

**THE INTERNALLY DISPLACED PERSONS  
BILL, 2012**

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**THE INTERNALLY DISPLACED PERSONS  
BILL, 2012**

**A Bill for**

**AN ACT of Parliament to make provision for the protection and assistance to internally displaced persons and give effect to the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons and the United Nations Guiding Principles on Internal Displacement and for connected purposes**

**ENACTED** by Parliament of Kenya as follows—

**PART I—PRELIMINARY**

**1.** This Act may be cited as the Internally Displaced Persons Act, 2012, and shall come into operation upon the expiry of ninety days from the date of publication.

Short title and commencement.

**2.** (1) In this Act, unless the context otherwise requires—

Interpretation.

“Accounting Officer” means the Principal Secretary in charge of the government department for the time being responsible for matter relating to internally displaced persons or an officer deputed by that Principal Secretary in writing.

“Armed groups” means dissident armed forced or organized armed groups that are distinct from the armed forces of the state.

“Cabinet Secretary” means the Cabinet Secretary in charge of the government department for the time being responsible for matters relating to internally displaced persons;

“Committee” means the National Consultative Coordination Committee on Internally Displaced Persons established by section 13;

“civil society” means national and international non-governmental organisations;

“durable solution” means the achievement of a durable and sustainable solution to the displacement of persons through a voluntary and informed choice of sustainable reintegration at the place of origin, sustainable local

integration in areas of refuge, or sustainable integration in another part of Kenya;

“Fund” means the Protection and Assistance to Internally Displaced Persons Fund established by section 15;

“Guiding Principles” means the 1998 United Nations Guiding Principles on Internal Displacement referred to in Article 1(3) of the Great Lakes Protocol and set out in the Second Schedule.

“Humanitarian Fund” means the Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of Post-2007 Election Violence established by regulation 3 of the Government Financial Management Regulations, 2008;

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“internally displaced person” means a person or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, large scale development projects, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border;

“protection” means all activities aimed at obtaining full respect of the rights of internally displaced persons in accordance with the letter and spirit of the fundamental rights and freedoms under the Bill of Rights of the Constitution of Kenya and applicable regional and international human rights and humanitarian law instruments;

“Protocol” means the Great Lakes Protocol on Protection and Assistance to Internally Displaced Persons as adopted by the International Conference on the Great Lakes Region in 2006 and set out in the First Schedule.

(2) In this Act—

- (a) a reference to “public interest” shall be construed, in reference to large-scale development projects, the development interests of, and for the benefit of, the people of the Republic as whole, including persons displaced by such project;
- (b) a reference to “United Nations” shall be construed to be a reference to the United Nations Country Team in Kenya;

(c) until after the first general elections under the Constitution, a reference to “Cabinet Secretary” shall be construed to mean “Minister”;

(d) until after the first general election under the Constitution, a reference to “Principal Secretary” shall be construed to mean “Permanent Secretary”

## **PART II—PRINCIPLES OF PREVENTION, PROTECTION AND ASSISTANCE**

**3.** Subject to the Constitution and this Act—

Protocol and Guiding Principles to apply.

(a) the provisions of the Protocol, and

(b) the provisions of the Guiding Principles shall apply to all internally displaced persons in Kenya.

**4.** The Government and any other organization, body or individual when responding to a situation of internal displacement and the needs of internally displaced persons under this Act, shall take into account their rights and freedoms as set out in the Bill of Rights of the Constitution;

Rights-based response to internal displacement.

**5.** (1) Subject to the Constitution, the Government and any other organization, body or individual shall guard against factors and prevent and avoid conditions that are conducive to or have the potential to result in the displacement of persons.

Prevention of displacement.

(2) The Government and any other organization, body or individual shall prevent internal displacement in situations of armed conflict, generalized violence, human rights violations, natural or human-made disasters and development projects.

(3) The Government shall raise public awareness, undertake sensitization, training and education on the causes, impact and consequences of internal displacement and means of prevention as provided for in sections 17 to 20 of this Act.

(4) The Government shall establish a prevention mechanism charged with monitoring areas inhabited by persons at risk of displacement, periodical reporting on the situation in such designated areas and early warning issued to the Cabinet Secretary and the Chair of the Committee for further action to prevent internal displacement.

**6.** (1) The Government shall protect every human being against arbitrary displacement.

Protection from displacement

(2) Arbitrary displacement is prohibited and shall constitute an offence punishable under this Act as specified in section 23.

(3) Displacement and relocation due to development projects shall only be lawful if justified by compelling and overriding public interests and in accordance with the conditions and procedures in Article 5 of the Protocol, Principles 7-9 of the Guiding Principles and as specified in sections 21-22 of this Act.

**7.** Subject to the Constitution, the Government shall put into place measures and structures to prepare for emergency disaster and ensuing internal displacement and mitigate its consequences.

Preparedness and mitigation.

**8.** (1) The Government shall address put into place measures for assistance and protection needs of internally displaced persons with particular regard to displaced communities with a special dependency on and attachment to their lands and the protection needs of women, children, the disabled, the elderly and other persons with special needs.

Assistance and protection.

