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KENYA

THE UNSEEN MAJORITY: NAIROBI'S
TWO MILLION SLUM-DWELLERS

HUMAN RIGHTS =
LESS POVERTY

AMNESTY
INTERNATIONAL



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Front cover photo: Behind the shacks of Kibera lies the temporary accommodation site for the pilot upgrading project in Soweto East, still not habitable due to lack of sewerage services when photographed in March 2009.

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Back cover photos: School children in Mathare 4A; Joyce Wanjiku Mbura, a Soweto resident whose house and shop were demolished during a road-widening project.

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1. INTRODUCTION

“The waste water passes through open drains and snails through the compound and through the neighbouring houses and into the river ...”

Mama Esther, a resident of Mukuru settlement

Life is precarious for the approximately 2 million people who live in Nairobi's informal settlements and slums. They make up over half the capital's population yet are crammed into only 5 per cent of the city's residential area and just 1 per cent of all land in the city.¹ They are forced to live in inadequate housing and have little access to clean water, sanitation, healthcare, schools and other essential public services. They also live under the constant threat of forced eviction from the makeshift structures they have made their homes.²

People have lived in slums in and around Nairobi since the city's formation at the turn of the 20th century.³ Over the years, government responses have failed to ensure the state's obligation to realize the human right to adequate housing. Recent government papers and policies have recognized the existence and continued growth of slums and informal settlements in Kenya, but not enough has been done to rectify decades of failure by the state to develop comprehensive and coherent policies to address lack of security of tenure and access to essential services in these settlements.

The experience of slum-dwellers starkly illustrates that people living in poverty not only face deprivation but are also trapped in that poverty because they are excluded from the rest of society, denied a say, and threatened with violence and insecurity.

Rights are the key for people to break out of the poverty trap. Put simply, respect for human rights demands inclusion, demands that everyone gets a say, demands that those in power protect people from threats to their security.

Amnesty International's Demand Dignity Campaign, launched in May 2009, is exposing and combating the human rights violations that drive and deepen poverty. The campaign is initially focusing on a few key issues, including slums, which sharply demonstrate the connection between deprivation, insecurity, exclusion and denial of opportunities for participation by people in decisions that affect their lives. The overall goal of the campaign is to end the human rights violations that keep people poor.

NAIROBI SLUMS VISITED BY AMNESTY INTERNATIONAL

Kibera, a vast slum south-west of Nairobi's centre, emerged in 1912 when a group of former soldiers from the Nubian community, who had served in the British army, were granted temporary rights to settle on a small area of densely forested land.⁴ Over time the government authorized other people to settle there. Today, up to 1 million people live on about 550 acres of Kibera land, most of it owned by the government.⁵

Amnesty International delegates visited three of Kibera's many villages – Soweto East, Laini Saba and Lindi.⁶ Soweto East covers about 52.8 acres and hosts up to 25,000 people. Laini Saba and Lindi stand on around 47 and 28 acres respectively and both host about 100,000 people. In all three villages, up to 90 per cent of residents are tenants.⁷

Mathare was established in about 1963 on government land by a group of independence fighters.⁸ The total population is unknown. It too is divided into villages. Part of the settlement is on government-owned public land but most is on land owned by private companies and individuals.

Amnesty International delegates visited three of Mathare's settlements – Bondeni, Mathare 4A and Mathare 4B. Bondeni stands on about 58 acres and hosts up to 10,000 people. Structure owners (resident in the settlement) comprise up to 40 per cent of the residents; the rest are tenants. Mathare 4A stands on about 23 acres and hosts 23,000 people, most of them tenants. Mathare 4B covers about 18 acres and hosts up to 12,000 people,⁹ with up to 80 per cent of them tenants living on government land.

Korogocho is an informal settlement started in the early 1980s. Over half of the land is government/public land and the rest is privately owned. It is estimated that over 120,000 people stay in about seven villages of Korogocho. Amnesty International delegates visited one of the villages, Ngunyumu, home to up to 9,800 people living on 45 acres mostly owned by the government.¹⁰ Although the average size of rooms is similar to other settlements, the houses in Korogocho are of a more permanent nature with walls of building blocks and iron-sheet roofing. The majority of residents are tenants.

Mukuru Kwa Njenga is home to an estimated 75,000 people and lies 10km south-east of Nairobi's city centre. The settlement began in 1958 when farm labourers lived there on land that was then owned by white settlers.¹¹ It subsequently attracted the urban poor who built makeshift homes. Today, it covers about 80 acres of government-owned land allocated on 99-year leases to private owners.¹²

Deep Sea is in Nairobi's north-west Westlands division. The first group of residents moved there in 1963 onto what was then untitled public (forest) land. Today, an estimated 7,000 people are said to be living on 33 acres, most of them tenants.

