

# 'WE ARE LIKE RUBBISH IN THIS COUNTRY'

FORCED EVICTIONS IN NAIROBI, KENYA

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*Cover photo:* A resident of City Carton settlement in Nairobi sits outside her demolished home on 10 May 2013, hours after groups of unidentified men used crowbars and sledgehammers to demolish homes.

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*Back cover images:*

*Top:* Gladys Namwaya in front of her home in Deep Sea settlement in Nairobi.

*Bottom:* Deep Sea has only one access road, which is extremely narrow and uneven. The road is lined with businesses and shops, many of which are owned by residents, and is the centre of the settlement's activities.

Both images © Nikola Ivanovski

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# METHODOLOGY

This report is the outcome of research conducted by Amnesty International in Nairobi, Kenya in May, June and July 2013.

Amnesty International researchers first visited City Carton settlement near Wilson Airport on 10 May 2013, the day of the first house demolitions in the settlement. Follow-up visits to City Carton were conducted in May, June and July 2013. Over this period researchers interviewed 50 residents of City Carton through group meetings and individual interviews.

Amnesty International researchers interviewed the Governor of Nairobi County and a number of police officials about the evictions and demolitions at City Carton. Researchers also met with the Administrative Police Chief Inspector from Nairobi West, the District Officer for Nairobi West, and the Police Commander of Nairobi, and spoke with the Officer Commanding Police Station from Langata Division and the District Commissioner for Nairobi West by phone. Further information was obtained from NGOs and activists who were also present during the demolitions at City Carton.

In July and August 2013, Amnesty International followed up on the City Carton case through official letters to the Governor of Nairobi County and the Police Commander of Nairobi. At the time of publication no response had been received.

Amnesty International has long-standing links with the Deep Sea community dating back to 2009. The organization has been following developments around a proposed road construction project since 2012 and has written to, and met with, the Kenya Urban Roads Authority, in charge of the road project, to raise concerns regarding possible evictions and resettlement. Amnesty International researchers carried out further research in Deep Sea settlement in June 2013. Researchers collected information through group meetings and individual interviews with 40 Deep Sea residents. Amnesty International researchers also met with officials from the Kenya Urban Roads Authority, the Department of Slum Upgrading in the Ministry of Lands, Housing and Urban Development and representatives of the European Union delegation in Nairobi.

Amnesty International requested a meeting in June 2013 with the Cabinet Secretary for Lands, Housing and Urban Development to discuss both cases featured in the report, but did not receive a response.

This report includes responses of various parties received by Amnesty International at the time of printing. Any responses received after printing of the report can be located at <http://www.amnesty.org/en/library/info/AFR32/005/2013/en>.

# INTRODUCTION

## “We are like rubbish in this country”

Diana Angaya, Deep Sea, Nairobi, Kenya

Kenya’s capital, Nairobi, is home to an estimated 3.1 million people.<sup>1</sup> Approximately half of them<sup>2</sup> live in slums or informal settlements.<sup>3</sup> Due to lack of adequate planning, many of these settlements occupy land designated for non-residential purposes - such as roads or railway lines, or are in locations where the residents do not have any recognized right to live. Residents of Nairobi’s slums or informal settlements often lack security of tenure which increases their vulnerability to forced evictions.

### Security of Tenure

The UN Committee on Economic, Social and Cultural Rights has emphasized that security of tenure is one of the crucial elements of the right to adequate housing. Tenure takes various forms, including, rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements. According to the UN Committee “[N]otwithstanding the type of tenure all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”<sup>4</sup>

This report focuses on two informal settlements in Nairobi: City Carton and Deep Sea. City Carton settlement near Wilson Airport was home to some 400 families before it was demolished in May 2013.<sup>5</sup> On 10 May approximately 200 men<sup>6</sup> arrived at City Carton accompanied by 170 police officers.<sup>7</sup> 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<sup>8</sup>, 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.<sup>9</sup> According to the police officers, the demolition was authorized by an order of the Milimani Law Courts. 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.<sup>10</sup> 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, around 400 people - those with no alternatives - are now living 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.

Governments have a duty to provide victims of human rights violations with effective remedies. As victims of human rights violations City Carton residents were not offered effective remedies, such as compensation or alternative housing. Moreover, as far as Amnesty International is aware, the authorities have not carried out any investigation into the unlawful demolition of homes and destruction of property by private individuals at City Carton.

Deep Sea settlement is located in an area known as Westlands in Nairobi. An estimated 3,000 people could be at risk of eviction in the coming months as the Kenya Urban Roads Authority (KURA) plans to construct a major road through the settlement with funding from the European Union.

Deep Sea residents first learned that a road was going to be built through their settlement in 2009. Since then, KURA has assured them that they would be consulted and kept informed about construction plans and possibilities for resettlement. However, almost four years later, and despite some limited interaction with KURA, Deep Sea residents have not been engaged in genuine consultations on alternatives to evictions or on resettlement options. As a result, although Deep Sea residents have been informed about the impending eviction they have no information on when the road construction will start; nor do they have information on whether, and if so what, resettlement options may be offered to them. Amnesty International is concerned that if due process requirements, including genuine consultation with the affected people, are not put in place swiftly Deep Sea residents could be at risk of forced evictions.

## **WHAT IS A FORCED EVICTION<sup>11</sup>**

A forced eviction is the removal of people against their will from the homes or land they occupy without legal protections and other safeguards.

Under international human rights law, evictions may only be carried out as a last resort, once all other feasible alternatives to eviction have been explored and appropriate procedural protections are in place. Such safeguards include:

- 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 the evictions;
- Anyone carrying out the eviction to be properly identified;
- Evictions 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.

Not every eviction that is carried out by force constitutes a forced eviction – if all the legal safeguards and protections required under international law are complied with, and if the use of force is proportionate and reasonable, then the eviction would not violate the prohibition on forced evictions.

Forced evictions often render people homeless; they also frequently devastate livelihoods, break up families and drive people deeper into poverty. This report calls for effective remedies for victims of forced evictions and for long-term measures in law, policy and practice to ensure forced evictions are prohibited and that evictions, where justified, are carried out in a manner that is lawful and respectful of human rights.



# LEGAL FRAMEWORK AGAINST FORCED EVICTIONS

The Government of Kenya is obligated under a range of national and international human rights laws to respect, protect and fulfil the right to adequate housing.<sup>12</sup> This includes being a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which guarantees the right to adequate housing under Article 11(1).

The UN Committee on Economic, Social and Cultural Rights, a body of experts that provides authoritative guidance on the implementation of the ICESCR, has clarified the obligations of states parties vis-à-vis the right to adequate housing.<sup>13</sup> It requires the government to respect the right to adequate housing by refraining from forced evictions, to protect people from interferences with their rights by third parties such as landlords, and to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to adequate housing. Governments must prioritize the realization of minimum essential levels of housing for everyone whilst prioritizing the most disadvantaged groups in all programmes when allocating resources. The Committee also requires states parties to guarantee the right of people to participate in and be consulted over decisions that will affect them, and to provide an effective remedy if any of these rights are violated.<sup>14</sup>

The UN Committee, in General Comment 7, has emphasized that evictions, and particularly those involving large groups, may only be carried out after all feasible alternatives to eviction have been explored in genuine consultation with the affected people.<sup>15</sup> Where evictions are considered to be justified they should be carried out in strict compliance with principles of international law and due process requirements.<sup>16</sup>

Article 17 of the International Covenant on Civil and Political Rights (ICCPR), to which Kenya is also a State party, provides protection against arbitrary and unlawful interference with privacy, family and home. The Human Rights Committee has held that forced evictions contravene article 17 of the ICCPR.<sup>17</sup>

Kenya has also ratified the African Charter on Human and Peoples' Rights. The African Commission on Human and Peoples' Rights, a body charged with overseeing the implementation of the Charter, has affirmed - in the case of *SERAC and the Centre for Economic and Social Rights v. Nigeria* - that forced evictions contravene the African Charter, 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. In that case, the African Commission stressed that “although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the [African] Charter a right to shelter or housing.”<sup>18</sup>

The UN Special Rapporteur on adequate housing, an independent expert mandated to report, advise and provide technical assistance to governments on the right to adequate housing, developed the Basic Principles and Guidelines on Development-based Evictions and Displacement. The guidelines reflect existing standards and jurisprudence on the issue of evictions.<sup>19</sup> They describe in detail the steps that should be taken before, during and after evictions in order to ensure compliance with international human rights law.

### **KENYA'S CONSTITUTION - REALIZING HOUSING RIGHTS FOR SLUM RESIDENTS**

Kenya's 2010 Constitution recognizes several human rights, including the right to housing. The Constitution also sought to establish new structures and polices to safeguard those rights.

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 the Constitution 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.<sup>20</sup> 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.<sup>21</sup>

Further, according to Article 21 (2) of the Constitution “The State shall take legislative, policy and other measures, to achieve the progressive realisation of the rights guaranteed under Article 43.” Article 2 (6) of the Constitution lays down that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution.

Article 184 of the Constitution provides for national legislation to be passed which will, among other things, enable residents to participate in the governance of urban areas and cities. As part of these constitutional obligations, the government has, in the last two years, passed a series of laws which outline the duties and responsibilities of the state in relation to housing and urban development, and provide for civic participation in county development plans. This includes the County Governments Act 2012 which sets out the functions and powers of the county structures, and provides for citizen participation through, among other things, timely access to information and the right to petition and challenge any matter under the responsibility of the county government.

