

## **Policy Brief**

# **Articulating the socio-economic impacts of development and reforestation-induced displacements in Kenya**

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### **Summary**

Kenya has in the recent past witnessed an increase in the number of people displaced due to development and reforestation. The cases for Embobut forest, Mau forest and Kibera slums evictions are the latest of such displacements with great human displacement impacts. While in most of these instances it was within the mandate of the Government of Kenya to carry out the displacements on public needs grounds, the displacements were carried out in a manner that violated the socio-economic rights of the affected people. Thus, the Government of Kenya while conducting the forceful evictions acted contrary to the law and regulations. Notably, the forceful displacements resulted in homelessness, greater poverty, social exclusion and discrimination.

Noteworthy, national, regional and international law requires Kenya to take into account the human rights of the affected people, and to carry out evictions only in instances where

there are no other feasible alternatives to the displacement. This brief draws from existing literature in order to point out instances where the government has breached the socio-economic rights of persons displaced for development projects and reforestation. It highlights the relevant legal requirements in order to assess their adequacies or lack of it in addressing the processes and impacts of displacements for development and reforestation. This brief concludes with recommendations on the proposed ways for mitigating such resulting socio-economic impacts.

## **1 Introduction**

Kenya, like most countries in sub-Saharan Africa, has in the recent past witnessed an increase in the number of people displaced for development projects and reforestation purposes. While the government could justify the displacements on public need grounds, the displacements have resulted in loss of homes, sources of income, work, education, health, water and property. Most of the forced evictions have been carried out against poor and low-income earners in ways that are contrary to both national and international obligations. The cases for Mau forest, Embobut forest and Kibera slums evictions are some of the latest evictions that have been carried out unlawfully in Kenya and have resulted in the displacements of thousands of people.

## **2 Case summary on socio-economic impacts of development and reforestation-induced displacements**

There is a correlation between forced evictions and reduction in socio-economic development (Internal Displacement Monitoring Centre 2018). The world estimates of displacements by development project stand at over fifteen million people globally (Aboda et al 2019, 100-110). Such development projects includes the construction of roads, dams, and railway lines, highways and electricity plants. Displacements have also been attributed to reforestation. As a result of these displacements, the affected communities suffer from landlessness, homelessness, food insecurity and joblessness (Aboda et al 2019, 100-110). To highlight the socio-economic impacts of displacements caused by development projects and reforestation in Kenya, this section briefly discusses the forced evictions in Mau forest, Embobut forest and Kibera slums.

The Mau forest evictions were carried out for purposes of preserving the environment. According to Human Rights Watch, the Government of Kenya used excessive force in

forcefully evicting local communities in the Mau forest (Human Rights Watch 2019). This position has been reiterated by other human rights organisations and human rights activists. While the government's contention that Mau forest evictions were necessary in order to conserve the ecosystem by preventing further encroachment into the forest and deforestation was justifiable, the evictions were done in a manner that failed to preserve the development rights of the Mau people. Police officers who had been deployed by the government tortured people, destroyed crops and homes and killed several adults and babies (Human Rights Watch 2019). Cases of sexual harassment, intimidation and theft of property by the police were also reported. As a result, thousands of people were displaced from their homes.

Due to frustrations from the forceful evictions in Mau forest, some of the affected people committed suicide (Human Rights Watch 2019). Some of the families were separated in the process. A majority of the affected families had been residing in the forest for several years and therefore did not have alternative plans for resettlement (UN Office of the Human Rights Office for Human Rights 2018). Land titles, though legally acquired, were cancelled without giving the affected people adequate compensation as is required by law (Human Rights Watch 2019). None of the affected people was given an opportunity to salvage their properties. Most of them were forced to set up temporary structures on the edge of the forests in order to provide homes for their families since they had no other resettlement plans. These, the government also followed to destroy (UN Office of the Human Rights Office for Human Rights 2018). The affected populations were therefore left homeless.

