



Republic of Kenya

MINISTRY OF LANDS

**EVICTIION AND RESETTLEMENT
GUIDELINES**

Towards Fair and Justifiable Management of Evictions and Resettlements

LRTU SECRETARIAT
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1.0 Introduction

1.1 Overview

The practice of forced eviction is a global phenomenon. Between 1995 and 2005, a survey covering only ten countries, showed that over ten million people were forcibly evicted.¹ These people were left homeless and subject to deeper poverty, discrimination and social exclusion. A number of such evictions involve entire communities of tens or even hundreds of thousands of people. Such communities are invariably evicted against their will and in most cases without any compensation or alternative housing.²

Forced evictions are normally caused by various and often complex but interconnected factors. These include:

- Tenure insecurity
- Development and infrastructure projects.
- Environmental concerns.
- Large international events, eg Olympic Games or World Cup or international conference.
- Urban redevelopment and beautification initiatives.
- Property market forces and gentrification.
- Absence of state support for the poor
- Political conflict, ethnic cleansing and war.
- Planning initiatives
- Discovery and extraction of natural resources. These include among others minerals etc.

Regardless of the cause those who carry out evictions always get a justification and normally public good is invoked as the underlying reason. Normally very complicated technical jargon is used to defend the actions. It is nevertheless clear that under international human rights law the practice of forced evictions is clearly considered as illegal, unjust and counterproductive to the goal of human development.

1.2 Problem

For decades, the Kenyan Government has carried out large-scale forced evictions especially in informal settlements, contravening international human rights standards.

¹ Forced Evictions- Towards Solutions , Second Report of the Advisory Group on Forced Evictions to the Executive Director of UN-HABITAT 2007

² Supra

Mass forced evictions have usually involved government projects or private developers claiming ownership of land on which some of the settlements stand. Government bulldozers are used to evict residents and demolish their homes with little or no notice and no efforts are made to resettle or compensate residents. Families are made homeless and many are left without livelihoods when their small businesses are destroyed. Documented evidence shows that forced evictions affect the livelihoods of individuals and households and always have a devastating impact and sometimes loss of livelihood on individuals and households. This calls for a legislative framework and guidelines to direct evictions, especially for “development-based” evictions.

Informal settlers lack tenure security mainly because they occupy lands that are classified as unfit for human habitation or land to which they have no title. As development plans change in the urban areas, the areas occupied by slums are reassigned for various development projects including housing projects for slum upgrading. Other cases are where the land, being unsuitable for human habitation is actually fragile ecosystems that need conservation. More than 20,000 people have been forcibly evicted from neighborhoods in or around Nairobi since 2000 for example. Up to 127,000 people in Nairobi River Basin will be victims of forced eviction if the river clean-up exercise goes ahead as planned, without a comprehensive relocation plan for the affected residents

In the rural areas, squatters and former labour tenants face evictions from the land owners. Squatting is wide spread in the country occurring as a result of displacement by development projects, different forms of violence, redundant labour tenants, forest evictees, corrupt land registration practises as the case in most parts of coast, among others.

Unfortunately, the trend of forced eviction is also running parallel to cases of land related corruption. While cases of irregularly land registration have been documented and are numerous as recorded in the **Ndungu Commission's** report, reclamation of such lands has taken numerous forms. Those with alternative livelihoods have simply surrendered such land, while others who may be politically well connected have opted to use the political card to defy surrender of the land. Many families that acquired the lands with the intention of using it as chore source of livelihood have found themselves on the wrong side of the law as they are evicted to the roadside. Mau forest is a case in point as the most recent. This is in spite of the Ndungu Commission recommending that *in suspected cases of illegal or irregular allocation of public land a Land Titles Tribunal be immediately established to embark upon the process of revocation and rectification of titles in the country.*

About 80% of land in Kenya is largely held under customary tenure in form of trust land (community land under the new Constitution). While the land is held in trust by local authorities for people resident in the areas, setting it apart for any other use than that of the residents requires consultation with the land 'owners'. This rarely happens and many cases are reported of such land being taken away from the owners by force. The case of the Endorois of Baringo is one good example of communities losing their land held in trust for them, forcefully and irregularly.

The Government evicted the Endorois community from the land around Lake Bogoria in 1974 without proper compensation or re-settlement, ostensibly to establish the Lake Bogoria Game Reserve. They opted for international judicial process to seek redress at the Africa Court in Banjul; a ruling of which was delivered in favour of the Endorois in 2009. Among other recommendations, the Africa Commission ruled that the Government should:-

- (a) Recognise rights of ownership to the Endorois and restitute Endorois ancestral land.
- (b) Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle.
- (c) Pay adequate compensation to the community for all the loss suffered.
- (d) Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve.

This is a clear illustration of the level to which forced evictions violate human rights and unless some national regulatory framework is adopted, such cases are bound to increase exposing the Government to unnecessary international scrutiny.

1.3 International Conventions on Eviction and the Kenyan situation (UN Principles/Protocols/ Conventions on Evictions)

The UN Committee on Economic, Social and Cultural Rights General Comment 7 defined forced evictions as:-

“The permanent or temporary removal of individuals, families and/or communities against their will from their homes and/or land that they occupy, without the provision of, and access to, appropriate forms of legal or other protection...”

The Committee examines state records on evictions and over time has developed specific guidelines for evictions.

International legal standards allow for eviction. However, under international human rights law, evictions may be carried out only as a last resort, once all other feasible

alternatives to eviction have been explored and genuine consultation has taken place with affected individuals or groups. International and regional human rights law requires that adequate procedural safeguards be put in place.

Housing involves more than having a roof over one's head. It includes the need for minimum levels of security of tenure. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, provides for the right to adequate housing, the right to protection from arbitrary or unlawful interference with privacy, family or home and to legal security of tenure. Article 17 of the International Covenant on Civil and Political Rights provides for the right to protection of the law against arbitrary or unlawful interference with a person's privacy, family or home.

Kenya is party to both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The rights envisioned under Article 11(1) and 17 of the two treaties named respectively mirror each other and they are related, hence the laws are interconnected. Forced evictions contravene the African Charter on Human and Peoples' Rights to which Kenya is also a party to in particular, Articles 14 and 16 on the right to property and the right to health, and Article 18(1) on the state's duty to protect the family.

This principle was affirmed in 2001 by the African Commission on Human and Peoples' Rights in the case of *Social and Economic Rights Action Center & The Center for Economic and Social Rights vs. Nigeria*. The case refers to the Ogoni land issue, where oil explorations led to the degradation of the environment. Over the years there had not been enough state enforcement regarding the right to property and health. It was held that even though these issues were not explicitly provided for under the African Charter of Human and Peoples' Rights, they had been implied in it. The UN Commission on Human Rights also held that the practice of forced eviction constitutes a gross violation of human rights especially the right to adequate housing.

Kenya now has a constitution that fully incorporates economic, social and cultural rights that are recognized under the relevant international and regional human rights instruments. Other legislations like the Children's Act provide limited protection with regard to economic, social and cultural rights. Consequently protection of citizens from forced evictions can be inferred from the Constitution and other legislations.

