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CONTENT

Bill for Introduction into the National Assembly —

PAGE

The Evictions and Resettlement Procedures Bill, 2012 2475



THE EVICTIONS AND RESETTLEMENT PROCEDURES BILL, 2012

ARRANGEMENT OF CLAUSES

PART I—PRELIMINARY

Clause

1. Short title.
2. Interpretation.
3. Application of Act.

PART II—PROCEDURE PRIOR TO FORCED EVICTION

4. Prohibition of eviction without Court order.
5. Offence of forced eviction.
6. Pre-eviction procedures.

PART III—PROCEDURE DURING FORCED EVICTION

7. Procedure during forced evictions.

PART IV—COURT PROCEDURES DURING EVICTION PROCEEDINGS

8. Procedure during eviction proceedings.
9. Urgent proceedings for eviction.
10. Eviction of squatters by organ of state.
11. Mandatory requirements during evictions.

PART V—MISCELLANEOUS PROVISIONS

12. Eviction and resettlement procedures.
13. Remedies for forced evictions.
14. Resettlement.
15. Monitoring and follow up.
16. Role of stakeholders.
17. Saving of existing rights.

THE EVICTIONS AND RESETTLEMENT PROCEDURES BILL, 2012

A Bill for

AN ACT of Parliament to set out appropriate procedures applicable to forced evictions; to provide protection, prevention and redress against forced eviction for all persons occupying land including squatters and unlawful occupiers; and to provide for matters incidental and connected thereto

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Evictions and Resettlement Procedures Act, 2012.

Interpretation

2. In this Act, unless the context otherwise requires—

“consent” means the express or tacit permission, whether in writing or otherwise, of the owner or person in charge of the land to the occupation of the land in question;

“consultation” means the process whereby the affected persons, on their own or through their representatives, are provided an opportunity to be heard and to participate in the decision making process on matters involving any proposed eviction so that they can protect their legitimate collective interests and includes appropriate documentation and feedback mechanisms;

“county government” means a county government as defined under Article 176 of the Constitution;

“Court” means the Environment and Land Court established under section 4 of the Environment and Land Court Act, 2011;

“forced eviction” means the permanent or temporary removal of persons, squatters or unlawful occupiers of land from their home or land which they occupy against their will without the provision of access to appropriate forms of legal or other protection;

“land” includes a portion of land and structures affixed to it or any body of water on the surface;

“organ of state” means the national Government, county government or any other public body which is regarded as a state corporation under any written law;

“owner” means a person or organ of state who holds legitimate interest in the land in question;

“person in charge” means a person who has, or at the relevant time, had legal authority to give permission to a person to enter or reside upon the land in question;

“professional squatter” means—

- (a) a person who habitually occupies lands for speculative purposes without the express or tacit consent of the owner or person in charge; or
- (b) a person who has previously been awarded home lots or land by the Government but who subsequently sold, leased or transferred the land and is now settled illegally in the same place or in another area.

“property” includes any vested or contingent right to, or interest in or arising from—

- (a) land, or permanent fixtures on, or improvements to land;
- (b) goods or personal property;
- (c) money and negotiable instruments;

“housing” means any building or other shelter or part thereof in which people live or carry out business;

“squatter” means a person who has occupied land without the express or tacit consent of the owner or person in charge for a continuous period of at least six years without any right in law to occupy such land and that person does not have sufficient income to purchase or lease alternative land;

“unlawful occupier” means a person who takes possession of land or structures without the tacit consent of the owner or without any right in law to take possession of such land or structure.

Application of Act

3. (1) This Act applies in respect of all land and all occupiers of land throughout the Republic of Kenya.

(2) Despite subsection (1), this Act does not apply to:

(a) professional squatters as defined in section 2;

(b) any dispute relating to occupation of land arising from a landlord and tenant agreement, notwithstanding whether such agreement is written or unwritten.

PART II—PROCEDURE PRIOR TO FORCED EVICTION

Prohibition of
eviction without
Court order

4. (1) A person shall not be forcibly evicted from their home or have their property demolished without a Court order authorizing the eviction or demolition.