In recognition of the need to safeguard the specific rights of slum and settlement residents within national laws and policies, a National Task Force comprising representatives from government ministries, academia, the Kenya Land Commission and civil society organizations is currently drafting an Evictions and Resettlement Bill. The Ministry of Lands, Housing and Urban Development is formulating a Slum Upgrading Policy as part of a broader Slum Upgrading Programme which runs until 2020. The policy's aim is to improve the living conditions of Kenya's estimated 5.3 million slum dwellers.<sup>22</sup> The policy is undergoing public consultations and will eventually be tabled in Parliament for approval.

# FORCED EVICTIONS IN CITY CARTON

*“We were woken at 4 am by the gangs. They were ruthless - they took valuables, gadgets – anything useful. As we moved out we saw them breaking down our homes.”*

Mariam, City Carton, Nairobi, Kenya

City Carton was demolished in May 2013. It was a relatively small informal settlement of an estimated 400 households, located near Nairobi’s Wilson Airport. The settlement had existed for several decades - at least since as far back as 1964.<sup>23</sup> Many residents were born in the settlement; others had moved to City Carton – some after being evicted from other settlements in Nairobi. While many people in City Carton owned the structures in which they lived, others were tenants, renting from structure owners. Several City Carton residents worked in nearby areas or had small businesses which they ran from within the settlement.

Amnesty International was unable to verify who owned the land on which the City Carton settlement was constructed. It does not appear to have been state land; a private institution, the Moi Educational Centre, has reportedly made some legal claim to the land, but a legal representative for the Centre declined to comment on the issue.<sup>24</sup> Residents told Amnesty International that they did not pay rent to a land owner.

On 10 May 2013, between 4 and 5am, City Carton residents were woken up by groups of men armed with crowbars, sledgehammers and machetes. The men set about demolishing and looting homes. They reportedly beat people who tried to stop them. The men were accompanied by some 170 police officers who surrounded the area and did nothing to prevent the destruction of people’s homes or the theft of their belongings.<sup>25</sup>

Although the police did not participate directly in the demolition of homes at City Carton, residents told Amnesty International that the police used tear gas and fired live ammunition during the demolition.<sup>26</sup> On the afternoon of 10 May, shortly after the demolitions, Amnesty International researchers visited the settlement; residents showed them two used cartridge cases and five tear gas canisters that were found in the rubble.<sup>27</sup> Mariam, a 21-year-old woman who lived at City Carton, reported that one of the tear gas shells fired by the police fell near her seven-month-old child, who, as a result, had to be taken to hospital for treatment.<sup>28</sup> Amnesty International researchers also saw people with physical injuries

consistent with the allegations that people had been beaten during the demolitions.

Police officials later interviewed by Amnesty International stated that the demolitions were carried out on the basis of an order of the Milimani Law Courts.<sup>29</sup> The men who carried out the house demolitions were described by the police as having been hired by an auctioneer, who was reportedly acting on behalf of a landlord who had secured the court order.

**“We are bitter about this unfortunate event. Even if we were here illegally, we were expecting some notice. Instead we were ambushed. We saw a gang of people escorted by the Kenyan and administrative police. They came with one intention – to break our houses and demolish them. We started packing our things. They said we had a few minutes to gather whatever we could before they started demolishing. Some of the men also robbed whatever they could. One woman was mugged for 11,000 Kenyan Shillings [approx US\$ 120]. My brother’s phone was also stolen.”**<sup>30</sup> – Branham Odowya, City Carton resident.

When the men stopped the demolition on the afternoon of 10 May, over half the houses, a toilet block and the water tank had been destroyed. Many of those who had been forcibly evicted went back to the settlement to recover their belongings and reconstruct their houses. Paul Musina, a City Carton resident, told Amnesty International that after 10 May he had been trying to get building material in order to reconstruct his house when the forced evictions resumed. In the early hours of 17 May groups of men once again accompanied by police officers returned to the area armed with crowbars, iron rods and machetes and demolished the rest of the houses. After demolishing homes, they used a bulldozer to flatten what remained of the settlement. Some residents told Amnesty International that the men also set fire to their belongings.<sup>31</sup>

Describing events on 17 May, Beatriz Wanjiru Ndungu, recalls that there was no electricity the night before the demolition. At around 5am she woke to the sound of screams and went outside where she met five men armed with crowbars, sledge hammers and machetes. As she tried to stop them from attacking a young man from the community, one of the men hit her with a crowbar on the eye.<sup>32</sup>

**“I remember very vividly what happened after that. One of the youths took the lantern hanging in the house, opened it and poured the kerosene over our things. He went to the next house and did the same. I asked him why he was doing it and he said because he did not want us to be there anymore. I tried persuading him not to burn our things but he did not listen. He set fire to other houses as well. People left the area and stood on the side...everything was torched.”**<sup>33</sup> – Beatriz Wanjiru Ndungu, City Carton resident.

Amnesty International researchers returned to City Carton on 17 May after receiving reports that further demolitions were underway. When they arrived, at about 11am, the land where the settlement was located had been cleared and the men had begun fencing the area using tin sheets. Amnesty International researchers contacted by phone the Officer Commanding Police Division (OCPD) for Langata, a catchment area that covers City Carton. He denied any knowledge of the demolitions on 17 May. He claimed that he visited the site at 9am and only saw residents removing iron sheets from their own homes.<sup>34</sup>

After the demolitions on 10 and 17 May, City Carton residents were rendered homeless and many left the area in search of alternative accommodation. An estimated 400 people, those with no means to find somewhere else to live, moved to a dirt track close to the settlement and began building makeshift shelters.<sup>35</sup>

Following the demolition on 10 May 2013, City Carton residents sought an injunction against the eviction from the High Court of Nairobi. While the residents were ultimately successful in obtaining an interim order to stop the eviction, by the time they received it on 28 May 2013, the remaining few houses in City Carton had been demolished and the area was fenced off.<sup>36</sup>

## POLICING FAILURES

Amnesty International interviewed several police authorities during the course of its research into the City Carton case. According to the OCPD for Langata, the demolition at City Carton on 10 May 2013 was based on an order of the Milimani Law Courts. However, this claim does not stand up to scrutiny and Amnesty International’s investigation reveals a number of serious failures by the police authorities.

In a meeting with Amnesty International on 10 May 2013, the Administrative Police Chief of Nairobi West also claimed that the police were acting on the basis of a court order; however, he said that he had not seen the court order. He stated that, on the evening of 9 May, he had been directed by the Nairobi Police County Commander to provide police officers for the operation.<sup>37</sup>

Amnesty International subsequently obtained a copy of the court order. The order does not make any reference to the demolition of homes or the eviction of any residents. Dated 24 April 2013, it lists Moi Educational Centre as the landlord and two individuals in the community, as tenants. The order authorized the Officer in Charge, Langata Police Station to assist the auctioneer and his agents listed, “to execute instructions to levy distress to the premises occupied by the tenants...and remove the proclaimed moveable assets for the purpose of auctioning them to recover the rent arrears.”<sup>38</sup>

In a meeting on 27 June 2013 the Police County Commander for Nairobi and other senior police officials, whose office sanctioned the deployment of police personnel to City Carton confirmed to Amnesty International researchers that “levying distress” does not involve house demolitions or evictions but means confiscation of moveable property.<sup>39</sup> Additionally they highlighted that in cases of levying distress, if the auctioneer or land owner took action beyond the instructions of the court order, this would be a criminal matter.

The officials, however, were unable to adequately explain why in the case of City Carton the police provided support to the groups of men to act beyond the remit of the court order and to demolish the homes of the entire community. Moreover, it remains unclear why the Police County Commander for Nairobi, based on the court order, sanctioned the deployment of a force of 170 personnel, some of whom were armed, to facilitate the confiscation of the moveable property from two individuals.

Amnesty International is also concerned that by providing security cover for the unlawful demolition of homes, and by using firearms and tear gas to support the demolition, the police may have abetted the commission of acts deemed illegal under the Kenyan Penal Code (Cap 63) revised in 2010.<sup>40</sup>

Furthermore, by allowing the men to demolish people’s homes at City Carton the police failed in their duty to protect people from arbitrary and unlawful interference with their privacy, family and home as required under Article 17 of the International Covenant on Civil and Political Rights and acquiesced in the forced eviction of City Carton residents. This has

rendered an estimated 400 families homeless. According to the UN Committee on Economic, Social and Cultural Rights, “The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.”<sup>41</sup>

#### EXCESSIVE USE OF FORCE

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials requires that all use of force is necessary and proportionate. Further, firearms should only be used in self-defence or the defence of others against the threat of death or serious injury, and when less extreme measures are insufficient.<sup>42</sup>

Residents interviewed by Amnesty International reported that the police used firearms and teargas during the demolitions. Some residents reported hearing at least five gunshots and showed Amnesty International two bullet casings found in the rubble.<sup>43</sup> In a telephone interview with Amnesty International on 10 May 2013, the OCPD Langata initially denied that firearms had been used during the demolition of homes. When Amnesty International researchers told him that they had photographic evidence of used cartridges, he admitted to the use of teargas and firearms although he claimed that shots were only fired in the air, to disperse the residents who were throwing stones. Interviews with several police officers did not reveal any incidents of police officials being injured by stone throwing. The OCPD Langata also told Amnesty International that no one was arrested or detained during the forced eviction.<sup>44</sup>

The evidence gathered by Amnesty International raises serious questions whether the use of force and firearms at City Carton was a necessary and proportionate response by the police. In a meeting on 27 June 2013 the Police County Commander for Nairobi told Amnesty International that an “inquiry file” had been opened to examine complaints of excessive use of force by police personnel present during the demolition as well as allegations of looting and violence by the men carrying out the demolition.

