

Migration and Displacement Policy Brief

Development-induced Displacement in Kenyan Cities: Recommendations to Prevent and Mitigate the Negative Impact of Forced Evictions

Findings of the HBS Urban Displacement Conference, Nairobi, 28 August 2023
By **Fabian Oribi**



Background

Development-induced displacement (DiD) is a worldwide phenomenon that has severely negative impacts on individuals' and communities' rights to adequate housing, livelihoods, and basic services; women suffer many of its harshest consequences. During the 1980s and 1990s, a minimum of 10 million people were evicted annually due to large-scale development projects. This number increased to an estimated 15 million individuals per year in the subsequent decade of the 2000s (Farha, 2011). DiD/forced evictions are often justified as serving the 'public interest'. The harsh reality is that actions such as the 2008 Beijing evictions, which forcibly displaced a minimum of 300,000 people for the Summer Olympics, and the 2004 New Delhi and Calcutta evictions, which impacted at least 227,000 individuals, have severely detrimental consequences for those who are displaced (Du Plessis, 2005).

Whereas DiD is a global phenomenon, its stinging effects are felt most acutely in the Global South, where adequate government assistance and/or re-settlement for affectees are rarely a priority. Africa is no exception. In Nigeria's Rivers state, the Rainbow Town evictions in 2000 displaced over 1.2 million people in the coastal city of Port Harcourt. The authorities claimed the destruction was necessary for urban renewal (UN-Habitat, 2007). Similarly, the Badia Community evictions in February 2013, part of the Lagos Metropolitan Development and Governance Project, displaced over 9000, disrupting homes and livelihoods (Amnesty International, 2013). A dossier by the Heinrich Böll Foundation's African Migration Hub details this recurring phenomenon in Thies, Dakar, Lagos, and Nairobi. (HBS, 2023).



During the 1980s and 1990s, a minimum of 10 million people were evicted annually due to large-scale development projects. This number increased to an estimated 15 million individuals per year in the subsequent decade of the 2000s

(Farha, 2011)

The Centre on Housing Rights and Evictions (COHRE) reports that poor and vulnerable communities are the worst affected by DiD and that realising urban plans is the prevalent cause of evictions (COHRE 2003). For instance, in 2004, 2,000 residents of Raila Village in Kibera Slums were evicted on the grounds of expanding the Southern Bypass road which passed through their village. No eviction notice was issued, and neither was there any prior consultation with the affected people. A fact-finding mission by COHRE discovered that the rights of the poor and disadvantaged in the 2004 evictions were not protected as no alternative housing was provided to evictees; nor was post-eviction support provided (COHRE, 2006).

In 2011, Kenya witnessed massive evictions affecting over 3000 Mitumba Village households in a venture to expand Wilson Airport in Nairobi. Despite the Mitumba Village obtaining a conservatory order to stop the intended evictions, Kenya Airports Authority, a government agency, defied the High Court's order and proceeded with plans to expel 15,000 dwellers from their homes. This case was litigated from the High Court to the Supreme Court of the Republic of Kenya for ten years, from 2011 to 2021 (Mitu-Bell..., Supreme Court petition 3 of 2018). Even though the Supreme Court held that the U.N Guidelines on Evictions, published by the UN's Committee on Economic, Social and Cultural Rights (CESCR 1997) were not binding to member states, it affirmed that the eviction of 15,000 dwellers at the Mitumba Village was in flagrant disregard of the law and court orders, and that it undermined the constitutional order in the republic of Kenya.

The threat of possible future evictions still looms in Kenya. Not least in cities. It is estimated that by 2030, more than half of the population in Kenya will be urbanised, with a risk that three-quarters of the population will reside in informal settlements. In light of this, it becomes imperative for duty-bearers to enhance accountability in shaping incidental policies and balancing development-related goals with human rights in the purview of the rule of law (Aoko, 2023).

