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KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION - 2012

THE DEPARTMENTAL
COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON THE
INTERNALLY DISPLACED PERSONS BILL, 2012

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

OCTOBER 2012

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PREFACE

Mr. Speaker Sir,

- 1 On behalf of the Members of the Departmental Committee on Labour and Social Welfare, and pursuant to the provisions of Standing Order No. 101 A (4), it is my pleasure to present to the House the Report on the Internally Displaced Persons Bill, 2012 by the Hon. Ekwere Ethuro, Member of Parliament for Turkana Central.

- 2 Committee Membership comprises of the following: -
 - i. The Hon. Sophia Abdi Noor, M.P. – Chairperson
 - ii. The Hon. Lenny Kivuti, M.P. – Vice-Chairperson
 - iii. The Hon. Najib Balala, M.P.
 - iv. The Hon. Charles Keter, M.P.
 - v. The Hon. Elijah Lagat, M.P.
 - vi. The Hon. Joseph Magwanga, M.P.
 - vii. The Hon. Alfred Odhiambo, M.P.
 - viii. The Hon. Pollyns Ochieng, M.P.
 - ix. The Hon. Jackson K. Kiptanui, M.P.
 - x. The Hon. Charles Nyamai, M.P.
 - xi. The Hon. Clement Waibara, M.P.

- 3 The Departmental Committee on Labour and Social Welfare is one of the Departmental Committees established under Standing Order No. 198 whose functions are *inter alia*:-
 - i. investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;
 - ii. study the programme and policy objectives of the Ministries and Departments and the effectiveness of the implementation;
 - iii. **study and review all legislation after First Reading subject to the exemptions under Standing Order 101 A (4);**
 - iv. study and review all legislation referred to it;
 - v. study, assess and analyse the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
 - vi. investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
 - vii. make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

- 4 The Committee is mandated to consider the following issues; on Labour; Trade Union Relations; Manpower or Human Resource Planning; Gender; Culture and Social Welfare; Youth, Children's Welfare; National Heritage; Betting; Lotteries and Sports.
- 5 In executing its mandate, the Committee oversees the following Ministries and Commission:
 - i. Ministry of Labour
 - ii. Ministry of State for Youth Affairs and Sports
 - iii. Ministry of State for Special Programmes
 - iv. Ministry of Gender and Children Development
 - v. Ministry of State for National Heritage and Culture ; and
 - vi. National Gender and Equality Commission

Mr. Speaker, Sir,

- 6 The Internally Displaced Bill, 2012 was read a First Time on 13th June 2012 and was consequently referred to the Departmental Committee on Labour and Social Welfare in accordance with the provisions of Standing Order No. 111 of the National Assembly.

The Committee held several meetings with key stakeholders, where it received and considered oral and written submissions. The Committee also held a retreat with stakeholders on the Bill. The Stakeholders included;

- i. Ministry of State for Special Programmes
- ii. Hon. John Ekwee Ethuro, M.P. (Sponsor of the Bill)
- iii. Ministry of Foreign Affairs
- iv. Ministry of Justice, National Cohesion and Constitutional Affairs
- v. State Law Office
- vi. United Nations Refugee Agency (UNHCR)
- vii. International Organisation for Migration (IOM)
- viii. Refugee Consortium of Kenya (RCK)
- ix. Office of the United Nations Special Rapporteur on IDPs
- x. International Committee for the Red Cross
- xi. HelpAge International
- xii. Article 19
- xiii. IDP Network
- xiv. Internal Displacement Policy and Advocacy Centre

- xv. Danish Refugee Council
- xvi. Kenya Land Alliance
- xvii. Protection Working Group on Internal Displacement, Nakuru

Mr. Speaker,

7 The Object and purpose of the 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 the Internally Displaced Persons came 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 laws of Kenya under the Constitution. The Bill seeks to fulfill the specific aspects of the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons that required action through domestic legislation.

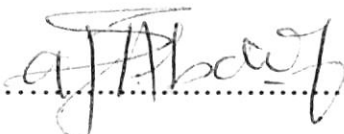
Mr. Speaker, Sir,

Acknowledgements

8 The Committee takes this early opportunity to thank the Office of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee is grateful to the Minister of State for Special Programmes for appearing before the Committee to discuss the Bill. The Committee wishes to thank all the stakeholders for their participation and meticulous scrutiny of the Bill during the Meetings with the Committee. Lastly, the Committee is grateful to the Hon. Ekwee Ethuro, MP and the Ad Hoc Select Committee on Internally Displaced Persons for initiating, drafting and publishing this very important Bill.

