

Crisis in Kenya: land, displacement and the search for 'durable solutions'

Key messages

- Current post-election displacement in Kenya is not a new phenomenon but a recurring trend linked to unresolved land grievances, in a context of poor governance and socio-economic insecurity. This is of concern to humanitarians as the failure to understand the dynamics involved and the implications for recovery can exacerbate tensions and jeopardise attempts to resolve the crisis.
- Humanitarians need to engage with land specialists to ensure that their programming not only avoids exacerbating tensions, but is also consistent with efforts to address the structural causes of conflict.
- Return, relocation and local integration processes should not be promoted as durable solutions in the absence of serious attempts to resolve land-related grievances. If durable solutions are to be found, programmes must take account of those who were forced to move in earlier waves of displacement.
- The government's urgency in encouraging IDPs to return despite continued political uncertainty and insecurity raises clear protection concerns. This includes both physical security and wider issues to do with rights, community reconciliation and sustainable access to the means of subsistence.
- In the absence of political progress and stability, urbanisation is likely to accelerate as displaced people seek alternative livelihoods.

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Accusations of irregularities during the December 2007 elections in Kenya sparked widespread violence. Over 1,000 people were killed and as many as 600,000 displaced from their homes. Apart from the immediate humanitarian implications, the economic cost of the crisis is put at over Ksh100 billion (around \$1.5bn). Jobs have been lost, and people have not been able to harvest or cultivate their farms.¹ Meanwhile, the ethnic character of the violence has put Kenya's coherence as a nation in doubt.² Although by April 2008 the violence had largely subsided,

it was still unclear whether a political agreement reached between President Mwai Kibaki and Prime Minister-designate Raila Odinga would resolve the crisis.

Events in Kenya took the international community by surprise, not least because the country is usually held up as a model of stability in an increasingly fragile region. Yet violence and displacement accompanied elections throughout the 1990s, leading some commentators to warn that Kenya's long-term stability was in jeopardy.³ Central to both past

¹ International Crisis Group, *Kenya in Crisis*, Africa Report 137, 2008, pp. 1, 19.

² Africa Research Institute, *Kenya: A Nation Fragmented*, Briefing Note 0801, 2008.

³ See for example Internal Displacement Monitoring Centre, *'I Am a Refugee In My Own Country': Conflict-Induced Internal Displacement in Kenya* (Geneva: IDMC, 2006), pp. 6–7.

and current upheavals have been long-standing disputes over land ownership. This HPG Policy Brief explores the role that land issues have played in the current crisis, and why it is essential that humanitarian actors understand these issues as they seek to assist displaced populations and facilitate the process of return or resettlement.

Post-election violence, displacement and the humanitarian response

The violence began when Kibaki's Party of National Unity (PNU) declared victory in the elections. In response, the opposition Orange Democratic Movement (ODM) claimed widespread irregularities and fraud, sparking rioting across the country between supporters of the rival parties. The unrest also enabled some groups to act on long-standing grievances over land, and forcible appropriation has led to large-scale displacement, particularly in the Rift Valley and western Kenya.

Estimates of the current number of IDPs range from 400,000 to 600,000, though patterns of displacement are fluid and accurate data is difficult to obtain.⁴ What seems clear is that many of the displaced – perhaps as many as half – are not in camps, but have sought refuge with host families, often in their so-called 'ancestral homelands'. The caseload includes landowners and farmers from the Rift Valley, who have fled to nearby towns and camps; migrant workers from the Rift Valley and Central Province, who are moving back towards western Kenya; and urban dwellers and business owners from main cities such as Nairobi, Kisumu, Eldoret, Nakuru and Naivasha.⁵ These are in addition to pre-existing IDPs displaced by clashes during the 1990s, mainly located in Molo, Kuresoi, Burnt Forest and Mount Eglon. A further 12,000 refugees are thought to have fled across the border into Uganda.

The Kenyan government has led the humanitarian response through the Ministry of Special Programmes (MoSP). Within the ministry the National Disaster Operations Centre acts as the coordinating agent, with the Kenyan Red Cross (KRCS) the official implementing partner. The government's response has been supported by the international community. The cluster approach has been activated and an Emergency Humanitarian Response Plan was launched in April for \$190

million (revised upwards from \$40m).⁶ The initial appeal was 74% funded. There has also been a concerted response by civil society organisations, particularly Church associations such as the National Council of Churches of Kenya (NCCCK), which has historically played a significant role in assisting IDPs.