Displacement, urban governance, and migration in the context of climate change

In Kenya, the design and implementation of urban development plans in cities like Nairobi and Mombasa reveal a systemic pattern of dispossession and disruption to the lives of low-income city dwellers (Otiso, 2003). According to Annette Mbogoh of Kituo Cha Sheria, this pattern is evident in cases the organisation she leads has prosecuted in the cities of Nairobi and Mombasa. For instance, in 2010, Kituo Cha Sheria filed a petition on behalf of over 300 Muthurwa residents on the enforcement of the right to housing and protection from forced evictions. The court found that residents' rights to accessible and adequate housing had been violated by the Registered Trustees of Kenya Railways Staff Retirement Benefits Scheme, which had attempted to violently and illegally evict the residents. They had ordered the residents to vacate the premises without any regard for their lack of alternative housing (Mbogoh, 2023).

In addressing these injustices and disruptions to the lives of low-income city dwellers, experts hold that there ought to be participatory planning in the execution of urban development projects in Kenyan cities in order to avert various injustices. According to Samuel Olando of Pamoja Trust, these injustices are often occasioned by late involvement of stakeholders and civil society in the life cycle of infrastructure development. For participatory urban planning to be achieved, the concerns of those affected must be considered early on in the project conception stage (Olando, 2023). On

a related note, Faith Alubbe of Kenya Land Alliance asserts that public agencies have a duty to initiate processes of engaging the public where urban displacement and evictions are concerned. At the same time, private entities should not be overlooked; executing participatory urban planning involves collaboration between public and private agencies for the benefit of the public (Alubbe, 2023). The role of the private sector can of course be a contentious matter for stakeholding communities, with some justification (Asuwa, 2023). Private actors and interests cannot be privileged in such problem-solving collaborations, which must be structured in such a way as to ensure prioritization of the concerns of stakeholding communities and society at large.



In Kenya, the design and implementation of urban development plans in cities like Nairobi and Mombasa reveal a systemic pattern of dispossession and disruption to the lives of low-income city dwellers

(Otiso, 2003)



Participatory urban planning is integral to institutionalizing resilient urban development in the face of threat multipliers like climate change, which compound the problem of urban displacement by exacerbating the vulnerability of populations most likely to be affected by DiD/forced evictions: the urban poor, minorities, and other marginalized groups (Orago, 2023). In addition to boosting the resilience and adaptive capacities of these groups in respect of all forms of displacement, a cohesive, whole-of-government approach will be required - one that, for instance, integrates disaster risk reduction and climate change adaptation into single approach to urban development policies, planning and implementation (Ibid).

The migration aspect of urban displacement and forced evictions in Kenyan cities has barely been explored. According to Victor Nyamori, a migration and refugee researcher with Amnesty International, analysis of the 2012 [Anuak "villagisation"](#) program in Gambella, Ethiopia, provides evidence that forced evictions can be intimately related to large-scale IDP situations and even the development of refugee scenarios where cross-border movement is witnessed. (Nyamori, 2023; Horne, 2012) As such, it could be argued there are lacuna in law and policy linking urban displacement to mobility and migration issues. This points to a need for urgent research into the nature and complexity of these links. Amidst the realities of an increasingly urbanised refugee population in Kenya, the potential for migration agencies like the IOM and UNHCR to play a greater role in addressing the consequences of DiD/forced evictions should be considered. (This point is developed below).

Prevention, mitigation, adaptation: The three approaches to reshaping displacement policy

Shaping people-centred policies in addressing urban displacement in Kenyan cities requires an expansive and multidimensional approach which appreciates the need to address complex and overlapping problems in a way that reconciles competing interests.

Policy solutions can be viewed through three primary lenses of (i) prevention; (ii) mitigation; and (iii) adaptation.

(i) Prevention

Prevention invites the responsible execution of obligations bestowed upon duty-bearers to ensure that the whole process of designing infrastructural development is subjected to public scrutiny and openness as mandated by principles of good governance codified in laws and the Constitution of Kenya, 2010. As such, if legal standards and procedures are strictly followed, DiD and other associated forms of evictions will be prevented in Kenyan cities. Court injunctions to prevent intended evictions are one way of enhancing prevention. Kenyan judges in the past have suggested ways in which evictions should be handled. Justice Angote is of the opinion that “there is need to amend the law and provide that an eviction notice should be issued only after the court has granted an order. This requirement forestalls a situation where people might be evicted on the pretext that they were served with notices.” (Angote, 2018).

