

Internal displacement in Nairobi: A literature review

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1. Introduction

This review examines existing research on the issues raised by the presence of internally displaced people (IDPs) in an urban context such as that of Nairobi, Kenya. The review explores historical and present patterns of displacement in the broader context of Nairobi's urbanisation processes. It aims to build on the current understanding of how IDPs live in the urban environment and relate with the communities around them and governance institutions, and of whether and in what ways they are more vulnerable than other urban residents. Lessons drawn from current assistance programmes to urban IDPs and other urban residents with specific vulnerabilities are also presented. The focus of the review is primarily on IDP literature, but work related to broader Nairobi's urbanisation and migration issues and on policy and legal frameworks is also presented where relevant.

The review informs the work of the joint ODI/HPG-IRC-IDMC-ICRC¹ research project on urban IDPs in Nairobi, which forms part of a larger IDMC-ODI/HPG study on the general phenomenon of urban displacement. The final aim of the study is to improve responses to the needs of urban IDPs by better understanding urban displacement, reviewing existing responses and their impact on IDPs and other urban residents, and suggesting alternative approaches as appropriate.

2. Setting the context: Internal displacement in Kenya

While there was some media coverage on the situation of IDPs in Kenya throughout the 1990s and early 2000s, the literature review has highlighted a general lack of academic interest. Existing research studies tend to provide only a rough idea of the larger picture. A wider selection of the literature is, however, available for the events following the 2007 and 2008 post-election violence. In this case as well, however, information on IDPs tends to focus mostly on the "visible" ones and little is known on those who have dispersed, for example staying with hosts or taking shelter among urban communities.

Internal displacement in Kenya is often traced back to the return to multi-party politics in the 1990s when it became part of political strategies to retain or win power (Kamungi, 2009). The ethnic clashes that broke out then and continued throughout the

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democratisation process were seemingly the last bid by opponents to multi-party democracy² to prove that a country divided along ethnic lines was not ready for such a system (Oucho, 2002; HRW, 1997). The effects of land redistribution during colonial times have also been closely associated to the political strategies of the 1990s. Access to land became a major factor in ethnic clashes as certain politicians exploited land grievances in their efforts to establish loyal constituencies along ethnic lines (HRW, 1997). Most of the perpetrators of violence in the Rift Valley in this period have been identified as belonging to pastoral groups who had been evicted from their land during the colonial period. On the other hand, most of the internally displaced people (IDPs) belonged to agricultural communities – mostly Kikuyus – who had been brought in from neighbouring provinces by the British rulers to cultivate the once pastoral lands (Global IDP Project, 2004).

The major periods of violence and displacement centred around the 1992 and 1997 elections. On each occasion, violence erupted in many parts of the country, including multi-ethnic regions in the Rift Valley, Coast and Western provinces. By 1993, in the Rift Valley, two years of violence had forced some 300,000 people to flee their homes, most of them from tribal groups associated with the political opposition (HRW, 1997). Reports suggest that perhaps half of them had resettled by the mid-1990s, but further displacement occurred between 1993 and 1995 (USCR, 1998).

In 2002, the electoral defeat of the Kenyan African National Union (KANU), which had been ruling since independence in 1963, raised hopes of durable solutions for the 350,000 or so remaining IDPs. The new government, however, downplayed the problem of internal displacement in the country, in order to avoid addressing the highly controversial issue of land ownership (UN OCHA, 2004; EAS, 6 October 2004).

A few reports have also highlighted a history of violence and displacement in northern Kenya, a predominantly arid or semi-arid region. The region, inhabited by pastoral communities and characterised by chronic drought, has been neglected in national economic development plans (GoK, 2005). Research has highlighted that resource insecurity within pastoral communities, due for example to increased competition for water and pasture following the creation of new administrative boundaries, has continued to cause violence and displacement in the region (IDMC, 2006). The proliferation of guns, the commercialisation of traditional cattle rustling, political manipulation of resource-based grievances, the shrinking economic prospects of affected groups and the inability or unwillingness of security forces to stem the violence have all contributed to aggravate tensions (US DOS, 2001).

Further research is warranted, however, on the links between those who have abandoned their traditional pastoral ways of life and migrated to urban centres and those who have been displaced because of the region's violence. Reports have also pointed to a different level of support for drought-affected communities and conflict-induced IDPs in the region, with the latter being almost completely neglected (IDMC, 2006).