Issued as part of the Demand Dignity Campaign, this report provides an overview of the human rights issues raised by the Kenyan government's approach to slums and informal settlements. Subsequent Amnesty International reports will examine in greater detail the human rights issues faced by residents of informal settlements in their access to affordable, habitable housing and access to essential services.

This report draws on interviews with individuals and focus group discussions conducted by Amnesty International delegates in December 2008 and February/March 2009 with more than 200 residents of five informal settlements and slums in Nairobi – Deep Sea, Kibera,

Korogocho, Mathare and Mukuru Kwa Njenga.¹³ Those interviewed included both landlords/structure owners¹⁴ and tenants. Tenants comprised a majority of those interviewed simply because they constitute the majority in each of the settlements visited. While individual experiences dominated the interviews, clear patterns and themes emerged about the factors affecting the realization by settlement residents of their right to adequate housing.

The report also draws on interviews with government officials, in particular officials in the Ministry of Housing and the Nairobi City Council, as well as representatives of UN agencies, local non-governmental organizations (NGOs) and community-based organizations working in and on the slums and informal settlements. The report's findings are further informed by extensive published and unpublished research on the housing situation in the settlements by UN agencies and by local and international NGOs.

The report ends with a series of recommendations to the Kenyan government. In short, these call on the authorities to take the following steps as a matter of priority:

- Immediately cease all forced evictions, legislate and enforce a clear prohibition on forced evictions, and develop and adopt guidelines for evictions which comply with international human rights law. Until such steps have been taken, impose a moratorium on mass evictions.
- In relation to planned mass evictions regarding the Nairobi River Basin Programme and planned construction of government infrastructure, ensure genuine consultation with the affected communities to identify all feasible alternatives to evictions, put in place appropriate procedural and legal safeguards, and develop a comprehensive relocation and compensation plan.
- Ensure that implementation of the slum upgrading programme complies with the government's obligations in relation to the right to adequate housing, including the obligation to adequately consult affected communities and ensure the affordability and accessibility of housing, particularly for disadvantaged sections of the community.
- Ensure that the slum upgrading programme and policies address the immediate needs of residents in terms of security of tenure and access to essential services.

2. NAIROBI'S BURGEONING SLUMS

“The police are usually resistant to come here because they say there are no roads...”

A resident of Kibera Laini Saba village

Nairobi's vast slums and informal settlements are, like all communities, places where people live, work, eat, sleep and raise their children. But the residents of informal settlements must cope with inadequate housing, little access to water, sanitation and other basic services, and the ever-present threat of forced eviction.

Nairobi's slums are the consequence of both explicit government policy and decades of official indifference. In particular, informal settlements were excluded from city authority planning and budgeting processes, which meant in effect that public policy often treated these areas as if they did not exist. A stark illustration of this is the lack of water delivery in Kibera. Water mains criss-cross Kibera, delivering water to homes in wealthier areas, but the one million residents of the settlement must buy water at up to 20 times the price of piped water.

Because government policies have not focused on making low-cost housing available or providing slum-dwellers with viable long-term alternatives, the state has contributed to the proliferation of informal settlements. In the absence of other affordable housing, many people who migrate to Nairobi have no realistic alternative to life in the slums.

Nairobi's informal settlements have a history as long as that of the city itself. Throughout much of the colonial period, most Africans were barred from the city's designated residential areas as these were reserved for Europeans and Asians. Africans who came to the city in search of work therefore had to create informal residential settlements outside of the central business district and the planned residential areas.¹⁵

The colonial government largely ignored these informal settlements. The city's first development plans did not include the early settlements, meaning that the local authorities did not provide essential services for the settlements and did not construct roads to link them to other areas of the city. As a result, Nairobi developed along segregated lines.¹⁶ The city's 1948 Master Plan and other major urban development plans continued to neglect the informal settlements.¹⁷

Independence in 1963 did not lead to improved conditions in the informal settlements. The

immediate post-independence government considered slums an “eyesore” and an indication of government failure. As a result, it first introduced control measures to reduce population movement into the city and then, under the pretext of “maintaining law and order”, adopted the more radical measure of slum clearance.¹⁸

The slum clearance policy did not, however, halt the proliferation of informal settlements. Instead, displaced residents moved to other areas in and around the city, creating new informal settlements and slums. Between 1971 and 1995, the estimated number of informal settlements grew from 50 to over 130, and their population rose tenfold, from some 100,000 to over 1 million people.¹⁹

In the 1970s and 1980s the government's approach shifted away from clearances towards efforts aimed at improving living conditions in the settlements. Projects undertaken as part of bilateral or multilateral donor initiatives reflected this new approach, as did projects developed by NGOs, churches and slum-dweller alliances.