From consultations with key informants, it is generally believed that the basic needs of the displaced in camps, in terms of protection, food, education, health, water and sanitation, have largely been met, although the humanitarian response has suffered from a lack of access due to insecurity, with roadblocks delaying the provision of relief. There have been some reports of national staff being targeted because of their ethnicity. Sexual exploitation, mainly of women and children, has been widely noted, in the camps and elsewhere. Furthermore, with the passage of time and the arrival of the rainy season, concerns have been raised over conditions in some of the camps. The fate of displaced people outside of the camps is meanwhile unclear. Accurate data does not exist and there is no mechanism to identify, locate and assess their needs and intentions. This is a significant failing.

In short, immediate relief requirements, for camp-based IDPs at any rate, have largely been met through the combined efforts of communities themselves, the government, civil society organisations, aid agencies and international donors. For many, the concern is now security in home areas: displaced people feel unable to return until the government addresses this issue, both in terms of physical security and in its wider socio-economic and legal sense. The situation remains highly complex and volatile, and is likely to deteriorate further unless the underlying causal factors are addressed. Here, resolving disputes over land must play a central role.

The land question and displacement in Kenya

Internal displacement is a recurring theme in Kenya's recent history. During the colonial period, British land policy favoured (white) settler agriculture, entailing the dispossession of many indigenous communities' land (mainly the Kalenjin, Maasai and Kikuyu) across the Rift Valley and Nyanza, Western and Central provinces – the so-called White Highlands. This process was legalised with the implementation of an individual freehold title registration system at the expense of customary mechanisms of land tenure.⁷ The land grievances colonial dispossession gave rise

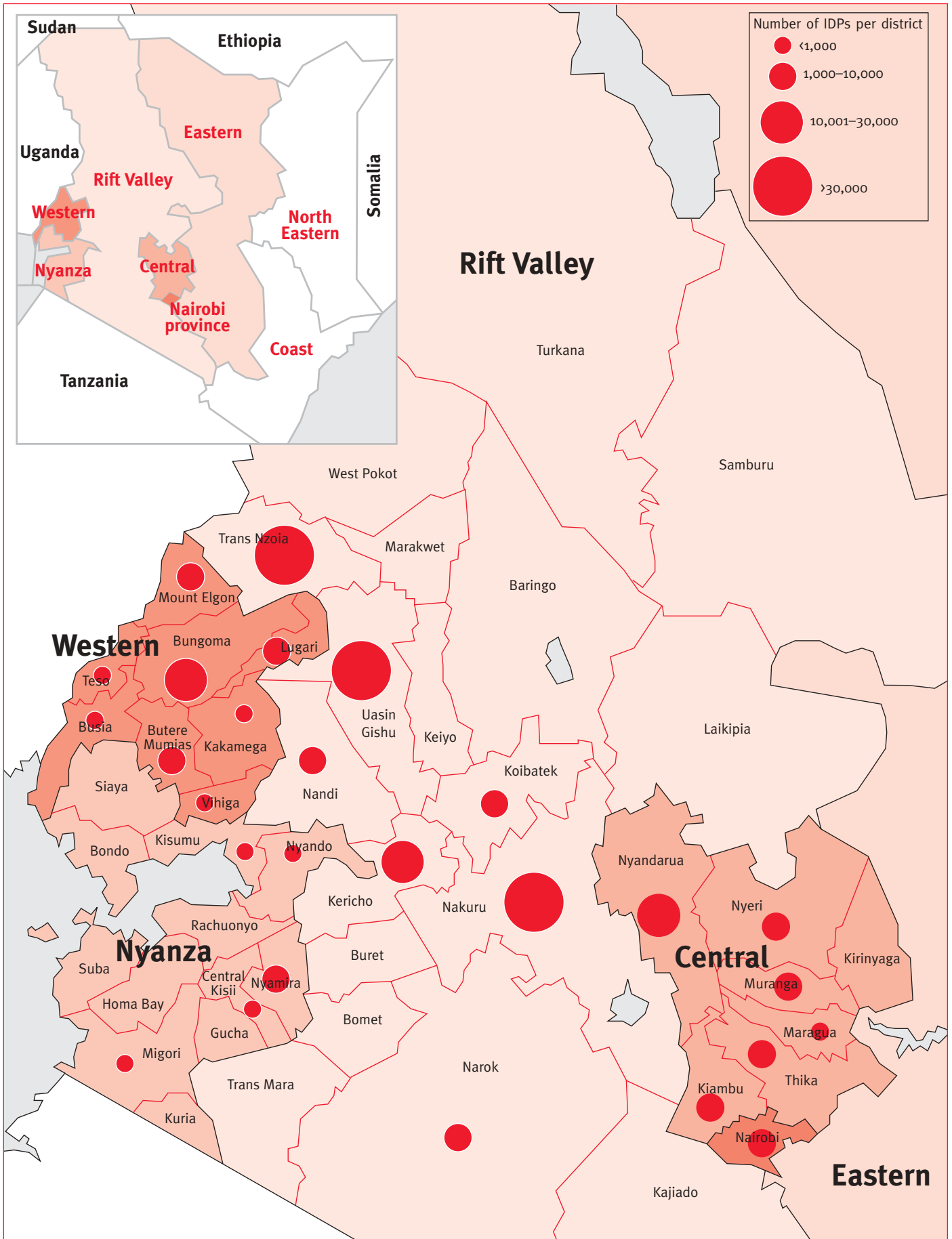
⁴ The estimate of 600,000 is the UN figure. See 'Some 600,000 Displaced in Kenya', BBC News, 11 February 2008, <http://news.bbc.co.uk/1/hi/world/africa/7239234.stm>. The Kenyan Red Cross Society (KRCS) estimates that over 200,000 IDPs are residing in camps, and it is widely believed among aid agencies that there is an equivalent number of non-camp IDPs. KRCS Kenya Humanitarian Forum Meeting, 28 March 2008.