Though many of the people displaced in the 1990s were thought to have returned by

² Mainly the Kenyan African National Union (KANU), which ruled Kenya from independence in 1963 to 2002 as a de facto one-party state (IDMC, 2006)

the beginning of 2000, a few groups of people were still displaced. The Jesuit Refugee Service provided in 2001 a useful overview of the different categories of IDPs who were still in search of durable solutions. These included displaced landowners who had either lost land or whose legal rights to the land were considered invalid; displaced landowners whose ownership was not contested but who could not access their land because of persisting insecurity; displaced “squatters” living on other people’s land whose houses had been demolished; dispersed IDPs who were more difficult to target with return assistance; orphans; and displaced pastoralist groups who had to abandon secure water points and move to a more hostile environment with fewer survival alternatives.

2007 post-election violence

In December 2007, allegations of election irregularities and malpractice led to widespread violence that displaced up to 600,000 people (IDMC, 2008). As with previous elections, different factors heightened the risk of post-election violence: the identification of the two main contenders along ethnic lines, the likelihood of close election results, doubts about the impartiality of the electoral commission and the presence of armed militia (Bayne, 2008).

A number of in-depth reports have highlighted four broad forms of violence that took place between December 2007 and January 2008: spontaneous violence, organized attacks, organized retaliatory attacks and excessive use of force by the police (Bayne, 2008; OHCHR, 2008; KNCHR, 2008). Violence greatly depended on region-specific dynamics. It erupted spontaneously in and around the cities of Nairobi, Mombasa, Kisumu triggered by the anger of opposition supporters at the election results; in the Rift Valley perpetrators mainly targeted communities of small farmers and landowners perceived to be Government supporters; retaliatory attacks against communities of migrant workers perceived as opposition supporters took place reportedly in Nakuru, Central province and Kibera and Mathare slums of Nairobi (OHCHR, 2008). In the Rift Valley, violence fuelled by land grievances and related hostility towards Kikuyus resulted in massive displacement. Many of the people displaced in 2007-2008 in the Rift Valley had already experienced violence and displacement since the mid-1990s (IDMC, 2008).

Patterns of displacement

Although most of the information available on the patterns of displacement varies between the areas affected and over time, it is possible to draw a few patterns from the literature. In general, IDPs have shown to resort to both grouped and dispersed settlement options. More detailed information will be presented in the appropriate sections below.

IDPs settled in organised or spontaneous camps/sites

Throughout the 1990s, IDPs found refuge across the country in organised settlements on church or school grounds (IDMC, 2006), that were set up either by government agencies or local NGOs (HRW, 1997). Others organised themselves in abandoned buildings (UN DPMCU, 2002). Following the 2007 post-election violence, the Kenyan Red Cross established 296 camps, mostly in the Rift Valley, Nyanza, Western, Coastal and Central provinces (OHCHR, 2008). Around 34 official and unofficial (that is, with no formal camp management mechanisms in place) IDP sites were also

recorded in and around Nairobi (Caritas, 2008; UNICEF/UNFPA/CCF, 2008).

As IDPs started going back home in the course of 2008, transit camps were established, particularly in the farming areas of Uasin Gishu and Trans Nzoia districts, to facilitate reconciliation between returnees and communities in areas of return while providing increased security for returnees (UN OCHA, 2008a). Since the 1990s, the Kenyan government has closed official IDP camps either by forcibly removing IDPs, as in the case of the Maela camp in the Rift Valley in 1994, or by accelerating the return process as it did in 2008 with Operation *Rudi Nyumbani* (Return Home) (UN OCHA, 2008d).

IDPs in peri-urban areas

An unknown number of IDPs have found refuge on the periphery of towns. Accounts of their survival strategies are mainly anecdotal and far from comprehensive. The choice of such settlement option is often due to the possibility to rent farms from the local community or to acquire strips of land in forests (UN DPMCU, 2002; UNIFEM, 2002). Evidence shows that their survival in such settings is prevalently based on rural subsistence strategies.

IDPs in urban areas

According to the reports available, the majority of IDPs have found refuge in urban areas across the country (HRW, 1997; Kathina Juma, 2000; UN DPMCU, 2002; UNIFEM, 2002; Klopp & Sheekh, 2008). Their reasons for choosing a safe haven in cities and towns include the presence of family and friends or the impossibility to purchase land elsewhere. Many find shelter in informal settlements³, in low-priced rented accommodation or simply on the street (UNIFEM, 2002). After the 2007 post-election violence many IDPs fled to their “ancestral homelands” where they settled in towns and cities as they had urban livelihoods prior to being displaced. Others dispersed into urban areas, such as the slums of Nairobi, right after the violence or with the progressive closure of camps (IRIN, 2008).