Evictions should only be carried out when appropriate procedural protections are in place. These protections are identified by the UN Committee on Economic, Social and Cultural Rights, in paragraph 15 of General Comment No.7, as follows:

- An opportunity for genuine consultation with those affected;

- Adequate and reasonable notice for affected people prior to the eviction;
- Information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- Government officials or their representatives to be present during an eviction;
- Anyone carrying out the eviction to be properly identified;
- Evictions are not to take place in particularly bad weather or at night unless the affected people consent;
- Provision of legal remedies;
- Provision where possible, of legal aid to people who are in need of it to seek redress from the courts.
- Governments must also ensure that no one is rendered homeless or vulnerable to the violation of other human rights as a consequence of eviction. Adequate alternative housing and compensation for all losses must be made available to those affected prior to eviction, regardless of whether they rent, own, occupy or lease the land or housing in question (General Comment No.7, paragraph 16).

In Kenya there have been large-scale forced evictions that contravene international human rights standards, such as the Deep Sea eviction, which was carried out at night with bulldozers. No one should be rendered homeless, regardless of whether they have a title to land or not. The safeguards in place should address the human face of the occupation problem rather than deal with land ownership and tenure issues.

Examples of pending forced evictions in Nairobi, for example, relate to the railway expansion project in Kibera/Mukuru and the implementation of the Nairobi River Basin Programme. It is the plan of the Government to carry out development and environmental conservation programs. However, such plans are normally hampered by the lack of clear guidelines for compensation for persons affected by such developments. In the case of the Mau Forest evictions, for example, there is debate about financial compensation, but there are no clear guidelines for such compensation. There is need to allocate resources to compensate evicted persons and put in place clear guidelines for carrying out any evictions, and which should be firmly backed by a legal framework.

There have also been forced evictions in other areas such as Mt. Kenya and part of the Mau Forest in 2005. Underlying the problem of forced evictions in these areas is often the fact that affected individuals and families find themselves living on land or in areas meant for essential purposes such as road reserves, water catchment areas, or forest. With the widespread lack of security of tenure, this means that the informal settlement dwellers and other affected individuals and families are particularly vulnerable to forced evictions.

It is noteworthy that international human rights monitoring bodies, seeking to ensure Kenya's compliance with its international obligations, have urged the adoption of a law and guidelines on forced evictions on several occasions. In the report on his visit to Kenya in February 2004, the UN Special Rapporteur on the right to adequate housing highlighted concerns about the practice of forced evictions. He recommended that the Government should immediately put into practice the procedure called for under general comment No.7 of the Committee on Economic, Social and Cultural Rights.

In December 2008, the Committee on Economic, Social and Cultural Rights expressed concerns about the practice of forced evictions in Kenya. It recommended inclusion of a provision in Kenya's then draft Constitution to ensure that evictions are only used as a last resort and that Kenya should adopt legislation or guidelines strictly defining the circumstances and safeguards under which evictions must take place. On these occasions, the Kenyan government indicated it would adopt laws and relevant guidelines. The formulation of these guidelines is a clear indication of the government's commitment to the fulfillment of its obligations with regard to the enactment of relevant guidelines and laws on forced evictions.

2.0 Policy Framework and Legislation in Kenya

Kenya has several legislations and policies that attempt to address the issue of forced evictions. These include:-

2.1 The National Land Policy

The Sessional Paper No.3 of 2009 on National Land Policy assures security of tenure to land. The implementation of the Policy is therefore critical in preventing forced evictions. In particular, the Policy recommends several measures to safeguard the rights of both the informal settlers and the land owners. These include:-

- (a) Taking an inventory of genuine squatters and people who live in informal settlements;
- (b) Put in place appropriate mechanisms for the removal of squatters from unsuitable land and their resettlement;
- (c) Ensure that land subject to informal settlement is development in an ordered and sustainable manner;
- (d) Facilitate the registration of squatter settlements found on public and community land for purposes of upgrading or development;
- (e) Develop, in consultation with affected communities, a slum upgrading and resettlement programme under specified flexible tenure systems;
- (f) Put in place measures to prevent further slum development on private land and open spaces;
- (g) Prohibit sale and/or transfer of land allocated to squatters and informal settlers; and
- (h) **Put in place an appropriate legal framework for eviction based on internationally acceptable guidelines among.**

These guidelines will lay a firm basis for preventing forced evictions if the broader issues of security of tenure are addressed and the necessary legal reviews done to provide instruments that will prevent evictions.

2.2 The Constitution 2010

The Constitution of Kenya 2010 has a comprehensive chapter on the Bill of Rights that has significant implications for the right to adequate housing and other economic, social and cultural rights. In particular, the following articles are key to the legislative, policy and programmatic reforms on evictions.

Article 2 on the Supremacy of the Constitution, among others provides that any treaty or convention ratified by Kenya is considered as part of the Constitution. One of the treaties Kenya has ratified is the International Covenant on Economic, Social and Cultural Rights that recognizes the right to housing. Under this article, this is now part of the Constitution.

Article 10 on values and principles of governance lists the following as core values:

- Human dignity.
- Equity.
- Social justice.
- Inclusiveness.
- Equality.
- Human rights.
- Non-discrimination and;
- Protection of the marginalized.

Article 20 obliges the Government to show that it does not have resources to implement the rights. The implication is that the burden of proof is shifted to the Government meaning that it cannot abdicate its obligation by simply stating that it has no resources to discharge its obligations.

Article 21 obligates the government to pass laws, adopt policies and take other measures including the setting of standards to achieve the rights under article 43. This has a direct implication on the issue of evictions. The development of eviction guidelines is therefore a constitutional obligation.

It further obligates the state to enact and implement laws to fulfill its international obligations.

Nature of government obligations under international

- Obligation to respect
- Obligation to protect
- Obligation to fulfill
- Obligation to promote

International Obligations

Key treaty is ICESCR article 11-right to housing

Right to housing has been interpreted to mean: General Comment no 4

- Legal security of tenure-legal guarantee against forced evictions.
- Availability of services, materials, facilities and infrastructure.
- Affordability.
- Habitability

- Accessibility
- Location

Under international human rights treaties the obligations of state parties are categorized under four broad headings:

- Obligation to respect: this requires the government and/or its agents or servants to desist or refrain from any act that would violate the human rights of individuals or groups (e.g., chiefs evicting slum dwellers).
- Obligation to protect: this requires the government to prevent non state actors from violating the rights of others(e.g. landlords evicting their tenants without following the law)
- Obligation to fulfill: This requires the government to take positive steps to implement human rights (e.g. making budgetary allocations for slum upgrading projects)
- Obligation to promote: Requires the government to educate people on their rights.

The Committee on Economic, Social and Cultural Rights has provided authoritative interpretation on the meaning of the right to adequate housing. Under General Comment No. 4 the right to adequate housing has the following elements:

- Legal security of tenure-legal guarantee against forced evictions.
- Availability of services, materials, facilities and infrastructure.
- Affordability.
- Habitability
- Accessibility
- Location

On evictions General Comments No. 11 stipulates the following procedural requirements:

- Opportunity for genuine consultation with those affected.
- Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction.
- Information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected.
- Where groups of people are involved, government officials or their representatives to be present during an eviction.
- All persons carrying out the eviction to be properly identified;
- Evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise.