Building on the legal and constitutional doctrines of good governance and openness, the current effort in Kenya to construct affordable housing highlights the need to address issues related to slum dwellers’ land tenure rights. Currently, Kenya is collecting an [affordable housing levy](#) from all employed people with a view to eradicating slums like Kibera Informal Settlement through construction of affordable houses (Kinyanjui 2023). Prior to implementing such initiatives, it is imperative that the Kenyan Government addresses the land tenure question by ensuring that current dwellers of slums like Kibera are the actual owners of the land on which they are currently residing. By doing so, they ensure that in cases where slum dwellers are temporarily relocated during construction they have the right to return to their land once houses are constructed. Institutions like UN-Habitat have often called on the government to establish land tenure rights before embarking on slum upgrading and housing projects (UN-Habitat, 2016) precisely to prevent the risk of such schemes resulting in displacement and dispossession. Failure to establish these rights poses a serious danger of land grabbing, and can easily result in the

permanent displacement of dwellers in slums like Kibera (COHRE 2006)

Taking prevention measures like determining land tenure rights and owners places a responsibility on duty-bearers to assess the impact of such development in light of public good justifications, and address any negative fall out on directly affected populations, to whom there must be substantial reparation, including that which addresses the socio-economic dimensions of their lives. This brings us to mitigation.

(ii) Mitigation

Mitigation measures reluctantly accept the realities of gentrification in Kenyan cities, but seek to attenuate their worst impacts.

In *Satrose Ayuma & 11 others v Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 3 others (Petition 65 of 2010)*, the High Court decried the widespread practices of forced evictions without consultation, compensation or adequate resettlement particularly in Nairobi, indicating a disconnect between law and practice. (Mitigation would be served by implementing existing laws).

Mitigation measures should be directed towards alleviating or reducing the negative impacts of DiD. Some of these measures are sanctioned under the constitution. The UN Basic Principles and Guidelines on Development based Eviction and Displacement (UN 2007) have been affirmed by the courts.

Compensation/reparation is a crucial mitigation imperative. Article 40(3)(b) of the Constitution of Kenya (2010) obligates the state to the ‘prompt payment in full of just compensation’ to any person deprived of their land compulsorily. In *Petition 65 of 2010* the court underscored that compensation to DiD evictees is a constitutional right. Compensation addresses among other things, the issue of loss of livelihoods. It is important for duty bearers to ensure that evictees have access to social services such as food, water and sanitation, basic shelter and education as immediate reliefs. Psychosocial support such as counselling should be prioritized as a coping mechanism.

On resettlement/relocation, the UN Basic Principles and Guidelines on Development based Eviction and Displacement (UN 2007, Para 56) recommends that states should develop a resettlement policy consistent with adequate housing requirements. Domesticating these global recommendations and guidelines at the urban scale should be a priority, so that for example, relocation as a mitigation measure for DiD evictees is to a place of equal or better quality, in accordance with international standards.

(iii) Adaptation

Adaptation approaches to urban displacement consist of building resilience and exploring options available to communities already affected by urban displacement in various forms, like forced evictions. Here it is worth underlining once more the fact that in urban settings, communities experiencing negative effects of climate change and other environmental hazards are also those most likely to be displaced by evictions. Therefore, adaptation measures for climate change, such as capacity building with grassroots community-based organisations in informal settlements to address the effects of urban flooding, can be piggy-backed upon as a means of building more general resilience to different forms of displacement (including DiD/forced evictions). Solutions with multiple benefits for economic, social, and environmental sustainability should be explored.

Support for these adaptive strategies, it should go without saying, can never be used to normalize DiD/forced evictions, or portray them as inevitable. Nonetheless, it is important to make strategic use of the growing resources directed towards climate-related adaptation and align such efforts with support for communities affected by DiD.

Mechanisms, levels, forums of policymaking: Recommendations

The Kenyan context necessitates a multi-sectoral, multi-level approach which integrates duty bearers' roles in the local, national, and international realms. In appreciation of this need, the present brief recommends the following measures in Kenya:

Firstly, at the national and local level: there is an urgent need for all governments, government officials and public duty-bearers to adhere to laid down laws and ratified international law provisions. For instance, section 21 of the [Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act of 2012](#) mandates that development-related displacement ought to occur only in exceptional circumstances and that in the likelihood of it taking place, the law must handle such a situation with compensation, mitigation, and assistance. Adherence to this law by state agencies would have prevented the lengthy court battle witnessed in the Mitubell case.