⁵ OCHA Humanitarian Update, 16–19 February 2008.

⁶ UN, *Kenya: Emergency Humanitarian Response Plan*.

⁷ Kenya Land Alliance, *Righting the Wrongs: Historical Injustices and Land Reforms in Kenya*, Policy Brief (Nairobi: KLA, 2004), pp. 1–2.

Kenya – IDP situation map



Source: KRC March 2008, Kenya Humanitarian Forum Meeting, 28 March 2008

to were aggravated by Jomo Kenyatta's independent government. Kenyatta maintained the system of freehold land titles and did not question how the land had been acquired. To compensate the displaced, the government began a series of resettlement schemes based on a market system, which was biased towards those with the financial means to acquire land.⁸ Meanwhile, corruption and ethnic politics supported patronage networks and favoured certain communities, particularly the Kikuyu, who settled in the fertile areas of the Rift Valley, at the expense of others, such as the Luo, the Maasai and the Kalenjin.

These land tensions were further exacerbated by Kenyatta's successor as president, Daniel arap Moi. In response to the political threat posed by the advent of multiparty politics in the 1990s, Moi (a Kalenjin) sought to portray the opposition as Kikuyu-led, and multiparty politics as an exclusionary ethnic project to control land.⁹ This entailed evoking *majimboism*, a type of federalism that promotes provincial autonomy based on ethnicity. To recover 'stolen' land, Kikuyu were evicted from the areas they had settled in the Rift Valley and western Kenya.¹⁰ Associated clashes throughout the 1990s left thousands dead and over 350,000 displaced, allowing Moi to gerrymander elections in 1992 and 1997.¹¹ Rampant land-grabbing further undermined customary mechanisms of land governance, while growing hardship among the majority poor and rapid population growth increased pressure on the country's arable land.

The displacement crisis following the 2007 elections is thus not an anomaly; rather, it is part of a sequence of recurrent displacement stemming from unresolved and politically aggravated land grievances, in a context of population growth, poor governance and socio-economic insecurity. Simply focusing on facilitating the return of people displaced in the current crisis, in the absence of efforts to address the underlying structural causes, risks creating the conditions for further rounds of violence and fresh displacement.

The search for 'durable solutions'

Despite continuing political uncertainty, the Kenyan government has called for those displaced

8 Kenya Land Alliance, *The National Land Policy in Kenya: Addressing Historical Injustices* Issues Paper No. 2/2004 (Nairobi: KLA), pp. 6–7.

