

KENYA

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EXECUTIVE SUMMARY

Amnesty International submits this briefing in advance of the examination of Kenya's combined second to fifth periodic reports at the United Nations (UN) Committee on Economic, Social and Cultural Rights (the Committee)' 57th session in February – March 2016.

The submission focuses on the right to adequate housing, including the prohibition on forced evictions, as enshrined in Article 11.1 of the International Covenant on Economic, Social and Cultural Rights. The concerns highlighted in the submission relate both directly and indirectly to those in the Committee's list of issues to be raised for review of the state's report. In particular, Amnesty International is concerned about the failure of the government of Kenya to comply with its obligations to refrain from and prevent forced evictions, and the failure to ensure equal access to water and sanitation to people living in slums and informal settlements which has a particularly negative impact on women and girls.

A chief obstacle to realizing the right to adequate housing is the lack of legal security of tenure for most residents of informal settlements. The haphazard and unplanned growth of informal settlements in Kenya means that thousands of families stay in structures or houses constructed on land reserved for roads, electricity lines, railway tracks, or on dumping grounds and river banks. Additionally failure on the part of successive governments to resolve historical land issues in the coastal areas has resulted in situations such as in Mombasa County where over 65% of the population lives in informal settlements and lacks security of tenure.

Lacking security of tenure, residents of informal settlement are particularly vulnerable to forced evictions, which are often carried out en masse. The informal nature of these settlements has also resulted in the denial of access to essential services such as the provision of water and sanitation facilities.

This submission is based on Amnesty International's research since the Committee's consideration of Kenya's last periodic report in 2006.

FAILURE TO REFRAIN FROM AND PREVENT FORCED EVICTIONS

In its concluding observations to Kenya in December 2008, the Committee stated its concern regarding forced evictions from forests, slums and informal settlements and on road reserves. The Committee therefore recommended "the State party consider including a provision in its new draft Constitution to ensure that evictions are only used as a last resort, adopt legislation or guidelines strictly defining the circumstances and safeguards under which evictions must take place, in accordance with the Committee's general comment No. 7 (1997) on forced evictions, and ensure that each victim of forced evictions is provided with adequate alternative housing or compensation and that he or she has access to an effective remedy."¹

Amnesty International acknowledges that part of the Committee's above recommendation has been implemented. The adoption and coming into force of Kenya's 2010 Constitution has been a significant development since the country's previous periodic report submitted to the Committee in 2006. Kenya's 2010 Constitution recognizes a number of economic, social and cultural rights including the rights to health, education, water, sanitation and housing. Article 43 (1b) of the Constitution of Kenya states: "Every person has a right to accessible and adequate housing and to reasonable standards of sanitation". The High Court of Kenya has, in at least three different cases, interpreted this right in Article 43 to include a prohibition on forced evictions. In some instances, the Court has also recommended that national guidelines be developed to ensure that any evictions from settlements do not violate the constitutional rights of the residents.² In a 2013 ruling concerning a case of forced evictions in Nairobi, the High Court of Kenya directed the government to develop an appropriate "legal framework for evictions based on internationally acceptable guidelines". The court also called on the Kenyan parliament to enact legislation following consultation and public participation that would address the issue of forced evictions and security of tenure.³

However, forced evictions in Kenya continue and the above-mentioned court rulings that have upheld the right to adequate housing and ordered governments to provide remedies to victims of forced evictions, are yet to be implemented.

SELECT CASES OF FORCED EVICTIONS

Amnesty International has documented a number of forced evictions carried out by state authorities, often to make way for infrastructure development projects, and by private entities during the period of review. The evictions have been carried out in the absence of due process requirements as outlined in international human rights standards including the lack of adequate notice, genuine consultation and legal remedy including adequate compensation. Thousands of people have been left homeless and vulnerable to other human rights abuses as a result of the evictions. Below are a few examples of forced evictions carried out in the present reporting period.