Amnesty International subsequently wrote to the Police County Commander for Nairobi seeking information on the outcome of the inquiry file and an explanation for the police allowing the private individuals to act beyond the scope of the court order and demolish homes in City Carton.<sup>45</sup> At the time of writing, the organisation had not received a response.

In summary, Amnesty International is deeply concerned about the conduct of the police in the City Carton case. The organization is concerned that the police appear to have:

- deployed a large number of police officers to facilitate the implementation of a court order against two individuals;
- allowed and facilitated the conduct of criminal acts by private individuals against City Carton residents, and;
- used excessive force against City Carton residents.

Amnesty International has raised these concerns in a letter to the Independent Police Oversight Authority.<sup>46</sup>

## AN EVICTION WITHOUT DUE PROCESS

Amnesty International also found that even if the eviction had been legally justified and the court had indeed ordered an eviction, the authorities failed to put in place the safeguards required by international law. The UN Committee on Economic, Social and Cultural Rights has emphasized that even when an eviction is considered to be justified, “it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.”<sup>47</sup>

The UN Committee on Economic, Social and Cultural Rights has highlighted that “States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.”<sup>48</sup> The Committee has also identified adequate and reasonable notice for **all** [emphasis added] affected persons prior to the scheduled date of eviction as one of the key procedural protections in situations of evictions.<sup>49</sup> The UN Basic Principles and Guidelines on Development-based Evictions and Displacement also provide that “[a]ny decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance.”<sup>50</sup> The time period provided to people under the notice should enable them to be able to take an inventory of their possessions, goods and other losses that may ensue.<sup>51</sup> It is also essential that people are given sufficient time and opportunity to challenge the decision to evict and seek legal remedies.<sup>52</sup>

When Amnesty International met senior police officials responsible for Nairobi County, they clarified that the role of the police in implementing court orders that sanction evictions was limited to maintaining law and order and ensuring a peaceful operation. The actual evictions were the responsibility of the bailiffs or the auctioneer appointed by the land/house owner. However, the officials also said that as part of the process they would ensure that the auctioneer or bailiffs provide notices of eviction to those affected. In addition to ensuring that the bailiffs provided these notices, the police officials told Amnesty International that they were not aware of any procedural requirements that should be in place prior to evictions.<sup>53</sup>

Nevertheless every resident interviewed by Amnesty International said that they had not received any formal notice prior to the demolitions and evictions; nor was there any discussion of the possibility of an eviction. Several residents said they had heard rumours ahead of the 10 May demolition. One of the residents said that he raised the matter with his Chief – the traditional leader in the settlement – but he was not given any information.<sup>54</sup>

According to senior police officials, the notice of eviction was sent to the local police station in advance of the demolition.<sup>55</sup> However, when Amnesty International spoke to the Administrative Police Chief Inspector of Nairobi West at the local police station on 10 May, he claimed he had not seen the court order for the eviction and was simply acting on orders from the Police County Commander to provide personnel in the City Carton area.<sup>56</sup> Regardless of these discrepancies such procedures are grossly inadequate and completely fail to meet basic due process requirements, which would require that all those affected be notified and given an opportunity to challenge the decision.

The authorities also failed in their obligation to ensure that the community was consulted on alternatives to evictions. This is contrary to requirements under international law and standards. The UN Committee has highlighted that States parties shall ensure, prior to any

evictions being carried out both by their own agents and non-state actors, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.<sup>57</sup> For consultation to be deemed genuine, the authorities must provide full, accurate and timely information in order to enable people to participate in the consultation process.

#### OTHER FAILURES TO FOLLOW DUE PROCESS

The demolition of City Carton was carried out between 4 and 5am, when most people were asleep. Senior police officials stated that demolitions are usually carried out in the early hours because that is when officers are least likely to meet resistance.<sup>58</sup> This approach runs contrary to basic due process requirements of lawful evictions as emphasized by the UN Committee on Economic, Social and Cultural Rights.

The Committee also requires authorities to ensure that everyone involved in the eviction process is properly identified.<sup>59</sup> The forced evictions in City Carton, however, were carried out by privately hired, unidentified men.

#### IMPACT OF THE FORCED EVICTION

Many of the City Carton residents have been subjected to forced evictions in the past. Margaret, who was renting a house in City Carton, had moved there with her 10 children after being forcibly evicted from the nearby Mitumba settlement in 2012. Following the forced evictions at City Carton, seven of her children left the area in search of alternative housing and ways to earn a living. Margaret told Amnesty International that she had nowhere to go as she had no income and no capacity to rent.<sup>60</sup>

In June 2013, over a month after being forcibly evicted, many people from City Carton were still in the process of constructing new shelters from bamboo and cardboard along a dirt track near the demolished site. An estimated 400 people are living in extremely precarious conditions at this new site. Amnesty International visited the site, and spoke to the people living there in June and July 2013. As far as Amnesty International is aware, there have been no changes in their living conditions.

Mama Kasuku (also known as Margaret N’Thenya), who lived alone, described how she had to sleep in the open for almost a month until some community members were able to help her construct a shelter.<sup>61</sup> Several people noted that the makeshift shelters did not provide adequate protection from the wind and often flooded when it rained. They also raised concerns about the complete lack of sanitation facilities in the area following the destruction of the toilet blocks at City Carton. In their new location, women and men had no option but to use the nearby bushes as toilets.<sup>62</sup>

The lack of adequate clean water at the new site was an ongoing concern for many people. Before the forced eviction, City Carton residents bought water from community members who had piped water connections provided by the Nairobi City Council.<sup>63</sup> In their new location, where no one has access to such connections, many had to buy water from private providers further away from their homes and at significantly higher rates. One of the residents said that she used to buy water at a rate of approximately three Kenyan Shillings (approximately 3 US Cents) for 20 litres in City Carton. The same amount of water was now being sold for 15 Kenyan Shillings (approximately 15 US Cents) from a water point nearby.<sup>64</sup> Unable to meet



the increased cost, many residents were relying on water from a swamp in the area which was not potable and likely to be contaminated.

## THE RIGHT TO WATER

General Comment 15 on the right to water, adopted in November 2002 by the UN Committee on Economic, Social and Cultural Rights, sets the following criteria for the full enjoyment of the right to water.

(a) Availability. The water supply for each person must be sufficient and continuous for personal and domestic uses.

(b) Quality. The water required for each individual's personal and domestic use must be safe, therefore free from microorganisms, chemical substances and radiological hazards that constitute a threat to a person's health.

(c) Accessibility. Water and water facilities and services have to be accessible to everyone without discrimination, within the jurisdiction of the state party. This includes economic accessibility so that water is affordable for all.

International human rights standards require states to take active steps to ensure that everyone can enjoy the right to water as soon as possible. State parties have to adopt the necessary measures directed towards the full realization of the right to water, including by taking positive measures to assist individuals and communities to enjoy the right. States are under an obligation to move as expeditiously and effectively as possible towards securing the right to water.

As a consequence of the demolition of City Carton, many people have lost their livelihoods. Residents also reported that around 20 children had been forced to drop out of school as a result of destitution faced by their families after the forced eviction.<sup>65</sup> Caroline Allen, one of the residents interviewed by Amnesty International, had lived in City Carton for 30 years and earned a living from sewing. She said that, like many others, she was unable to salvage any of her belongings. “They burned my sewing machine” she said. “It is difficult for me to even eat...I have no sewing machine anymore...how will I survive?” She also spoke of the already poor living conditions that worsened when it rained as the area was prone to flooding. “In the rain everything gets wet – there is water in the house, children's books and uniforms get wet...they can't go to school.” For Caroline, living beside the dirt track meant living in fear - fear of snakes when they went into the bush, fear of drunken men attacking them when they slept at night, and fear of being forcibly evicted once again.<sup>66</sup>

In a subsequent visit to the area in July 2013 where City Carton residents live, Amnesty International found that living conditions in and around the makeshift homes had deteriorated. The lack of toilets, for instance, had led to the area being littered with excreta, posing a serious risk to people's health.<sup>67</sup> Additionally, residents reported that they had received eviction threats from representatives of Nairobi City Council. The eviction threats have led to increased levels of a sense of uncertainty and anxiety among residents. Some residents told Amnesty International that they have, at times, slept outside their shelters in fear of further attacks. Others said that are reluctant to leave the settlement to look for work in case their shelters were demolished while they were away.

The UN Committee on Economic, Social and Cultural Rights has noted that: “Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined

in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home, and the right to the peaceful enjoyment of possessions.”<sup>68</sup>

The City Carton case exemplifies this widespread impact on human rights.

## FAILURE TO PROVIDE EFFECTIVE REMEDIES

Amnesty International is concerned that despite being aware of the forced evictions in City Carton, neither the police nor the county government has taken any steps towards providing City Carton residents with any form of effective remedy.

Over four months after the forced evictions and demolitions, there is no evidence of any criminal proceedings initiated against the group of men who demolished homes in City Carton, allegedly beat people and stole and destroyed their belongings. Despite assurances by the Nairobi Police County Commander that the police would open an “inquiry file” to examine complaints of violence and looting by the group of men, as far as Amnesty International is aware City Carton residents have not been contacted by the police or any other authority.<sup>69</sup>

Several former City Carton residents also stated that they have not followed up their verbal complaints formally because they believe the police are not impartial, and were on the “same side” as the men who had forcibly evicted them.<sup>70</sup>

## THE RIGHT TO EFFECTIVE REMEDY

International law entitles all victims of human rights violations to effective remedies and reparation. Reparation requires that, as far as possible, the consequences of the violation are corrected. The body providing a remedy should award the measures necessary to repair the specific harm suffered by victims, including some or all of the following:

- restitution, for example by restoring homes that were taken away during a forced eviction;
- compensation;
- rehabilitation, through services to address physical or psychological harm;
- satisfaction, by imposing additional or alternative remedies that are satisfactory to the victim; for example, a public apology, and;
- a legally binding guarantee of non-repetition.