3. Policies and legal frameworks on internal displacement

The Kenyan government has obligations under international, regional, and national law to protect the human rights of IDPs. Kenya is a state party to all the core human rights instruments except the Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR), to the International Covenant on Economic, Social and Cultural Rights (ICESCR), to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to the Convention on the Rights of the Child (CRC) and to the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT). Kenya has also ratified and fully domesticated the four Geneva Conventions through the Geneva Conventions Act (Chapter 198 of the Laws of Kenya).

Kenya has also ratified the African Charter on Human and People’s Rights, the African Charter on the Rights and Welfare of the Child, and the Protocol to the

³ According to UN-HABITAT, slum dwellers are urban households lacking one or more of the following: durable housing, sufficient living area, access to an improved water source, access to improved sanitation and security of tenure. Cf. <http://ww2.unhabitat.org/mdg/>

African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights. It has signed but not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. On the other hand, Kenya has not signed the African Union Convention for the Protection and Assistance of IDPs in Africa (the Kampala Convention), the first regional instrument in the world to impose legally-binding obligations on states in relation to the protection and assistance of IDPs (Brookings-Bern, 2009).

At the sub-regional level, Kenya has ratified the Pact on Security, Stability and Development in the Great Lakes Region (the Great Lakes Pact), which came into force in 2008. The Great Lakes Pact includes two protocols which are of particular relevance to IDPs, namely the Protocol on the Protection and Assistance to Internally Displaced Persons, and the Protocol on the Property Rights of Returning Persons. A third, the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children, is highly important for IDPs, given the prevalence of sexual violence in conflict and post-conflict environments. The other seven protocols of the Pact, while not specifically tailored to protect the rights of displaced people, extend the general quality of human rights protection in the region (IDMC, 2008a). Article 2 of the Protocol on Democracy and Good Governance, for example, articulates the "prohibition of ethnic, religious, racial, gender or regional discrimination" as a core constitutional principle (ICGLR, 2006).

The Pact was the first multilateral instrument to commit member states to adopting and implementing the Guiding Principles on Internal Displacement as a framework. In addition to defining protection measures for people internally displaced due to all causes and people in all phases of displacement, the Pact addresses some specific concerns from the experience of internal displacement in the Great Lakes Region, such as protection measures for pastoralists, host communities and families of mixed ethnic identity. Furthermore, it strengthens the legal basis for IDPs to claim their rights, including the rights to access to information, to be consulted about and to participate in decisions that affect their lives and the right to receive humanitarian assistance. The IDP Protocol commits member states not only to enact national legislation to implement the Guiding Principles into domestic law, but also to create a practical implementation framework (IDMC, 2008a).

The primary sources of Kenyan domestic law include the Constitution, the Acts of Parliament and other specific pre-independence Acts, customary law and Islamic law. As nationals, IDPs are entitled to the full protection of national law, without any adverse distinction or discrimination on the basis of their displacement. Under Chapter V, the Kenyan Constitution prohibits discrimination in the enjoyment of fundamental rights and freedoms on the grounds of race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex. The need to revise the Constitution was agreed by national referendum in August 2010, to reduce presidential powers and regulate the acquisition and repossession of public land, an essential factor to facilitate the attainment of durable solutions for IDPs as well as prevent new displacement (UN, 2010).

Kenya has no national legal and institutional framework on internal displacement, but has recently engaged in the drafting of a national IDP policy. The government has worked with a broad range of national and international stakeholders including UN

agencies, and the Ministry of State for Special Programmes (MOSSP) and the Ministry of Justice, National Cohesion and Constitutional Affairs. The final draft of the policy addresses both issues of durable solutions and prevention of displacement. The policy combines a needs-based and a rights-based approach and covers displacement caused by a broad range of factors, including politically-instigated violence, natural disasters and development projects (IRIN, 2010). Concerns were expressed by UNICEF and UNFPA, however, that issues of gender-based violence are not extensively covered in the policy (PCWG, 2010). The draft will need to be adopted by the Cabinet and the Parliament but it is unclear whether the signing of the Kampala Convention will take priority over the finalisation of the national IDP policy.

4. Displacement and urbanisation processes in Nairobi

Kenya has witnessed rapid urbanisation at an estimated rate of 7.3 per cent annually. In 1962 for instance, it was estimated that only one Kenyan out of every 12 lived in urban centres, while in 1999 the rate rose to one out of three. Current predictions estimate that half of Kenya's population will live in urban centres by 2015 (UN HABITAT, 2007). In the recent 2009 census, 32.4 per cent of the total population, or 12.5 million Kenyans lived in 108 designated urban centres (Daily Nation, 2010).