In October and November 2011, state authorities carried out mass forced evictions in five informal and formal settlements in Nairobi. Officers from the regular and administrative police and the General Service Unit, acting with officials from the Kenya Airports Authority (KAA) and the city council carried out demolitions of homes and other buildings and evicted residents in Kyang'ombe informal settlement on 22 October, Kenya Ports Authority (KPA) settlement on 29 October, the non-slum settlement of Syokimau on 12 November, and a settlement in Embakasi where Maasai *manyattas* were demolished on 17 November. All demolished settlements are located close to the Jomo Kenyatta International Airport. Evictions also took place in Mitumba informal settlement,

¹ UN Committee on Economic, Social and Cultural Rights: Concluding Observations: Kenya, E/C.12/KEN/CO/1, 1 December 2008, para 31.

² Ibrahim Sangor Osman & 1222 Others v the Minister of State for Provincial Administration and Internal Security and 10 Others (2011) (www.kenyalaw.org/Forum/?p=348); Susan Waitthara and 4 Others v the Town Clerk, Nairobi City Council and 2 Others, 2011 (http://kenyalaw.org/Downloads_FreeCases/80847.pdf)

³ Satrose Ayuma and Ors. vs. The Registered Trustees of the Kenya Railways Staff Retirement Benefit Scheme and Ors. in the High Court of Kenya at Nairobi, Petition No. 65 of 2010 para 109.

located near Wilson Airport on 19 November, and in settlements close to the Moi Airbase in Eastleigh on 22 November. Thousands of people were affected by the evictions. KAA officials maintained that evictions close to the airports were necessary because the settlements were in restricted flight paths and around restricted airport areas, and needed to be demolished to avert potential air disasters in the future. No reason was given for demolitions in areas close to the Moi Air base. In Kyang'ombe, thousands were forcibly evicted at night despite an existing temporary injunction from the High Court preventing demolitions and evictions taking place pending a hearing regarding ownership of the land on which the settlement was located. Residents told Amnesty International that a car drove around the community throwing eviction notices out of the windows some three months prior to the evictions. These notices were in specific reference to the need to move from the flight path of the airport. However, residents were not clear about the geographical scope of the flight path and whether the notice applied to some people or everyone in the settlement. Community leaders wrote to the KAA requesting clarification on the boundaries of the flight path, but received no response.⁴

On 28 January 2012, an eviction in Mukuru Kwa N'jenga led to the deaths of three people. One woman was electrocuted by a live power cable which fell during the eviction, whilst another woman was shot. A child was killed when protestors demonstrating against the eviction fled from police.⁵ No notice was issued to residents before the January 2012 eviction, and many residents were away at work when the demolitions began. Some of the affected residents had previously been forcibly evicted from Kyang'ombe informal settlement in December 2011. In response to the Mukuru eviction, Prime Minister Raila Odinga issued a statement calling for evictions in the country to be halted until there was a government policy in place to ensure that forced evictions did not take place.⁶ Despite this statement, state agencies have continued to threaten and carry out forced evictions.

On 10 May 2013 approximately 200 men arrived at City Carton, an informal settlement near Wilson airport, accompanied by 170 police officers who used tear gas and fired ammunition during the demolition. The men, who were reportedly hired by an agent of an institution that claims to own some or all of the land on which the City Carton settlement was built, proceeded to use hammers, crowbars and machetes to demolish most of the homes in the settlement. On 17 May at least 100 men returned to the settlement to demolish the remaining houses and fence off the area. According to the police officers, the demolition was authorized by an order of the Milimani Law Courts. However, the court order, which Amnesty International obtained after the eviction, did not authorize the demolition of homes but only allowed the confiscation of moveable property from two people against non-payment of rent. The demolition of homes in City Carton was a criminal act carried out by private individuals in the presence of police. It resulted in the forced eviction of an estimated 400 families from their homes. While some of those forcibly evicted sought housing in other settlements in Nairobi, hundreds of people - those with no alternatives - are now still living over two and half years later along a dirt track beside the demolished area in temporary shelters constructed from bamboo and cardboard. Lacking access to adequate water and sanitation facilities, the forcibly evicted families are living in extremely precarious circumstances that pose serious risks to their health and safety.

