



Kenya: Internally Displaced Persons Bill Must Advance the Right to Access to Information

STATEMENT

Nairobi, 05.07.2012: Today, ARTICLE 19 releases its legal analysis of the Internally Displaced Persons Bill for Kenya (“the Draft Bill”), welcoming the initiative to institutionalise protection and assistance for internally displaced persons (“IDPs”). The Draft Bill contains robust provisions to increase information flows to and from IDPs, but the effectiveness of protection and assistance to IDPs will depend on stronger safeguards for information rights, greater participation of IDPs in decision-making, and enhancing transparency.

ARTICLE 19 believes that empowering IDPs to claim their information rights is essential for enabling them to assert their other rights, in particular their economic and social rights. Access to information ensures public participation in decision-making and facilitates full public debate on public policy. A lack of respect for these rights has been identified as a weakness in Kenya’s response to internal displacement to date. There has been insufficient information about IDPs to inform policy; a lack of transparency around policy making related to IDPs and a failure to consult with IDPs on issues affecting them, and opacity has led to numerous instances of corruption.

The following is a summary of the key observations and recommendations made by ARTICLE 19 to the Draft Bill:

Ratification of the Kampala Convention

Kenya played a leading role in the drafting of the Kampala Convention, which contains numerous provisions to protect the right of access to information and the participation of IDPs in decision-making affecting them.

Recommendation:

- Kenya must enact a legislative framework for the ratification of treaties in order to enable the ratification of the Kampala Convention.

Enhancing the Rights-Based Response to Displacement

ARTICLE 19 commends the rights-base approach taken to addressing issues of internal displacement (Sec. 4). The domestication of the UN Guiding Principles on Internal Displacement and the Great Lakes Protocol on Protection and Assistance to Internally Displaced Persons is positive; both instruments stress the importance of increasing information flows to and from IDPs, and maximising the participation of IDP communities in decision-making that affects them (Sec. 3).

Recommendations:

- A stand-alone provision should be inserted to the Draft Bill, guaranteeing that the right of access to information applies at all times, during all stages of displacement. This would address gaps that exist in the Draft Bill where the right is not so clearly protected;
- The Great Lakes Protocol on Democracy and Good Governance, and the Great Lakes Protocol on Management of Information and Communication, should be referenced in the Draft Bill, as both contain further safeguards for the right of access to information and participation in decision-making;
- Enactment of the Freedom of Information Bill, implementing Article 35 of the Constitution, would further protect the information rights of IDPs.

Development-Induced Displacement

Provisions in the Draft Bill concerning information on Development-Induced Displacement and participation from affected communities are robust and largely comply with international standards (Sec. 6, Sec. 21-22). The authorities are obliged to provide full information and hold public meetings with affected populations, and seek the free and informed consent of those individuals before development decisions inducing displacement are made (Sec. 22).

Where decisions are made affirmatively, they must be accompanied by justifications: demonstrating that it is unavoidable, detailing the alternatives that were explored and why those alternatives were not feasible (Sec. 22.2). A reasonable time period must also be given for appeals to an independent body (Sec. 22.3). These measures are commendable.

Where displacement occurs, the participation of affected IDPs must be sought in planning and managing the displacement, and defining suitable durable solutions (Sec. 22.4). These measures are also positive.

Recommendation:

- Sec. 22.3.a of the Draft Bill should allow individuals affected by development decisions violating Sec. 21.2 to appeal the legality of those decisions to the High Court of Kenya.

Prevention from Displacement, Preparedness and Mitigation

The public awareness, sensitization, training and education programme on the causes, impact and consequences of internal displacement is largely positive (Sec. 5.3, Sec. 17-20). This campaign will, if adequately funded and properly implemented, increase dialogue on the realities of displacement across the country and forestall future instances of displacement. It also prepares individuals for the worst case scenario – so that they know their legal rights should they find themselves forced to flee their homes.

The Cabinet Secretary is also obliged to make rules regarding the dissemination of the Draft Bill (Sec. 24.2.e).

Recommendations:

- An awareness-raising, sensitisation, training and education programme should be tailored to the needs of existing IDPs and target IDPs remaining in camps and other settlements;
- Sec. 24.2.e should oblige the Cabinet Secretary to ensure that information under the Act is disseminated as broadly as possible, in multiple languages and formats to ensure its accessibility.

Protection During Displacement

ARTICLE 19 welcomes the establishment of the NCCC and its role in collecting information about IDPs for the purpose of providing protection and assistance (Sec. 13). The development of an IDP database will ensure the government has available to it information about IDPs that will assist in the formulation and effective implementation of its interventions.

The fundamental weakness of the Draft Bill is its failure to address the information needs of existing IDPs during their displacement.

Recommendations:

- The Draft Bill should make clear that the government is obliged to provide full information to IDPs on issues pertinent to them during their displacement, and must seek their participation in decisions on the provision of protection and assistance during this time;
- The participation of IDPs, particularly women, should be sought in relation to decisions relating to resource allocation, which affect them;
- The NCCC must publicly disclose information on its activities, including disaggregated data on the situation of IDPs in Kenya and ensure that its annual reports are disseminated widely;
- Information collected about IDPs must be held in a manner that complies with international standards on data protection. The Data Protection Bill (currently under stakeholder review) must be reformed to comply with international standards and its adoption prioritised.
- Information regarding missing persons must be collected, and authorities must facilitate information requests made by family members in respect of their missing relatives.

Durable Solutions to Displacement

The definition of “durable solution” incorporates the principles that return, resettlement or reintegration must be voluntary and on the basis of full information (Sec 1.2, Sec. 9). This presupposes a process of information disclosure and consultation with affected IDPs.

Recommendation:

- The full disclosure of information and fostering the participation of IDPs in decision-making should be expressed as a necessary condition of gaining “informed consent” to durable solutions.

The Committee and Disclosure Obligations

ARTICLE 19 welcomes the requirement that reports on the activity of the NCCC be compiled and tabled before Parliament, as this is an important mechanism for ensuring transparency and accountability of the executive to Parliament.

Recommendations:

- The annual report submitted by the NCCC to the Parliament must be published publicly on-line and disseminated to media outlets and civil society organisations.

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