Kenya is divided into eight provinces administered by a Provincial Commissioner, of which the city of Nairobi is the smallest and only exclusively urban province. According to the 2009 census, Nairobi hosts some 3.1 million people (KNBS, 2010). The city covers only 0.1 per cent of the total surface of Kenya, but hosts about 25 per cent of Kenya's urban population and eight per cent of the total population (CCN/UNEP/UN-HABITAT, 2007). According to the Central Bureau of Statistics cited in the City of Nairobi Environment Outlook, in 2005, almost half of Nairobi's population living under the poverty line were concentrated in three divisions: Embakasi, Kasarani and Makadara (CCN/UNEP/UN-HABITAT, 2007).

4.1 Nairobi's urban growth

Urban growth in Nairobi reflects both natural population growth and rural-to-urban migration. Nairobi's expansion has been described as "two-faced", including at the same time both a modern facade and the burgeoning of makeshift housing, uncontrolled settlements, roadside shops and businesses, in what Hake (1977) has called the "self-help city". About two million people are estimated to live in Nairobi's informal settlements, so over half of the city's population (CCN/UNEP/UN-HABITAT, 2007) lives in only 5 per cent of the city's land (UN-HABITAT, 2005).

The rise of Nairobi's informal settlements dates back to colonial times. Settlement structures were first organised along racial lines, with whites and Asians occupying residential areas and Africans establishing themselves in unplanned settlements outside high-income areas. Post-independence history has been characterised by two opposing approaches towards informal settlements: slum clearance and efforts aimed at improving living conditions in the settlements. However, while the first has led to the creation of new informal settlements and slums by displaced residents, the second has often failed to include target groups in the planning processes and has suffered from corrupt practices (UN-HABITAT, 2007).

In the 1980s, the removal of agricultural subsidies and the perceived higher incomes in urban areas led to an increase in rural-to-urban migration, straining existing facilities (Peters, 1998). While traditionally it was men who migrated to urban areas, House-Midamba (1991) found that an increasing number of women started migrating to towns and cities, both to escape traditionally ascribed status in rural areas to improve their socio-economic situation. In the early 2000s, Mitullah (2003) estimated that a significant percentage of households in informal settlements in Nairobi were headed by women, while child-headed households were also on the increase.

More recently, it has been estimated that no more than 20 per cent of Nairobi residents below 35 years of age were born in the city. Young people form the majority of the migrants; approximately 50 per cent of Nairobi's current migrant population were between 17 and 23 years old when they arrived in the city (Zulu, Konseiga, Darteh & Mberu, 2006). According to data collected in 2006 by the African Population and Health Research Center (APHRC)-Nairobi Urban Health and Demographic Surveillance System (NUHDSS), 70 per cent of the migrant population in slums was aged 24 or less and the same percentage had only primary education or less. They estimated the origin of slum migrants as follows: 31 per cent came from other slums, 16 per cent from Nairobi non-slum areas, 6 per cent from other urban areas, and 47 per cent from rural areas. Improvement of economic well-being was identified as the most common incentive for migration to slums (Zulu, Konseiga, Darteh & Mberu, 2006). A 2006 survey targeting adolescents (between 10 and 19 years old) living in Kibera also shows the importance of migratory movements to Nairobi's informal settlements. According to this survey, 53 per cent of boys and 47 per cent of girls living in Kibera migrated to Nairobi from another region: 70 per cent of adolescent migrants came from Nyanza and the western provinces (Erulkar & Matheka, 2007).

Inevitably such growth, while offering potential for improvement in people's lives, has led to major challenges in urban governance and management. In addition to the usual problems associated with rapid rates of urbanisation and the rise of informal settlements, such as inadequate housing, lack of clean water, insufficient drainage and poor sanitation, violent crime has also been on the increase in Nairobi over the last two decades.

4.2 History of displacement and settlement patterns in Nairobi

Literature on internal displacement patterns in Nairobi is scarce and is mostly limited to short references in broader reports on election/ethnic violence in Kenya. It is possible, however, to analyse the available literature making reference to two distinct phases: multi-party politics until 2007, and after the 2007 post-election violence. While information is generally scarce for the first phase, more is known on IDPs who have gathered in settlements in Nairobi after the 2007 post-election violence. Literature remains scarce, however, on post-election violence IDPs who have dispersed.

Pre-2007

At the centre of the violence of the 1990s were the farms in the Rift Valley. These were bought by large numbers of Kikuyus from neighbouring Central Province in the course of the 1960s and 1970s under the government's land settlement schemes, at the

expense of Maasai and Kalenjin pastoralist groups (HRW, 1997). As the campaign for multi-party democracy gained strength in the build-up to the elections in 1991, violence broke out among different ethnic groups, mainly in Rift Valley, Western and Nyanza Provinces, as these land grievances were politically manipulated. The great majority of those displaced were farmers of the Kikuyu, Luo and Luhya ethnic groups. Periodic outbreaks of violence continued throughout 1993 and 1994. Human Rights Watch (1997) reported that IDPs found refuge with relatives, in abandoned buildings and market centres, including presumably in Nairobi. In Coast province, displacement was reportedly temporary, with residents fleeing to Nairobi and up-country and returning once calm was restored (JRS, 2001).