(2) Assistance and protection needs of communities in rural and urban areas where displaced persons find refuge shall equally be addressed based on their needs.

**9.** (1) The Government shall create the conditions for and provide internally displaced persons with a durable and sustainable solution in safety and dignity and shall respect and ensure respect for the right of internally displaced persons to make an informed and voluntary decision on whether to return, locally integrate or resettle elsewhere in the country.

Durable solutions.

(2) Without limiting the generality of the sub-section (1), the following conditions for durable solutions shall apply—

- (a) long-term safety and security;
- (b) full restoration and enjoyment of the freedom of movement;
- (c) enjoyment of an adequate standard of living without discrimination;

- (d) access to employment and livelihoods;
- (e) access to effective mechanisms that restore housing, land and property;
- (f) access to documentation;
- (g) family reunification and the establishment of the fate and whereabouts of missing relatives;
- (h) equal participation in public affairs;
- (i) access to justice without discrimination

**10.** (1) Every person, including any public body, State officer or public officer and private body or individual involved in the protection and assistance to internally displaced persons in the Kenya shall act in accordance with the Protocol, the Guiding Principles and as provided for in this Act.

Obligations imposed by Protocol or Guiding Principles.

(2) Armed groups and similar non-state actors shall observe the provisions of the Protocol and the Guiding Principles as provided for in this Act but such observance shall not afford legal status or recognition to such groups.

### **PART III—ADMINISTRATION**

**11.** (1) The national Government shall bear ultimate responsibility for the administrative implementation of this Act.

Responsibilities of Government.

(2) For the purposes of any provision of the Protocol and the Guiding Principles that confers or imposes a power, duty or function on a State, that power, duty or function may be exercised or carried out on behalf of the Government of Kenya by the Cabinet Secretary, if this Act makes no other provision in that regard.

(3) County Governments shall bear responsibility for the administrative implementation of the provisions of this Act in accordance with their functions and powers accorded by Article 186 and the Fourth Schedule of the Constitution.

(4) Without prejudice to the generality of the foregoing, the Government shall, in accordance with Article 3 (3) of the Protocol and Principles 2(1) and 28 (1) of the Guiding Principles, bear the primary duty and responsibility for—

- (a) preventing and protecting from internal

displacement, preparing for it and mitigating its consequences;

- (b) protecting and assisting internally displaced persons throughout the Republic;
- (c) creating conditions conducive to and providing durable and sustainable solutions for internally displaced persons.

(5) In particular, the Government shall bear the primary duty and responsibility to—

- (a) designate, where necessary, official areas for the settlement of internally displaced persons in the Republic;
- (b) facilitate the administration of settlement areas for internally displaced persons;
- (c) ensure adequate provision of basic social and health services in areas inhabited by internally displaced persons;
- (d) ensure, where necessary, the maintenance of public order, public security, and public health in areas inhabited by internally displaced persons; and
- (e) safeguard and maintain the civilian and humanitarian character of settlements.

(6) In particular, the Government shall and in accordance with Article 3 (6-8) and (10) of the Protocol and Principles 24-27 of the Guiding Principles—

- (a) request international assistance if the capacity of the Government to provide such protection and assistance is insufficient, inadequate or lacking;
- (b) ensure rapid and unimpeded access of humanitarian personnel to all internally displaced persons;
- (c) ensure that humanitarian assistance is not diverted;
- (d) ensure the protection of humanitarian personnel, transports and goods;
- (7) The Government, through the Cabinet Secretary

may delegate to the Committee the exercise of any of the responsibilities under subsection (4), (5) and (6).

**12.** (1) There is hereby established a Committee to be known as the National Consultative Coordination Committee on Internally Displaced Persons.

Establishment of the Committee.

(2) The Committee shall be an incorporated body under the relevant Government Department for the time being responsible for matters relating to internal displacement.

(3) The Committee shall consist of—

- (a) a Chairperson from among those listed in subsections (b) to (l) appointed by the President;
- (b) the Principal Secretary of the Government Department for the time being responsible for matters relating to internal displacement;
- (c) the Principal Secretary of the Government Department for the time being responsible for matters relating to internal security;
- (d) the Principal Secretary of the Government Department for the time being responsible for matters relating to finance;
- (e) the Principal Secretary of the Government Department for the time being responsible for matters relating to lands;
- (f) The Principal Secretary of the Government Department for the time being responsible for matters relating to justice and constitutional affairs;
- (g) the Attorney-General;
- (h) the Director of Public Prosecutions;
- (i) the Chairperson of the Kenya National Commission on Human Rights;
- (j) the Secretary-General of the Kenya Red Cross Society;
- (k) three persons appointed by the Cabinet Secretary upon nomination by one of the following bodies—
  - (i) the United Nations;

- (ii) the civil society;
- (iii) the donor community;
- (l) two persons of opposite gender appointed by the Cabinet Secretary and nominated by internally displaced persons from amongst their number in such manner as may be prescribed.
- (4) The Chairperson may co-opt membership of the Committee on a permanent or ad hoc basis.
- (5) The persons referred to under paragraphs (b) to (j) may attend in person or designate their alternate representatives not below the level of their immediate deputies.
- (6) The conduct of business and affairs of the Committee shall be as set out in the Third Schedule.