9 J. Klopp, 'Kenya's Internally Displaced: Managing Civil Conflict in Democratic Transitions' in D. Bekoe (ed.), *East Africa and the Horn: Confronting Challenges to Good Governance*, International Peace Academy Occasional Paper Series (Boulder, CO: Lynne Rienner, 2006).

10 P. Kamungi, 'Land and Internal Displacement in Kenya', briefing for donors at the Canadian High Commission, Nairobi, 11 September 2007.

11 Klopp, 'Kenya's Internally Displaced'.

Box 1: Land, displacement and humanitarian action

Humanitarian agencies often lack an adequate understanding of land issues – ownership, use and access – and tend to dismiss the problem as too complex, politically sensitive or outside their remit.¹² Yet conflicts over land often drive complex emergencies, particularly in agrarian societies where land is central to livelihoods. Forced displacement and appropriation can be a means to reward allies, acquire or secure access to resources, manipulate elections or create ethnically homogenous areas.¹³ Even where land is not a central driver, secondary conflicts can emerge, particularly if there is protracted displacement and land is occupied opportunistically. The result is often overlapping or competing land rights and claims, lost or destroyed documents, lack of adequate housing stock and increased land pressure, often in the absence of an institutional framework that can effectively resolve these conflicts.¹⁴ Policy responses usually favour returning populations to their areas of origin or habitual residence and the restitution of land and property. Often, however, displaced people have no land to return to, or are unable to access their properties. They may have had no alternative but to occupy someone else's land, or they may be in direct competition for land with other groups, including the state.¹⁵ For all of these reasons, land issues pose a substantial challenge to humanitarian agencies as they engage in the assisted return, reintegration and recovery of displaced populations.

by the post-election violence to return to their homes. In order to support this process a fund of Ksh1bn (\$15m) has been established, and the international community has been asked to contribute a substantially larger amount, to be administered by the newly created Mitigation and Resettlement Unit within the MoSP. In this

12 HPG conference report, *Uncharted Territory: Land, Conflict and Humanitarian Action*, February 2008, <http://www.odi.org.uk/hpg/meetings/land-conference-note.pdf>.

13 A. De Waal, 'Why Do Humanitarian Agencies Need to Tackle Land Issues?', paper presented at the HPG conference *Uncharted Territory: Land, Conflict and Humanitarian Action*, February 2008.

14 C. Huggins, 'Land in Return, Reintegration and Recovery Processes: Some Lessons from the Great Lakes Region of Africa', paper presented at the HPG conference *Uncharted Territory: Land, Conflict and Humanitarian Action*, February 2008.

15 L. Alden Wily, "'It's More Than About Going Home". Land in Emergency to Development Transitions in Conflict States: Who Should Do What?', paper presented at the HPG conference *Uncharted Territory: Land, Conflict and Humanitarian Action*, February 2008.

endeavour, the government will seek to increase physical security in the areas from which people were displaced, rehabilitate key services, provide assistance for the first three months of return and promote and engage in reconciliation activities.¹⁶

Despite these pledges by the government, return has so far been limited and isolated. Some 50,000 IDPs from Kakamega have returned to their home areas and people displaced close to their homes are commuting to work on their farms; overall, however, people are reluctant to return, particularly in areas affected by land disputes. IDPs are calling for preconditions, such as assurances on security, systems to compensate for or restore lost property and measures to ensure that land issues are resolved. Many, particularly those with no, lost or destroyed titles, are sceptical that such conditions will be met, and are asking to be resettled in alternative sites, including in main urban areas such as Nairobi.

The government has pledged to adhere to international guiding principles on IDP return, resettlement and reintegration. In addition, the Inter-Agency Standing Committee (IASC) has developed a framework designed to ensure a 'durable solution', covering return, relocation (settlement in another part of the country, including movement to ethnically homogeneous areas or so-called 'ancestral homelands', where the IDP has links to extended family or to an identifiable ethnic group) and local integration in areas of refuge.¹⁷ As is usually the case in situations like this, the preferred option, for the government, donors and the humanitarian community, is the return of the displaced to their areas of former residence. This is seen as less controversial than other options, which might lead to significant changes in the structure of a society, and is a visible and quantifiable process. Furthermore, it is in line with international standards such as the Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles), which call for the restitution of land and property to the displaced.¹⁸