The violence that characterised the first multi-party elections in 1992 was to be repeated on a greater scale in 1997. The ethnic clashes that broke out in the Coast province between “coastal” (Mijikenda, Taita, Pokomo, Orma, Taveta, Bani and Sanye) and “inland” ethnic groups reached such a scale that the Kenyan army was called in to restore law and order (Mulli, 1999). While “inland” ethnic groups fled to other provinces up-country, “coastal” groups were mostly displaced because of the reprisals by security forces and found refuge in nearby towns and cities, including Nairobi (JRS, 2001).

The Jesuit Refugee Service (2001) reported that many of those displaced did achieve durable solutions after the election period. Rather, in the Rift Valley, those who had found refuge in grouped settlements were forcibly dispersed and resettled in Central Province – the “ancestral” homeland of the Kikuyus – without benefitting from proper resettlement help. Landless and in many cases separated from other family members, many found their way onto the streets and into the informal settlements of the nearest market centre, Nairobi, where they could engage in low-paying jobs.

Mentions of intra-urban displacement in Nairobi can also be found in the literature. From the 1980s, with the increase of people settling in slum areas, Nairobi started facing an increase in criminal violence. With the involvement of police forces in criminal activities and the presence of the headquarters of all political movements in the city, Nairobi faced recurrent tensions with riots and looting breaking out and demonstrations violently repressed, especially close to elections (Agostini et al., 2007).

Stewart (2002) has used the concept of “horizontal inequalities” (that is, between culturally formed groups as opposed to individuals) as a major catalyst for conflict. It has been argued that in an urban context, such as in Nairobi, the mixing of established urban groups and new urban residents may create frustration and tensions which could lead to violence, as the two groups protect their interests (Agostini et al., 2007). Such tensions led to violence in the Kibera slums in Nairobi in November and December 2001 (UNIFEM, 2002). The violence was triggered by a feud between landlords and tenants over uncontrolled rents for slum dwellings in an overpopulated suburb with few services and amenities, and wholly inadequate water and sanitation (IRIN, 2001). Some 3,000 people were displaced from Kibera to more secure and affordable estates such as Kangemi and Kawangware; however the scale and specific patterns of their displacement are unknown (UN DPMCU, 2002). It was also unclear how much the ethnic component played a role in the clashes, as displaced tenants included both Luo and many other different ethnic groups.

2007 Post-election violence (PEV)

In December 2007, allegations of irregularities and malpractice in Kenya's presidential elections led to widespread violence that displaced up to 600,000 people (IDMC, 2008). A country-wide profiling exercise conducted by the government on post-election violence IDPs put the number at more than 660,000. As the full report has never been disclosed, however, humanitarian agencies have doubted that these numbers represent the full scale of displacement (IASC TF MHCUA, forthcoming).

Violence erupted in and around the cities of Nairobi, Mombasa, Kisumu, and across the Rift Valley. In Nairobi, violence mostly affected communities living in slums including Mathare and Kibera, where youths allied with the incumbent Party of National Unity and the opposition Orange Democratic Movement parties clashed. The violence in Nairobi was not organised: as soon as the election results were announced, youths took to the streets and caused mayhem and violence targeted mainly at Kikuyus (Bayne, 2008). Reprisal attacks followed. Victims of the violence fled to major towns in the Rift Valley and Central Province and to Nairobi's western outskirts. The displaced in Nairobi initially took refuge in City Park and Jamhuri Park, a large open area in the city used for trade and agricultural shows, and at the compounds of chiefs and District Commissioners (IDMC, 2008). These camps were among the first to be shut down by the government despite protests from humanitarian agencies and the displaced themselves (UNICEF, 2008). In total, around 34 official and unofficial (that is, with no formal camp management mechanisms in place) IDP sites were recorded in and around Nairobi in 2008 (Caritas, 2008; UNICEF/UNFPA/CCF, 2008).

According to the literature, the mix of various ethnic groups in Nairobi has led to minority groups being at risk throughout the city: in Mathare, mainly Kikuyus were displaced, but Kambas were also at risk; in Kariobangi and Dandora, low-income residential estates in north-eastern Nairobi, Kikuyus and Luos displaced one another; in Huruma, which borders Kariobangi to the East, the minority Borana community was displaced; and in Kibera, various communities were displaced (Save the Children, UNICEF, UNFPA, UNHCR & GoK, 2008).