**13. The functions of the Committee shall be to—**

Functions of the Committee.

- (a) serve as the official impartial and humanitarian focal body liaising between Government Departments, the United Nations, civil society, the Secretariat of the International Conference of the Great Lakes Region, and where appropriate the African Union.
- (b) determine and establish procedures and channels of engagement and cooperation between Government Departments, the United Nations, civil society, the Secretariat of the International Conference of the Great Lakes Region and where appropriate the African Union in order to enhance the effectiveness of the response to internal displacement.
- (c) coordinate prevention and preparedness efforts, protection and assistance to internally displaced persons throughout their displacement until a durable and sustainable solutions is found, and to host communities as needed, among relevant Government Departments, the United Nations, and civil society;
- (d) ensure the registration of all internally displaced persons in order to maintain a national data-base of such persons. The registration shall—
  - (i) commence and conclude within 90 days of

the occurrence of internal displacement;

- (ii) be declared by the Cabinet Secretary through the issuance of a Gazette notice;
  - (iii) be only for reasons of ascertaining the identification, profile, conditions, and numbers of internally displaced persons for the sole purpose of protection and assistance in accordance with article 3 (4) of the Protocol.
- (e) raise national awareness, sensitize and facilitate and coordinate training and education on the causes, impact and consequences of internal displacement and means of prevention, protection and assistance as provided for in sections 18-21 of this Act;
  - (f) oversee the management and use of the Fund provided for in section 15 of this Act;
  - (g) prepare an Annual Report for tabling before Parliament on the situation of internally displaced persons;
  - (h) monitor and supervise the operational implementation of the Protocol and the Guiding Principles by virtue of this Act; and
  - (i) advise the Cabinet Secretary on the exercise of his or her powers and functions under this Act.

**14.** (1) There is established a fund to be known as the Protection and Assistance to Internally Displaced Persons Fund.

Establishment of the Fund.

(2) The Fund shall be the successor to the Humanitarian Fund.

(3) The Fund shall consist of—

- (a) any balance existing in the Humanitarian Fund as at the commencement of this Act ;
- (b) donations by bilateral and multilateral donors, without prejudice to their possibility to directly fund activities to assist and protect internally displaced persons in Kenya;
- (c) sums received, including grants, donations,

contributions or gifts from any person or institution;

(d) moneys earned or arising from any investment of the Fund;

(e) all other sums which may in any manner become payable to, or vested in, the Fund.

**15.** (1) The Fund shall be used for meeting the capital and recurrent expenditure relating to—

Use of the Fund

(a) the protection and assistance to internally displaced persons and the provision of a durable solution to them as provided for in sections 9 and 10 of this Act including—

(i) their former homes or alternative settlement sites;

(ii) the replacement of their basic household effects;

(iii) enabling them to re-start their basic livelihood;

(iv) the reconstruction of destroyed basic housing and rehabilitation of community utilities and institutions;.

(b) the prevention of internal displacement through preventive measures, including

(i) The establishment of the preventive mechanism as provided for in section 6 (4) of this Act;

(ii) Public awareness campaigns, sensitization, training and education on the causes, impact and consequences of internal displacement as provided for in sections 6 (3) and 18-21 of this Act;

(c) assisting in the operations of the Committee and civil society programmes in accordance with subsection (3);

(d) any other matter incidental to the matters stated in paragraphs (a) (b) and (c).

(2) Any capital and recurrent expenditures made, that

exceed the resources available, by County Governments in accordance with their responsibility for the administrative implementation of the provisions of this Act in accordance with their functions and powers accorded by Article 186 and the Fourth Schedule of the Constitution shall be covered by the Fund.

(3) An amount of not less than five per cent of the Fund's annual income shall be used to equitably finance the Committee in its operation and an additional amount of not less than fifteen per cent shall be used to fund relevant civil society programmes.

(4) Unless the Treasury otherwise directs, the receipts, earnings or accruals of the Fund and its balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for the purposes of the Fund in accordance with article 206 (1) (a) of the Constitution.

**16.** (1) The Fund shall be administered by the Accounting Officer under the general direction of the Committee.

Administration of  
the Fund.

(2) The Accounting Officer may, with the approval of the Cabinet Secretary for the time being responsible for finance, invest or place on a deposit account any of the moneys of the Fund and any interest earned on moneys so invested or deposited shall be placed to the credit of the Fund.

(3) The Accounting Officer shall—

- (a) supervise and control the administration and use of the Fund as provided for in section 16 of this Act under the general direction of the Committee;
- (b) reports at least once in every six months to the Committee on the management and use of the Fund;
- (c) impose conditions on the use of any expenditure personally authorized and may impose any restriction or other requirement concerning use of expenditure;
- (d) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of

the Fund;

- (e) prepare, sign and transmit to the Controller and Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund in accordance with the Public Audit Act, 2003 and in such details as the Treasury may from time to time direct;
- (f) furnish such additional information as may be required for examination and audit by the Controller and Auditor-General or under any law; and
- (g) designate such staff as may be necessary to assist in the management of the Fund.