- Provision of legal remedies; and provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.
- Evictions should not result in individuals being rendered homeless

Article 43 specifically provides that:

Every person has a right;

- To accessible and adequate housing and to reasonable standards of sanitation. (The right to adequate housing contains freedoms. These freedoms include protection against forced eviction and arbitrary destruction and demolition of one's home).
- Although the Constitution does not explicitly contain a provision on forced evictions, by providing the right to accessible and adequate housing, it can be argued that protection against forced evictions is contemplated. Security of tenure, defined as the legal guarantee against arbitrary eviction is one of the key normative content of the right to housing. It is nevertheless important that a separate legislation on eviction is adopted to provide a more comprehensive legal framework. A case in point is South Africa, where the national Constitution provides for right to adequate housing, a legislation specifically dealing with evictions was adopted to provide clear guidelines (The Prevention of Illegal Evictions From and The Unlawful Occupation Of Land Act, 1998).

Article 31

Every person has the right to privacy which includes the right not to have their person, home or property searched and their possessions seized.

Article 26

This provides that every person has the right to life and that a person shall not be deprived of life intentionally, except to the extent authorized by the constitution or other written law.

Article 27

Equality and freedom from discrimination before the law

Article 28

Human dignity

The right to have human dignity respected and protected

Article 40

Protection of right to property to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description.

Article 47

Fair Administrative action

1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

Article 50 - Fair hearing

Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

Article 33 – freedom of expression

Every person has the right to freedom of expression, which includes:-

Freedom to seek, receive or impart information or ideas

Other provisions include article 45 that provides that all administrative actions must be expeditious, efficient, lawful, reasonable and procedurally fair. It gives individuals the right to seek remedies where such action adversely affects him or her.

All these provisions clearly create a constitutional framework for the adoption of eviction guidelines.

2.3 Other legislations

Although there are a number of other legislations that have provisions that appear to be relevant to the practice of forced evictions, they are at best ambiguous and at worst ineffective. These include:

2.2.1 The Government lands act cap 280

Section 8 that:

All actions, suits and proceedings by or on behalf of the Government respecting:-

- (a) Government land; or
- (b) Any contract relating to Government land or any breach of any such contract;
or
- (c) Any trespass on Government land or any damages accruing by reason of such trespass; or
- (d) The recovery of any rent, purchase money or other monies in respect of Government land;

Shall be commenced, prosecuted and carried on by and in the name of the Commissioner who shall be represented by the Attorney-General or by any public officer or other person appointed by the Commissioner in any particular case.

The logical interpretation of the provision would imply that in all cases where people are illegally occupying Government land, the Commissioner through the Attorney-General or by any public officer or other person appointed by the Commissioner in any particular case, should file suit in court for the recovery of the same. In practice this hardly happens which is a clear demonstration that the law is utterly useless for the victims.

2.2.2 Physical Planning Act Cap.286

Section 29 of Physical Planning Act Cap 286 provides that a Local Authority shall have the power to:-

- (a) Prohibit or control the use and development of land and buildings in the interest of proper and orderly development of its area;
- (b) Control or prohibit the subdivision of land or existing plots into smaller areas;
- (c) Consider and approve all development applications and grant all development permissions;
- (d) Ensure the proper execution and implementation of approved physical development plans;
- (e) Formulate by-laws to regulate zoning in respect of use and density of development and;
- (f) To reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plan.

Sec. 30 and 38 (to be added)

2.2.3 Public Health Act (Cap.242)

Section 116 of the Public Health Act provides that:-

It shall be the duty of local authority to take all lawful, necessary and reasonably practicable measures for maintaining its districts at all times in clean and sanitary condition, and for preventing the occurrence therein of, or for remedying or causing to be remedied, any nuisance or condition liable to be injurious or dangerous to health, and to take proceedings at law against any person causing or responsible for the continuance of any such nuisance or condition.

2.2.4 Land Acquisition Act Cap 295

Section 3 of Land Acquisition provides that:

Whenever the Minister is satisfied that the need is likely to arise for the acquisition of some particular land under section 6, the Commissioner (of Lands) may cause notice

thereof to be published in the Gazette, and shall deliver a copy of the notice to every person who appears to him to be interested in the land.

The section clearly includes "every person who appears to be interested in the land". Obviously this should include legitimate squatters, but in practice unless one has a title deed this section is unlikely to be of any benefit.

2.2.5 Kenya Airports Authority (Cap 395), Kenya Ports Authority Act (Cap 391) and Kenya Railways Corporation Act Cap 397

The above legislations, among other things, establish parastatals and define their functions.

A common provision that is relevant to eviction states:

"Where any person erects any building which obscures the view of a fixed signal or is likely to cause any obstruction or any danger to any rail or transport service provided by the Corporation, the Corporation may, unless such person has previously obtained the approval of the managing director to the erection of such building or has modified it to the satisfaction of the managing director, apply to a judge of the High Court for an order for the demolition or modification of the building or, as the case may require, for the payment to the Corporation of the cost incurred in resisting or replacing any signaling or other equipment which is necessary to prevent such obstruction or danger and the court, at its discretion, may grant such order and may make such order as to the payment of compensation and costs as it thinks".

There are hardly any instances where the Corporations have found it fit to apply to the High Court for orders of demolition when faced with occupation of land especially by the poor. The practice is always to use either their own officers or the provincial administration or regular police to clear the settlements.

2.2.6 The Kenya Roads Authority Act

Section 23 provides that:

Where an Authority requires any land for its purposes under this Act, such Authority may either -

If such land is not public land, acquire such land through negotiation and agreement with the registered owner thereof:

Provided that, notwithstanding the provisions of section 6 of the Land Control Act, the

ensuing transaction shall not require the consent of a land control board if the land to be acquired is agricultural land;

The provision only makes provision for "registered owners" so that those who have no registration are left to the mercy of the Authority.

2.2.7 Landlord and Tenant (shops, Hotels and Catering Establishments) Act (Cap 301)

Section 4 of the Act provides that:

- (1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the following provisions of this Act.
- (2) A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.
- (3) A tenant who wishes to obtain a reassessment of the rent of a controlled tenancy or the alteration of any term or condition in, or of any right or service enjoyed by him registered post to his last known address, and any such notice shall be deemed to have been given on the date on which it was so delivered, or on the date of the postal receipt given by a person receiving the letter from the postal authorities, as the case may be.
- (4) A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4 (5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal:

Provided that a Tribunal may, for sufficient reason and on such conditions as it may think fit, permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of this section. The Act only protects business people.