Secondly, public duty-bearers must ensure horizontal coordination between national government agencies and vertical coordination between national and county governments. Where DiD is concerned, it may well be the case that local government should play a leading role in engaging and preparing communities affected by urban displacement in post-eviction care, prior consultation and engagement, and availing social amenities like shelter, hospitals, and schools. For instance, the Nairobi County Government may be better placed to coordinate a people-centred participatory process than agencies linked to the Ministry of Interior which are more likely to resort to force and instil fear in driving their agenda. Smooth coordination enables the harnessing of participatory planning with the population and the pooling of resources to help affected communities as dictated by the law. The seamless participation of county governments allows for their capacity to be enhanced in areas of legal compliance with international, regional, and domestic laws that prevent DiD. In addition, the implementation of international guidelines such as the UN Basic Principles and Guidelines on Development based Eviction and Displacement (UN 2007) necessitates the participation of both the national and county governments in domestication. Therefore, it is imperative that Kenya adopts the guidelines as both a statute under the National Assembly and as county legislation under Kenya's 47 County Assemblies to ensure the desired coordination.

Thirdly, in the execution of mandates by government agencies, the effects of urban displacement should be addressed by a specialised mobility segment which enables a broad scope for the involvement of agencies like IOM and UNHCR in directing remedies and reparations to urban displacement. Current policy practice is undermined by the refusal to consider urban displacement as a migration issue. Entities like UNHCR and IOM have often drawn the line at forced evictions in their work. This needs to change. At the international level, bodies like UNHCR should expand the scope of its work on IDPs to include various kinds of urban displacement scenarios. The needed action should be inclusionary, as already stated in the law governing the IDP situation in Kenya. The current policy practice should also investigate the correlation between urban displacement and the refugee crisis, as evidenced by the Anuak 'villagisation' situation.

Finally, it is necessary to establish a quasi-government agency that works at all scales with national and county governments as well as civil society and stakeholders. This organization should be tasked with providing assessment reports on anticipated urban developments with the goal of preventing and deflecting the anticipated negative effects on populations. It cannot be emphasized enough that its function must not be to legitimize forced evictions as a respectable practice or policy option. Rather, in the event of any kind of urban displacement, this organization must provide social and economic assistance to affected communities. Its budget should consist of both public and private contributions.