No 12 of 2003.

**PART IV—PUBLIC AWARENESS,  
SENSITIZATION, TRAINING AND EDUCATION**

17. (1) The national Government, in order to prevent future instances of internal displacement in Kenya, shall promote public awareness about the causes, impact, and consequences of internal displacement as well as on means of prevention, protection and assistance to internally displaced persons through a comprehensive nation-wide education and information campaign.

Public awareness,  
education and  
information  
campaign by  
national government

(2) The public awareness, education and information campaign referred to in subsection (1) shall be carried out in schools and other institutions of learning, prisons, remand homes and other places of confinement, amongst the disciplined forces, at places of work and in all communities throughout Kenya.

(3) The national Government in collaboration with the Committee shall provide training, sensitization and awareness programmes on the causes, impact and consequences of internal displacement, as well as on means of prevention, protection and assistance to internally displaced persons for—

- (a) employees of all national Government Departments, authorities and other agencies; and
- (b) employees of private and informal sectors'
- (c) community and social workers,

(d) media professionals, educators, and other stakeholders involved in the dissemination of information to the public on the causes, effects, means of prevention, protection and assistance to internally displaced persons.

(4) In conducting the education and information campaign referred to in this section, the national Government shall ensure the involvement and participation of individuals and groups affected by internal displacement without endangering their safety.

**18.** (1) The Committee shall liaise with the Government Department responsible for education, to integrate instruction on the causes, impact and consequences of internal displacement as well as on means of prevention, protection and assistance to internally displaced persons in subjects taught in public and private schools at all levels starting from early childhood education development centers to primary, secondary, and tertiary levels, including informal, non formal and indigenous learning systems.

Public awareness, education and information as part of education syllabus.

(2) The Committee shall in collaboration with the Government Department responsible for education, develop and implement a training curriculum to be integrated into syllabuses on the causes, impact and consequences of internal displacement as well as on means of prevention, protection and assistance to internally displaced persons to be taught at all levels starting from early childhood education development centers.

**19.** Every county executive committee, in collaboration with the Committee, shall conduct a public awareness, educational and information campaign on causes, impact and consequences of internal displacement as well as on means of prevention, protection and assistance to internally displaced persons within its area of jurisdiction in the manner contemplated under sections 17 and 18.

Public awareness, education and information campaign by county government.

**20.** Every city or urban area, in collaboration with the Committee, shall conduct a public awareness, educational and information campaign on causes, impact and consequences of internal displacement as well as on means of prevention, protection and assistance to internally

Public awareness, education and information campaign in cities or urban areas.

displaced persons within its area of jurisdiction.

**PART V—PROVISIONS RELATING TO DEVELOPMENT AND DISPLACEMENT**

**21.** (1) Subject to the Constitution, the Government shall abstain from displacement and relocation due to development projects or projects to preserve the environment and protect persons from displacement by private actors.

Conditions and standards for displacement induced by development projects.

(2) In exceptional cases, displacement and relocation due to development projects or projects to preserve the environment is—

- (a) authorized by, based on and carried out in accordance with the applicable law;
- (b) justified by compelling and overriding public interests in the particular case;
- (c) no feasible alternatives exist.

(3) Where displacement and relocation cannot be averted, the Government shall minimize it, mitigate its consequences and assist and protect the affected persons as provided for in sections 7 and 8 of this Act;

(4) Where the displacement is permanent, the Government shall provide the affected persons with a durable solution as provided for in section 10 of this Act.

**22.** (1) Subject to the Constitution and section 22 (2) of this Act and prior to the decision to give effect to the displacement of persons due to development projects or projects to preserve the environment, the Government shall—

Procedures for displacement induced by development projects.

- (a) seek the free and informed consent of the affected persons;
- (b) hold public hearings on the project planning.

(2) The decision to give effect to the displacement of persons shall give the justification for the displacement and demonstrate that the displacement is unavoidable and no feasible alternatives exist. The decision shall contain detailed justification on the alternatives explored.

(3) The Government shall ensure that the displacement is not carried out unless—

- (a) reasonable time is given to the affected persons to

review the decision and challenge it before an independent body on the grounds that the conditions in section 21 (2) are not adhered to;

- (b) an effective remedy in accordance with articles 46 and 47 of the Constitution is available for those affected.

(4) The Government shall ensure that the displacement is carried out in manner that is respectful of the human rights of those affected, taking in particular into account the protection of communities with special attachment to their land and the special needs of women, children and persons with special needs. This requires in particular—

- (a) full information of those affected and their effective participation, including by women, in the planning, management of the displacement, and in defining suitable durable solutions;
- (b) provision of safe, adequate and habitable sites and to the greatest practicable extent, of proper accommodation;
- (c) creation of satisfactory conditions of safety, nutrition, health and hygiene and the protection of the family unity.

(5) The Government shall ensure the presence of a Government official when the displacement and relocation is effected and the monitoring by an independent body.

#### **PART VI—MISCELLANEOUS PROVISIONS**

**23.** (1) No person shall cause, aid or abet arbitrary displacement through acts that amount to genocide, a crime against humanity or a war crime in accordance with international law and shall be punished in accordance with the International Crimes Act, 2008.

