

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

**SUBMISSION ON:**

**THEMATIC PRIORITIES OF THE SPECIAL RAPPORTEUR ON HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS**

**SUBMITTED TO:**

**SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS**:

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**PURPOSE: TO INFORM THE REPORT OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS TO THE 78TH SESSION OF THE GENERAL ASSEMBLY**

12th June 2023

Kenya National Commission on Human Rights

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**Introduction**

The Kenya National Commission on Human Rights is a National Human Rights Institution established under Article 59 of the Constitution and made operational by the Kenya National Commission on Human Rights Act 2011 (revised 2012).

The Commission has a broad mandate to promote the respect and a culture of human rights in the Republic of Kenya. The Commission has the mandate of ensuring compliance with obligations under treaties and convention relating to human rights. The Commission pursues its mandate through various strategies including advocacy, lobbying, public education and training, outreach, public interest litigation, alternative dispute resolution, receiving complaints, investigations and issuing advisories.

The Commission makes this submission pursuant to its human rights mandate and as the designated principal organ in ensuring state compliance with regional and international human rights obligations.

### **KEY QUESTIONS AND TYPES OF INPUT/COMMENTS SOUGHT**

**CLIMATE CHANGE AND INTERNAL DISPLACEMENT**

1. **What issues related to internal displacement and climate change are most serious in terms of protecting human rights, reducing barriers, and fostering conditions for progressively achieving durable solutions that would warrant the Special Rapporteur’s attention and reporting?**

**Response:**

1. States should enact policies and legislation geared towards addressing the protection needs of displaced and affected populations.
2. States should fully implement existing policy, legislation and programmatic interventions. This should entail among others adequate resourcing on preventive measures.
3. States should adequately invest in disaster prevention, and adoption of interventions or measures that support people to secure resilient livelihoods.
4. State centric approaches to conservation that have seen indigenous communities evicted ostensibly in the pursuit of conservation with devastating impact on their rights.
5. **What specific groups or populations are particularly or differentially affected by climate change and internal displacement? Is their meaningful and full participation ensured and if so, how? If not, what are the main obstacles?**

**Response:**

The groups include the special interest groups:

1. Ethnic minorities including indigenous communities.
2. Women.
3. Children
4. Older Persons.
5. Pastoralist communities.
6. Persons with Disabilities (PWDs) including mental disorders.

Participation is expressly provided for under Kenya’s Constitutional and statutory framework. Article 174 (1) of the Constitution of Kenya 2010 provides for such powers under Public Participation. Other specific Articles include 1(2), 10 (2),[[1]](#footnote-1) 69 (d), 118 (b), 196 (b) and 201 (a). This is also anchored on existing legislation including County Government Act Sections 94 and 95, Public Finance Management Act under Section 207 among others.

Irrespective of existing guidelines, Kenya National Commission on Human Rights holds that there is inadequate meaningful and full participation of the above population. The main obstacles include continued marginalization, inadequate awareness and lack of timely and adequate information to facilitate meaningful participation, lack of conscious targeting by different stakeholders, low levels of literacy and awareness, lack of effective advocacy strategies, lack of representation and inadequate political goodwill.

1. **What actions would you suggest the Special Rapporteur take to address these issues, within the purview of her mandate and complementary to the actions of her predecessors?**
2. Encourage states to enact and fully implement policy, legislation, administrative and programmatic interventions to ensure meaningful and full participation of the displaced and those affected by the effects of climate change with special consideration for the most vulnerable and those most likely to be affected by climate change ensuring Free Prior and Informed Consent (FPIC) for indigenous communities.
3. **What are the main elements of effective preventive strategies for internal displacement driven by climate change, including adaptation measures and planned relocation policies?**

**Response:**

The SP should encourage states to adopt disaster risk reduction strategies, invest in sustainable development approaches, and ensure the safe and voluntary movement of persons. This should be pursued with effective and meaningful participation of those likely to be affected.

*(****N.B.****As the Special Rapporteur is particularly interested in topics which have not previously been addressed, see* [**A/75/2017**](https://www.undocs.org/A/75/207)*,*[**A/66/285**](https://www.undocs.org/A/66/285)*,*[**A/64/214**](https://www.undocs.org/A/64/214)*,*[**A/HRC/10/13/Add. 1**](https://www.undocs.org/A/HRC/10/13/Add.1)*, and*[**A/60/338**](https://www.undocs.org/A/60/338)*for examples of the mandate’s previous work on this theme)*

**INTERNAL DISPLACEMENT DUE TO GENERALIZED VIOLENCE**

1. **What kind of situations or issues fall under the umbrella of “generalized violence” as a cause for internal displacement in your countries or contexts?**

**Response:**

The KNCHR has conducted Public Inquiries on Insecurity and its impact on the realization of human rights. It documented incidences of violence that have resulted in internal displacement. [[2]](#footnote-2)