After the forced eviction, City Carton residents appealed to the High Court of Nairobi for remedies against the forced eviction. The High Court in October 2014 confirmed that the demolition amounted to a forced eviction and awarded Ksh 84 million as compensation to the affected families.⁷ However, the affected families are yet to receive their compensation or any temporary assistance from the state while the case is going through the appeals process.

In January 2014, hundreds of homes belonging to Sengwer, an Indigenous People living in Embobut Forest in the Cherengany Hills area of Kenya, are alleged to have been burnt in order to evict the inhabitants.⁸ The World

⁴ Amnesty International, *Kenya must end evictions as fears intensify*, 25 November 2011 (Index: AFR 32/007/2011).

⁵ Amnesty International Report 2013, *The State of the World's Human Rights*, (Index: POL 10/001/2013), pp 148.

⁶ Daily Nation, *Raila Condemns Forced Eviction*, 29 January 2012, www.nation.co.ke/news/Raila-condemns-violent-Nairobi-evictions/-/1056/1316422/-/view/printVersion/-/11navie/-/index.html

⁷ Daily Nation, *Squatters get Sh84m for eviction*, 20 October 2014, <http://www.nation.co.ke/news/Squatters-get-Sh84m-for-eviction/-/1056/2493596/-/8mosf/-/index.html>

⁸ Forest Peoples Programme, "Kenyan Government torches hundreds of Sengwer homes in the forest glades in Embobut", 20 January 2014, http://www.forestpeoples.org/topics/legal-human-rights/news/2014/01/kenyan-government-torches-hundreds-sengwer-homes-forest-glade?_sm_au_=iVvp14PM49nQ61r6

Bank, which had financed a project which provided (inter alia) capacity-building support to the Kenya Forest Service (KFS) – the agency that carried out the evictions – issued a statement in February 2014 to express its alarm at reports of evictions and "strongly encourage the Kenyan authorities to thoroughly investigate claims made by civil society, including the affected communities, that the evictions are not following the legal process"⁹. Community members who were evicted allege that they were given no advance notice of the evictions. The KFS has not issued any communication to indicate that an investigation was carried out or that officers responsible for the evictions were subject to administrative or criminal investigation. On 18 February 2015 the High Court of Eldoret, ruling on a separate contempt of court issue, stated that the evictions had been unlawful.¹⁰

Community members who experienced the evictions, interviewed by Amnesty International in March and December 2015, stated that the evictions had a significant negative impact on their right to health (ability to source traditional herbal remedies only available in the forest). Community members who have returned to the forest, insisting that they cannot live anywhere else, told Amnesty International that their children have to walk up to four hours to get to school because the state does not provide any services in the forest.

On the night of 17 May 2015 scores of families living in Jomvu, an informal settlement along the A 109 highway in Mombasa, awoke to the sound of a bulldozer and the arrival of armed police. Even as they desperately tried to salvage their belongings, the bulldozer demolished their homes and small businesses. It was a terrifying ordeal, which left many people homeless. The demolitions were carried out by the Kenya National Highways Authority as part of preparations for a highway expansion project. The highway expansion project involves widening part of the road to ease traffic congestion. It has been financed by the African Development Bank, the German Development Bank, the European Investment Bank, the EU-Africa Infrastructure Trust Fund, and the Government of Kenya. According to eyewitnesses, the bulldozer systematically demolished shops and homes that bore yellow crosses. Those operating the bulldozer and the police did not inform Jomvu residents about the purpose of the demolition or on whose orders they were acting. The demolition stopped at around 4am, although not all of the marked structures had been demolished. While leaving the area and declaring their intention to return the following day, those carrying out the demolitions advised people whose houses or businesses had been marked to demolish their structures by themselves. Many people started tearing down their homes and shops soon after the bulldozer left the area, in order to try and save valuable building material for reuse.