In the current crisis, there is a sense that return must happen soon, so that some at least of the displaced can tend to their lands ahead of the rains and the upcoming planting season. The government is also keen to show that the crisis is over and

that normality has resumed. According to government estimates, most IDPs should have returned within 100 days. Given the complex conditions IDPs have placed on their return, such an arbitrary deadline is both unfeasible and unhelpful, and could see some returned against their will. Nor does such a rapid response allow time to instigate the processes needed to ensure a viable, durable return. Even if the conditions for return are deemed to be in place, such a process should not be framed as a durable solution but rather a temporary stop-gap until such time as clear processes are established to tackle unresolved land issues and other related grievances. Such processes must enjoy the support of leading local and national politicians.

The alternatives to return outlined in the IASC framework are relocation and local integration. IDPs who do not have land or who are too traumatised to return seem to favour resettlement on alternative sites, but this is a complex process and cannot be considered durable unless accompanied by a resolution of the land question more broadly. In any case, resettlement may simply aggravate existing land grievances, particularly in areas such as Central and Nairobi provinces, where population density is high and land scarce. Furthermore, solely focusing on those that have been recently displaced, as is currently the case among both the government and the humanitarian community, will create resentment among long-term IDPs (including the wider landless), who have been waiting many years to be resettled and are currently living in very difficult conditions.

Relocating IDPs to so-called 'ancestral homelands' is of particular concern. While this may offer a temporary refuge for communities that have retained strong ties with their extended families, many host families are starting to reject the continued presence of displaced people for fear that they will make claims on their land. Resettlement in areas of ethnic kinship also sets a dangerous precedent as it implicitly supports the goals of those engaged in violence and displacement as a means of ethnically cleansing certain regions. It also fails to take into account that the concept of 'ancestral homeland' is often an artificial construction of the colonial state, rather than a reflection of historical rootedness.¹⁹ Ethnicity is not a static, homogenous entity, but rather a fluid concept subject to generations of intermarriage.²⁰ Any efforts to return IDPs to presumed 'homelands' would need to determine which communities actually belong to certain areas, and how far back in history one would

16 Report of the National Accord Implementation Committee on National Reconciliation and Emergency Social and Economic Recovery Strategy, March 2008.

17 IASC, *IASC Steps Towards Durable Solutions to Post-Election Displacement in Kenya* (Nairobi: IASC, 2008).

18 For more information on the Pinheiro Principles and their implementation, see Multi-agency Handbook, *Housing and Property Restitution for Refugees and Displaced Persons: Implementing the 'Pinheiro Principles'*, 2007.

19 J. Lonsdale, 'Soil, Work, Civilisation and Citizenship in Kenya', *Journal of Eastern African Studies*, forthcoming.

20 Personal communication with Dr. Lotte Hughes, Ferguson Centre for African and Asian Studies, The Open University.

need to go to find this out, a process that would surely further divide Kenya's communities and could even threaten the country's cohesion.

The third possibility – integrating the displaced in the areas where they have sought refuge – depends on their characteristics and the willingness of both the displaced and host communities to accept integration. In reality, pressures on local resources are already high, and integrating IDPs in rural areas is probably not going to be feasible. In the towns and cities unemployment is a serious concern, particularly among young people, and access to land and housing is already inadequate. Despite these problems, if the political process stalls and land issues are not effectively tackled it is likely that urban migration will accelerate, which means that the government and humanitarian agencies must prepare to support integration in urban areas. These efforts need to be linked with the government's wider recovery strategy, which aims to improve services in slum areas and increase employment opportunities, and must be carried out in partnership with development agencies concerned with tackling the wider problems of socio-economic insecurity in the urban peripheries where the bulk of IDPs live. Questions of land tenure will also demand attention: many of the displaced will squat in public buildings or other public spaces, threatening the informal property interests of the existing urban poor.²¹ The expertise of development agencies engaged in urban planning will be needed to support measures to secure tenure for the displaced and the wider population of concern.

Any solution to displacement, whether temporary or durable, must enjoy the active participation of Kenyan civil society, particularly the faith-based organisations that have historically played an important role in supporting IDPs.²² These groups will be important stakeholders in promoting reconciliation and peace-building activities, and will bring important pressure to bear on the government to effectively deal with the issues outlined in the political agreement between Kibaki and Odinga.

