessing on their capacities will go long way in addressing climate change induced displacement.

1. **Information on how slow-onset effects of climate change are inter-related with conflict, i.e. how climate change and conflict combine to act as drivers and causes of internal displacement, and what specific combined effects they have on internally displaced persons.**

Kenya has been and continues to experience slow-onset effects of climate change leading to cases of inter-communal conflicts that cause internal displacement. This is commonly experienced between farmers and pastoralist communities. Recent cases (June 2020) involve two neighbouring communities in Northern Kenya where clashes occurred as a result of water and grazing lands dispute. This has led displacement of more than 200 households, destruction of property and livelihoods and deaths of several people.

1. www.environment.go.ke [↑](#footnote-ref-1)
2. <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010> [↑](#footnote-ref-2)
3. <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2011%20of%202016> [↑](#footnote-ref-3)
4. https://www.ifrc.org/docs/idrl/1058EN.pdf [↑](#footnote-ref-4)
5. <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2056%20of%202012> [↑](#footnote-ref-5)
6. <http://www.environment.go.ke/wp-content/documents/complete%20nccrs%20executive%20brief.pdf> [↑](#footnote-ref-6)
7. <http://www.environment.go.ke/wp-content/uploads/2018/08/GESIP_Final23032017.pdf> [↑](#footnote-ref-7)
8. <http://www.environment.go.ke/wp-content/uploads/2018/11/Revised_PROTOCOL-on-Environment-and-Natural-Resources-24-August-2018.pdf> [↑](#footnote-ref-8)
9. Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan, the United Republic of Tanzania and the Republic of Uganda [↑](#footnote-ref-9)
10. <https://au.int/sites/default/files/treaties/36846-treaty-0039_-_kampala_convention_african_union_convention_for_the_protection_and_assistance_of_internally_displaced_persons_in_africa_e.pdf> [↑](#footnote-ref-10)
11. For more information on the work of KNCHR with indigenous communities inhabiting in forests please visit <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1046/KNCHR%E2%80%99s-Engagement-with-Indigenous-People> [↑](#footnote-ref-11)
12. http://www.judiciary.go.ke [↑](#footnote-ref-12)
13. Kenyalaw.org [↑](#footnote-ref-13)