2.2.8 The Rent Restriction Act (Cap 296)

Section 14 provides that:

1. No order for the recovery of possession of any premises or for the ejectment of a tenant there from shall be made unless:-
 - (a) Some rent lawfully due from the tenant has not been paid, or some other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as it is consistent with the provisions of this Act has been broken or not performed; or
 - (b) The tenant, or any person residing with him, has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the tribunal, deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any such person; or
 - (c) The tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would, in the opinion of the tribunal, be seriously prejudiced if he could not obtain possession; or
 - (d) The tribunal is satisfied that the tenant has sublet the whole or any part of the premises (that part being also premises to which this Act applies) for a rent in excess of the rent recoverable under the provisions of this Act; or
 - (e) The dwelling-house is reasonably required by the landlord for occupation as a residence for himself or for his wife or minor children, or for any person bona fide residing or to reside with him, or for some person in his whole-time employment or in the whole-time employment of some tenant of his or for the occupation of the person who is entitled to the enjoyment of the dwelling-house under a will or settlement, and the landlord has given to the tenant not less than twelve months' notice to quit; and in that case the tribunal shall include in any order for possession a requirement that the landlord shall not without its consent let the premises or any part thereof within eighteen months after the date on which possession is to be given; or
 - (f) The premises are reasonably required for the purpose of the execution of the statutory duties or powers of a local authority or public body, or for any purpose which, in the opinion of the tribunal, is in the public interest:
Provided that where, upon completion of any work undertaken, the landlord wishes again to let the dwelling-house (whether for a consideration or without consideration), he shall give to the tenant who, under the provisions of this

paragraph was required to give up possession of the dwelling-house, the first option to let and take possession thereof; or

(g) (i) the tenant has, without the consent in writing of the landlord, assigned, sublet or parted with the possession of the premises or any part thereof;

(ii) A landlord who has obtained or is entitled to obtain an ejectment order on this ground may at his option either obtain a similar order against the occupier or treat the occupier as his tenant;

(h) The landlord is the owner of a dwelling-house which he has previously occupied as a residence for himself and reasonably requires the house for occupation as a residence for himself or for his wife or minor children, and has complied with the terms relating to the giving of notice contained in any lease into which he has entered with the tenant in respect of the house, or, in the absence of any such lease, has given the tenant three months' notice to quit:

Provided that if, within twelve months next after the date upon which the landlord was, under the provisions of this paragraph, entitled to vacant possession of the dwelling-house, he wishes again to let the house (whether for a consideration or without consideration), he shall give to the tenant who, under the provisions of this paragraph was required to give up possession of the house, the first option to let and take possession thereof; or

(i) The landlord requires possession of the premises to enable the reconstruction or rebuilding thereof to be carried out, and has given to the tenant not less than six months' written notice of that requirement; in which case the tribunal shall include in any order for possession a requirement that the reconstruction or rebuilding shall be completed within such specified time as the tribunal may consider reasonable:

Provided that where, upon completion of any work undertaken, the landlord wishes again to let the dwelling-house (whether for a consideration or without consideration), he shall give to the tenant who, under the provisions of this paragraph was required to give up possession of the dwelling-house, the first option to let and take possession thereof; or

(j) The tenant or his or her wife or husband owns a dwelling-house to which this Act does not apply, and the landlord has given to the tenant:-

- (i) Twelve months' notice to quit, and
 - (ii) An option, exercisable within six months of the date of the notice, to take the premises for a period of three years from the date of the notice at a rent and on terms to be determined, in default of agreement, by the tribunal, which shall determine the rent to be at the annual rate of one-tenth of such sum as it finds to be the open market value of the dwelling-house sold with vacant possession at the date of the notice; or
 - (k) The landlord has, with the consent of the tribunal, let the premises for a definite period, and the landlord requires the premises at the expiry of that tenancy for his own occupation or for the occupation of his wife or minor children or for some person in his whole-time employment; or
 - (l) The premises are occupied by a larger number of persons than can reasonably be accommodated so that in the opinion of the tribunal the premises are overcrowded or constitute, for any reason, a danger to the premises or to the neighbours; or
 - (m) The application for the recovery of possession of the premises is made by a person who, having been the tenant of the premises, has been unlawfully dispossessed thereof, and in any such case:-
 - (i) Any tenant who, if the application is successful, is liable to be ejected from the premises shall be made a party to the proceedings;
 - (ii) Where any such tenant is so ejected, the tribunal may order that the landlord pay to that tenant such sum by way of compensation as the tribunal thinks just in all the circumstances of the case;
 - (iii) Where any tenant has been lawfully dispossessed, and upon an application for recovery of possession, the tribunal may order that the landlord pay that tenant such sum by way of compensation as the tribunal thinks just in all the circumstances of the case.
2. In any case arising under any of paragraphs (a) to (d), (f) to (h) and (k) to (m), inclusive, of subsection (1), no order for the recovery of possession of premises shall be made unless the tribunal considers it reasonable to make such an order.
3. Nothing in paragraph (e) or paragraph (h) of subsection (1) shall permit a landlord to recover possession of a dwelling-house if by that recovery he or his wife or minor

children or any person bona fide residing or to reside with him would be in occupation of, or would acquire the right to occupy, more than one place of residence at the same time.

4. Where the tribunal makes an order for the recovery of possession of premises or for the ejectment of a tenant therefore subject to conditions it may:-
 - (a) Where those conditions are complied with, discharge or rescind the order; or
 - (b) Where those conditions are not complied with, on application by notice of motion, make the order absolute.
5. An order against a tenant for the recovery of possession of any premises or ejectment there from under the provisions of this section shall not affect the right of any subtenant to whom the premises or any part thereof have been lawfully sublet before proceedings for recovery of possession or ejectment were commenced to retain possession under the provisions of this section, or be in any way operative against any such subtenant.
6. Any landlord who, in contravention of the proviso to paragraph (f), (h) or (i) of subsection (1), fails to give a first option to the tenant required to give up possession of the dwelling-house or fails to give up possession of the dwelling-house to the tenant who has accepted the option shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment, and in addition the court may:-
 - (a) Order the offender to pay to the tenant concerned compensation for any loss or damage suffered by him in consequence of having been required to give up possession;
 - (b) Order any person to whom the dwelling-house has been let or who is actually occupying it to give up possession thereof within such period as the court may consider reasonable; and
 - (c) Order the offender to reinstate the tenant in the dwelling-house.
7. Where a landlord has obtained an order for possession or ejectment under this section, and it is subsequently made to appear to the tribunal that the order was obtained by misrepresentation or the concealment of material facts, the tribunal may order the landlord to pay to the former tenant such sum as appears sufficient

as compensation for damage or loss sustained by such tenant as the result of the order; and any landlord who so obtains such an order shall be guilty of an offence and liable to a fine not exceeding four thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

8. Any person who contravenes or fails to comply with any order made under subsection (1) or any requirement contained in any such order shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

We have reproduced the entire section because it is probably the most comprehensive legislation that provides protection against forced evictions in the country. In practice however it has been rendered more or less redundant. There are a number of reasons for this. Major ones include:

- (a) The Act only applies to residential houses where the rent payable is Kshs.2, 500 or below. The Act became operational on 1st October, 1959 and since then the rent ceiling has remained unchanged.
- (b) Although a number of residents in urban informal settlements may still fall under the Act, corruption and abuse of power by landlords or structure owners have made it almost impossible for tenants to be protected.
- (c) Most evictions in informal settlements are not ordinarily done by so called landlords but by the government because the landlords have no titles.
- (d) The Act envisaged cases of individual evictions and may not be very effective in situations of mass evictions.
- (e) The Act is confined to tenant-landlord relationship and therefore excludes many other cases.
- (f) The Tribunal is only too understaffed to be effective.