Offences relating to internal displacement.

- (2) No person shall intentionally—
  - (a) cause the arbitrary displacement of other persons as provided for in section 7 of this Act;
  - (b) impede access to internally displaced persons;
  - (c) cause harm to internally displaced persons;
  - (d) cause harm to humanitarian personnel;
  - (e) impede the work of humanitarian personnel;

- (f) obstruct the provision of humanitarian assistance to internally displaced persons;
- (g) steal, or loot, or destroy humanitarian supplies for internally displaced persons; and
- (h) misuse or abuse the use of humanitarian assistance for internally displaced persons;
- (i) aid or abet the commission of any of the acts or omissions specified in paragraphs (a) to (h).

(3) Any person who contravenes the provisions of subsection (2) commits an offence and shall be liable to a fine not exceeding five million shillings or to imprisonment for term not exceeding of ten years or to both such fine and imprisonment.

**24.** (1) The Cabinet Secretary may, upon recommendation by the Committee, make rules for giving effect to this Act.

Rules.

(2) Without limiting the generality of subsection (1) the rules may—

- (a) prescribe what is required under this Act;
- (b) prescribe the process and criteria for vetting of internally displaced persons to establish their authenticity.
- (c) provide for the administrative steps to be taken prior under this Act ;
- (d) provide for the management of the Fund subject to the provisions of this Act;
- (e) the dissemination of information under this Act.

**FIRST SCHEDULE (s.4)**

**GREAT LAKES PROTOCOL ON PROTECTION AND ASSISTANCE TO INTERNALLY DISPLACED**

## **PERSONS**

### **Preamble**

**We**, heads of State and government of the Member States of the International Conference on the Great Lakes Region;

**Considering** our Declaration on Peace, Security, Democracy and Development in the Great Lakes Region adopted and signed on 20<sup>th</sup> November 2004 in Dar-es-Salaam;

**Reaffirming** our commitment to the implementation of the terms of the said Dar-es-Salaam Declaration on behalf of their peoples;

**Recalling** specifically its Article 58 under which we committed ourselves to "respect and use the Guiding Principles on Internal Displacement as proposed by the UN Secretariat, harmonize all the relevant pieces of legislation and define a national and regional framework for the monitoring and follow-up of the standards contained therein and which relate to the access and protection of disaster victims, internally displaced persons, women and children who are victims of conflicts" ;

**Conscious** of the call made by the United Nations Secretary-General in 2005 for the Member States of the United Nations to accept the Guiding Principles on Internal Displacement as the basic international norm for protecting internally displaced persons, and to commit themselves to promote the adoption of these principles through national legislation;

**Noting** the recognition of the Guiding Principles on Internal Displacement as an important international framework for the protection of internally displaced persons by the United Nations Member States at the end of the United Nations Summit of September 2005;

**Deeply concerned** that the magnitude of the phenomenon of internal displacement is continuing on such a large scale that it is necessary to address the plight of internally displaced persons and to eliminate the root causes of their displacement in the Great Lakes Region;

**Mindful** that there is no specific coherent international or regional legal regime and institution mandated to provide

protection and assistance to internally displaced persons;

Agree as follows:

## **Article 1**

### **Definitions**

In this Protocol, unless the context otherwise requires, the following mean:

1. **Authorities:** National and Government Authorities in the Great Lakes Region as defined in the Guiding Principles;
2. **Groups:** armed groups in the Great Lakes Region as defined in the Guiding Principles ;
3. **Guiding Principles:** "the Guiding Principles on Internal Displacement" as proposed by the Secretary-General of the United Nations;
4. **Internally Displaced Persons:** persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border;
5. **Internally Displaced Persons:** also means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of large scale development projects, and who have not crossed an internationally recognized State border.

## **Article 2**

### **Objectives**

The objectives of this Protocol are to:

1. Establish a legal framework in the Great Lakes Region for ensuring the adoption and implementation by Member States of the Guiding Principles on Internal

Displacement;

2. Ensure legal protection by Member States of the physical safety and material needs of internally displaced persons in accordance with the Guiding Principles;
3. Provide a legal basis for the domestication of the Guiding Principles into national legislation by Member States;
4. Commit Member States to prevent and eliminate the root causes of displacement.

### **Article 3**

#### **Responsibility for Protecting Internally Displaced Persons**

1. Member States undertake to prevent arbitrary displacement and to eliminate the root causes of displacement.
2. Member States shall, to the extent possible, mitigate the consequences of displacement caused by natural disasters and natural causes.
3. Member States accept that they bear the primary responsibility for the protection of the physical and material safety of internally displaced persons during flight, in places of displacement, and upon return, or resettlement elsewhere within the territory of the State.
4. Member States shall be responsible for assessing the needs of internally displaced persons and shall, to the extent necessary, assist them with registration and, in such cases, Member States shall maintain a national data base for the registration of internally displaced persons.
5. Member States shall establish and designate organs of Government responsible for disaster emergency preparedness, coordinating protection and assistance to internally displaced persons, as well as the focal structures responsible for cooperating with international agencies and civil society responsible for internally displaced persons.
6. Member States shall facilitate rapid and unimpeded humanitarian access and assistance to internally

displaced persons.