Former City Carton residents have also not received any form of emergency assistance such as medical support, water, food or blankets from the authorities. Francis Kinjua, a 38-year-old man who rented a house in City Carton with his wife and three children, reported that he was beaten on the legs by three of the men carrying out the demolition. He suffered a fracture but told Amnesty International that he did not have the money to pay for plaster or medical treatment.<sup>71</sup>

The UN Basic Principles and Guidelines on Development-based Evictions and Displacement stipulate that “all those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for the loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process. Consideration of the circumstances of each case shall allow for the provision of compensation for losses related to informal property, such as slum dwellings.”<sup>72</sup> They also provide that “[c]ompensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”<sup>73</sup>

In a meeting with Amnesty International in June 2013 the Nairobi County Governor, whose responsibilities under Kenya’s newly devolved system cover county planning and development, including housing, expressed concern about the residents’ situation.<sup>74</sup> He assured researchers that he would send his officers to the area and explore resettlement options. In July 2013 Amnesty International sent a letter to the Governor reminding him of this commitment. However, as far as Amnesty International is aware at the time of publishing, officials from the Governor’s office had not visited the area or discussed resettlement with them. Instead, according to some residents Nairobi City Council had visited the area and threatened to evict the former City Carton residents from their new makeshift homes.<sup>75</sup>

# THREAT OF FORCED EVICTIONS AT DEEP SEA

*“The government cuts corners. We might be ambushed. We might suddenly have to go... The work of KURA is to build roads. They don't care where we go.”*

Joseph Mulatiya, Deep Sea, Nairobi, Kenya

Deep Sea is home to over 12,000 people, some of whom have lived in the settlement since 1963.<sup>76</sup> The settlement is located in Nairobi's affluent Westlands area in the midst of prime residential land and relatively close to the commercial area. Many Deep Sea residents work as security guards, domestic workers, gardeners and drivers. Some also work in the malls and shops nearby.<sup>77</sup> Diana Angaya, a Deep Sea resident for 25 years who has worked as a domestic worker, told Amnesty International that the location of the settlement is particularly convenient for single mothers as they are able to find work in houses nearby. An established and affordable day-care centre in the settlement is an added advantage for working mothers.<sup>78</sup> The settlement is also located a short walk from High Ridge, a state-run school which many children from the settlement attend.

The Kenya Urban Roads Authority (KURA) with funding from the European Union is planning to construct a major road through Deep Sea settlement.<sup>79</sup> The road known as “Missing Link 15B”, some 1.6km in length, is being built to connect two major roads, Limuru Road and Thika Road. It will pass through the trading centre and main road at Deep Sea, and affect an estimated 3,000 residents.<sup>80</sup>

The project is aimed at decongesting existing routes and providing safe facilities for the walking and cycling public; it involves the construction of six “Missing Link Roads” and three “Non Motorized Traffic” routes in Nairobi. The entire project is estimated at Euros 27.2 million, with the EU funding 65 per cent of the cost and the remaining 35 per cent covered by the Kenyan government.<sup>81</sup>

The Deep Sea settlement is located partly on private land and partly on land reserved for road construction.<sup>82</sup> While residents include structure owners and tenants, these are informal arrangements and all residents lack security of tenure. Like several other settlements in Nairobi, Deep Sea has faced forced evictions in the past. On 23 September 2005, groups of men demolished the homes of about 850 families using government-owned bulldozers.<sup>83</sup>



*Above:* View of Deep Sea informal settlement in Nairobi from the roof of one of the houses. The only road in the settlement serves as the main artery for all commercial and social activity. The proposed road construction will run through this trading centre, putting at risk hundreds of homes and livelihoods.

*Left:* Jeremiah Makori in front of his shop on the main road in Deep Sea.



*Right:* Diana Nyakowa Angaya, at her home in Deep Sea. She volunteers as a community health worker. Diana is also a member of the Rapid Response Team, a voluntary group that documents and mobilizes against forced evictions in Nairobi.

## DEEP SEA SETTLEMENT

All photos © Nikola Ivanovski



*Above:* Panoramic view of the residents of Deep Sea. 25 August 2012.

*Right:* Joseph Mulate Andana at his open air metal workshop in Deep Sea.

*Below:* Everlyne Sande Mulamu runs a day-care centre for children in Deep Sea. Everlyne suffered polio which left her disabled. Her home and the day-care centre are likely to be affected by the road construction project.



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## CITY CARTON SETTLEMENT

*Above:* The demolished site of City Carton informal settlement in Nairobi, formerly home to some 400 families. On 10 May 2013 at around 4am, unidentified men arrived unannounced and started dismantling people's homes. Residents reported that the police used live ammunition and tear gas to disperse people. On 17 May a bulldozer arrived and completely flattened the area.

*Left:* Some residents who were made homeless from the forced evictions at City Carton now live in makeshift shelters on a dirt track beside the settlement site, where they do not have access to basic services. There is no local water connection, forcing many people to collect water from the nearby swamp.



*Top:* Some residents who were made homeless from the forced evictions at City Carton now live in makeshift shelters along a dirt track beside the settlement. The shelters are not strong enough to withstand heavy winds and rain. Residents fear they will be evicted once again from this site and made homeless.

*Left:* A resident of City Carton carries cardboard sheets to his temporary shelter nearby. In the absence of any assistance from state authorities or access to effective legal remedies, residents have been left to their own devices. More than a month after the forced evictions, some residents were still constructing shelters.

*Above:* The remains of City Carton settlement in Nairobi, after bulldozers arrived on 17 May to flatten the area. At least 400 families were forcibly evicted and many are now homeless and in urgent need of food, water and adequate accommodation.



Apart from a general newspaper notice, of which residents only became aware after the eviction, residents were given no specific prior notice of the demolitions.

**“It was a painful experience. It was midnight when gangs of men came with bulldozers. They were shouting ‘save your body, leave your property’. The police were there but they were protecting the bulldozer. After the eviction we stayed in the open for two months. We had a hard time. There was no place to hide, especially when you need to go to the toilet. Men are protected, we women have so many enemies. When we are evicted there is nowhere to hide. When we get our monthly period, there is nowhere to wash. Sometimes you can be raped, kidnapped, beaten...”** – Diana Angaya describing her experience of the 2005 forced eviction at Deep Sea

Thousands of Deep Sea residents also lost their homes and their belongings in a fire that affected a large part of the settlement in 2011.<sup>84</sup> The possibility of losing their homes for the third time without any information on the eviction process or resettlement is a source of deep anxiety for many Deep Sea residents.

### INADEQUATE ENGAGEMENT BETWEEN DEEP SEA RESIDENTS AND KURA

The UN Basic Principles and Guidelines on Development-based Evictions and Displacement stipulate: “Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.”<sup>85</sup>

The Basic Principles and Guidelines make clear that, “[s]tates should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.”<sup>86</sup>

According to some Deep Sea residents, they first heard about the road construction project through a public meeting organized by the District Commissioner in 2009. He informed them of plans to construct a road from Limuru to Thika and announced that all those living on the reserved land would be evicted. Most others only found out about the proposed eviction in late 2009 when surveyors started putting markers for road construction in the settlement.<sup>87</sup>

Community members recalled that when they raised questions about the markers, an engineer from KURA assured them that they would be kept informed about road construction

plans. In the same year, KURA representatives carried out an enumeration exercise in the community to record the number of people who would be affected by the project. According to Deep Sea residents, the survey was not comprehensive and recorded only the number of structure owners, and excluded tenants, who would be affected. Following the survey, residents received no further information from KURA or any other authorities with regard to the project or the proposed evictions until almost three years later.<sup>88</sup>

In June 2012, surveyors from KURA returned to Deep Sea and, once again, marked out the area for road construction. Following a demand by community members, KURA set up a meeting where the results of the 2009 survey were discussed. Deep Sea resident Jeremiah Makori recalled: “Thirteen of us went to the meeting. At first they did not allow all of us but we insisted and then they allowed us. The room was full of officers from the Environment department, City Council and KURA. We listened. They had already prepared a RAP [Resettlement Action Plan]. In the RAP they said that they would give people transport to leave, and stalls would be taken to a City Council area. In the survey, affected people were classified as hawkers. We tried to react. We asked them, why didn’t you involve us?”<sup>89</sup> The Resettlement Action Plan discussed in the meeting also reportedly included a “disturbance allowance” for structure owners and a training course on starting businesses.<sup>90</sup>

In response to demands by the Deep Sea community for a detailed discussion, KURA representatives subsequently organized a meeting in the settlement where the community elected three members to represent them and engage with KURA. Following this, residents also participated in a public hearing (public meeting) organized by KURA in July 2012 with people affected by all the roads constructed under the Missing Links project.