Mr. Speaker, Sir,

- 9 On behalf of the Committee, and pursuant to Standing Order 111 (2), it is my pleasant duty to table in the House the Report of the Departmental Committee on Labour and Social Welfare on the Internally Displaced Persons Bill, 2012.

Signed.......... Date 3rd October 2012

HON. SOPHIA ABDI NOOR, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON LABOUR AND
SOCIAL WELFARE

10 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

- i. **Clause 1**, there was need to ensure that once the Internally Displaced Persons Bill, 2012 was signed into an Act, the Act shall come into operation as soon as possible to assist in the protection and assistance of the Internally Displaced Persons (IDPs) who have suffered for too long as there was no guiding principle and procedure on how to resettle them. Members felt that ninety days proposed should therefore be reduced to fourteen.
- ii. **Clause 2**, There was need to adopt the definition of Non-State actors that is used in the draft National Policy on the Internally Displaced Persons. That is, “Non-State actor” meaning actors who are not attributable to the State and whose actions are generally not attributable to the state.
- iii. **Clause 6** was vague on prohibited situations of arbitrary displacement. There was therefore need to state the prohibited situations of arbitrary displacement as provided in Principle (6) (2) of the UN Guiding Principles on Internal Displacement.
- iv. **Clause 8**, the word “address” appearing immediately after the word “shall” was misplaced, and should thus be deleted.
- v. **Clause 8**, the word “disabled” was derogatory. Members therefore recommended that it should be substituted therefor with the word “persons with disabilities” which is widely acceptable.
- vi. **Clause 8**, in formulating programmes for assistance and protection, consultations with the Internally Displaced Persons are key. The Government should therefore ensure that consultations are undertaken.
- vii. **Clause 9**, there was need to ensure that the procedure for resettlement of Internally Displaced Persons and the standards applicable to such resettlement are prescribed to guide all state agencies at the national and county levels when assisting displaced persons find durable solutions.

In formulating the durable solutions under this section, the Government should ensure that consultations are made with the Internally Displaced Persons.

- viii. **Clause 10**, it would be difficult to ensure that Armed groups and similar non-state actors observe the provisions of the Protocol and the Guiding Principles and as provided for in this Bill. Clause 10(2) should thus be deleted.
- ix. **Clause 11**, in addition to the Government bearing the primary duty and responsibility provided in Clause 11(1) (a), the Government should also ensure adequate provision of the social economic rights specified in Article 43 of the Constitution.
- x. **Clause 12**, in the Membership of National Consultative Coordination Committee on Internally Displaced Persons, the Chairperson of the National Lands Commission is key because assistance of IDPs involves resettling them, including on alternative settlement sites and availability of suitable land for the same has been a major issue in the past.

The words “civil society” wherever they occur should be deleted and substituted therefor with the words “non State actors” in line with the amended definition of non State actors in Clause 2.

The proposed Committee is too large. In addition, it is unnecessary to co-opt additional membership either on permanent or ad hoc basis, as the Committee should be able to determine its own procedure, and for the attendance of other persons at its meetings as provided for in the Third Schedule.

The Accounting Officer should provide the secretariat to the Committee.

- xi. **Clause 13 (a)**, The word “civil society” wherever they occur should be deleted and substituted therefor with the words “non State actors” in line with the amended definition of non State actors in Clause 2.

- xii. **Clause 13**, ninety days period for conclusion of registration of IDPs on occurrence of displacement was too long, which gives room for false cases. The National Consultative Coordination Committee should ensure conclusion of such registration within the shortest time possible of occurrence of internal displacement. In this regard, the Committee felt that three days were adequate.

Clause 13(g), the Annual report by the National Consultative Coordination Committee should relate to the fulfillment of its functions. This is to ensure that the report is comprehensive and informative.

- xii. **Clause 15**, the word “civil society” wherever they occur should be deleted and substituted therefor with the words “non State actors” in line with the amended definition of non State actors in Clause 2.

- xiii. **New Clause 23A**, any person, who pretends to be an internally displaced person or presents himself in a manner likely to suggest that he/she is an IDP, whilst he/she is not, who provides false information during profiling of IDPs and who establishes a camp with IDPs should be severely punished to discourage such actions.