(2) Notwithstanding any written law to the contrary, the procedure set out in section 8 shall apply in proceedings for forced eviction or demolition orders under sub-section (1).

Offence of forced
eviction

5. A person who forcibly evicts another person without a Court order issued pursuant to section 4 commits an offence and is liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding two years, or both.

Pre-eviction
procedures

6. (1) Before any forced eviction is carried out the following procedures shall be observed;

(a) an opportunity for genuine consultation between the land owner and the person to be evicted shall be availed;

(b) the person to be evicted shall be given adequate and reasonable notice of not less than three

months before the date of the intended eviction;

(c) an environmental, economic and social impact assessment shall be done;

(d) there should be put in place adequate resettlement action plans;

(e) there should be an opportunity for legal redress;

(f) the notice issued under paragraph (b) shall be in writing and also through public *barazas* or broadcast media in the national and local language or the language spoken by the majority of people in the locality;

(g) the notice issued under paragraph (b) shall contain adequate information on the reasons for the proposed forced eviction and the alternative purpose for which the land or structure is to be used;

(h) adequate consultations shall be held through public hearings with the affected persons or their duly designated representatives on all feasible alternatives to evictions with a view to avoiding or at least minimizing the need for eviction;

(i) a holistic and comprehensive environmental, economic and social impact assessment and resettlement action plan shall be conducted which shall include but not be limited to—

(aa) establishing the prevailing land tenure system;

(bb) establishing a cut-off date for an enumeration process;

(cc) evaluating, enumerating and recording of individuals, families and their assets;

(dd) examining the proposed eviction plans and alternatives;

- (ee) considering the magnitude of displacement;
- (ff) examining information on the full resource base of the affected population, including income derived from informal sector and non-formal activities, and from common property;
- (gg) examining the extent to which groups will experience total or partial loss of assets;
- (hh) examining the public infrastructure and social services that will be affected;
- (ii) dissemination by the authorities of relevant information in advance including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups;
- (jj) involving institutions such as community organizations and traditional ritual groups that can assist with designing and implementing the resettlement programmes;
- (kk) consideration of the views of the affected people to any proposed resettlement options;
- (ll) giving attention to special interest groups including people with disabilities, the elderly, youth, women and children and persons living with HIV/AIDS.

(2) Where an eviction is envisaged as a result of a development-based project an “eviction assessment” shall be conducted that shall include exploration of alternatives and strategies for minimizing harm and taking into account the differential impacts of evictions on women, children, the elderly and marginalized groups.

PART III-PROCEDURE DURING FORCED EVICION

7. (1) In all cases where forced eviction has been authorized by a Court, it shall be carried out in strict compliance with the following procedures—

- (a) a twenty-one days’ notice shall be given to the affected persons and the notice shall clearly state

the modalities, day and time of the forced eviction;

(b) full details of the proposed alternative, if any, shall be given to the occupiers of the land;

(c) where no alternatives exist, a detailed explanation of all measures taken to minimize the adverse effects of evictions shall be given;

(d) holding of public hearing with affected persons and other stakeholders to provide an opportunity to discuss alternative proposals for resettlement shall be done.

(2) Any person proposing to forcibly evict an unlawful occupier shall provide opportunity for the parties to seek legal redress where there is a stalemate or dispute.

(3) The eviction notice under sub-section (1) (a) shall contain a detailed justification for the decision and shall be in a language that is understood by all those concerned.

PART IV—COURT PROCEDURES DURING EVICION PROCEEDINGS

8. (1) Notwithstanding anything to the contrary contained in any written law, the provisions of this section shall apply to proceedings instituted in Court pursuant to section 4.

Procedure during
eviction proceedings

(2) At least twenty-eight days before the hearing of the proceedings contemplated in subsection (1), the Court shall serve written and effective notice of the proceedings on all parties.