7. Member States shall also ensure the safety and security of humanitarian personnel in areas of displacement.
8. Member States accept the obligation of humanitarian personnel to observe and respect the laws of the country in which they are operating.
9. Member States shall safeguard and maintain the civilian and humanitarian character of the protection and location of internally displaced persons in accordance with international guidelines on the separation of armed elements.
10. Where Governments of Member States lack the capacity to protect and assist internally displaced persons, such Governments shall accept and respect the obligation of the organs of the international community to provide protection and assistance to internally displaced persons.

#### **Article 4**

##### **Scope of Protection**

1. Member States undertake to:
  - (a) Adhere to the principles of international humanitarian law and human rights applicable to the protection of internally displaced persons in general and as reflected in the Guiding Principles in particular;
  - (b) Respect and uphold Security Council Resolution 1296 applicable to the protection of the civilian population during armed conflict as well as Security Council Resolution 1325 applicable to the protection of women and their role during armed conflict, including their participation in decision making and administration of programmes, with respect to their safety, welfare, health needs, sanitary care, reproductive rights, food distribution, and the process of return;
  - (c) Provide special protection for displaced populations, communities, pastoralists and other groups, with a special dependency on and attachment to their lands, consistently with the

provisions of the International Covenant on Civil and Political Rights 1966, the African Charter on Human and Peoples' Rights 1981, and the Guiding Principles on Internal Displacement

- (d) Provide special protection for women, children, the vulnerable, and displaced persons with disabilities;
- (e) Extend protection and assistance, according to need, to communities residing in areas hosting internally displaced persons;
- (f) Ensure the safe location of internally displaced persons, in satisfactory conditions of dignity, hygiene, water, food and shelter, away from areas of armed conflict and danger, and having regard to the special needs of women, children, the vulnerable, and persons with disabilities;
- (g) Ensure freedom of movement and choice of residence within designated areas of location, except when restrictions on such movement and residence are necessary, justified, and proportionate to the requirements of maintaining public security, public order and public health;
- (h) Facilitate family reunification, and to provide, if necessary, special protection for families of mixed ethnic identity;
- (i) Observe humanitarian principles and ethical standards relating to the provision of assistance to displaced persons in need of such assistance;
- (j) Establish a regional mechanism in the Great Lakes Region for monitoring the protection of internally displaced persons under this Protocol, provided that such a mechanism shall not affect the supervisory role of the United Nations Commission on Human Rights and treaty bodies, and the African Commission and Court on Human and Peoples' Rights, and the right of internally displaced persons to bring complaints before these bodies;
- (k) Guarantee that this Protocol shall neither, abrogate the right of internally displaced persons to seek and enjoy asylum in other States in accordance with the Universal Declaration of Human Rights 1948 and

the African Charter on Human and Peoples' Rights 1981, nor derogate upon the fundamental principle of non-refoulement, as contained in the United Nations Convention relating to the Status of Refugees 1951 and the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa 1969.

#### **Article 5**

##### **Development-induced Displacement**

1. Member States shall ensure that displacement owing to large-scale development projects shall be justified by compelling and overriding public interest and development. Member States shall therefore ensure that all feasible alternatives of development are explored in order to avoid development induced displacement altogether.
2. Where no alternatives exist, Member States undertake to avoid arbitrary displacement and shall take all measures necessary to minimize displacement and to mitigate the adverse effects of development induced displacement.
3. In such cases, Member States shall obtain, as far as possible, the free and informed consent of those to be displaced prior to undertaking displacement justified by compelling and overriding public interest and development.
4. Member States shall provide full information on the reasons and procedures concerning development induced displacement and, where applicable, on compensation and relocation.
5. Member States shall provide adequate and habitable sites of relocation and shall ensure, to the greatest practicable extent, that proper accommodation is provided to persons displaced by large scale development projects and that their displacement is effected in satisfactory conditions of safety, nutrition, health and hygiene.
6. Member States shall ensure the effective participation of internally displaced persons, particularly women,

in the planning and management of their relocation, as well as their return and reintegration, or resettlement.

7. Member States shall undertake to return and reintegrate, or resettle the displaced persons and populations as provided for under Section V of the Guiding Principles .

## **Article 6**

### **Adoption and Implementation of the Guiding Principles**

1. Member States undertake to adopt and implement the Guiding Principles as a regional framework for providing protection and assistance to internally displaced persons in the Great Lakes Region.
2. Member States accept to use the “Annotations of the Guiding Principles on Internal Displacement” as an authoritative source for interpreting the application of the Guiding Principles.
3. Member States shall enact national legislation to domesticate the Guiding Principles fully and to provide a legal framework for their implementation within national legal systems.
4. Member States undertake to ensure that such legislation shall—
  - (a) Define internally displaced persons according to Article 1(4)(5) of this Protocol;
  - (b) Prescribe the procedures for undertaking development induced displacement;
  - (c) Specify the organs of government responsible for providing protection and assistance to internally displaced persons, disaster preparedness and the implementation of the legislation incorporating the Guiding Principles;
  - (d) Provide for the channels of engagement and cooperation between the organs of government, organs of the United Nations, the African Union, and civil society;
  - (e) Enable the holistic incorporation of the Guiding Principles.