In general, IDPs sought safety in areas which had higher concentrations of their ethnic group. In many instances, people were displaced by a very short distance, often less than one kilometre. While some found refuge in designated sites, an estimated equal number of people remained scattered in the city (Lynch, 2009; IDMC, 2008). The fact that some lost everything in the violence, while others still had their houses or personal belongings intact, has been used to partly explain why in some cases, as at Jamhuri Park and Moi Airbase, the number of people sleeping at the site was much lower than the number receiving assistance (Save the Children, UNICEF, UNFPA, UNHCR & GoK, 2008).

Information on IDP sites in Nairobi is fragmented and incomplete. The literature is mostly composed of agency assessments targeting only a few of the estimated formal and informal sites at a time. Virtually no literature is available on urban IDPs who chose more dispersed settlement options in the city, although some information is expected to be found with religious organisations across the city, which have worked with local chiefs and religious elders to coordinate assistance (Kituo, 2010).

In Kibera, one of Africa's largest informal settlement areas, approximately five "official" (meaning recognised and served by the humanitarian community) IDP sites were identified: Dagoretti, Kawangware, Riruta Orthodox Church, Riruta Satellite, and Jamhuri Park, the largest of the five (UNICEF/UNFPA/CCF, 2008). Similarly, in Mathare, many IDPs initially found refuge at Moi Airbase.

Jamhuri Park (Save the Children, UNICEF, UNFPA, UNHCR & GoK, 2008; UNICEF/UNFPA/CCF, 2008)

As of January 2008, the registered number of IDPs in Jamhuri Park was around 6,000, although only between 1,200 and 2,300 people, mainly women and children, were estimated to be sleeping in the empty exhibition buildings or in the open at the site. The IDPs were mainly from Kibera and Kawangware slums around Nairobi, and from Burnt Forest and Kajiado in Rift Valley Province.

Moi Airbase – Central Division, Mathare (Save the Children, UNICEF, UNFPA, UNHCR & GoK, 2008)

As of January 2008, from 300 to 400 people were spending the night at the base and around 1,000 people receiving on-site assistance during the day. As there was no registration in place, estimates are based on feedback given from local NGOs providing assistance and local staff at the base. Most of the IDPs were from Mathare informal settlements and they were of mixed ethnicity (Kikuyu, Luo, Kisii or Kamba).

After the government's closure of the major IDP sites in Nairobi, such as Jamhuri Park and Moi Airbase, in January and February 2008, smaller IDP camps formed mainly in Nairobi north (UN OCHA, 2008b) and in Nairobi East. IDPs found refuge at the Mathare Police Depot, Huruma, Soul Winning Camp, NYS mosque, Bethany, St Benedict and at the Presbyterian Church of East Africa and in Karura in Nairobi West (UN OCHA, 2008).

5. Land tenure and settlement patterns

As highlighted above, the displacement crisis following the 2007 elections was 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" (HPG, 2008). The government's post-independence land policies have failed to resolve historical grievances stemming from the colonial practices of land dispossession in favour of white settlers, especially in present-day Rift Valley and Central Provinces (KNCHR, 2008). Such practices were legalised with the implementation of an individual freehold title registration system at the expense of customary mechanisms of land tenure. As land was sold to the highest bidder, many groups with customary rights over the land could not afford it and were dispossessed (HPG, 2008).

Starting in the 1990s, politically-instigated land clashes led to the displacement of the land title holders in the Rift Valley (KLA, 2004). Land clashes and consequent displacement have continued to contribute to urbanisation processes, as many IDPs have found refuge in nearby towns or in the capital. It will be extremely challenging to ensure that IDPs are able to attain durable solutions, especially where land

grievances are not resolved. Implementing ad hoc solutions for those who have been recently displaced without also focusing on longer-term IDPs will only create further tensions (HPG, 2008).

The laws and rules that govern land administration in Kenya are complex, fragmented and overlapping. To try to address such confusion, the government drafted the National Land Policy, which was approved by the Cabinet in 2009 (GoK, 2010). The policy aims to offer a framework of policies and laws that will provide: (a) all citizens with the opportunity to access and beneficially occupy and use land, and ensure their participation in decision making processes related to land issues; (b) economically viable, socially equitable and environmentally sustainable allocation and use of land; (c) efficient, effective and economical operation of land markets with increased security of tenure for all; (d) efficient and effective utilisation of land and land-based resources; and (e) efficient and transparent land dispute resolution mechanisms, through alternative dispute resolution mechanisms (KHRC, 2010). With particular reference to IDPs, Section 203 of the National Land Policy obligates the government to establish policy and institutional measures for protection of and assistance to IDPs, which have now been translated into the national IDP policy (KHRC, 2010).