References

- Amnesty International (2013) "Nigeria: If you love your life, move out! Forced eviction in Badia East, Lagos State, Nigeria" Retrieved 1.12.2023 from, <https://www.amnesty.org/en/documents/afr44/006/2013/en/>
- Angote, O. (2018) Evictions in Kenya: Which way under The New Constitution and The Land Laws (Amendment) Act 2016? *Journal of Conflict Management and Sustainable Development* 2(2) pp 58-85.
- CESCR (1997) General Comment 7. The right to adequate housing (Art.11.1): forced evictions. Retrieved 1.12.2023, from <https://www.escr-net.org/resources/general-comment-7>
- COHRE (2003) Forced Evictions Global Survey No. 9 of 2003 by The Centre on Housing Rights and Evictions. Retrieved 1.12.2023 from https://issuu.com/cohre/docs/sur_9
- COHRE (2006) Mission Report, Housing Rights Nairobi, Kenya. Retrieved 30.11.2023, https://issuu.com/cohre/docs/cohre_missionreport_housingrights_n_9c1a59a3f2a469
- Du Plessis, J. (2005) The growing problem of forced evictions and the crucial importance of community-based, locally appropriate alternatives *Environment and Urbanization* 17(1): 123–134
- Farha, L. (2011) Forced evictions: Global crisis, Global solutions. UN-HABITAT. Retrieved 1.12.2023, from <https://unhabitat.org/sites/default/files/download-manager-files/Forced%20Evictions%20%2C%20Global%20Crisis%20%2C%20Global%20Solutions.pdf>
- HBS (2023) Urban Displacement Dossier. Retrieved 30.11.2023, from: <https://hoa.boell.org/en/urban-displacement>
- Horne, F. (2012). "Waiting Here for Death". Human Rights Watch. Retrieved 1.12.2023, from <https://www.hrw.org/report/2012/01/17/waiting-here-death/forced-displacement-and-villagization-ethiopia-gambella>
- Mitu-Bell Welfare Society v. Kenya Airports Authority, SC Petition 3 of 2018.. Retrieved 24.12.2023, from <https://www.escr-net.org/caselaw/2021/mitu-bell-welfare-society-v-kenya-airports-authority-sc-petition-3-2018>
- Otiso, K M (2003) Forced Evictions in Kenyan Cities *Singapore Journal of Tropical Geography* 23(30): 252-267
- Kinyanjui, M (2023) "Ruto: In 10 years Kibera slum will have transformed to an estate" *Citizen Digital* 1.10.2023. Retrieved 4.10.2023, from <https://www.citizen.digital/news/ruto-in-10-years-kibera-slum-will-have-transformed-to-an-estate-n328463>
- UN-HABITAT (2007). Forced evictions-towards solutions? Second report of the advisory 19 group on forced evictions to the executive director of UN-HABITAT. United Nations Housing Rights Programme Nairobi, Kenya. Retrieved 1.12.2023, from <https://unhabitat.org/forced-evictions-towards-solutions-second-report-of-the-advisory-group-on-forced-evictions-to-the#:~:text=It%20contains%20follow%20Dup%20information,stop%20and%20prevent%20forced%20evictions.>
- UN-HABITAT (2016). UN-Habitat Support to Sustainable Urban Development in Kenya. Retrieved 1.12.2023, from https://unhabitat.org/sites/default/files/download-manager-files/UN-Habitat%20SSUDK_%20Report_Vol%204_final.LowRes.pdf
- UN (2007) Basic Principles and Guidelines on Development-Based Evictions and Displacement. ESCR-Net. Retrieved 1 December 2023, from <https://www.escr-net.org/resources/basic-principles-and-guidelines-development-based-evictions-and-displacement>

Urban Displacement Conference Presentations

- Alubbe, F. (2023) Round Table Discussion: Policy Recommendations on Development-induced-displacement in African Cities
- Aoko, L. (2023) Examining states' and other actors' role in urban infrastructural development: towards public accountability
- Asuwa, I. (2023) Researching Urban Displacement in Nairobi: What we learn from lived experience
- Mbogoh, A. (2023) Strategic litigation: preventing/mitigating forced evictions and D-i-D through the courts
- Nyamori, V. (2023) The nexus between forced evictions and other migration patterns and protections: is forced eviction a form of displacement under law?
- Olando, S. (2023) Development-induced displacement: Legal, policy, and political perspectives on drivers and impacts on the social fabric of communities
- Orago, N. (2023) The impact of Climate change on urban displacement and development: intersections and threat multiplications
- Schelchla, J. (2023) Displacement as a gross violation of the human right to adequate housing

Acknowledgements


Thanks to the speakers and participants who attended the Urban Displacement Conference convened by the Heinrich Böll Foundation's African Migration Hub on August 28th 2023 in Nairobi, several of whom provided comments on previous drafts of this brief:- Dr. Annette Mbogoh of Kituo Cha Sheria; Professor Nicholas Orago, Dean Maseno Law School; Samuel Olando of Pamoja Trust; Faith Alubbe of the Kenya Land Alliance; Victor Nyamori of Amnesty International; Leah Kanyangi of University of Cape Town; Professor Taibat Lawanson of University of Lagos; Joseph Schelchla of the HLRN; Yolande Hendler, Diana Wachira, and Desmond Chieshe of HIC; Irene Asuwa; Constant Cap; Damaris Opilu; Ali Nobil Ahmad and Linah Kinya of the Heinrich Böll Foundation, and all other delegates who were present.

Illustrations © Robert Kambo / Heinrich Böll Stiftung

HEINRICH BÖLL STIFTUNG HORN OF AFRICA

Heinrich Böll Stiftung - Horn of Africa Unit
P.O. Box 10799
Nairobi 00100
Kenya

<https://hoa.boell.org>

 <https://twitter.com/hbsHornOfAfrica>