While the public hearing provided Deep Sea residents the opportunity to raise their concerns, residents pointed out that the meeting covered all the different areas that would be affected by the project and brought together a wide range of interested parties, including large business interests and affluent home owners from beyond the settlement. The composition and scope of the meeting therefore made it difficult to discuss in detail the particular concerns of Deep Sea residents about evictions and resettlement.<sup>91</sup>

In October 2012, KURA carried out a new enumeration exercise. Deep Sea residents told Amnesty International that this time the exercise was comprehensive and, unlike the 2009 survey, recorded tenants as well as structure owners.<sup>92</sup> The enumeration recorded the number of people that would be affected by the project, the size of household and the average household income. According to residents, at the time of the survey KURA had committed to returning to the community to share the results and to verify and confirm the recorded data.<sup>93</sup> One year after the second survey was completed, however, neither the elected representatives of the community nor any other community members have received any further information on developments from KURA.<sup>94</sup>

Amnesty International researchers met with KURA on 1 July 2013. In the meeting KURA disputed that they had committed to returning to Deep Sea to verify the data and stated that the October 2012 survey was in fact the verification. KURA representatives also said that they had not been able to disclose the results of the survey as several steps needed to be followed before the information could be shared with the community. KURA explained that following the October 2012 survey they had sent the results for data entry and analysis which

was completed in December 2012. Subsequently, they had prepared a ‘revisional’ Resettlement Action Plan which was submitted to the National Environment Management Authority. According to KURA, they only had all the final data in May 2013. The Resettlement Action Plan and the data would now be shared with representatives of various government agencies, including the county administration and the Ministry of Lands and Housing. Only after all this was completed would the data and Resettlement Action Plan be shared with Deep Sea residents, along with all other project affected people. KURA, however, refused to divulge any information on the process or any timeline for consultation on the Resettlement Action Plan.<sup>95</sup> At the time of publication, the Deep Sea community had not received the Resettlement Action Plan and there was no indication of when it would be shared.

Contrary to requirements under international human rights standards, KURA has not engaged in genuine consultation with the Deep Sea community about alternatives to eviction or about resettlement options. According to Principle 56 (i) of the UN Basic Principles and Guidelines on Development-based Evictions and Displacement, “the entire resettlement process should be carried out with full participation by and with affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities.”

Deep Sea residents who would be affected by the road project were informed only after the plans for road construction had been finalized. Some of those interviewed by Amnesty International said that instead of being resettled in a different area, they would prefer if the households to be affected by the road construction project were accommodated within the settlement through slum upgrading initiatives that involved high density housing.<sup>96</sup> However, neither KURA nor any other authority has made any efforts to discuss these options with the community.

While KURA has had some engagement with Deep Sea residents on the project, the engagement has been *ad hoc* at best and can by no means be considered genuine or meaningful. An enumeration exercise does not constitute genuine consultation. Additionally, Amnesty International is concerned that consultation with the Deep Sea community on the Resettlement Action Plan may be tokenistic if key aspects of the plan have already been agreed with other government agencies.

The absence of regular communication has also led to misunderstandings about expectations and processes concerning evictions and resettlement. Full, accurate and *timely* information is essential for affected people to meaningfully participate in any consultative process. The irregular and very inadequate flow of information from KURA has created anxiety in the community. In the words of one resident, Nyamalo: “I live with the threat. It is always on my mind... I might go back and my house is not there...if the eviction comes where will I go? I have five children who depend on me and no support.”<sup>97</sup>

While the threat of eviction looms large in the lives of Deep Sea residents, they remain in the dark on crucial matters that affect their lives and livelihoods. These include the timing of the eviction, the precise number of people who will be affected, the process of consultation leading up to the eviction and the resettlement and compensation options available to them.

## EU RESPONSIBILITY IN UPHOLDING HUMAN RIGHTS

The road construction project is funded by the European Union (EU). Although Deep Sea residents have not been formally informed about the extent of the project's impacts, it is estimated that the project will impact homes, businesses and important services in the settlement.<sup>98</sup>

The EU's 2011 Annual Action Programme for the road construction project states that Kenyan authorities will implement “a comprehensive and transparent Resettlement Action Plan” for people currently living or operating businesses within the project area, and that this will include “fair and legally compliant compensation.”<sup>99</sup> Under a section entitled “human rights”, the project document states that the City Council and KURA will implement the Resettlement Action Plan (RAP) on the basis of a participatory approach with the affected population.<sup>100</sup>

In a meeting with Amnesty International in July 2013 to discuss the potential impacts of the project on Deep Sea residents, EU representatives stated that their role was limited to financing and supervising the road construction and that responsibility for any eviction and resettlement lay with the Kenyan government.<sup>101</sup> EU representatives also stated that, apart from requiring a participatory approach to resettlement, they did not have human rights safeguard policies to guide the funding and implementation of development projects in countries outside the EU. They largely relied on local laws.

However, the 10<sup>th</sup> European Development Fund which is funding the road construction project in Deep Sea is governed by the Cotonou Agreement.<sup>102</sup> The Cotonou Agreement underlines that respect for human rights is an essential element for development cooperation between the EU and partner African, Caribbean and Pacific states. Article 9(2) of the Cotonou Agreement commits the Parties to “...promote and protect all fundamental freedoms and human rights, be they civil and political or economic, social and cultural.”<sup>103</sup>

The Treaty on the European Union, a founding treaty of the EU, highlights the EU's commitment to human rights, including in its external action and its relations with the wider world.<sup>104</sup> Similarly the Treaty on the Functioning of the European Union in the context of development cooperation states that: “The Union and member states shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.”<sup>105</sup>

The European Community's Country Strategy Paper and Indicative Programming for Kenya 2008-2013 emphasize that “[t]o complement the Treaty and the Cotonou Agreement, the European Consensus on Development sets the general policy framework at EU level. The primary and overarching objective of EU development policy is the eradication of poverty in the context of sustainable development, in line with the international agenda and paying particular attention to the Millennium Development Goals (MDGs). Human rights and good governance are other important objectives.”<sup>106</sup>

In addition, the UN Committee on Economic Social and Cultural Rights has consistently held that the obligations of states which are parties to the International Covenant on Economic, Social and Cultural Rights extend to state action as part of inter-governmental organizations, and has required that all states parties take due account of their obligations under the

Covenant when acting as members of such institutions.<sup>107</sup>

In light of the above, Amnesty International is concerned that the EU is not sufficiently engaged with the process for mitigating potential negative impacts of the road construction project and ensuring that the project is implemented in a manner that respects and protects human rights. The absence of explicit policy guidelines for ensuring that projects such as Missing Link 15B do not result in human rights violations is a serious shortcoming and further heightens the organization’s concern. The EU and its member states have a responsibility to ensure that they do not support projects that cause or contribute to human rights violations.<sup>108</sup>

In follow-up email correspondence EU representatives told Amnesty International that they had received a copy of the RAP from KURA and that it was based on World Bank and Asian Development Bank guidelines on involuntary resettlement.<sup>109</sup> According to the World Bank and Asian Development Bank Resettlement Policy Frameworks, resettlement action plans should be developed in consultation with affected people and other stakeholders.<sup>110</sup>

Amnesty International is concerned that the Resettlement Action Plan for the road project in Deep Sea has been developed without the participation of, or consultation with, Deep Sea residents who will be affected by the project. That the EU has access to the Resettlement Action Plan before it has been shared with the community calls into question the participatory nature of the process that went into developing this plan.

Amnesty International is concerned that if due process requirements, including genuine consultations with affected communities with regard to evictions and resettlement, are not followed in the context of Missing Link 15B, any evictions could amount to forced evictions which are a violation of human rights. The human rights risks to Deep Sea residents are further exacerbated by the absence of comprehensive human rights safeguards policies that specifically inform EU funded projects outside the EU. The absence of such policies is inconsistent with the EU’s treaty obligations, described above.

## **IMPACTS OF THREATENED EVICTIONS AND LACK OF ADEQUATE INFORMATION**

Forced evictions can have devastating consequences for affected people. If due process is not followed and if the affected people are not consulted and kept informed throughout, they are unlikely to be able to plan for the impacts on their families, their homes, their livelihoods, and their lives. More than three years since they first heard about the possibility of eviction, people living at Deep Sea are yet to receive adequate information about timelines, resettlement options or compensation. The very limited information they have has led to anxiety and insecurity. While they know evictions are coming, they do not know when. They do not know whether they will lose their livelihoods or whether their children will have to move schools. They do not know if they will be given proper notice – or if their homes will be demolished and their possessions destroyed, as has happened in other forced evictions in Nairobi.

At the time of writing, residents of Deep Sea had received no official estimates on the extent and impact of the evictions that are likely to result from the road construction project. However, based on the limited information they have they believe that the road project could affect an estimated 3,000 people, as well as businesses, at least six of nine toilet blocks, two

churches, a nursery school, and a day-care centre. The road project would run through areas that serve as the business hub in the community, where residents buy and sell goods for their daily needs. Shops selling food, clothes and electrical supplies along the main artery in the community would be lost. As such, the road project is very likely to affect not only people living on land reserved for road construction but also many important services and community facilities.