The Ogiek community were affected as a result of the Mau forest evictions. Though the forest is rightfully their home, some have been forcefully evicted while others are constantly threatened with forced evictions by the government. The latest threat was in July 2020 (Slow Food 2020). Such evictions are carried out forcefully and without prior notice. As a result, the social, economic and cultural rights of the Ogiek has been continuously derogated from. Their rights to culture and ancestral home has been interfered with despite the African Court on Human and Peoples Rights' decision calling for their protection (*African Commission on Human and Peoples' Rights v The Republic of Kenya* 2017).

The Embobut forest evictions like the Mau forest evictions were forceful and no prior notice was given to the affected people. The evictions were carried out for purposes of conserving the forest and to specifically set up a conservation programme referred to as “Water Towers Protection and Climate Change Mitigation and Adaptation Programme” under the funding of the European Union. The latest forced evictions were carried out in July 2020 (Amnesty International 2020). Homes belonging to the Sengwer indigenous peoples were burnt down by the Kenya Forest Service. It is estimated that since 2009 when the forceful evictions began over 2000 homes belonging to the Sengwer people have been burnt down by the Kenya Forest Service (Amnesty International 2018). Public institutions such as schools and churches were also burnt down (Pablo 2019). There were also killings of several people during past evictions. Women were verbally, physically and sexually abused. In all the evictions, the free prior and informed consent of the local community was not obtained and no resettlement plans were provided by the government.

In 2018, the Government of Kenya forcefully evicted residents of Kibera slums for purposes of constructing a road. As a result, more than 30,000 people were forcefully evicted and more than 2000 children left without schooling (UN Office of the Human Rights Office for Human Rights 2018). During the evictions, schools and homes were destroyed. While the evictions might have been necessary for purposes of constructing a public road, the forceful evictions were done without giving the affected people adequate notice (a two weeks’ notice was given to them), compensation, resettlement plans and without considering any other feasible alternatives. Clearly, the free, prior and informed consent of the affected people as required by national and international laws was not obtained. As a result of the forced evictions, the affected peoples’ right to food, housing, education, work and sources of income, health and water were affected (UN Office of the Human Rights Office for Human Rights 2018).

### **3 Legal requirements for the protection of socio-economic rights on displacements by development projects or reforestation**

The Constitution calls on the government to only deprive Kenyans of their right to land for public purposes and upon prompt payment in full of just compensation. Such compensation is given also to persons who do not hold title to land (The Constitution of Kenya 2010, art 40(3) & (4)).<sup>1</sup> Kenya also has in place the Evictions and Resettlement

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<sup>1</sup> The Constitution of Kenya, 2010, Article 40(3) & (4).

Guidelines (the Guidelines) (Kenya Ministry of Lands 2009)<sup>2</sup> which sets out the terms for evicting people. The Guidelines require that at least three months' notice be given via a gazette and served on each of the affected people either personally or at a place that can be accessed easily by all of the affected people (Kenya Ministry of Lands 2009). The Guidelines further calls on the government to adequately consult with the affected communities before any forceful evictions are done. While so doing, there is need to reach a settlement on the amount of compensation to be given and plan for resettlement. While evicting, the government failed to take into account the marginalised and vulnerable group as is called to do by regional and international laws. The Guidelines notes that forceful evictions result in homelessness, greater poverty, social exclusion and discrimination (Kenya Ministry of Lands 2009, para 1.1). This is proof of the development challenges faced by persons who are forcefully evicted. The Guidelines further require that persons, regardless of whether or not they have titles to land, should not be forcefully evicted. Thus, evictions without adequate compensation and alternative housing pose a development challenge to the affected communities.

The 2012 Kenya Prevention, Protection and Assistance of Internally Displaced Persons and Affected Communities Act (Kenya IDP Act 2012, 2012) calls on the government to prevent displacements caused by development projects (Kenya IDP Act 2012, sec 5(2)). Where it is necessary to so displace, the development project should be necessary for compelling and overriding public interest (Kenya IDP Act 2012, sec 6(3)). The Act expressly calls on the government to refrain from displacements due to development projects and reforestation. Where necessary, the displacements ought to be carried out in accordance with the law, for a compelling and overriding public interest and where there are no feasible alternatives (Kenya IDP Act 2012, sec 21(1) & (2)).