The KNCHR wishes to highlight the following situations or issues that fall under “generalized violence” as a cause for internal displacement in Kenyan contexts:

1. **Politically instigated violence and ethnic clashes:** Politics of ethnicity dominate the Kenyan electoral cycle with cases of internal displacement witnessed. This has been evident during the colonial and post-colonial eras but became more intensified in the early 1990s with increased competition for political power under a multi-party democracy.
2. **Resource-based Conflicts and environmental factors:** Resource-based conflicts take various forms depending on the location. In Kenya, conflicts over land, access to pasture, and conflicts between herders and farmers continue to drive violence in Kenya’s north.
3. **Cultural practices:** These practices largely manifest through cattle rustling. Cattle rustling and stock theft are partly driven by economic motives. These include a desire to restock herds depleted by a lack of pasture and water during droughts (partly due to climate change), disease, raiding or other calamities but some incidents are believed to be driven by hatred, political instigations, unscrupulous commercial activities, general crime, and availability of firearms. This disrupts community livelihoods, and the use of automatic weapons in raids has led to a high number of deaths eventually leading to displacement.
4. **Insecurity:** This is common in several parts of the country including the North Rift region, and parts of the Eastern, North Eastern and Coast. In addition, in the recent past, this has been increasingly witnessed in urban areas, with informal settlements worse affected most. Others manifest in the form of organized political protests, especially by the opposition.
5. **Underlying feelings of injustice and marginalization:**  This is a new trend that is emerging especially in areas dominated by certain communities where the minority population feels to be a form of “**injustice and marginalization”** and thus decides to relocate.
6. **What issues related to generalized violence and internal displacement are most serious in terms of protecting human rights, reducing barriers, and fostering conditions for progressively achieving durable solutions that are insufficiently considered by other stakeholders that would warrant the Special Rapporteur’s attention and reporting?**

Response:

1. **Resource-based Conflicts and environmental factors:** This is witnessed with cyclic displacement and the state has not sustainably addressed the protection needs of the displaced population and the indirectly affected.

1. **Insecurity and Cultural practices:** Currently the state is responding to cattle rustling and banditry incidents in the North Rift Region. The operations in the region have seen several undocumented persons displaced, caused disruption of livelihood, learning and other crucial services in the affected areas. The SR should leverage the ongoing interventions to seek the government’s commitment to end the vice.
2. **What drivers of generalized violence are most serious in terms of their human rights implications? Which of them are insufficiently considered by other stakeholders that would warrant the Special Rapporteur’s attention?**

**Response:**

Refer to question 5 above.

1. **What disproportionate impact does such violence have on specific groups? How are specific groups particularly or differentially affected by generalized violence and internal displacement?**

**Response:**

These have led to among others death, destruction of properties, and disruption of livelihoods. Others include family separation, disruption of critical services including learning, health, and communal functions. The most affected include children, women, Persons With disabilities, older persons, persons with mental disorders and those with chronic illnesses. In the event of conflicts, these groups of persons are the most affected based on their unique vulnerability. They also face most challenges in fleeing from violence in cases of active conflicts and are often the “innocent victims” of state pursued disarmament exercises.

1. **What are the main elements of effective preventive strategies to mitigate internal displacement driven by generalized violence?**

**Response**:

1. Effective monitoring and responding to early warnings by the State and other stakeholders
2. Enhanced surveillance to deter triggers that might lead to internal displacement and generalized violence.
3. Enhanced community sensitization and/or awareness on prevention and effects of internal displacement and generalized violence.
4. State to redress effects of internal displacement and generalized violence either through holding the perpetrators to account.
5. Constant peacebuilding initiatives especially amongst “warring” communities.
6. **What actions would you suggest the Special Rapporteur take to address these issues, within the purview of her mandate and complementary to the actions of her predecessors?**

**Response:**

1. Work closely with NHRIs among other things to seek the State’s commitments to enact and fully implement policies and laws on climate change and internal displacement.
2. Work with states to enhance their capacities on matters of climate change and internal displacement. This can be through either direct or indirect technical support.
3. Lobbying for states to enhance the capacity of NHRIs to effectively monitor and report on climate change and internal displacement.
4. Support NHRIs to develop and implement effective strategies and interventions on climate change and internal displacement from a human rights perspective.
5. **What can different stakeholders do to address the root causes of generalized violence?**

**Response:**

1. Resource mobilization towards elaborate and continued engagement with the State in climate change and internal displacement sector.
2. Undertake continued monitoring and reporting on climate change and internal displacement issues.
3. Continued supporting (resources including funds and technical) institution mandates to address climate change and internal displacement including NHRIs.
4. Initiate and sustain pear-learning among actors in the climate change and internal displacement sector.
5. Support peacebuilding initiatives.