(3) Subject to subsection (2), the rest of the procedure for the serving of notices and filing of papers is as prescribed by the rules ordinarily applicable to the Court seized of the matter.

(4) Subject to subsection (2), if a Court is satisfied that service cannot conveniently or expeditiously be effected in the manner provided in the rules of the Court, service shall be effected in the manner directed by the Court provided that the Court shall consider the rights of the person or groups proposed to be evicted to receive adequate notice and to defend the case.

(5) The notice contemplated under subsection (2) shall—

- (a) state that proceedings are being instituted in terms of subsection (1);
- (b) indicate on what date and at what time the Court will hear the proceedings;
- (c) set out the grounds for the proposed eviction;
- (d) state that the person or groups proposed to be evicted are entitled to appear before the Court and defend the case and, where necessary, have the right to apply for legal aid.

(6) If the individual or groups proposed to be evicted have occupied the land in question for a period of less than six months at the time when the proceedings are initiated, a Court may grant an order for forced eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons, people living with HIV/AIDS and the special vulnerability of households headed by women.

(7) No order for eviction shall be granted when it is clear to the Court that such an order would result in rendering the affected persons homeless.

(8) If the individual or group proposed to be evicted have occupied the land in question for a period of more than six months at the time when the eviction proceedings are initiated, a Court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant issues, including the circumstances of the occupation, whether land has been made available or can reasonably be made available by the Government, organ of state or private owner for the relocation of the occupiers and including the rights and needs of the elderly, children, disabled persons, people living with HIV/AIDS and the special vulnerability households headed by women.

(9) If the Court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the occupiers, it shall grant an order for the eviction of the occupier, and determine:

- (a) a just and equitable date on which the occupier shall vacate the land under the circumstances; and
- (b) the date on which an eviction order may be carried out if the occupier has not vacated the land on the date stated in paragraph (a).

(10) In determining a just and equitable date under subsection (9), the Court shall consider all relevant factors, including the period the occupier and his or her family have resided on the land in question.

(11) A Court which orders the eviction of any person in terms of this section may make an order for the demolition and removal of any buildings or structures that were occupied by such persons on the land in question.

(12) Any order for the eviction of an unlawful occupier or for the demolition or removal of buildings or structures in terms of this section is subject to the conditions deemed reasonable by the Court, and the Court may, on good cause shown, vary any condition for an eviction order.

9. (1) Notwithstanding the provisions of section 8, the owner or person in charge of any land may institute urgent proceedings for the eviction of an unlawful occupier of that land pending the outcome of proceedings for a final order, and the Court may grant such an order if it is satisfied that—

Urgent proceedings
for eviction

- (a) there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land;
- (b) the likely hardship to the owner or any other affected person if an order for eviction is not granted exceeds the likely hardship to the unlawful occupier against whom the order is sought if an order for eviction is granted, and
- (c) there is no other effective remedy available.

(2) Before the hearing of the proceedings contemplated in subsection (1), the Court shall give a written and effective notice of the intention of the owner or

person in charge to obtain an order for the urgent eviction to the unlawful occupier.

(3) The notice of proceedings contemplated in subsection (2) shall—

- (a) state that proceedings will be instituted in terms of subsection (1) for an order for the urgent eviction of the unlawful occupier;
- (b) indicate on what date and at what time the Court will hear the proceedings;
- (c) set out the grounds for the proposed eviction, and;
- (d) state that the unlawful occupier is entitled to appear before the Court and defend the case and, where necessary, has the right to apply for legal aid.

10. (1) An organ of state may institute proceedings for the eviction of squatters from land which falls within its area of jurisdiction.

(2) The Court may grant such an order if it is just and equitable to do so, after considering all the relevant circumstances, and if—

- (a) the consent of that organ of state is required for the erection of a building or structure on that land or for the occupation of the land, and the squatter is occupying a building or structure on that land without such consent having been obtained; or
- (b) it is in the public interest to grant such an order.

(3) For the purposes of this section, “public interest” includes the interest of the health and safety of the squatters and the public in general.