The involvement of NGOs and international development agencies in informal settlement improvement projects increased in the 1990s. For example, the Mathare 4A settlement was the site of a slum upgrading project that began in 1992 as the result of an agreement between the Kenyan and German governments and the Roman Catholic Archdiocese of Nairobi. Although the project was halted in 2000, it led to improvements in water supplies, sanitation and other infrastructure.²⁰ Agnes, a resident of Mathare 4A, gave this assessment of the project:

My parents lived here before the upgrading project. When the project came here, we were compensated because the houses were going to be upgraded from mud structures to brick houses. That's how I got this room. I think it [the upgrading] was a boost to our living standards because we previously didn't have toilets, bathrooms, and proper hygiene which the upgrading process has provided.²¹

By the government's own admission, however, these initiatives “tended to exclude target groups from the planning process” and were subject to corruption in allocating housing and other shortcomings.²²

The lack of recognition of slums and settlements as residential areas for city planning and budgeting purposes²³ has meant that residents have been denied a range of essential services provided by the government to other residents of the city. These essential services include water, sanitation, electricity, garbage collection, health, education, access roads and transport. The government has admitted:

Slums/settlements lack adequate physical infrastructure such as accessibility (roads and footpaths), sewer systems, drainage, water and sanitation facilities, electricity and street lighting. Where such facilities exist, they are in a bad state or are results of illegal connections...²⁴

In turn, the services that property owners provide to tenants are often insufficient. Mama Esther, a resident of Mukuru, described her living situation to Amnesty International:

We are about fifteen families on this one plot owned by one landlord. Each family rents a one-room house and pays between 400 and 700 shillings [US\$5-7] for the room per month. I pay 400 as rent. The room as you can see is single, but we divide it into two so that my three children can sleep in the other section... The services here are very bad. Although I feel the landlord earns a lot of money from the rents we pay, he is reluctant to ensure that we have access to even the most basic of services. All fifteen families on this plot use the one pit latrine which you can see outside there. There is also one common bathroom which is adjacent to it and whose entry is covered by a polythene bag... Because we are many, we have to organize, throughout the day, on how to use the pit latrine and particularly the bathroom... The waste water passes through open drains and snails through the compound and through the neighbouring houses and into the river...²⁵

INADEQUATE ACCESS TO CLEAN WATER

Most residents of Nairobi's settlements do not have access to public water supplies, which are available to other residents of the city. The longstanding view that informal settlements were illegal meant that local authorities were not held responsible for providing access to water and other essential services.²⁶ In 2002, for example, a study found that 24 per cent of slum households in Nairobi had access to piped water, compared with 92 per cent of the rest of Nairobi.²⁷ In 2007, by the government's own admission, "sustainable access to water drops to as low as 20 per cent in the settlements of the urban poor where half of the urban population lives."²⁸

The Water Act of 2002, in operation since 2003, introduced national reforms in water delivery that included the privatization of water services.²⁹ Intended to improve water supply and bring down costs, privatization has in fact not changed the insufficient and irregular delivery of water to the settlements. For instance, residents in three Kibera communities told Amnesty International that because of the intermittent delivery of water to the private water points in their own communities, they often had to look for water in neighbouring urban areas, sometimes walking three kilometres or more to collect water.³⁰

Moreover, water delivery to the settlements may be interrupted to serve other areas of the city first. The UN Development Programme (UNDP) reported that Kibera "gets far less water than other settlements, partly because the utility diverts water to high-income areas during periods of shortage."³¹

Nor has privatization meant that settlement residents receive water at rates that are affordable or even comparable to the prices paid in wealthier communities. Amnesty International consistently heard from settlement residents that the price of water was such that they could not afford to buy what they need. Caroline Akello, who lives in Ngunyumu in Korogocho settlement with her husband and four children, told Amnesty International:

We usually buy water from private water vendors around here although water supply is very intermittent... For our domestic use, involving cooking, washing and bathing, we need up to 150 litres of water per day... However, because of the high costs involved in buying water, we have got to do with even 30 litres a day... It costs us Ksh 2 [approximately US\$0.025] per 20 litre container of

*water, and if we were able to pay for the water we need, I would be paying up to Ksh 160 per day [US\$2]... But we cannot afford this. So the result is that our children and we have to skip bath and we only wash the clothes occasionally... With other basic needs, particularly food to pay for, we cannot afford to think of water as the most important need.*³²

The price of water in the settlements is significantly higher than the rates paid in other areas of the city. UNDP noted in 2005 that in the informal settlements, “the average price is some seven times higher than that paid by people in high-income settlements served by the Nairobi Water and Sewage Company.”³³ When the government introduced its new national water strategy in 2007, it observed that in settlements: “Vendors sell water of uncontrolled quality to consumers who have to spend hours to fetch it at prices that are often between five and 20 times the tariff applied to consumers with a metered water connection.”³⁴