The demolitions at Jomvu constitute forced evictions and a violation of international human rights law. They rendered more than a hundred people homeless and destroyed livelihoods. Following Amnesty International's research and advocacy, the Kenya National Highways Authority expressed regret for the forced evictions and agreed to provide remedies to all those affected. At the time of preparing this submission, affected families in Jomvu were still waiting to be provided with effective remedies.

⁹ World Bank Inspection Panel, Report No. 88065-KE, "Kenya Natural Resource Management Project", May 22 2014, Para 90

¹⁰ High Court of Eldoret, David Kiptum Yator et al v. the Honourable Attorney General et al. pp 61

ABSENCE OF LEGISLATION THAT EXPLICITLY PROHIBITS FORCED EVICTIONS

Article 21(2) of the Constitution mandates the state to adopt legislative and any measures necessary to create an enabling environment for the progressive realization of economic and social rights. In a recent ruling concerning a case of forced evictions in Nairobi, the High Court of Kenya directed the government to develop an appropriate legal framework for evictions based on internationally acceptable guidelines. The ruling also urged the Kenyan parliament to enact legislation following consultation and public participation that would address the issue of forced evictions and security of tenure.¹¹ However, despite these requirements and the recommendation by the Committee for the same, the government of Kenya is yet to enact the necessary legislation.

In its report to the Committee, the government of Kenya has pointed out that they have a draft Eviction and Resettlement Bill 2012 which provides guidelines on how evictions are to be carried out. Amnesty International welcomes this development. However, the organization notes that although the Ministry of Land, Housing and Urban Development has produced draft bills on this issue since 2011, there has been little discernible progress in terms of ensuring that the draft bill is finalised, shared for public consultations and introduced in parliament with a view to expediting its adoption as law.

Amnesty International understands that the Ministry of Land, Housing and Urban Development is no longer promoting the Evictions and Resettlement Bill but has drafted a Land Laws Amendment Bill 2015 which includes guidelines on evictions and resettlement. Civil society organizations that Amnesty International met have expressed concerns that the Land Laws Amendment Bill 2015 dilutes protections against forced evictions.¹² Another bill that could further the realisation of the right to adequate housing and increase protection against forced evictions is the Community Land Bill which aims to provide legal recognition and protection of community land rights; previously only recognized under customary law. The bill is currently in its second stage of reading before the National Assembly.¹³ However, civil society organizations have raised concerns about flaws in the bill including on weak provisions on consultation and participation.

FAILURE TO PROVIDE EQUAL ACCESS TO ESSENTIAL SERVICES IN INFORMAL SETTLEMENTS

Amnesty International's research in 2009 and 2010 highlighted the lack of adequate sanitation within informal settlements and slums in Nairobi, reflecting decades of neglect because of the government's failure to recognize these areas for city planning purposes and the non-enforcement of applicable domestic law and regulations.¹⁴ During the research many women emphasized how the lack of toilets/latrines and bathroom facilities combined with the lack of effective policing, left them at high risk of sexual and other forms of gender-based violence.

The majority of Nairobi's residents live in informal settlements and slums and most do not have access to public water supplies which are available to other residents of the city. The longstanding government view that informal settlements are illegal mean that local authorities have not been held responsible for providing access to water and other essential services. The majority of slum residents use shared pit latrines, if these are available, and mostly only during the day. Women interviewed by Amnesty International said that one pit latrine would be shared by up to 50 people living in different households. Most women interviewed by Amnesty International had to walk more than 300 metres from their homes to use the available latrines. Most latrines are

¹¹ *Satrose Ayuma and Ors. vs. The Registered Trustees of the Kenya Railways Staff Retirement Benefit Scheme and Ors.* in the High Court of Kenya at Nairobi, Petition No. 65 of 2010 para 109.