(4) In deciding whether it is just and equitable to grant an order for eviction under this section, the Court must have regard to—

- (a) the circumstances under which the squatters occupied the land and erected the buildings or structures;
- (b) the period the squatter and his or her family have resided on the land in question, and;

(c) the availability to the squatter of suitable alternative accommodation or land.

(5) An organ of state contemplated in subsection (1) must, before instituting such proceedings, give not less than thirty days' written notice to the squatter or person in charge of the land before instituting the proceedings.

(6) If an organ of state gives the squatter notice in terms of subsection (5) to institute proceedings for eviction, and the squatter fails to do so within the period stipulated in the notice, the Court may, at the request of the organ of state, order the squatter or person in charge of the land to pay the costs of the proceedings contemplated in subsection (1).

(7) The procedure set out in section 8 shall apply, with the necessary modifications, to any proceedings in terms of subsection (1).

11. Notwithstanding any provisions to the contrary in this Act or in any other written law, all evictions shall—

Mandatory requirements during evictions

- (a) be done in the presence of county government officials or their representatives;
- (b) be preceded by the proper identification of those taking part in the eviction or demolitions;
- (c) be preceded by the presentation of the formal authorizations for the action;
- (d) be done transparently, openly and with full compliance with international human rights principles;
- (e) not take place in bad weather, at night, during festivals or religious holidays, prior to an election or prior to or during national examinations;
- (f) be carried out in a manner that respects the dignity, right to life and security of those affected;
- (g) include special measures to ensure that women are not subjected to gender-based violence or any other forms of discrimination in the course of evictions, and that the human rights of children are fully protected;

- (h) include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;
- (i) include mechanisms to protect property and possessions left behind involuntarily from destruction, arbitrary and illegal appropriation, occupation or use;
- (j) respect the principles of necessity and proportionality during the use of force, and any national or local code of conduct consistent with international law enforcement and human rights standards;
- (k) give the affected persons the first priority to demolish and salvage their property.

PART V—MISCELLANEOUS PROVISIONS

12. (1) Following an eviction and resettlement exercise, the relevant authorities shall facilitate the management and the handing over of the infrastructure present at the resettlement site.

(2) Special efforts shall be made to ensure the equal participation of women, minority and other vulnerable groups in all planning and implementation processes and in the distribution of basic services and supplies.

(3) Measures shall be taken to ensure, especially for those who are unable to provide for themselves, that—

- (a) members of the same family are not separated;
- (b) people and their property are protected and secured;
- (c) essential medical services are accessible;
- (d) psychological and counseling services are provided;
- (e) special attention is paid to people with special needs;
- (f) on-going treatment is not disrupted as a result of the resettlement;
- (g) spread of contagious and infectious diseases including HIV/AIDS at the resettlement sites are avoided;

(h) essential food, potable water and sanitation are provided;

(i) basic shelter and housing is provided;

(j) education for children and child care facilities are provided;

(k) essential livelihood resources are availed.

(4) Steps shall be taken to build the capacity and strengthen the ability of those resettled to be able to adjust to the new environment and tap potential opportunities that exist in the new area.

(5) The person proposing or carrying out the resettlement shall pay for any associated costs including all resettlement costs and those resettled shall be given security of tenure to avoid future evictions.

(6) Immediate steps shall be taken to ensure that no new illegal structures are erected in the area where people have been evicted.

(7) Where eviction is inevitable, resettlement plans shall be developed that will incorporate provisions for sufficient resources and opportunities to the affected persons, compensation for losses incurred prior to the eviction and support during the transition period.

(8) The affected persons shall fully participate in the planning and implementation of the resettlement plan.

(9) The resettlement plan shall include appropriate physical planning.

(10) Where large scale eviction of people is unavoidable, a detailed resettlement plan, timetable and budget shall be prepared.

(11) As much as possible, preference should be given to land-based resettlement options especially for people from agricultural urban informal settings.

(12) The resettlement plan shall take into consideration the interests of the host community and in particular, the resettlers should be fully integrated socially and economically into host communities so that adverse effects on host communities are minimized.