Conclusion

This HPG Policy Brief has sought to highlight the importance of land issues in forced displacement in Kenya, and to draw out their implications for current humanitarian and early recovery interventions in the wake of the violence and displacement that followed the 2007 elections. Even before the latest crisis, grievances over land had generated over 350,000 IDPs. Displacement is thus not a new phenomenon,

²¹ Alden Wily, "It's More Than About Going Home".

²² Klopp, 'Kenya's Internally Displaced'.

Box 2: Urbanisation

Complex emergencies tend to represent fundamental processes of change and societal transformation.²³ These changes can often accelerate the process of urbanisation as the displaced migrate to urban centres in search of safety and alternative livelihood strategies. Displaced people will tend not to return to rural environments, particularly if their land grievances are not resolved or if they see a brighter future in the cities. These trends have been seen in previous episodes of displacement in Kenya, where the government has failed to support return or provide suitable resettlement schemes. As a result, the majority of IDPs live in informal urban settlements and are marginalised amongst the urban poor.

and portraying return as a durable solution in the absence of clear processes to resolve the underlying issues giving rise to it risks embedding the conditions for further violence in the future. If a durable solution is to be achieved, historical grievances must be acknowledged and addressed.²⁴ This goes beyond the core humanitarian agenda, but is nevertheless an important element in the way humanitarians engage in relief and return processes.

Although many of these grievances have been acknowledged, it is not yet clear whether adequate processes will be put in place to address them. As a result, many local communities oppose the return of displaced people, and displaced people themselves are not keen to go back to contested areas. The possibility of coerced return raises clear protection concerns, particularly given the government's stated desire to 'resolve' the displacement problem as rapidly as possible. The humanitarian community should be very cautious about facilitating return in the absence of adequate physical and socio-economic security. Well-informed advocacy, which incorporates land tenure expertise, is required to encourage the government to meet its obligations to ensure that the conditions for return are in place. If such processes are to represent a truly durable solution, they must be accompanied by an acknowledgement of historical grievances and the need for reconciliation processes. In the absence of such change, it is imperative that the humanitarian community monitors the fate of IDPs after their return, to ensure that their rights are protected and their needs met.

²³ See for example M. Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London: Zed, 2003), p. 14.

²⁴ J. Klopp, 'Can Moral Ethnicity Trump Political Tribalism? The Struggle for Land and Nation in Kenya', *African Studies*, vol. 61, no. 2, 2002.

Recommendations

- Humanitarian agencies must be better informed about the underlying causes of displacement, including grievances over land. This will help ensure that their responses do not aggravate existing sources of tension, and are aligned with processes that aim to resolve the fundamental issues at stake. The housing, land and property sub-cluster and the early recovery cluster should engage more deeply with land tenure specialists.
- Humanitarian agencies should ensure that the protection needs of displaced people are met, and should resist premature returns that threaten the security of IDPs. In the absence of mass return, the needs of the displaced should continue to be met.
- Return to areas affected by land grievances should not be promoted as a durable solution but rather as a temporary measure, to be accompanied by clear efforts to resolve the underlying causes of displacement.
- Permanently relocating IDPs to so-called ‘ancestral homelands’ risks promoting ethnic cleansing and further fragmenting Kenya’s communities, leading to renewed outbreaks of violence. It should not be promoted as a durable solution to Kenya’s displacement crisis.
- Agencies should prepare for an influx of IDPs into urban areas, particularly if the political process stalls and displacement becomes protracted. This will require engagement with development organisations in order to align efforts to integrate IDPs, whilst addressing wider socio-economic insecurity in urban areas.
- The recovery process must include a systematic mechanism to collect adequate data on IDPs inside and outside camps, and from previous displacements, in order to determine their profile, needs and intentions so that interventions can be catered to them. The data should also include relevant information on land, and land tenure specialists should be enlisted to help collect and analyse the data. Efforts in this direction by national and international agencies should be coordinated and shared with the government.
- The search for durable solutions needs to include civil society organisations, which have an important role to play in promoting reconciliation and peace-building, and in exerting pressure on the government to tackle the underlying causes of displacement.
- Donors should ensure that their support to the Kenyan government is contingent on adequate conditions for return, including progress in addressing underlying issues, including land.

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