5. Member States shall ensure the effective participation of internally displaced persons in the preparation and design of the said legislation

#### **Article 7**

##### **Final Provisions**

1. This Protocol shall be an integral part of the Pact and shall not be subject to separate signature and ratification by the Member States.
2. For any Member State which has ratified the Pact in terms set out in Article 30 of the Pact, this Protocol shall automatically enter into force at the same time as the Pact in accordance with Article 33 of the Pact.
3. Nothing contained in this Protocol shall be construed to be contrary to the provisions of the Pact, the Constitutive Act of the African Union, and the Charter of the United Nations.

#### **SECOND SCHEDULE (s.4)**

##### **UNITED NATIONS GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT**

##### **Guiding Principles on Internal Displacement**

##### **Introduction - Scope and Purpose**

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

3. These Principles reflect and are consistent with international human rights law and international

humanitarian law. They provide guidance to:

- (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
- (b) States when faced with the phenomenon of internal displacement;
- (c) All other authorities, groups and persons in their relations with internally displaced persons; and
- (d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

### **Section I. General Principles**

#### **Principle 1**

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

#### **Principle 2**

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

#### **Principle 3**

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

#### **Principle 4**

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

### **Section II. Principles relating to Protection from Displacement**

#### **Principle 5**

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

#### **Principle 6**

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement:

- (a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial

composition of the affected population;

- (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
- (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
- (e) When it is used as a collective punishment.

3. Displacement shall last no longer than required by the circumstances.

#### **Principle 7**

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent that proper accommodation is provided to the displaced persons that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

- (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
- (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
- (c) The free and informed consent of those to be displaced shall be sought;
- (d) The authorities concerned shall endeavour to

involve those affected, particularly women, in the planning and management of their relocation;

- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

#### **Principle 8**

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

#### **Principle 9**

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

### **Section III. Principles Relating to Protection During Displacement**

#### **Principle 10**

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;

- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

**Principle 11**

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

- (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
- (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
- (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

**Principle 12**

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.

3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.

4. In no case shall internally displaced persons be taken hostage.

**Principle 13**

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.

2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances

**Principle 14**

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.

2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

**Principle 15**

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

**Principle 16**

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.

2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent

their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.

4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

#### **Principle 17**

1. Every human being has the right to respect of his or her family life.

2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.

3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

#### **Principle 18**

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) Basic shelter and housing;
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

**Principle 19**

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

**Principle 20**

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

**Principle 21**

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

- (a) Pillage;
- (b) Direct or indiscriminate attacks or other acts of violence;
- (c) Being used to shield military operations or objectives
- (d) Being made the object of reprisal; and
- (e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

#### **Principle 22**

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

#### **Principle 23**

1. Every human being has the right to education.

2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.

4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

#### **Section IV. Principles Relating to Humanitarian Assistance**

##### **Principle 24**

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

##### **Principle 25**

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

##### **Principle 26**

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

### **Principle 27**

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

## **Section V. Principles Relating to Return, Resettlement and Reintegration**

### **Principle 28**

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

### **Principle 29**

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of

such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

### **Principle 30**

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration

## **THIRD SCHEDULE (s.13(6))**

### **CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE**

1. (1) The members of the Committee referred to in section 7 (3) (h) and (i) shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for one further term.

Tenure of office.

(2) No person shall be eligible to be appointed as a members of the Committee under section 7 (3) (h) and (i) of the Act if such person—

- (a) does not fulfill the requirements of integrity set out in chapter six of the Constitution;
- (b) is an undischarged bankrupt;
- (c) is a person who, in Kenya or elsewhere, has been sentenced to imprisonment without the option of a fine and who has not received a pardon therefor.

(3) Any such person who knowingly acts or sits as a member of the Committee thereof whilst so disqualified commits an offence and liable to a fine not exceeding one hundred thousand shillings.

2. (1) A member of the Committee other than an ex-officio member may—

Vacation of office.

- (a) at any time resign from office by notice in writing to the President in the case of the Chairperson and to the Cabinet Secretary in the case of a member;

- (b) be removed from office by the Cabinet Secretary on recommendation of the Committee if the member—
  - (i) commits a serious violation of this Constitution or any other law, including a contravention of Chapter Six;
  - (ii) has been absent from three consecutive meetings of the Committee without its permission;
  - (iii) is convicted of a criminal offence that amounts to a felony under the Laws of Kenya;
  - (iv) is incapacitated by prolonged physical or mental illness for a period exceeding six months; or
  - (v) is otherwise unable or unfit to discharge his functions.

3. (1) The Committee shall meet not less than six Meetings. times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least a third of all the members shall, convene a special meeting of the Committee at any time for the transaction of the business of the Committee.

(3) Unless three quarters of the total members of the Committee otherwise agree, at least fourteen days' written notice of every meeting of the Committee shall be given to every member of the Committee.

(4) The quorum for the conduct of the business of the Committee shall be half of the total members including the Chairperson or the person presiding.