Remedies for forced
eviction

13. (1) Notwithstanding the provisions of any law to the contrary, all persons threatened with or subjected to forced evictions have the right to timely access appropriate remedies including fair hearing and access to legal aid.

(2) A Court may make such orders including declaration of rights, compensation, injunction or any other relief it may deem appropriate.

(3) When eviction is unavoidable and necessary for the promotion of the general welfare and the public interest, the Government must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interest in property and transport to the relocation site.

(4) Where private or community land has been taken, the evicted persons should be compensated promptly, fairly and fully.

(5) Consideration of the circumstances of each case shall allow provision of compensation for losses related to informal property such as slum dwellings.

(6) Joint spousal compensation packages must be ensured.

(7) Single women, widows and orphans shall be entitled to their own compensation.

Resettlement

14. Resettlement shall occur in a just and equitable manner and in accordance with the provisions of this Act and in full accordance with international law standards.

Monitoring and
follow up

15. (1) The National Land Commission, in consultation with the relevant stakeholders, shall actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long-term consequences of evictions, including forced eviction, that occur within their jurisdiction and territory of effective control.

(2) The National Land Commission shall ensure that the monitoring reports and findings under sub-section (1) are available to the public and concerned international parties in order to promote the development of best practices and problem-solving experiences based on lessons learned.

(3) The Kenya National Commission on Human Rights shall monitor and investigate forced evictions and the state's compliance with this Act and international human rights law and present annual reports to Parliament outlining the state of evictions in the country, challenges and recommendations on what needs to be done.

(4) Regular governmental presentations at international forums on economic, social and cultural rights shall be used as an evaluation and monitoring tool for this Act.

16. All stakeholders bear an obligation to promote, protect and fulfil the human rights to housing, land and property before, during and after eviction.

Role of stakeholders

17. This Act shall not be interpreted as limiting or altering any existing rights of persons occupying land but is supplementary to those rights and other rights recognized under international human rights, refugee, criminal or humanitarian law relating to the standards or rights consistent with those laws and standards as recognized under the Constitution of Kenya.

Saving of existing rights

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of this Bill is to set out the procedures that must be followed before, during and after the forced evictions of all persons occupying land, including squatters and unlawful occupiers of land.

The Bill seeks to protect the occupiers of land from unlawful and unprocedural evictions. To this extent, the Bill aims to give further effect to Article 43 (1) (b) of the Constitution which Article declares the right of every person to accessible and adequate housing.

Part I of the Bill contains preliminary provisions.

Part II of the Bill provides the procedures to be followed prior to forced evictions. **Clause 4** of the Bill provides that no person shall be evicted from their homes without a Court order authorizing the eviction. **Clause 5** provides that it forcibly evicting a person without a court order is an offence punishable by a fine not exceeding one million shillings or imprisonment for term not exceeding two years, or both. **Clause 6** of the Bill sets out the pre-eviction procedures to be followed. These procedures include a requirement for a notice of at least three months of the eviction date and provision of adequate opportunity for legal redress.

Part III of the Bill sets out the procedure to be followed during forced evictions which have been authorized by the Court. These procedures include a requirement for a notice of at least 21 days before the eviction is carried out.

Part IV of the Bill provides for the Court Procedures during eviction proceedings. **Clause 8** of the Bill sets out a special procedure to be applied by Courts during eviction proceedings. **Clause 8 (7)** explicitly provides that an order for eviction shall not be granted where it is clear to the Court that such an order would render the affected persons homeless. **Clause 9** of the Bill proposes procedures where circumstances allow for expeditious eviction of unlawful occupiers when irreparable damage or loss is likely to be occasioned in case of any delay.

Part V contains miscellaneous provisions. These include provisions requiring immediate resettlement of forcibly evicted persons, remedies for forced evictions and saving of existing rights.

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

Dated the 12th June, 2012.

SHAKEEL A. SHABBIR,
Member of Parliament.