¹² 'Draft Law a threat to Land reforms', *Hakijamii* accessed at (www.hakijamii.com/index.php/8-hakijamii/54-media-article-draft-law-a-threat-to-land-reforms) on November 13, 2015

¹³ Gathoni Jemimah, 'Kwale residents oppose the community land bill', *Citizen TV*, accessed at (<https://citizentv.co.ke/news/kwale-residents-oppose-the-community-land-bill>) on November 13, 2015

¹⁴ This section is drawn from Amnesty International's report, *Insecurity and Indignity: Women's Experiences in the Slums of Nairobi, Kenya, 2010*, (Index: AFR 32/002/2010).

full and rarely emptied, and pose serious health problems to residents. The common use of “flying toilets” in informal settlements is a result of the inaccessibility of toilet facilities. Because many of the settlement areas do not fall within the boundaries covered by formal urban plans, public government or local authority facilities for pit emptying services are in general, rarely used in the settlements. The poor state of the roads into settlements and other factors, such as the long distances to the official dumping site have also contributed to the high cost of latrine emptying services, acting as a further disincentive to maintaining services.

Under Kenyan law the primary responsibility to ensure adequate access to sanitation at a household level rests with the private individuals and companies that own the houses and structures inhabited by most people living in the settlements. The Public Health Act and relevant provisions of the applicable Building Code make provisions regarding minimum standards which include sanitary requirements. The local authorities and public health officials are required to supervise the compliance of these standards by individual private developers. Section 126A of the Public Health Act provides for the power of “every municipal council and every urban and area council” to make and enforce by-laws in relation to buildings and sanitation. However, Amnesty International found that these laws and regulations were not enforced in four settlements it visited in 2009. This was partly because the settlements fall outside areas covered by urban plans and as a result, proper sanitation infrastructures, including settlement connection to public sewer lines were not ensured.

The absence in practice of any official supervision of existing laws and standards means that private developers, including landlords and structure owners, often construct houses without complying with sanitation requirements. Structure or house owners focus primarily on maximizing incomes by renting out a high number of structures or houses and paying little attention to the availability and adequacy of sanitation facilities. Residents told Amnesty International that a single structure owner would usually own tens of houses but not pay attention to the needs of families for toilets and shower spaces. Most residents, usually tenants, can do nothing about the poor sanitation or the fact that structure owners are not complying with existing laws and standards because City Council and public health authorities will not act, as they still consider slums and informal settlements irregular.

The scarcity of essential services has a particular impact on women and girls as set out below. This is particularly the case in relation to the absence of adequate sanitation in most informal settlements. Women interviewed by Amnesty International described the ever-present risk of sexual and other forms of gender-based violence because of the long distances they have to travel to reach toilets and other sanitation facilities. For the significant majority of those interviewed, the lack of adequate access to toilets and bath facilities meant that they would not dare use the limited available facilities because they were far away. Inadequate and inaccessible toilets and bathrooms, as well as the general lack of effective policing and insecurity, make women even more vulnerable to rape and other forms of gender-based violence.

RECOMMENDATIONS

In seeking to ensure the State fulfils its obligations with regard to the right to adequate housing, Amnesty International recommends that the Kenyan authorities:

- Adopt and enforce a national-level moratorium on mass evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international human rights standards and national laws.
- Prioritize the enactment of legislation that explicitly prohibits forced evictions, clearly lays down legal and procedural safeguards against forced evictions and complies with Kenya's constitutional and international human rights obligations to guarantee the right to adequate housing.
- Develop comprehensive guidelines based on the UN Basic Principles and Guidelines on Development-based Evictions and Displacement, and other international human rights standards for officials in charge of carrying out evictions.
- Implement judicial orders that provide remedies to victims of forced evictions as a matter of priority.
- Take concrete steps towards guaranteeing security of tenure for all, especially residents of informal settlements.
- Ensure equal protection under the law to all the people living in informal settlements including by applying and enforcing legislation requiring landlords to construct toilets/latrines and bathrooms in the immediate vicinity of each household.
- Provide assistance to structure owners who are unable to meet the costs of construction of toilets/latrines and bathrooms.
- Ensure local municipalities are legally responsible for the provision of essential services, including water and sanitation, to all city residents without discrimination including those living in informal settlements.

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