2.2.9 Trespass Act Cap 294

Section 3 provides that

- (1) Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits Stock to be on, private land without the consent of the occupier there of shall be guilty of an offence.

(2) Where any person is charged with an offence under subsection (1) the burden of proving that he had reasonable excuse or the consent of the occupier shall lie upon him

Section 9 provides that:

- (1) When any person is seen or found committing, or is reasonably suspected of having committed, an offence under this Act, the occupier of the private land or the owner of the fence, as the case may be, or any police officer, administration police officer or administrative officer, may arrest that person without warrant, if he has reason to believe that, except by arresting him, he may not afterwards be found without undue delay, trouble or expense.
- (2) For the purposes of ascertaining whether an offence under this Act is being committed, a police officer, administration police officer or administrative officer may enter upon any private land without the prior consent of the occupier thereof.

The Act criminalizes what ideally should be a civil matter and has often been misused to carry out evictions. It gives almost unrestricted power to private individuals and police officers. Most of the victims are the poor.

2.2.10 Limitations of Actions Act Cap 22

Section 7 provides that:

An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

The Act implicitly contradicts the Trespass Act because it is premised on the understanding that a registered owner of land should only resort to civil action to recover her/his land from an alleged trespasser. If she/he fails to do so for twelve or more years then she/he loses the right to the land. Unfortunately again, the poor are unlikely to find this law useful because of the complex and expensive legal process in bringing an action for adverse possession.

2.2.11 Environmental and Management Coordination Act (1999)

2.1 Pending Laws.

2.3.1 The Government Lands (Amendment) Bill, 2001

This was the most ambitious attempt to come up with legislation on eviction but it was never passed. It defined forced eviction as follows:

“forced eviction” involves the involuntary removal of persons, families, entities and groups from their homes and communities.

It provided that:

To provide for the security of tenure for those persons living in the informal settlements, all forced eviction of persons and demolition of structures in the informal settlements as a practice shall be discouraged. Eviction and demolition may be allowed in the informal settlements only under the following situations:-

- (a) When there is a valid court order for eviction and relocation obtained pursuant to the provisions of this Act; or
 - (b) When an on-site development project designed to upgrade and rehabilitate an informal settlement is to be implemented by the government for the benefit of the occupying residents of the said informal settlement.
1. (a) No person other than the Commissioner of Lands may institute proceedings to obtain an order for the eviction and relocation of a person occupying public land in the informal settlements. Similarly, no person other than the Town Clerk may institute proceedings to obtain an order for the eviction and relocation of a person occupying land held by the local authority in the informal settlements. No person other than the legal titleholder may institute proceedings to obtain an order for the eviction and relocation of a person occupying private land in the informal settlements.
- (b) In determining whether to grant an order of eviction and relocation, the court must consider the following factors:
- (i) Whether there is a viable alternative to the proposed eviction and relocation;
 - (ii) The government's proposed use for the land at issue;
 - (iii) The period of time in which the community has occupied the informal settlement;
 - (iv) The circumstances in which the community was initially settled in the informal settlement;
 - (v) The number of persons who live in the informal settlement; and vi) any other relevant issues brought to the attention of the court.

- (c) The court shall not grant an order for eviction and relocation unless
 - (i) it is satisfied that greater hardship will be done to the community at large if the persons are not evicted, than will be done to the residents if they are relocated; and
 - (ii) satisfactory arrangements have been made for the relocation of the residents to be affected.
 - (d) An order of eviction shall contain therein a provision allowing for the relocation of the affected persons. That relocation shall be undertaken by the local government units, in coordination with the Department of Housing with the assistance of other government agencies within forty-five (45) days of service of final judgment by the court.
 - (e) The affected persons shall be provided with relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of affected families.
 - (f) Prior to relocation or resettlement, adequate consultations on the matter of resettlement shall be undertaken with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated.
 - (g) The Department of Housing and local government units shall jointly promulgate the necessary rules and regulations to carry out the above provision.
2. In the event that the government undertakes an on-site development project with the aim of upgrading and rehabilitating a blighted area of an informal settlement, the government must proceed in a way that minimizes displacement of persons occupying structures therein. To the extent displacement cannot be avoided, those persons to be affected should not be rendered homeless but shall be relocated according to the provisions of Section 2 of this Act.

Moreover, before proceeding with any on-site development project that will foreseeable displace residents therein, the following are mandatory:

- (a) When a development project will displace persons whose structures are located on government land, the Commissioner of Lands shall serve written notice of the development project and the identity of those structures which will be demolished on that person or persons to be affected either personally or by

leaving it for him at his last known address at least ninety (90) days prior to the date of the demolition.

- (b) When the development project will displace persons whose structures are located on land held by local authorities, the Town Clerk shall serve written notice of the development project and the identity of those structures which will be demolished on that person or persons to be affected either personally or by leaving it for him at his last known address at least ninety (90) days prior to the date of eviction.
 - (c) Further notice of the demolitions shall also be published by affixing a copy in the District Commission, District Officer and area Chief's offices and in some public or conspicuous place or situation in the area concerned such as the area school, church, mosque and meeting hall, and, where it is deemed necessary, by publishing it in the Gazette.
 - (d) Such publication or affixing shall be deemed good and sufficient publication and notice to all persons concerned. Any person who, without lawful cause or excuse, tears, defaces, alters, injures or removes any notice so affixed shall be guilty of an offence and liable to a fine not exceeding 1,000 shillings.
 - (e) When notice of the development project and demolition in the informal settlement sector is given under this Act, any affected person who is dissatisfied with the proposed demolition of his structure, he may within thirty days after being notified of the demolition appeal in writing to the Commissioner of Lands or Town Clerk who shall hear and determine the appeal and shall notify the resident in writing of its decision.
 - (f) The Minister of Lands may make regulations to provide for the practice and procedure to be followed in respect of appeals under this section.
 - (g) Any party to an appeal to the Commissioner of Lands or Town Clerk who is dissatisfied with the decision of that office may appeal to the Resident's Magistrate's Court. Any party to an appeal to the Resident Magistrate's Court who is dissatisfied with the decision may appeal to the High Court whose decision is final.
3. In the execution of any eviction or demolition of persons or structures situated in the informal settlement sector, the following shall be mandatory:
- (a) When the eviction is to take place on government land, the Commissioner of Lands shall serve written notice of the eviction on the person to whom it is to

be given either personally or by leaving it for him at his last known address at least ninety (90) days prior to the date of eviction.

- (b) When the eviction is take place on City Council Land, the Town Clerk shall serve written notice of the eviction on the person to whom it is to be given either personally or by leaving it for him at his last known address at least ninety (90) days prior to the date of eviction.
- (c) Notice of the evictions shall also be published by affixing a copy in the District Commission, District Officer and area Chief's offices and in some public or conspicuous place or situation in the area concerned such as the area school, church, mosque and meeting hall, and, where it is deemed necessary, by publishing it in the Gazette.
- (d) Such publication or affixing shall be deemed good and sufficient publication and notice to all persons concerned. Any person who, without lawful cause or excuse, tears, defaces, alters, injures or removes any notice so affixed shall be guilty of an offence and liable to a fine not exceeding 1,000 shillings.
- (e) Local government officials or their representatives must be present during the eviction or demolition and properly identified at all times.
- (f) No eviction or demolition shall take place between sunset and sunrise or on any Sunday.
- (g) No use of heavy equipment shall be allowed for demolition except for structures that are permanent and of concrete materials.