PROPOSED AMENDMENTS

CLAUSE 1

THAT clause 1 be amended by deleting the word “ninety” and substituting therefor the word “fourteen”

CLAUSE 2

THAT clause 2 of the Bill be amended by deleting the definition of “civil society” and substituting therefor the following new definition in proper alphabetical sequence-

“non State actor” means persons or organization who are not attributable to the State and whose actions are generally not attributable to the State

CLAUSE 6

THAT clause 6 be amended in sub clause (2) by inserting the words “in the manner specified under principle 6(2) of the Guiding Principles” immediately after the word “displacement”

CLAUSE 8

THAT clause 8 be amended-

(a) by deleting the word “address” appearing immediately after the word “shall”;

(b) by deleting the words “ the disabled” appearing immediately after the word “children” and substituting therefor the words “persons with disabilities”;

(c) by inserting a new sub clause immediately after sub clause (2)-

(3) In formulating programmes for assistance and protection under this section, the Government shall ensure that consultation is made with the internally displaced persons.

CLAUSE 9

THAT clause 9 be amended by inserting the following new sub clauses immediately after sub clause (2)-

(3) The procedure for resettlement of internally displaced persons and the standards applicable to such resettlement shall be as prescribed.

(4) In formulating the durable solutions under this section, the Government shall ensure that consultation is made with the internally displaced persons.

CLAUSE 10

THAT clause 10 be amended by deleting sub clause (2)

CLAUSE 11

THAT clause 11 be amended in sub clause (5) by inserting the following new paragraph immediately after paragraph (e)-

(f) ensure adequate provision of the social economic rights specified in article 43 of the Constitution.

CLAUSE 12

THAT clause 12 be amended-

(a) in sub clause (2) by deleting the word “incorporated” and substituting therefor the word “unincorporated”;

(b) in sub clause (3)-

(i) by inserting the following new paragraph immediately after paragraph (i)-

(ia) the chairperson of the National Lands Commission.

(ii) by deleting the words “civil society” appearing in paragraph (ii) and substituting therefor the words “non State actors”;

(iii) by deleting paragraphs (j) and (k) and substituting therefore the following new paragraph-

(j) two persons appointed by the cabinet Secretary to represent the non state actors and donor community

(c) by inserting the following new sub-clause immediately after sub clause (3)-

(3A) The Accounting Officer shall provide the secretariat to the Committee.

(d) by deleting sub clause (4)

CLAUSE 13

THAT clause 13 be amended-

(a) by deleting the words “civil society” wherever they occur and substituting therefor the words “non State actors”;

(b) in paragraph (d)-

(i) by deleting the full stop and the word “The” appearing immediately after the words “such persons” and substituting therefor the word “which”;

(ii) by deleting the word “90” appearing in subparagraph (i) and substituting therefor the word “three”.

(c) in paragraph (g) by inserting the words “relating to the fulfillment of its functions” immediately after the words “Annual Report”

CLAUSE 15

THAT clause 15 be amended by deleting the words “civil society” wherever they occur and substituting therefor the words “non State actors”;

NEW CLAUSE 23A

THAT the Bill be amended by inserting the following new clause immediately after clause 23-

23A. Any person who-

- (a) pretends to an internally displaced person or presents himself in a manner likely to suggest that he is an internally displaced person whilst he's is not such person: or
- (b) provides false information during the verification or profiling of internally displaced persons or;
- (c) establishes an institution or camp which consists of persons pretending to be internally displaced persons as contemplated in paragraph (a);

commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

CLAUSE 24

THAT clause 24 be amended in sub clause (2) by inserting the words “provide for” immediately before the words “the dissemination” appearing in paragraph (e).

MINUTES OF THE 213TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY, 18TH SEPTEMBER, 2012 AT 10.30AM IN THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDINGS

MEMBERS PRESENT

Hon. Alfred Odhiambo, M.P. – Ag. Chairperson
Hon. Charles Keter, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Joseph Magwanga, M.P.
Hon. Elijah Lagat, M.P.

ABSENT WITH APOLOGY

Hon. Sophia Abdi Noor, M.P. – Chairperson
Hon. Najib Balala, M.P.
Hon. Pollyns Ochieng, M.P.
Hon. Charles Nyamai, M.P.

ABSENT

Hon. Lenny Kivuti, M.P. – Vice Chairperson
Hon. Clement Waibara, M.P.

INATTENDANCE

Ms. Rachael Kairu – Second Clerk Assistant
Mr. Michael Karuru – Legal Counsel
Mr. Wilfred Manyi – Parliamentary Intern

NATIONAL ASSEMBLY

MIN. NO. 253/2012 PRELIMINARIES

The meeting commenced with a word of prayer.