In a group meeting with Amnesty International in June 2013, Deep Sea community members expressed serious concern about the lack of communication from KURA regarding the project. This information vacuum has given rise to rumours in the community about the eviction date and resettlement plans. One man related that he was warned about evictions in August 2013 by the Assistant Chief of the community while planning renovation of his property. “He asked me why I was renovating when it was all going to come down in August”, he told Amnesty International.<sup>111</sup>

The absence of information has meant that residents do not know whether they will receive cash compensation - and would therefore need to find alternative housing, or whether they will be resettled as a community on alternative land. Several women, some of them single mothers, spoke about their concerns, particularly the possible loss of the children’s day-care centre and the support networks that they had built in Deep Sea. Some residents feared that the financial help for education that their children received through the local church would be lost.<sup>112</sup>

Amnesty International also met with several residents who were tenants and who, in the absence of information on process, compensation and resettlement, felt particularly vulnerable. Zena Nzemi Mulei, who has been renting space for her home and hairdressing business in Deep Sea for 10 years, feared that tenants would not be treated fairly. Although the second survey conducted by KURA documented both structure owners and tenants, Zena felt that past experience had shown that concerns of tenants were often undervalued, if not completely ignored. “If I have to move from here – where will I go? Where will I get a house at this rate? Anywhere else, I will have to pay a deposit. I will have to start my business from scratch. There is no other place for these businesses to be set up in Deep Sea.”<sup>113</sup>

The lack of information is also particularly difficult for HIV-positive people in the community. A neighbourhood support group helps with obtaining free medicines from a nearby hospital. Some HIV-positive community members were trained to advise others in similar situations, and they feared that this support network would be lost if they were evicted and scattered.<sup>114</sup>

Amnesty International has been monitoring developments with regard to the road construction project by KURA in Deep Sea since June 2012. In light of Amnesty International’s research, the organization believes that there is a real risk that due process as required by international law and standards will not be followed when implementing the road construction project. Failure on the part of KURA and other authorities in Nairobi to follow due process would amount to a forced eviction.

## CONCLUSION

Forced evictions not only make people homeless, they can also lead to loss of livelihoods and loss of access to education and health care. They are often violent. International human rights standards are unequivocal: forced evictions are illegal; they are never justified and they constitute a grave violation of the right to housing. Moreover, they can lead to violations of a number of other human rights such as the rights to life, food, water, sanitation, health, education, work and security of person. The UN Basic Principles and Guidelines on Development-based Evictions and Displacement underline that: “Forced evictions intensify inequality, social conflict, segregation and ‘ghettoization’, and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous peoples.”<sup>115</sup>

Amnesty International’s research on City Carton highlights the serious failures in police conduct with regard to the demolition of houses and the grave impact of forced evictions. Some six months after the forced evictions, many City Carton residents are living in highly precarious conditions that impact a whole range of their human rights. They do not have access to effective remedies.

At Deep Sea, the absence of adequate information and meaningful engagement to date on the part of KURA has increased anxiety and uncertainty for residents. While a Resettlement Action Plan has been developed by KURA, Deep Sea residents have not had any opportunity to evaluate it and provide their inputs. Nor has KURA indicated a time frame for the impending evictions and resettlement. Having faced forced evictions previously, Deep Sea residents fear that due process may not be followed and they could be subjected to human rights violations once again.

The City Carton and Deep Sea cases are representative of what is happening to thousands of people living in slums and informal settlements in Nairobi. Since 2011 Amnesty International has documented at least nine cases of forced evictions in Kenya’s capital city.<sup>116</sup> Although Kenya’s Constitution recognizes the right to adequate housing, given the scale and frequency of forced evictions, there is an urgent need for legislation explicitly prohibiting forced evictions, as well as clear guidelines for officials on conducting evictions in line with Kenya’s domestic and international human rights commitments. There is also a need for police officers to receive adequate instruction and training on the subject of evictions and the requirements of due process and protection of human rights.

The UN Committee on Economic, Social and Cultural Rights has emphasized that governments must pass laws banning forced eviction, stating that: “Such legislation should include measures which: (a) provide the greatest possible security of tenure to occupiers of houses and land; (b) conform to the Covenant; and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it.” The UN Committee adds that “States parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any [...] that are inconsistent with the requirements of the

Covenant.”<sup>117</sup>

The enactment and implementation of such laws and guidelines would be a significant step towards ensuring that victims of forced evictions are provided with effective remedies and that the experience of City Carton is not replicated in other informal settlements across Nairobi and in other parts of Kenya.



# RECOMMENDATIONS

## TO THE CABINET SECRETARY FOR HOUSING AND LANDS:

- Publicly condemn the practice of forced evictions in Nairobi and in Kenya.
- Adopt 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.
- Introduce a bill in Parliament that explicitly prohibits forced evictions and sets out safeguards that must be strictly followed before any eviction is carried out. This law should be in strict compliance with Kenya’s Constitution and its international human rights commitments, including in respect of the provision of effective remedies and reparation. Such reparation should include adequate alternative housing for all those who cannot provide for themselves, rehabilitation, compensation for all losses and guarantees of non-repetition.
- 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.

## RECOMMENDATIONS FOR CITY CARTON

### **To the Governor, Nairobi County:**

- Immediately stop any plans to forcibly evict City Carton residents currently living near their original homes and state publicly that there will be no further eviction of City Carton residents while adequate alternative housing is being sought and people will only be moved after adequate safeguards are in place.
- Immediately provide all necessary support and assistance to all those who were forcibly evicted. Such assistance should include access to temporary adequate housing, water, sanitation, education and healthcare services, provision of food and clothing and support in re-establishing businesses and accessing sources of work.
- Take urgent steps to explore resettlement options in genuine consultation with City Carton residents. Any resettlement must comply with international human rights standards on adequacy of housing, including with respect to security of tenure, access to services, location and habitability
- Provide an effective remedy and reparation to all those forcibly evicted from City Carton on 10 and 17 May 2013. Such reparation should include adequate alternative housing for all those who cannot provide for themselves, compensation for all losses and guarantees of non-repetition.
- Ensure that county officials involved in evictions are adequately trained with the

necessary knowledge on international safeguards and due process when carrying out evictions, including compliance with court orders and human rights standards.

#### **To the Independent Police Oversight Authority**

- Initiate an independent and impartial investigation into police involvement in and conduct during the City Carton forced evictions, and in particular the reasons why the 170 officers were deployed on the basis of a court order for the removal of property from just two individuals; the orders issued to police officers in relation to the demolitions and evictions; the reasons why police officers allowed and facilitated the destruction of property; and the use of force and firearms.
- Ensure that those responsible are subject to disciplinary action or criminal proceedings, as appropriate.

#### **To the Police Commander, Nairobi County**

- Order investigations into allegations of the reported violence, looting and burning of property by the men who demolished City Carton.

### **RECOMMENDATIONS FOR DEEP SEA**

#### **To the Kenya Urban Roads Authority (KURA)**

- Engage in a meaningful and ongoing dialogue with Deep Sea residents and provide full and accurate information on the timeline for the road construction project, the number of persons affected and proposed plans to minimize displacement and mitigate impacts on disadvantaged groups.
- Ensure that the Resettlement Action Plan that has been developed is shared with affected people in a manner that is accessible to all and, in particular, to individuals and groups who may be excluded or disadvantaged. Ensure that this Resettlement Action Plan is genuinely open for revisions based on consultations with affected people.
- Ensure that all processes concerning evictions and resettlement are carried out in strict compliance with international human rights law and standards.
- Ensure that the Resettlement Action Plan is fully compliant with Kenya’s national and international human rights obligations and in particular obligations in the context of the right to adequate housing.
- Ensure that the Resettlement Action Plan is comprehensive and also takes into account the impact of the potential loss of amenities in Deep Sea including the trading centre and toilet blocks used by the entire community.
- Ensure that both structure owners and tenants in Deep Sea have their rights respected, and are treated fairly in the eviction and resettlement process.

#### **To the Governor, Nairobi County**

- Ensure that all processes concerning evictions and resettlement are carried out in strict

compliance with international human rights law and standards.

- State publicly that there will be no evictions of Deep Sea residents until all adequate safeguards are in place, including adequate alternative housing.

#### **To the EU**

- Ensure that, in line with the Missing Link project requirement, the Resettlement Action Plan is shared with affected people in a manner that is accessible to all and in particular to individuals and groups who may be excluded or disadvantaged. Ensure that this Resettlement Action Plan is genuinely open for revisions based on consultations with affected people.
- Proactively engage with the Kenyan authorities on Deep Sea, with a view to ensuring that the project does not lead to human rights violations. At a minimum the EU should urgently seek guarantees from KURA and other relevant authorities that there will be no forced evictions in Deep Sea. The EU should also make clear that Deep Sea residents must be given all the necessary information on the planned eviction and resettlement, in a timely manner, and must be consulted fully on alternatives to evictions and on resettlement plans and options.
- Publicly state that the EU will not support infrastructure projects that result in forced evictions or other human rights violations.
- Develop robust human rights safeguard policies for EU development assistance; these safeguards should include a clear prohibition on forced evictions to ensure that projects funded through EU partnerships are respectful of, and promote and protect, human rights in line with the EU's own human rights treaty commitments.

## ENDNOTES

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1 Kenya National Bureau of Statistics, Census, 2009.

2 UN HABITAT (UN Human Settlements Programme), United Nations Environment Programme (UNEP), *The State of African Cities 2010: Governance, Inequality and Urban Land Markets*, Nairobi, 2010.

3 This report adopts the definition of “slums” and “informal settlements” used by UN-HABITAT. In *Enabling Shelter Strategies: Review of Experience from Two Decades of Implementation*, UN-HABITAT, 2006, p.4, UN-HABITAT states that “informal settlements” commonly refer to: “(i) residential areas where a group of housing units has been constructed on land to which the occupants have no legal claim, or which they occupy illegally; (ii) unplanned settlements and areas where housing is not in compliance with current planning and building regulations (unauthorized housing).” The term “slums” refers to “an area that combines, to various extents...residents’ inadequate access to safe water; inadequate access to sanitation and other infrastructure; poor structural quality housing; overcrowding; and insecure residential status”.