4. There shall be a moratorium on the eviction of all persons and demolition of structures situated therein for a period of three (3) years from the affective date of this Act; or until the Constitution of Kenya is amended to provide for the security of tenure for the urban poor and marginalized living in the informal settlement sector or whichever comes sooner.

The moratorium shall not apply to those persons who have constructed their structures after the effective date of this Act or for cases enumerated in this Act.

5. Any person who violates any provision of Section 1 herein shall be imposed the penalty of not more and three (3) years of imprisonment or a fine not less than 50,000 Kenyan shillings, but not more than 100,000 Kenyan shillings or both at the discretion of the court.

Provided, that if the offender is a corporation, partnership, (limited or otherwise), or association, the penalty shall be imposed on the officer or officers of the said corporation, partnership, association who caused the violation.

6. All persons subjected to any eviction not in full accordance with the Act, shall be entitled to restitution and/or compensation for any losses of land, personal, real or other property or goods. The absence of legal title to land by affected person shall not be a bar to compensation.

Compensation can include land and access to common property resources and shall not be limited to cash payments.

7. Any person or persons who claim that any of the provisions herein have been violated with respect to himself, shall apply to the High Court in its original jurisdiction and notwithstanding the provisions of the Government Proceedings Act, the Court shall have the power to issue orders of injunction which it deems appropriate.

Complaints of violations of these regulations against state, administrative or local government executives and officers shall be filed and prepared in accordance with section.

The Bill also included complaints mechanism against subordinate officials including but not limited to chiefs, sub-chiefs, employees, agents and others acting for or on behalf of state, administrative or local government officials.

It would been a positive step in addressing the issue of evictions even though its major was that that it narrowly assumed that all evictions occur only in informal settlements alone and that all evictions are always done by the government or its officials. It was however never tabled in Parliament.

2.2 Some Emerging Practices

There are currently some emerging practices that are not anchored in policy or legislation but which provide some lessons.

2.4.1 The Mau Forest case

The Mau relocation was preceded by the formation of a Task Force whose main mandate was to inquire into the nature and circumstances of the settlements in the forest. The Task Force made recommendations that have informed the formation and work of the Interim Coordinating Secretariat within the Office of the Prime Minister whose main mandate is to coordinate the implementation of the recommendations on

the rehabilitation and conservation of the Mau Forests Complex. In the longer term, a Mau Forests Complex Authority will be established to coordinate and oversee the management of the Mau Forests Complex. The Authority will be guided by a Board of Directors which will comprise representatives of the main stakeholders.

2.4.2 Railway Relocation Action Plan

The Plan is meant to guide the relocation of those staying on the railway reserve land. The Project is supported with funding from the World Bank. Under the World Bank Operational Policy 4.12, every resettlement plan or policy framework must include measures that ensure that displaced persons are informed about their options and rights pertaining to resettlement and must be consulted, offered choices, and provided with technical and economically feasible resettlement alternatives. It is expected that these requirements will be strictly adhered to during the railway resettlement programme.

3.0 Towards a Solution: Eviction Guidelines

In spite of past Government attempts in law and policy to address the issue of evictions, these initiatives were not comprehensive or adequate to resolve cases of forced evictions. It is as a result of this that the Government through the National Land Policy committed itself to establish an appropriate legal framework for eviction based on internationally acceptable guidelines.

3.1 Forced Eviction concerns

In developing these guidelines the following concerns should be addressed:-

3.1.1 Land Tenure

Generally there has been a focus on the provision of individual land titles. Individual land titling delivers tenure security but it does so at great human and financial cost. In Kenya, with the rolling out of titles for a hundred years, only 15 percent coverage of the national land surface has been achieved. This suggests that a range of different types of tenures have to be introduced. This will enhance the delivery of security of tenure especially for urban and rural poor. Examples of these tenure types include occupancy rights, anti-eviction rights, adverse possession, unregistered leases and rentals.

3.1.2 Land Administration

These systems are vital as it is not possible to supply land rights and security of tenure without an appropriate technical and institutional (governance) system to underpin these rights, such as land records, administrative procedures, and appropriately decentralised delegation of functions. Conventional land registration (titling) systems

are highly centralised, expensive, rely on scarce professionals, and are based in major towns. This means that those living outside major urban areas especially the poor and the illiterate cannot easily use or access the conventional systems.

3.1.3 Strategic Planning

The systems of managing and planning development have not changed significantly after independence to fit with the Kenyan urbanisation and settlement patterns. Strategic planning approaches have to be strengthened and ensure that development control and land use management is sustainable. Country-wide and affordable planning approaches and standards, including plot sizes and service standards need to be developed and enforced.

3.4.4 Decentralization and Improved Local Governance Capacity

In the past, the role of vulnerable groups in decision making and local governance has not been fully incorporated in the existing decentralized frameworks. In lieu of the above, the county governments under the new constitutional dispensation shall be required to adequately devolve resources, authority and qualified manpower. Transparency and participation of communities in development decisions shall be upheld.

3.4.5 Planning and Social Amenities Standards

Most towns/settlements still depend on planning and social amenities standards that are not responsive to the challenges of urbanization and contemporary development trends. There is need to ensure that the physical planning standards addresses the social amenity needs of informal and slum settlements.

3.4.6 Financing Mechanisms

In most cases it is necessary to own a registered land title to be able to obtain a mortgage or housing loan from a commercial bank. Institutional strengthening of the financial sector is required accompanied by supportive legal instruments and pro-poor foreclosure laws.

3.4.7 Building Standards and Housing Delivery

Most towns still have colonial building standards appropriate for middle class housing, yet the majority of the population is low income and poor. The Habitat Agenda encourages governments to create a framework that facilitates housing delivery by the involvement of all stakeholders particularly the private sector (including informal sector), in partnership with the public sector. Housing co-operatives remain under-developed despite their proven ability to cater for low income groups in other parts of the world accompanied by the capacity to promote services for all to justify the taxes.

There is need to ensure the draft Building Code and regulations addresses the needs of low income and poor.

3.4.8 Land Tax

In Kenya, land tax uses the land registration (cadastral) system as the information system to indicate who should be paying taxes. If the majority of the population is living outside the land titling system then a county or municipality cannot increase its tax, or tax the rich who are not living in the formal system. Appropriate approaches to tax parcels, tax records and tax procedures have to be developed.

The underlining principle in dealing with the challenge of slum settlements is that emphasis should be given to a pre-emptive approach that is directed to guiding and facilitating orderly urban and housing development. As much as possible forced eviction of a segment of the population who mostly have no place to go and have been trying to survive with no other alternative housing and income generating facilities needs to be avoided. While evictions may sometimes be necessary, they should be a last resort.