MIN. NO. 254/2012

CONSIDERATIONS OF THE AMENDMENTS TO THE INTERNALLY DISPLACED PERSONS BILL, 2012

The Acting Chair welcomed Members to the meeting and requested the Legal Counsel to take the Committee through the draft amendments that arose from meetings with various stakeholders:

The Legal Counsel informed the Committee as follows; That:

- a) **Clause 1;** the word “Civil Society” should be deleted and substituted with “Non State”. This was aimed at harmonizing the Bill with the Internally Displaced Persons Policy.
- b) **Clause 8 (a);** the word “address” was misplaced and thus should to be deleted.
- c) **Clause 8 (b)** the word “disabled” was derogatory and thus should be substituted with “Persons with Disabilities”.
- d) **Clause 12(2)** the word “incorporated” should be substituted with “unincorporated”
- e) **Clause 12 (3),** new sub clause should be inserted immediately after sub clause (3) “the Accounting Officer shall provide the secretariat to the Committee”.

- f) **Clause 12 (i)**, the Chairperson of the Lands Commission should be included in the the National Consultative Co-ordination Committee.
- g) **Clause 12 (3) (ii)**, the word "Civil Society" should be deleted wherever it occurs and replaced with "Non- State Actors"
- h) **Clause 13 (d)**, that the full stop and the word "the" appearing immediately after the words "such persons" be deleted and substituted with the word "which"
- i) **Clause 13 (d)**, the word "90" appearing in the paragraph should to be deleted and substituted with the word "fourteen days".

MIN. NO. 255/2012 DELIBERATIONS

The Committee observed that there was need for stiff penalties in Clause 23 of the Bill to deter persons from masquerading as IDPs and facilitators of such persons.

The Committee further observed that in Clause 13 (d), fourteen days as provided for in the amendments was way too long and should thus be replaced with "72 hours".

The Legal Officer was requested to draft requisite amendments to address the above observations.

MIN. NO. 256/2012 ADJOURNMENT

There being no other business, the Ag. Chairperson adjourned the meeting at Five Minutes Past Noon until Wednesday, 18th September, 2012 at 11.00 a.m

SIGNED.....
CHAIRPERSON

DATE..... 3/10/2012.....

MINUTES OF THE 208TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY, 30TH AUGUST 2012 IN COMMITTEE ROOM ON 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.30AM

MEMBERS PRESENT

Hon. Sophia Abdi Noor, M.P. - Chairperson
Hon. Alfred Odhiambo, M.P.
Hon. Joseph Magwanga, M.P.
Hon. Pollyns Ochieng, M.P.
Hon. Charles Nyamai, M.P.
Hon. Elijah Lagat, M.P.

ABSENT WITH APOLOGY

Hon. Lenny Kivuti, M.P. - Vice Chairperson
Hon. Charles Keter, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Najib Balala, MP
Hon. Clement Waibara, M.P.

INATTENDANCE

Hon. Esther Murugi
Amb. Binsai Chepsongol
Mr. Martin Mwiti
Mr. Musembi N. Michael

MINISTRY OF STATE FOR SPECIAL PROGRAMMES

- Minister
- Director of Administration
- Under Secretary
- Director

INATTENDANCE

Ms. Rachael Kairu
Mr. Wilfred Manyi

NATIONAL ASSEMBLY

- Second Clerk Assistant
- Parliamentary Intern

MIN. NO. 233/2012

PRELIMINARIES

The meeting began by a word of prayer. The Chair welcomed the Minister and her team and invited her to present the Ministry's views on the Internally Displaced Persons Bill, 2012.

MIN. NO. 234/2012

THE INTERNALLY DISPLACED PERSONS BILL, 2012

The Minister mentioned that the Ministry had a similar Bill, which they planned to present together with the IDPs policy.

The Minister thereafter highlighted the Ministry's proposed amendments as follows:

- i. The Bill should not only dwell in the UN Guiding Principles and The Great Lakes Protocol but should also make reference to the IDP Policy.
- ii. The Non-State Actors should be included in the Bill as they are also included in the Policy.
- iii. Clause 12(3)i, j, k and l under The National Consultative Coordination Committee should be deleted and replaced with the Chairman of National Land Commission.

- iv. The number of days in Clause 13(d)i should be reduced to 48 hours to be in tandem with the IDP Policy
- v. Clause 14 (f) should be added to include Funds from the Exchequer.
- vi. Clause 15(3) should be deleted and replaced by the National Coordination Committee that will be mandated to determine the funding.
- vii. The words "special attachment" in Clause 22(4) should to be deleted.
- viii. Clause 16(e) and (f) should be deleted to only retain the Auditor General as one reviewing Ministries' kitty.
- ix. The word 'number' in clause 3(5)in Third Schedule should to be replaced with 'member'
- x. Clause 5(2) to read 'shall' not 'shal'
- xi. The UN, Donor Community and Civil society should not be part of the Government as they need to carry out their mandates discretely.