4 UN Committee on Economic, Social and Cultural Rights (CESCR), *The right to adequate housing* (Art. 11(1), 13/12/1991, CESCR General Comment 4, paragraph 8(a).

5 Information collected during Amnesty International interviews with City Carton residents and local NGOs in Nairobi, Kenya in May, June and July 2013.

6 Amnesty International interviews with City Carton residents, Nairobi, Kenya, 10 May 2013.

7 Amnesty International telephone interview with the Officer Commanding Police Division (OCPD) Langata, who is responsible for policing the Langata area where City Carton is located, Nairobi, Kenya, 10 May 2013.

8 Amnesty International was unable to verify who owned City Carton land. However, police officials state that the men were hired by an auctioneer retained by a landlord. The landlord was named as the Moi Educational Centre although, as described in Chapter III entitled *Forced Evictions in City Carton*, ownership of the land is disputed.

9 As witnessed by Amnesty International researchers at City Carton, Nairobi, Kenya, 17 May 2013.

10 *Kangeri Wanjohi T/A Kindest Auctioneers and Moi Educational Centre (Landlord) vs. Milcah Wanjiru and Elijah Memba (Tenants) Chief’s Magistrates Court at Nairobi Milimani Commercial Courts Misc. Application No. 303 of 2013*

11 Based on UN Committee on Economic, Social and Cultural Rights, *The right to adequate housing* (Art. 11.1): forced evictions 05/20/1997 CESCR General Comment No. 7.

12 Article 11 (1) of the International Covenant on Economic Social and Cultural Rights acceded to by Kenya on 1 May 1972; Article 27(3) of the Convention on the Rights of the Child ratified by Kenya on 30 July 1990; Article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination acceded to by Kenya on 13 September 2001; and Article 17 of the International Covenant

on Civil and Political Rights (ICCPR) acceded to by Kenya on 1 May 1972;

13 UN Committee on Economic, Social and Cultural Rights, The right to adequate housing, General Comments No. 4 and 7.

14 Committee on Economic, Social and Cultural Rights, General Comment 4, paragraph 9 and General Comment 7, paragraph 13.

15 Committee on Economic, Social and Cultural Rights, General Comment No. 7, paragraph 13.

16 Committee on Economic, Social and Cultural Rights, General Comment No. 7, paragraph 14.

17 See Concluding Observations of the Human Rights Committee: Kenya, UN Human Rights Committee, CCPR/CO/83/KEN 29 April 2005, paragraph 22.

18 *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication No. 155/96, paragraph 60.

19 Basic Principles and Guidelines on Development-Based Evictions and Displacement (Basic Principles), Annex 1 to UN.Doc, A/HRC/4/18, 2007.

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

21 *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.

22 Kenya Slum Upgrading Programme website, available at: <http://nairobiplanninginnovations.com/projects/kenya-slum-upgrading-programme-kensup/> (last accessed 30 September 2013)

23 Amnesty International interviews with residents of City Carton, Nairobi, Kenya, May and June 2013

24 A court order that the police cited as the basis for the demolition of homes on 10 May 2013 cited the Moi Educational Centre as the landlord. However, it remains unclear whether Moi Educational Centre owned all the land on which the settlement stood or only part of it. Amnesty International tried to contact representatives of Moi Educational Centre by telephone but were unable to secure a meeting. Instead they were directed to speak with the Centre's lawyer who refused to comment.

25 Amnesty International interviews with residents of City Carton, Nairobi, Kenya, 10 May 2013. Amnesty International researchers were present in City Carton on the afternoon of 10 May 2013. They met several women and men whose homes had been demolished by the groups of men earlier that day. They also saw injuries on some people which were consistent with their accounts of being beaten by the men carrying out the demolition. On the same day Amnesty International researchers telephoned the Officer Commanding Police Division (OCPD) Langata, who is responsible for policing the Langata area where City Carton is located. He confirmed that 170 police personnel were deployed in City Carton. According to him, the role of the police was limited to cordoning off the area and allowing the men to carry out their work as sanctioned by a court order. Although he was present during the demolition, he said that he did not see anyone being beaten nor did he see any incidents of theft or receive complaints to that effect from the residents. However, the Administrative Police Chief Inspector for Nairobi West, interviewed by Amnesty International on 10 May 2013, acknowledged that over 150 residents had made verbal complaints about the violence and looting that took place during the demolition.

26 Amnesty International interviews with residents of City Carton, Nairobi, Kenya, 10 May 2013. The Administrative Police Chief for Nairobi West told Amnesty International researchers on 10 May 2013 that at least five police officers deployed in City Carton were armed with fire arms and tear gas. Although some residents had complained to him about the use of firearms by police during the demolitions, he said that he did not hear any shots fired as he was not present at the site as the OCPD Langata was leading the operation.

27 On 10 May 2013 when Amnesty International researchers had a telephone conversation with the OCPD Langata, he confirmed that five tear gas canisters had been used although he initially denied the use of fire arms. However, when Amnesty International told him that they had seen and photographed two empty cartridges found in City Carton, he said that some shots were fired in the air in response to stone throwing by residents. He said that the stone throwing began between 6:30 and 7:00 in the morning.

28 Amnesty International interview, City Carton, Nairobi, Kenya, 10 May 2013.

## 34 “We are like rubbish in this country”: Forced evictions in Nairobi, Kenya

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- 29 Amnesty International meeting with the Administrative Police Chief Inspector on 10 May 2013 and telephone conversation on 10 May 2013 with the Officer Commanding Police Division, Langata Area, Nairobi, Kenya.
- 30 Amnesty International interview with City Carton residents, Nairobi, Kenya, 10 May 2013
- 31 Amnesty International interviews with City Carton residents, Nairobi, Kenya, 29 June 2013.
- 32 On 29 June 2013 when Amnesty International researchers visited the makeshift settlement, Beatriz Wanjiru Ndungu showed them scars from an injury just above her eye. The scar appeared consistent with her account of events on 17 May 2013.
- 33 Amnesty International interview with Beatriz Wanjiru Ndungu, City Carton, Nairobi, Kenya, 29 June 2013.
- 34 Amnesty International telephone interview with the OCPD Langata, Nairobi, Kenya, 17 May 2013.
- 35 Amnesty International researchers visited the site and interviewed several residents in June and July 2013.
- 36 City Carton residents in collaboration with residents of Upendo, a nearby settlement which was demolished on 28 May 2013 currently have a petition in the Nairobi High Court seeking remedies against the forced eviction
- 37 Amnesty International interview with the Administrative Police Chief of Nairobi West, Nairobi, Kenya, 10 May 2013
- 38 *Kangeri Wanjohi T/A Kindest Auctioneers and Moi Educational Centre (Landlord) vs. Milcah Wanjiru and Elijah Momba (Tenants)* Chief's Magistrates Court at Nairobi Milimani Commercial Courts Misc. Application No. 303 of 2013
- 39 Amnesty International meeting with the Nairobi Police County Commander and other senior police officers on 27 June 2013
- 40 Kenya Penal Code, Chapter 63, Revised 2009. Specifically Chapter XXIV – Assaults, Chapter XXVI – Theft, Chapter XXIX - burglary, housebreaking and similar offences, Chapter XXXIII - offences causing injury to property.
- 41 Committee on Economic, Social and Cultural Rights, General Comment 7, paragraph 8
- 42 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, Principle 9
- 43 Amnesty International interview with City Carton residents, 10 May 2013
- 44 Amnesty International telephone interview with OCPD Langata, Nairobi, Kenya, 10 May 2013
- 45 Amnesty International letter to Police County Commander for Nairobi, 12 August 2013
- 46 Amnesty International letter to Police County Commander for Nairobi, 1 October 2013
- 47 Committee on Economic, Social and Cultural Rights, General Comment 7, paragraph 14.
- 48 Committee on Economic, Social and Cultural Rights, General Comment 7, paragraph 13
- 49 Committee on Economic, Social and Cultural Rights, General Comment 7, paragraph 15 (b).
- 50 Principle 41, Basic Principles and Guidelines on Development-based Evictions and Displacement (the Basic Principles) UN Doc. A/HRC/4/18 (Annex 1), 5 February 2007.
- 51 See Principle 42, the Basic Principles.
- 52 See Committee on Economic, Social and Cultural Rights, General Comment 7, paras 13 and 15 (g).
- 53 Meeting with County Commander for Nairobi and other senior police officials, Nairobi, Kenya 27 June 2013.
- 54 Amnesty International interviews with City Carton residents Nairobi, Kenya 10 May 2013 and 24 June 2013.,
- 55 Meeting with County Commander for Nairobi and other senior police officials 27 June 2013.
- 56 Amnesty International interview with Administrative Police Chief Inspector of Nairobi West, 10 May 2013
- 57 CESCR, General Comment 7, paragraph 13.
- 58 Meeting with County Commander for Nairobi and other senior police officials 27 June 2013.
- 59 Committee on Economic, Social and Cultural Rights, General Comment 7, paragraph 15 (e).
- 60 Amnesty International with City Carton resident, 24 June 2013.
- 61 Amnesty International interview with City Carton resident, 29 June 2013.
- 62 Amnesty International interview with City Carton residents, 24 and 29 June 2013.
- 63 Amnesty International interview with City Carton resident, 24 June 2013.
- 64 Amnesty International interview with City Carton resident, 24 June 2013.
- 65 Amnesty International interviews with City Carton residents during follow-up visit to City Carton, July 2013.