*(****N.B.****As the Special Rapporteur is particularly interested in topics which have not previously been addressed, please see*[**A/76/169**](https://www.undocs.org/A/76/169), [**A/HRC/38/39/Add. 1**](https://undocs.org/A/HRC/38/39/Add.1), and [**A/HRC/32/35/Add.4**](https://undocs.org/A/HRC/32/35/Add.4) *for examples of the mandate’s previous work on this theme)*

**INTERNALLY DISPLACED PERSONS IN PEACE NEGOTIATIONS OR MEDIATION PROCESSES AND IN PEACEBUILDING TO ACHIEVE SUSTAINABLE PEACE**

1. What issues related to the human rights of internally displaced persons are most serious and/or least considered in such processes that would warrant the Special Rapporteur’s attention and reporting?

**Response:** States should consider addressing the protection needs of the displaced population including:

1. **Before displacement**: Consider mitigation measures including public education/sensitization and issuance of early warnings.
2. **During Displacement:** Consider addressing their protection needs including access to basic needs like availing livelihood opportunities, documentation, health, education, family tracing and reunification.
3. **After Displacement:** Provide durable solutions including return, reintegration, resettlement and compensation.
4. **How and when should internally displaced persons participate in peace negotiations, mediation processes and in peacebuilding?**

**Response:** This should be appropriate in the entire cycle of displacement with greater focus directed before displacement takes place. This will help to prevent the occurrence where possible and/or mitigate the likely effects of displacement. However, peace negotiations, mediation processes and peacebuilding should also be pursued in areas of return, resettlement and integration to address the likely mistrust that might exist between the host and displaced communities.

1. **What specific groups or populations among internally displaced persons are underrepresented in or excluded from participation in such processes?**

**Response:**

Refer to No. 2 above

1. **What actions would you suggest the Special Rapporteur take to address these issues, within the purview of her mandate and complementary to the actions of her predecessors?**

**Response:**

Refer to No. 9 above.

1. **How should peace negotiations, mediation processes and peace processes attempt to address the root causes of internal displacement?**

**Response:**

The approaches bring people or communities together to among other things be able to identify the common issues that affect them as a people and the root causes thereof. The platform should facilitate parties’ openness and genuine discussions and undertakings based on the common issues affecting them, in so doing the root causes or displacement triggers will be mitigated. During this process, one is able to identify the areas of convergence and persuasion strategies to have the groups agree on ideal approaches to redress the triggers if any. A common and agreeable roadmap by both parties is mostly realized and both undertake to abide. This mostly proposes visible and population context solutions.

1. **Do peace and/or mediation processes and peacebuilding efforts adequately address the needs of all internally displaced persons? What factors enable or inhibit this?**

**Response:**

Yes and No. This is informed by the context.

Peace and/or mediation processes and peacebuilding efforts adequately address the needs of all internally displaced persons. This is enabled by factors to include mapping out common areas of interest, involvement of all persons especially the most vulnerable in society, adoption and actual, trustworthy implementation of certain actions. However, there exist various inhibitors of peace and/or mediation processes and peacebuilding efforts in addressing the protection needs of displaced persons. These include lack of meaningful participation and/or inadequate involvement of affected communities or persons (directly and indirectly affected populations). Others include politicization of the protection needs of displaced and affected persons for certain gains, corruption, insincere peace and/or mediation processes and peacebuilding efforts and deep rooted or entrenched cultural practices.

1. **What are effective strategies to ensure peace negotiations, peacebuilding efforts, other peace mediation processes, and peace agreements prevent future internal displacement?**

**Response:**

These should include sustainably addressing/resolving the historical injustices including unresolved land tenure questions, creation of equal opportunities for all in public sphere (employability and appointments in public sectors), addressing discrimination and marginalization of certain communities, access to livelihood and employment opportunities for all, uniform resource allocation by the state governance structures and redirecting investments to places perceived to be displacement epics.

*(****N.B.****As the Special Rapporteur is particularly interested in topics which have not previously been addressed, please see*[**A/73/173**](https://www.ohchr.org/sites/default/files/Documents/Issues/IDPersons/A73_173.pdf), [**A/68/225**](https://www.undocs.org/A/68/225), [**A/HRC/10/13**](https://www.undocs.org/A/HRC/10/13/), and [**A/62/227**](https://www.undocs.org/A/62/227) *for examples of the mandate’s previous work on this theme)*

**(RE)INTEGRATION OF INTERNALLY DISPLACED PERSONS**

1. **What issues related to integration or reintegration of internally displaced persons are most serious in terms of protecting human rights, reducing barriers and fostering conditions for progressively achieving durable solutions that would warrant the Special Rapporteur’s attention and reporting?**

**Response:**

In Kenyan the issues of integration or reintegration of internally displaced persons are dependent on a number of factors and locality context- affected communities’ activities or social and economic activities. For instance, these may include difficulties accessing basic and social services, land, adequate housing, limited access to livelihood opportunities, and insecurity. In addition, politics also play a pivotal role, where people vote based on ethnic alignments. Therefore, some communities perceive others to inform or change the voting patterns, thus affecting integration or reintegration towards achieving durable solutions.