The Committee informed the Minister that the Committee would consider and harmonize all the proposed amendments received from stakeholders.

MIN. NO. 235/2012 ANY OTHER BUSINESS

The Committee resolved to meet with the Minister for Gender, Children and Social Development on the matter of Funds for Persons Living with Disability on Thursday, 13th September 2012.

The Committee also resolved to meet with the Minister for Youth Affairs and Sports on Tuesday, 25th September 2012 on among other things, the London 2012 Olympic Games.

MIN. NO. 236/2012 ADJOURNMENT

There being no other business, the meeting adjourned at Half Past Eleven O'clock until Tuesday, 04 September, 2012.

SIGNED:.....

 CHAIRPERSON

DATE:..... 3/10/2012

MINUTES OF THE 199TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON TUESDAY 24TH JULY, 2012 AT 10.30AM

MEMBERS PRESENT

Hon. Sophia Abdi Noor, M.P.- Chairperson
Hon. Charles Keter, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Joseph Magwanga, M.P.
Hon. Charles Nyamai, M.P.

ABSENT WITH APOLOGY

Hon. Najib Balala, M.P.
Hon. Pollyns Ochien'g, M.P.
Hon. Alfred Odhiambo, M.P.

ABSENT

Hon. Lenny Kivuti, M.P. - Vice Chairperson
Hon. Elijah Lagat, M.P.
Hon. Clement Waibara, M.P.

INATTENDANCE

Mr. Rachael Kairu
Mr. Jeremiah Ndombi
Mr. Wilfred Manyi

NATIONAL ASSEMBLY

- Second Clerk Assistant
- Legal Counsel
- Parliamentary Intern

MIN 197/2012

The sittings' proceedings commenced with a word of prayer.

PRELIMINARIES

MIN 198/2012

INTERNALLY DISPLACED PERSONS BILL, 2012

Mr. Jeremiah Ndombi, Legal Counsel informed the Committee as follow;

- i. The Bill originated from Parliamentary Ad hoc Committee on Internally Displaced Persons in Kenya.
- ii. The Bill was an outcome of deliberations with the Ministry of State for Special Programmes, United Nations High Commission for Refugees, Refugee Consortium of Kenya and other partners on Internal Displacement.
- iii. The Internally Displaced Persons Bill, 2012 was based on 2 instruments;
 - a) The Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons- which Kenya ratified and is part of its Laws; and
 - b) United Nations Guiding Principles on the protection of Internally Displaced Persons.
- iv. The Bill covered wider aspects of preventive, preparedness and vetting of genuine IDPs.

- v. Part III of the Bill on Administration constituted a Committee to be known as the National Consultative Coordination Committee on IDPs, which shall be an incorporated body under the relevant Government Department responsible for matters relating to internal displacement. The Committee shall among other things serve as an impartial and humanitarian focus body liaising between Government Departments, the UN, Civil Society, the Secretariat of International Conference of the Great Lakes Region, and where appropriate the AU.
- vi. Clause 14 of the Bill provides for establishment of a Fund, the Internally Displaced Persons Fund, which shall be a successor to the Humanitarian Fund, that would be open to donor support.
- vii. Part IV of the Bill obligates the National and County Government to take into consideration matters affecting IDPs.

MIN. 199/2012

DELIBERATIONS

The Committee;

- i. Expressed optimism that the Bill's creation of a new Fund would address impartially in addressing issues of IDPs.
- ii. Called for amendment in the numbering in the arrangement of Clauses and Memorandum of Objects and Reasons, page 983 and 1026 respectively.
- iii. Was of the view that under Section 10 (2) needed to reconsidered as it would be difficult to ensure that Armed groups and similar non-state actors observe the provisions of the Protocol and the Guiding Principle as provided for in the Act.
- iv. Expressed concern over duplication in Section 12(k) with regard to the three persons to be appointed by the Cabinet Secretary upon nomination by United Nations, Civil Society and Donor Community. Members called for harmonization.
- v. Observed that Section 12(4) regarding Chairperson co-opting membership of the Committee on a Permanent or Ad Hoc basis did not add up.

MIN. 200/2012

ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Half Past Eleven O'clock.

SIGNED.....
(CHAIRPERSON)

DATE..... 3/10/2012