When the National Land Policy was awaiting discussion and approval by the Parliament, the implementation of some reforms already started, including improvements in the archiving of land records (GoK, 2010). As of 2005, it was estimated that the formal land registration system covered 15 per cent of Kenya's land areas (Lamba, 2005).

Land in Kenya falls under three different domains: government land (accounting for around ten per cent of the total), private land (20 per cent of the total) and trust land (70 per cent) (Lamba, 2005). The predominant land tenure systems currently in existence in Kenya include customary rights, statutory rights and informal rights under informal tenure arrangements. The latter is most frequently observed in urban centres where urban management systems have proved incapable of providing affordable land and shelter to growing urban populations (Lamba, 2005; Muraya, 2006).

5.1 Land tenure in informal settlements

In Nairobi, as in other towns and cities in Kenya, informal settlements are found on both public and private land, where land is acquired, used and occupied without the permission of its owner. Land tenure in informal settlements can be quite complex. Lamba (2005) reports three main land tenure systems: shared ownership where land is acquired through a joint purchase, for example through self-help groups; a temporary occupation license where local authorities allow for the use of public land on a temporary basis; and squatting, that is illegal occupation of vacant public or private land. In the Mathare slum of Nairobi, for example, the three different and parallel tenure systems were recorded: private tenure on land with individual title, group tenure under land-buying companies, and squatting on trust land (NISCC, 1997), where land rights are held in trust by the county or city councils on behalf of the resident communities (Wayumba, 2004).

The government has responded in different ways to occupation of public land. In

residential areas, it has in some cases enabled the occupier to formalise their tenure rights; where land is reserved for public purposes, evictions have been common. Informal settlements on private land have continued to be contested through numerous court cases.

Tenants in informal settlements may face an even bigger risk of eviction if the landlord identifies that the land they occupy has a higher rental value than they can afford (Lamba, 2005). Through a rapid survey, Mitullah (2003) confirmed the trend that over 80 per cent of slum dwellers in Nairobi's informal settlements were tenants.

The upgrading of informal settlements has become the official plan of action of the government. In November 2000, it agreed with UN-HABITAT to pursue a joint slum upgrading project to confront the issue in a systematic manner (Syagga, Mitullah & Gitau, 2001). The Kenya Slum Upgrading Programme (KENSUP) is intended to bring about the formal recognition of existing informal settlements, the provision of tenure security to residents, the improvement of housing, infrastructure and urban services and the improvement of economic opportunities. The improvements implemented in Nairobi, Kisumu and Mombasa are expected to be extended to other urban areas in Kenya. (Lamba, 2005).

Progress on slum upgrading has, however, been slow (COHRE, 2006). Syagga, Mitullah & Gitau (2001) have identified insecure land tenure as the primary constraint to the programme and the improvement of living conditions in the informal settlements. Absentee landlords offer for rent semi-permanent rooms without providing adequate water and other environmental sanitation facilities for their tenants, while poor and inadequate access routes within these settlements also hinder service improvements.

In his review of the domestic legal framework, Leckie (2003) highlighted how Kenya does not meet its international obligations to provide adequate housing. There are only two Acts of Parliament that regulate housing rights – the Housing Act and the Rent Restriction Act – and neither of those provides substantial protection for housing rights. The latter provides for limits to evictions of tenants and to rent increases but it is unclear the extent to which it covers tenants in informal settlements. In practice, courts have reviewed cases of informal sector tenants even though the legislation remains widely unknown among affected individuals.

6. Urban poverty and vulnerability in Nairobi

Surveys have suggested that patterns of deprivation are still more acute in rural areas in Kenya than in urban areas (OPHDI, 2010). However Manda et al (2001) have highlighted how poverty estimates in Kenya have been based on household surveys and have excluded certain social groups, such as street families, beggars and women in destitute conditions, which are mostly urban. In a recent report, OXFAM found that poor city-dwellers face an alarming (and growing) range of vulnerabilities (OXFAM, 2009). In particular, residents of informal settlements in Nairobi earn lower incomes (through casual labour or informal employment or small business activities) than other urban residents and have limited assets (Mitullah, 2003). Though the majority of the households living in informal settlements are male-headed, female-headed households

represent a significant percentage while, because of a measurably higher HIV vulnerability in slums (Ochieng, 2007), child-headed households have been increasing in number (Mitullah, 2003). the prevalence of prostitution as well as a high incidence of sexual violence (AI, 2010) have both contributed to this. Incidents of sexual violence reportedly increased in the aftermath of the 2007 elections, while displaced girls and women continued to be at particular risk in both formal and informal camps or traded sex for money, protection or transportation (UNICEF, 2008; UNICEF/UNFPA/CCF, 2008).