4.0 Evictions and Resettlement Guidelines

4.1 Introduction

4.1.1 Definitions

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

“Consultation” refers to the process whereby the affected persons, on their own or through their organizations, are provided an opportunity to be heard and to participate in the decision-making process on matters involving the protection and promotion of their legitimate collective interests, which shall include appropriate documentation and feedback mechanisms;

“court” means the High Court or the magistrate’s court in whose area of jurisdiction the land in question is situated;

“forced evictions” or “arbitrary evictions” refer to the permanent or temporary removal against their will of individuals, families and /or communities from their home and/or land which they occupy, without the provision, and access to, appropriate forms of legal or other protection as outlined the draft Eviction and Resettlement (hereinafter referred to as “The Guidelines”).

“land” includes a portion of land and housing;

“Professional squatters” refers to individuals or groups who occupy lands without the express or tacit consent of the landowner or person in charge and who have sufficient income to purchase or lease land. The term shall also apply to persons who have been previously awarded home lots or housing units by the Government but who sold, leased

or transferred the same to settle illegally in the same place or in another area, and *non-bona fide* occupants and intruders of lands reserved for other purposes. The term shall not apply to individuals or groups who simply rent land and housing from professional squatters or squatting syndicates

4.2 Application of the Guidelines

These guidelines apply in respect of all land and all occupiers of land throughout the country but shall not apply to professional squatters.

4.3 Forced evictions constitute human rights violations

Forced evictions constitute *prima facie* violations of a wide range of internationally recognised human rights. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

No one may be evicted from their home, or have their home demolished without following the procedures laid down the guidelines or without a court order after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

4.5. Associated human rights violations

The Government and or any other person or agency that is carrying evictions shall ensure that such eviction does not violate other human rights, such as confiscation or destruction of productive land, the destruction of property, schools, health care, water and sanitation facilities and cultural property and the dislocation of social networks and where they may occur they must comply with the provisions of these Guidelines.

4.6 General Obligations

4.6.1 The Government's obligations

The Government shall take all appropriate steps to prohibit, prevent and provide remedies in all cases of forced evictions whether carried out or threatened by State or non-State actors.

The aforementioned obligations of the Government with respect to forced evictions shall not relieve other entities from their obligations in this regard.

4.6.2 Prohibition of forced evictions

The Government shall take all necessary steps to legally prohibit forced evictions.

The Government shall apply all appropriate civil and/or criminal penalties against any person or entity whether public or private, who carries out a forced eviction in breach of the law.

4.6.3 Non-discrimination and equality

The Government shall ensure that protections against forced evictions, the right to secure tenure and the right to adequate housing shall be guaranteed without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Government shall guarantee the equal right of women and men to the enjoyment of the rights articulated within the present Guidelines.

The Government shall take special action to provide sufficient protection to vulnerable groups such as women, people living HIV/AIDS, children, and people with disabilities, the sick and the elderly.

4.6.4 Prevention of forced evictions

The Government shall secure, by all appropriate means including the provision of security of tenure, the maximum degree of effective protection against the practice of forced evictions for all persons.

4.6.5 Monitoring Evaluation and Follow-up

The Government 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. Monitoring reports and findings should be made 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.

The Government shall entrust an independent national body such as the Kenya National Human Rights Commission, to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law.

Regular governmental presentations at international forums on economic, social and cultural rights be used as an evaluation and monitoring tool for the Eviction and Resettlement Guidelines.

4.7 Prevention of Forced Evictions

4.7.1 Right to housing and adequate standard of living

The Government shall enact legislation providing for the right to adequate housing which include the right to secure legal tenure, the right to access to essential services and the right to affordable, habitable, physically accessible, appropriately located and culturally appropriate housing.

The Government shall take all steps within its maximum available resources to ensure that everyone enjoys their right to adequate housing and to an adequate standard of living in order to decrease their vulnerability to being forcibly evicted.

4.7.2 Right to secure tenure

The Government shall enact and enforce legislation guaranteeing universal security of tenure. Regardless of the type of tenure conferred - for example rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property - residents should be adequately protected against forced evicassation.

4.7.3 Review of legislation

The Government shall carry out a comprehensive review of all relevant national legislation with a view to ensuring the compatibility of such legislation with the norms contained in the present Guidelines and other relevant international human rights provision.

The Government shall repeal, amend and/or enact national legislation as necessary to bring national legislation into compliance with the aforementioned standards.

4.7.4 Legislative framework on forced evictions

The Government shall adopt appropriate legislation and policies to ensure the effective protection of individuals, groups and communities from forced eviction. Such legislation should include measures which: (a) conform to these Guidelines and international human rights law, and (b) are designed to control strictly the circumstances under which evictions may be carried out. Such legislation must also apply to all agents acting under the authority of the Government or who are accountable to it and non state actors.

4.7.5 Abolition of existing forced eviction plans

The Government shall take immediate steps to ensure that all existing plans involving forced evictions are eliminated.

The Government shall place a moratorium on all evictions until a proper legislative and institutional framework is in place to prevent and remedy forced evictions.

4.7.6 Non-retrogressive measures

The Government shall refrain from introducing any retrogressive measures with respect to *de jure* or *de facto* protection against forced evictions. This includes measures that negatively and unreasonably impact upon a person's ability to earn or attain an adequate income sufficient to ensure the satisfaction of basic needs.

The Government shall, especially where prices and income levels are determined by other actors, take all steps to ensure that these actors respect human rights, including the right to an adequate income, social security, adequate housing and the right to an adequate standard of living.

4.7.7 Development-based displacement

The Government shall ensure that an environmental and eviction impact assessments are carried out prior to the initiation of any project which could result in development-based displacement, with a view to fully securing the human rights of all potentially affected persons, groups and communities.

4.7.8 Market-based displacement

The Government shall review the operation and regulation of the housing and tenancy markets to ensure that market forces do not increase the vulnerability of low-income and other marginalised and vulnerable groups to eviction.

The Government shall in cases where the price of land and housing that is owned or occupied by such groups significantly increases, ensure there is sufficient protection against physical or economic pressures for residents to leave or be deprived of living in housing, or on land, that accords with the right to adequate housing.

4.7.9 Natural disasters and environment

The Government shall take steps to minimise the occurrence of natural disasters and environmental degradation, which create the conditions for displacement. The Government should take concerted action at the national and international levels to ensure that climate change, deforestation and desertification does not respectively result in the displacement of residents, particularly in coastal areas, forest, arid and semi-arid areas.

Natural disasters by themselves shall not be used as a pretext for forcible evictions: residents should not unreasonably be prevented from returning to their homes and legal remedies should be provided in those exceptional cases where return is not

feasible. Where evictions are proposed for the purpose of protecting the environment, they must only occur in accordance with these Guidelines.

4.8 Marginalised and Vulnerable Groups and People

4.8.1 Women

The Government shall ensure the equal right of men and women to legal security of tenure; property ownership; equal access to inheritance; the control of and access to housing, land and property and to housing, land and property restitution.