- 66 Amnesty International interview, 24 June 2013.
- 67 Amnesty International's follow-up visit to City Carton, July 2013.
- 68 Committee on Economic, Social and Cultural Rights, General Comment 7, para 4
- 69 Amnesty International interview with City Carton residents on 30 July 2013, Nairobi, Kenya, in a follow-up site visit.
- 70 Amnesty International interview with City Carton residents, Nairobi, Kenya, 29 June 2013
- 71 Amnesty International interview with Francis Kinjua, 29 June 2013. During the interview Francis Kinjua's injuries and particularly his swollen leg were visible to Amnesty International researchers.
- 72 Principle 61, the Basic Principles
- 73 Principle 60, the Basic Principles.
- 74 Constitution of Kenya, Fourth Schedule, Article 185 (2), 186 (1) and 187 (2).
- 75 Amnesty International interviews with City Carton residents during a site visit, 30 July 2013.
- 76 Based on Amnesty International interviews with residents of Deep Sea Settlement, 25, 26 and 28 June 2013. Records of the state-run community health programme in the settlement also confirm this number.
- 77 Amnesty International interviews and group discussions with residents of the Deep Sea community, June 2013.
- 78 Amnesty International interview with Diana Angaya, Deep Sea, 28 June 2013.
- 79 The funding is from the 10th European Development Fund. See European Commission, Commission Decision on the Annual Action Programme 2011 in favour of Kenya to be financed by the 10th European Development Fund, Brussels 20 December 2011.
- 80 Based on Amnesty International interviews with residents of Deep Sea Settlement on 25, 26 and 28 June 2013. Deep Sea residents have not been officially informed about the exact number of people, houses and other buildings that will be affected as a result of the road construction. These estimates are based on the participation of Deep Sea residents in an enumeration exercise carried out by the Kenya Urban Roads Authority in October 2012.
- 81 European Commission, 'Commission Decision on the Annual Action Programme 2011 in favour of Kenya to be financed by the 10th European Development Fund', Annex 1, Kenya – Nairobi Missing Link Roads and Non-motorised Facilities, CRIS No Ke/Fed/022-951; Brussels 20 December 2011
- 82 Based on Amnesty International interviews with Deep Sea residents, Deep Sea land is owned by an estimated five private entities. Amnesty International was unable to verify this information and was told by Deep Sea residents that ownership of the land has changed at least a few times over the years that the settlement has been in existence. Part of Deep Sea is also located on a 'road reserve' or as explained by KURA and the EU delegation, land reserved for road construction in the city plan.
- 83 Forced evictions: Violations of Human Rights - Global Survey on Evictions, Centre on Housing Rights and Evictions (COHRE), 2006; Amnesty International interviews with residents of Deep Sea, 2 March 2009. For details see Amnesty International, *The Unseen Majority: Nairobi's Two Million Slum Dwellers*, AFR/005/2009.
- 84 Amnesty International, "Kenyan Government Urged to Protect Slum-Dwellers after Fire", 18 March 2011. See <http://www.amnesty.org/en/library/asset/AFR32/002/2011/en/a1e7316e-3a57-40a3-937c-6be7c56acfcbafr320022011en.pdf> (last accessed 30 September 2013)
- 85 Principle 37, UN Basic Principles and Guidelines on Development-based Evictions and Displacement
- 86 Principle 38, UN Basic Principles and Guidelines on Development-based Evictions and Displacement
- 87 Amnesty International interviews and group discussions with Deep Sea residents, 25, 26 and 28 June 2013.
- 88 Amnesty International interviews and group discussions with Deep Sea residents, 25, 26 and 28 June 2013.
- 89 Amnesty International interview with Jeremiah Makori, 26 June 2013.
- 90 Amnesty International interviews with Deep Sea residents who attended the meeting, 26 June 2013.
- 91 Amnesty International interviews with Deep Sea residents, 26 June 2013,

92 Amnesty International interviews and group discussions with Deep Sea residents, 25, 26 and 28 June 2013,

93 Amnesty International interviews with Deep Sea residents, 26 June 2013.

94 Amnesty International interviews and group discussions with Deep Sea residents, 25, 26 and 28 June 2013.

95 Amnesty International meeting with KURA, 1 July 2013.

96 Amnesty International interviews and group discussions with Deep Sea residents, 25, 26 and 28 June 2013.

97 Amnesty International interview with Nyamalo in Deep Sea, 25 June 2013.

98 Based on the enumeration conducted in October 2012, residents estimate that the road project will impact hundreds of homes, at least six of the nine toilet blocks in the settlement, a primary school, a children's day-care centre and the community's main trading centre.

99 European Commission, 'Commission Decision on the Annual Action Programme 2011 in favour of Kenya to be financed by the 10th European Development Fund', Annex 1, Kenya – Nairobi Missing Link Roads and Non-motorised Facilities, CRIS No Ke/Fed/022-951; Brussels 20 December 2011.

100 European Commission, 'Commission Decision on the Annual Action Programme 2011 in favour of Kenya to be financed by the 10th European Development Fund', Annex 1, Kenya – Nairobi Missing Link Roads and Non-motorised Facilities, CRIS No Ke/Fed/022-951; Brussels 20 December 2011.

101 Amnesty International meeting with EU representatives at the EU Delegation in Nairobi on 1 July 2013.

102 The Cotonou Agreement signed in 2000 and revised in 2005 and 2010 is a partnership agreement between developing countries and the EU. It has been the framework for the EU's relations with 79 countries from Africa, the Caribbean and the Pacific

103 The Cotonou Agreement, consolidated version, available at: [http://ec.europa.eu/europeaid/where/acpl/overview/documents/devco-cotonou-consol-europe-aid-2012\\_en.pdf](http://ec.europa.eu/europeaid/where/acpl/overview/documents/devco-cotonou-consol-europe-aid-2012_en.pdf) (last accessed 30 September 2013)

104 For instance Article 3 (5) of the Treaty on the European Union states: "In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security and sustainable development of the Earth, solidarity and mutual respect amongst peoples, free and fair trade, eradication of poverty and protection of human rights in particular the rights of the child, as well as the strict observance and development of international law, including respect for the principles of the United Nations Charter."104 Article 21 of the treaty with regard to the EU's "external action" states: "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. See Consolidated Version of the Treaty on European Union, 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:en:PDF> (last accessed 30 September 2013)

105 See Article 208 (2) of the Treaty on the Functioning of the European Union in the context of development cooperation states available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>

106 Republic of Kenya-European Community, 'Country Strategy Paper and Indicative Programme for the period 2008 – 2013, available at: [http://ec.europa.eu/development/icenter/repository/scanned\\_ke\\_csp10\\_en.pdf](http://ec.europa.eu/development/icenter/repository/scanned_ke_csp10_en.pdf) (last accessed 30 September 2013)

107 For example: General Comment no. 14, on the right to the highest attainable standard of health asserts that "States Parties have an obligation to ensure that their actions as members of international organisations take due account of the right to health" and that "States parties which are members of international financial institutions, notably the International Monetary Fund, the World Bank and regional development banks, should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions", Committee on Economic, Social and Cultural rights, General comment No. 14, UN Doc. E/C.12/2000/4, 11 August 2000, para. 39. With respect to the right to adequate housing, the Committee has clarified that there is a duty on international financial institutions to ensure that measures they promote do not undermine the realisation of that right. CESCR, General Comment 4, para 19 states that: "International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing".



108 For example: “international agencies should scrupulously avoid involvement in projects which, for example, involve the use of forced labour in contravention of international standards, or promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. [In addition] wherever possible, the agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights.”, CESCR, General Comment 2, para 6.

109 Email correspondence with Amnesty International, 13 August 2013.

110 See World Bank Operational Policy OP 4.12 and Asian Development Bank Safeguard Policy: Involuntary Resettlement 2009

111 Amnesty International interview, 28 June 2013.

112 Amnesty International interviews and group discussions with Deep Sea residents, 28 June 2013.

113 Amnesty International interview with Deep Sea resident, 28 June 2013.

114 Amnesty International interview with HIV-positive people in Deep Sea, 28 June 2013.

115 Principle 6, UN Basic Principles and Guidelines on Development-based Evictions and Displacement

116 Amnesty International Report Annual Report 2012 and Amnesty International Annual Report 2013. This number does not include forced evictions documented by Amnesty International’s partner organizations in Kenya.

117 Committee on Economic, Social and Cultural Rights, General Comment 7, paragraph 9



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## **'WE ARE LIKE RUBBISH IN THIS COUNTRY'** **FORCED EVICTIONS IN NAIROBI, KENYA**

Approximately half the population of Kenya's capital, Nairobi, live in slums and informal settlements. Lack of adequate planning has meant that many of the settlements are on land designated for non-residential use or in locations where the residents do not have any recognized legal right to live. Residents of many of these settlements live under the constant threat of forced evictions from their homes.



This report focuses on two such informal settlements. One of them, City Carton, was demolished in May 2013 and some 400 families were forcibly evicted. Many remain homeless and are living in temporary shelters beside their former settlement. They have received no compensation or assistance from the authorities.

Around 3,000 families living in the other settlement, Deep Sea, fear eviction in the coming months as the Kenya Urban Road Authority plans to construct a road through the settlement. If due process is not followed, then the residents of Deep Sea are at risk of being forcibly evicted, which could leave many of them in a similar situation to those forcibly evicted from City Carton.

This report calls for effective remedies for victims of forced evictions and for measures to ensure that evictions, where justified, are carried out with respect for human rights. It also calls for a national law in Kenya that explicitly prohibits forced evictions.

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