(5) The Chairperson shall preside at every meeting of the Committee but the members present shall elect one of their number to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Committee shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Committee shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Committee may determine its own procedure and the procedure for any committee of the Committee and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

4. The Government Department for the time being responsible for matters relating to internal displacement Secretary shall be responsible for—

Secretariat.

- (a) providing administrative support to the Committee;
- (b) the custody and keeping of the minutes of the proceedings of the Committee and all other records of the Committee;
- (c) such other functions as may be assigned by the Cabinet Secretary and the Committee.

5. (1) The Committee may establish—

Sub committees.

- (a) such subcommittees at the national level; and
- (b) such subcommittees at the county level as it may deem appropriate to perform such functions and responsibilities as it may determine;

(2) The composition of the county sub-committees shall, to the extent possible, reflect that of the Committee.

(3) The Committee shall appoint the chairperson of a subcommittee established under subparagraph (1) from amongst its members.

(4) The Committee may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

6. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the

Disclosure of interest.

commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Committee who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

## MEMORANDUM OF OBJECTS AND REASONS

The Object and purpose of this Bill is to—

- (a) provide for the protection and assistance to internally displaced persons and
- (b) give effect to the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons and the United Nations Guiding Principles on Internal Displacement.

The Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons entered into force on June 21, 2008, following ratification by eight member states, including Kenya. Under article 2(6) of the Constitution, any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution. The Bill seeks to fulfill the specific aspects of Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons that required action through domestic legislation.

**Part I** provides for preliminary matters

Clause 1 provides for commencement of the of the Act within ninety days from the date of publication so as to give room for addressing transitional issues and also allow for administrative action to prepare for the full operationalization of the Act.

**Clause 2** provides for the interpretation of the Act. The definition of internally displaced persons has been enlarged from that of the Protocol to include persons displaced by large scale development projects.

**Part II** provides for the general principles of protection and assistance.

**Clause 3** gives legal effect to and allows for administrative application by all persons including the Government of the general principles of protection and assistance to internally displaced persons as enshrined in the Protocol and in the United Nations Guiding Principles on Internal Displacement which are incorporated into the Protocol by in Article 1(3) of the Protocol. The application of the general principles is made subject to the Constitution, the proposed Act and all other written laws so as to avoid conflict with the Constitution or other written law.

**Clause 4** provides for rights-based response to internal displacement and imposes an obligation on every person, including public bodies, State officers, public officers and private bodies or individuals involved in the protection and assistance to internally displaced persons in the Kenya to act in accordance with the Protocol and the Guiding Principles

**Clause 5** provides for prevention of displacement by the Government and other non state actors while Clause 6 provides for protection from displacement by the Government.

**Clause 7** imposes on the Government the obligation to prepare and mitigate internal displacement emergencies.

**Clause 8** provides for assistance and protection while Clause 9 provides for durable solutions.

**Clause 10** provides for obligations imposed by Protocol or Guiding Principles.

**Part III** provides for the administration of the Act.

**Clause 11** vests on the Government the primary duty and responsibility for the protection and assistance of internally displaced persons throughout the Republic;

**Clause 12** establishes the National Consultative Coordination Committee on Internally Displaced Persons along the lines proposed in the draft policy on internal displacement. The composition of the Committee is multi-sectoral consisting of both State and inter-state actors so as to facilitate a consultative process as envisaged in the policy. The composition of the State agencies is modeled along the lines of the composition of the committee currently administering the Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of Post-2007 Election Violence. The status of the committee is Ministerial so as to allow the responsible Minister to be fully in charge of ensuring the fulfillment of the object of the Act.

**Clause 13** outlines the functions of the Committee.

**Clause 14** establishes the Protection and Assistance to Internally Displaced Persons Fund as envisaged in the draft Policy. The Fund is the successor to the Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of Post-2007 Election Violence established by regulation 3 of the Government Financial Management (Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of Post-2007 Election Violence) Regulations, 2008.

**Clause 15** outlines the uses of the Fund.

**Clause 16** deals with the administration of the Fund. The Committee is given an overall role in the administration of the Fund so as to allow a consultative process as proposed in the draft policy.

**Part IV** provides for education and public awareness.

**Clause 17** deals with information, education and communication by national government.

**Clause 18** requires education on the causes, effects, means of prevention, protection and assistance to internally displaced persons to form part of the education syllabus.

**Clause 19** provides for dissemination of education on the causes, effects, and means of prevention, protection and assistance to internally displaced persons by county governments.

**Clause 20** provides for dissemination of education on the causes, effects, and means of prevention, protection and assistance to internally displaced persons by in cities and urban areas.

**Part IV** contains provisions relating to development and displacement.

**Clause 21** provides for the conditions and standards for displacement induced by development projects

**Clause 22** provides for the procedure for displacement in respect of large scale development projects

**Part IV** provides for miscellaneous matters

**Clause 23** provides for offences relating to internal displacement

**Clause 24** provides for the ruling making authority

The enactment of this Bill shall not occasion additional expenditure of public funds

Dated the 21st February, 2012.

EKWEE ETHURO,  
*Member of Parliament.*