The Government shall take all necessary steps to ensure that affected women are adequately represented and included in relevant consultation and decision-making processes, for example with respect to alternatives to eviction or resettlement, and have the appropriate means and information to participate effectively.

The Government shall, in particular, take specific and comprehensive preventive measures to ensure that private actors do not forcibly or violently evict women from their homes.

4.9 Protection Against Forced Evictions

4.9.1 Exceptional circumstances

The Government shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their potential extremely negative impact on a wide range of international recognised human rights. Any eviction must be warranted by law, reasonable in the circumstances, proportionate and can only be carried out in accordance with the Guidelines and international human rights and humanitarian law.

The Government shall ensure that exceptions to the prohibition on forced evictions such as the 'interest of society' or 'public interest' should be read restrictively, so as to again ensure that evictions only occur in exceptional circumstances.

Where eviction is considered to be justified it should be carried out in strict compliance with the following procedures:-

- (a) Appropriate notice given to the affected individual or groups clearly stating the modalities, day and time of the eviction.
- (b) Consultations with the affected individual or group on the proposed eviction modalities and resettlement plans.

- (c) Holding of public hearing with affected persons and other stakeholders to provide an opportunity to discuss alternative proposals for resettlement.
- (d) Provide opportunity for the parties to seek legal redress where there is a stalemate or dispute.
- (e) The eviction notice should contain a detailed justification for the decision, among others:-
 - (i) Be a language that is understood by all individuals concerned
 - (ii) The full details of the proposed alternative
 - (iii) Where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions

4.9.2 Alternatives to forced evictions

The Government shall fully explore all possible alternatives to eviction. In this regard, all affected persons, including women, children, people with disability, people living with HIV and AIDS the elderly, and illiterate persons shall have the right to all relevant information and the right to full participation and consultation throughout the entire process and to propose any alternatives.

The Government shall ensure that, in the event that agreement cannot be reached on the proposed alternative by the affected persons, groups and communities and the entity proposing the forced eviction in question, the dispute shall, in the first instance, be referred to Mediation Committee consisting of representatives from the affected group, officials from the Ministry of Lands, representatives from the party intending to carry the eviction and a representative from the Kenya National Commission on Human Rights.

4.9.3 Process during eviction

The Government shall ensure that appropriate procedural protection and due process is followed during all evictions. These include:

- (a) Presence of government Local government officials or their representatives during eviction or demolitions.
- (b) Proper identification of those taking part in the eviction or demolition.
- (c) Presentation of formal authorization for the action.
- (d) Transparency, openness and compliance with international Human Rights Principles.
- (e) Eviction must not take place in bad weather, at night, during festivals or religious holidays, prior to election, during or just prior to school examinations.
- (f) Eviction should be carried out in a manner that respects the dignity, right to life and security of those affected.

- (g) Special measures must be taken to ensure that women are not subject to gender- based violence, any other forms of discrimination in the course of evictions, and that the human rights of children are fully protected.
- (h) Special measures must be taken to ensure no arbitrary deprivation of property or possessions take place as a result of eviction. Property and possession left behind involuntarily should be protected against destruction, arbitrary, and illegal appropriation, occupation or use.
- (i) Legal use of force must respect the principles of necessity and proportionality, and any national or local code of conduct consistent with international law enforcement and Human Rights Standards.
- (j) The affected persons shall be given the first priority to demolish and salvage their property. Where they fail to comply, demolition will take place taking due consideration to people with disabilities, elderly, women and children and the sick.
- (k) Provision of legal remedies; and
- (l) Provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

4.9.4 Court order

Where no agreement is reached between the affected persons and the entity intending to carry eviction, the Government shall adopt legislative measures prohibiting any such eviction without a court order. The court shall consider all relevant circumstances of affected persons, groups and communities and any decision be in full accordance with principles of equality and justice and internationally recognized human rights and humanitarian law.

4.9.5 Alternative land and housing

The Government shall ensure that evictions do not result in individuals being rendered homeless or vulnerable to the violation of other human rights.

The Government shall, where those affected are unable to provide for themselves, take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

4.10 Legal Remedies

4.10.1 General

The Government shall ensure that all persons threatened with eviction, notwithstanding the rationale or legal basis thereof, have the right to:

- (a) A fair hearing before a competent, impartial and independent court or tribunal

(b) Legal counsel, and where necessary, sufficient legal aid

(c) Effective remedies.

4.10.2 Appeal

The Government shall ensure that all persons have a right to appeal any judicial or other decisions affecting their rights as established pursuant to the present Guidelines, to the highest national judicial authority.

4.10.3 Compensation

The Government shall ensure that all persons subjected to any eviction not in full accordance with the present Guidelines, should have a right to compensation for any losses of land, personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments.

4.10.4 Resettlement

The Government shall ensure, in cases where evictions have been deemed lawful and in compliance with the present Guidelines, the right of all persons, groups and communities who are unable to provide for themselves, to suitable resettlement which includes the right to alternative land or housing, which is safe, secure, accessible, affordable and habitable.

The Government shall ensure that resettlement is only carried out in exceptional circumstances, when in the public interest, or where the safety, health or enjoyment of human rights so demands. Such resettlement must occur in a just and equitable manner.

Resettlement must ensure equal rights to women, children, people with disability and people living with HIV/AIDS and other vulnerable groups including the right to property ownership and access to resources. Resettlement policies should include programmes designed for women with respect to education, health, family welfare and employment opportunities.

No affected persons, groups or communities, shall suffer detriment as far as their human rights are not concerned nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction.

Sufficient information shall be provided to affected persons, groups and communities concerning all State projects as well as to the planning and implementation processes relating to the resettlement concerned, including information concerning the purpose to which the eviction dwelling or site is to be put and the persons, groups or communities who will benefit from the evicted site. Particular attention must be given to ensure that indigenous peoples, ethnic minorities, the landless, women and children are represented and included in this process.

The entire resettlement process should be carried out in full consultation and participation with the affected persons, groups and communities. The Government take into account in particular all alternate plans proposed by the affected persons, groups and communities.

If after a full and fair public hearing, it is found that there is a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least ninety (90) days notice prior to the date of the resettlement; and

Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.

Immediate steps will be taken to ensure that no new illegal structures are erected after the eviction.

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

4.10.5 Monitoring, Evaluation and Follow-up

The Government 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. Monitoring reports and findings should be made 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.

The Government shall entrust an independent national body such as the Kenya National Human Rights Commission, to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law.

Regular governmental presentations at international forums on economic, social and cultural rights be use used as an evaluation and monitoring tool for the Eviction and Resettlement Guidelines.

4.10.6 Domestic agencies

The Government shall designate specific public agencies to be entrusted with monitoring forced evictions and reviewing the enforcement for the prohibition on forced evictions.

4.11 Responsibilities of Non-State Actors

4.11.1 International organizations

All International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, working in the country and /or with the Government shall be subject to these guidelines

4.11.2 Transnational corporations and other business enterprises

Transnational corporations and other business enterprises working in the country shall respect the right to housing, including the prohibition on forced evictions.

4.12 Other

4.12.1 Interpretation

These guidelines shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee, criminal or humanitarian law and related standards, or rights consistent with these laws and standards as recognized under any national law.