Most slum dwellers feel at risk from crime and violence in their settlements, and this sense of insecurity is worsened by their insecurity of tenure and the threat of eviction under which many of them live. Youth crime is particularly alarming and criminal youth gangs have become a growing phenomenon in the city. In some cases, they have developed parallel local governance structures in slums and informal settlements, taxing residents, providing “security” and delivering local forms of justice (UN-HABITAT, 2007a). According to the results of a 2002 city-wide victim survey, however, more than poverty and unemployment, “crime is more a consequence of exclusion from social services, education, health care, governance and politics” (UN-HABITAT, 2002). Discrimination also exists within slums, especially along ethnic lines, with most ethnic groups conglomerating in particular areas or sections of slums, where “neighbourhood victimisation” – in which outsiders are regarded with suspicion – is quite common (Mitullah, 2003).

In their review of the livelihood approaches of Nairobi’s slum dwellers, Kimani et al. (2007) found that water and sanitation were the most pressing needs after housing and employment opportunities. In the absence of public water provision, private water vendors, who operate without any regulatory mechanisms, usually charge inflated prices for substandard services. 94 per cent of slum residents buy domestic water from these vendors and pay about eight times more for it than other urban residents (Kimani et al, 2007; OXFAM, 2009). Relative to rural areas, OXFAM (2009) found that the weak “social capital” in Nairobi has an impact on people’s livelihoods options, as they do not have the same kin and support networks as people elsewhere. IDPs as well have to struggle “individually in a society with little social capital and a cash-based economy” (IASC TF MHCUA, 2011).

The Refugee Consortium of Kenya (2005) found that those IDPs in the 1990s and early 2000s who had found refuge in Nairobi had engaged in similar economic activities as non-IDPs, including in brewing illicit liquor, petty trade in vegetables and prostitution. Their distance from available farming land has also had an impact on food security strategies put in place by IDPs (IASC TF MHCUA, forthcoming), presumably especially for those displaced from the Rift Valley and Western Provinces used on relying on farming subsistence living. Following post-election violence in 2007 and 2008, many IDPs relied on food distribution, which was complicated by challenges in accessing affected areas and in identifying beneficiaries (IASC TF MHCUA, forthcoming).

7. Conclusion

The proliferation and expansion of informal settlements in Nairobi reflect ongoing

economic migration to cities as well as population growth and influx of IDPs. The city's infrastructure, however, is not keeping pace with the number of arrivals, resulting in inadequate living conditions and heightened vulnerability. Both national and international actors have taken steps to address challenges linked to urban vulnerability and urban displacement. Efforts, however, have varied according to areas and target groups. Moreover, different actors have used different approaches according to their resources and networks.

Generally, humanitarian assistance in the wake of the 2007 post-election violence appears to have been provided primarily to land-owning rural IDPs rather than to IDPs in urban or peri-urban settlements who organised themselves into self-help groups and sought to buy land. So-called "integrated" IDPs, namely IDPs in urban or peri-urban areas who took up residence with friends or relatives, or rented accommodation did not access humanitarian assistance, their presence having gone unnoticed as they are mixed with the general population (South Consulting, 2010). In Nairobi, the Commission of Inquiry into the 2007 Post-Election Violence noted, for example, a divergence in treatment between IDPs having sought refuge in camps and those hosted by families or friends, because of their lack of visibility (CIPEV, 2008). The latter benefited from support from local communities, but missed out in large part on humanitarian assistance while their hosts' resources thinned out in a few months (UN OCHA, 2008c).

A process led by UN-Habitat and OCHA was initiated in Kenya in 2009 to strengthen the coordination of humanitarian response in urban areas (UN HABITAT & UN OCHA, 2009). Building on this process, the government and the Kenya Humanitarian Partnership Forum (KHPT) created the Assessment and Monitoring Working Group on Kenya Urban Vulnerability to draw up indicators and measurements to identify the drivers of vulnerability in Kenya's cities. The Working Group, in consultation with other coordination forums such as the Protection Working Group, will design a "basket of indicators" to mark the point at which these vulnerabilities can be classified as an emergency (IASC TF MHCUA, 2011).

In adapting the response to the context, a joint programme with the government, WFP, Care, Concern and Oxfam targeted especially vulnerable groups in Nairobi, providing them with small cash grants over an eight-month period. The cash transfer programme partnered with community committees to identify the most vulnerable, followed by agency house-to-house verification, registration in the programme and the distribution of a phone card that allowed the beneficiaries to access cash through mobile phone transfer (IASC TF MHCUA, 2011).

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