At the regional level, the Great Lakes Protocol on Protection and Assistance to Internally Displaced Persons (Kenya IDP Act 2012, schedule 2) calls on the Kenyan Government to only displace people due to development projects where there is a compelling public interest and where there are no feasible alternatives. They are asked to further prevent arbitrary displacements that may cause adverse effects to the affected people. The free prior and informed consent has to be obtained prior to the displacements. While so doing, the full reasons and information for displacement ought to be provided. The displaced

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<sup>2</sup> Kenya Ministry of Lands, 'Evictions and Resettlement Guidelines' (2009), available at [https://urbanlex.unhabitat.org/sites/default/files/urbanlex/eviction\\_guidelines\\_final\\_july\\_2010\\_revised\\_sep\\_2010.pdf](https://urbanlex.unhabitat.org/sites/default/files/urbanlex/eviction_guidelines_final_july_2010_revised_sep_2010.pdf).

person ought to also be provided with site for relocation. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention 2009, art 5) calls on the government to carry out the socio-economic and environmental impacts assessment prior to displacing people due to a development project (Kampala Convention 2009, art 10(3)). The Pact on Peace, Stability and Development in the Great Lakes Region (Great Lakes Pact 2006) calls on the government to provide special protection to internally displaced persons and to allow them to recover their properties (Great Lakes Pact 2006, arts 12 & 13(a)).

At the international level, the United Nations Guiding Principles on Internal Displacement of 1998 (UN Guiding Principles 1998, principle 5) prohibits displacements by development projects that are not justified by a compelling and overriding public interest (UN Guiding Principles, principle 6(2)(c)). The free prior and informed consent of the affected people ought to obtain and particularly, involve women in the relocation process, provide an effective remedy to the affected people and provide them with adequate information on their displacement (UN Guiding Principles 1998, principle 7(3)). The displacements should not also infringe on the rights of the affected people. The 2011 UN Guiding Principles on Business and Human Rights also protects human rights resulting from business related evictions. The 2015 United Nations Sustainable Development Goals<sup>3</sup> and the African Union Agenda 2063 (African Union 2013) requires the Kenyan Government to reduce extreme poverty and to actively involve its citizens in decisions affecting their development. The government ought to also be caring and people-centred. Thus, there are adequate laws and guidelines for mitigating the socio-economic impacts of development and reforestation-induced displacements in Kenya.

## **4 Conclusion and Recommendations**

This brief highlights that the socio-economic impacts of development and reforestation displacements are due to failure to create awareness, properly consult with the affected communities, inadequate notices and insufficient compensation and lack of alternative resettlement plans for the affected people. It is therefore necessary to obtain the social license of the local communities prior to carrying out any evictions. The human rights of the affected communities ought to be protected. The government ought to carry out the displacements in a humane and people centred manner. This necessitates an

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<sup>3</sup> United Nations Sustainable Development Goals (2015).

understanding the impacts of development and reforestation-induced displacements prior to carrying out the displacements. In Kenya there are adequate measures put in place to see to it that displacements are conducted in ways that protect the social, economic and environmental rights of the affected people. The challenge remains in the enforcement or implementation of the measures. This brief recommends the following to Kenya:

- The first step towards mitigating the economic impacts of such displacements is therefore compliance with all the existing relevant laws by all stakeholders and particularly, the police and Kenya Forest Services who in most instances oversee the evictions. Compliance with national, regional and international law is paramount in mitigating the socio-economic effects of development and reforestation-induced displacements. The government ought to implement the order of the African Court on Human and Peoples Rights on the *Ogiek* case. This would then set a precedent for compliance in other cases.
- Importantly, the Government ought to introduce stringent measures for authorities overseeing evictions, such as the police. This is because, and as has been discussed in this brief, they are responsible for using excessive force and derogating on the affected peoples' rights. Prosecuting them for the crimes committed during the evictions would for example ensure that they acted responsibly. The government should also see to it that any court orders issued relating to forceful evictions are strictly applied and adhered to.

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