1. **What specific groups or populations among internally displaced persons face particular challenges in integrating or reintegrating, and what are these challenges? Which challenges are faced by host communities and how to address them**?

**Response:**

The groups include ethnic minorities, children, women, older persons, persons with disabilities and persons with mental disorders as well as indigenous people.

For instance, ethnic minorities in integrating or reintegrating contexts face a raft of challenges as they are considered not to be the natives of areas of settlement or displacement. In any political contest, the group has limited chances of being elected by those considered natives. In addition, they are considered as the ones changing the voting pattern of the region because they are “easily influenced” based on their vulnerability to vote in a certain pattern, thus influencing the politics of that locality, in the process, they fall victim to various human rights violations including discrimination against certain community and public opportunities to include access to employment opportunities.

On the other hand, children especially school-going, face challenges accessing schools in areas of integration as they are considered to overstretch the already existing infrastructure including learning materials and equipment, and teaching staff among others. Therefore, this strains the relationship between host and integrated communities thus affecting the realization of durable solutions to internal displacement. This also applies to the sick, while accessing health services.

Displacement of indigenous people especially forest dwelling communities removes them from their ancestral lands thus making it practically impossible for them to enjoy certain rights including the right to culture and religion. This impact was well articulated by the African Court on Human and Peoples’ Rights in the Ogiek Case,[[3]](#footnote-3) where the African Court observed that:

*…in the context of traditional societies where formal religious institutions do not exist, the practice and profession of religion are usually inextricably linked with land and the environment. In indigenous societies in particular, the freedom to worship and to engage in religious ceremonies depends on access to land and the natural environment. Any impediments to, or interference with accessing the natural environment, including land, severely constrains their ability to conduct or engage in religious rituals with considerable repercussion on their freedom of worship[[4]](#footnote-4)*

1. **What factors enable or impede the sustainability of integration or reintegration of internally displaced persons? Please refer to social cohesion, mental and psychological health, identity, cultural and spiritual factors.**

**Response:**

In Kenya, there are several factors that can acts as enablers of sustainability of integration or reintegration of internally displaced persons. These include, states investment in integration or reintegration of internally displaced persons. This can take a form of creating livelihood and employment opportunities. Expansion and/or establishment of new infrastructure in areas of integration or reintegration of internally displaced persons is critical, this will address the likely strain and conflicts that might be experienced by host and integrated communities, considering none will feel disadvantaged especially of access. The other areas of fucus should be continuous monitoring and reporting of the likely triggers of displacement with a view to mitigate the same through myriad of approaches including peacebuilding initiatives.

On the other hand, there are several factors that impede the sustainability of integration or reintegration of internally displaced persons. These are intertwined with especially how communities view each other based on either cultural and spiritual identities. For instance, culture plays a critical role in defining ones or community’s alignment especially in relation to economic practices and social cohesion.

1. **What actions would you suggest that the Special Rapporteur take to address these issues within the purview of her mandate and complementary to the actions of her predecessors?**

**Response:**

Refer to No. 9 above.

*(****N.B.****Please consider the theme of integration/reintegration of internally displaced persons within the context of and complementary to the*[**Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons**](https://interagencystandingcommittee.org/system/files/2021-03/IASC%20Framework%20on%20Durable%20Solutions%20for%20Internally%20Displaced%20Persons%2C%20April%202010.pdf) *and the work of the* [**Office of the Special Adviser on Solutions to Internal Displacement**](https://www.un.org/en/solutions-to-internal-displacement)*)*

1. Article 10 of the Constitution provides for National Values and Principles of Governance. It makes public participation a constitutional imperative binding on all state organs, public officers and all persons whenever any of them applies or interprets the Constitution, enacts, applies or interprets any law, or makes or implements policy decisions. [↑](#footnote-ref-1)
2. See: <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1041/Public-inquiry-on-insecurity-and-its-impact-on-the-enjoyment-of-fundamental-human-rights-in-the-North-Rift-Region-of-Kenya> the Report available for download through the link. [↑](#footnote-ref-2)
3. African Commission on Human and Peoples Rights v Republic of Kenya (African Court on Human and Peoples Rights Application No 006/2012) available at <http://en.african-court.org/images/Cases/Judgment/Application%20006-2012%20-%20African%20Commission%20on%20Human%20and%20Peoples%E2%80%99%20Rights%20v.%20the%20Republic%20of%20Kenya..pdf> [↑](#footnote-ref-3)
4. At Paragraph 164 of the Judgment [↑](#footnote-ref-4)