Finally, questions about quality remain. As Millicent of Mathare Valley told Amnesty International:

*I have lived here for about 20 years and one of the main problems is the high frequency of cholera, dysentery and other water-borne diseases, especially for our children. Last month, my second-born child, aged 15 years, was seriously hit by cholera that she almost died were it not for the mercy of the local health unit where she was attended to... My other three children frequently suffer from water-borne illnesses from time to time. I attribute this to the situation we live in where we do not have enough access to clean water and are forced to drink polluted water. The open drains that you see here pass within the villages and in front of houses... Pipes used for drinking water often leak and come into contact with waste and sewage... I don't know what to do – even though I would wish to move from this place, I ask myself where else I can afford to go...*³⁵

ABSENCE OF SANITATION

The Kenyan Public Health Act and its subsidiary rules set out detailed standards for housing and sanitation.³⁶ Local authorities are expected to supervise the enforcement of the law. In addition, Section 160 of the Local Government Act expects every local authority to establish and maintain sanitary services for the removal and destruction of all kinds of refuse and effluents. However, as the Nairobi City Council Planning Department itself acknowledged to Amnesty International, these laws have never been enforced in relation to Nairobi's slums and settlements because “these areas are not and have not historically been integrated into the city's urban plans”.³⁷

Nairobi's sewerage system is generally poor, and the waste and disposal system dysfunctional.³⁸ But even this system is not available to residents of settlements as they have limited or no access to the public sewer lines and waste disposal systems. Rudimentary hand-constructed earthen channels acting as open sewers are common in all the settlements. In these channels, the sewage often comes into contact with drinking water pipes and many times passes right in front of houses. The smell of human waste is always present in flat parts of settlements where the sewage pools and stagnates. For areas such as Kibera, Mathare's Bondeni and Mathare 4B which neighbour the Mathare/Nairobi rivers, domestic waste is mainly directed into the river.

Toilets and latrines are limited in all the settlements visited by Amnesty International. Most residents use the few available pit latrines, often shared by a number of households.³⁹ There is no system for removing this waste, and people are often forced to pay for the waste to be taken away manually. In some areas such as Lindi village of Kibera settlement, there are no toilets at all. Residents mostly resort to “flying toilets” (small plastic bags used to throw out toilet waste).

Jane Macharia, a resident of Lindi village, told Amnesty International:

Flying toilets are frequently used here. Almost all my neighbours use them and the practice is that they are thrown at night. We feel that this contributes to the unsanitary conditions in our environment but what do you expect people to do? Toilets and latrines are very few for most of us. In my case the landlord has not put up a toilet and yet we are about five families living on the plot...⁴⁰

The Kenyan Public Health Act prescribes the health and safety measures that landlords must comply with, including in relation to the provision of sanitation and other services.⁴¹ As with other provisions, the local authorities do not enforce these against landlords or developers who build and rent homes in slums and settlements. In Mukuru Kwa Njenga settlement, for example, a private developer has built tens of residential and commercial housing units without proper sewerage. A resident affected by the lack of proper sewerage disposal by this private developer explained:

The toilets you see in that plot are connected to a pipe which runs straight into this open drain you see here. Once every month the private developer releases the sewage straight into this open drain which ends up coming right through the plot where we stay and to the primary school you see down there. The effect is a staunch smell and possible health hazards as the sewage and waste gets into peoples' houses. Our children have to walk through the sewage and usually when water pipes – both under and above ground – burst, then the open sewage gets into water and the water is contaminated... When the sewage dries up, it is part of the dust and pollutes the air... We feel nobody cares about our situation and the dangers that come with the actions such as that of this individual who does not care about our situation... He is powerful, that is all that matters... Do you think government officials who come here don't know that what this owner [of houses] is doing is wrong?⁴²

LACK OF CLINICS, SCHOOLS AND ROADS

The government has established few schools and health care centres in settlements, so residents are forced to rely on private facilities, where they exist.

The estimated 130,000 people who live in Kibera's villages of Soweto East, Laini Saba and Lindi, for example,⁴³ have access to only one reliable private health facility – the NGO-run Africa Medical Research Foundation – which is a few kilometres from these areas and serves the majority of Kibera. In theory, residents may access the government hospitals and health units in Nairobi that are close to the slums and settlements, including the nearby Kenyatta National Hospital, the country's main public health institution. However, most residents indicated that the cost of care at these hospitals and institutions is often beyond their means.

Kinyanjui, a resident of Lindi village, told Amnesty International:

Our problems include poor hygiene leading to poor health yet there are no government health centres in the slums. The nearest health facility is about five kilometres away. We walk there if we are sick. If we are too ill to walk, we must take human ambulances, people to carry us, or carts... We would not be able to afford taxi costs for those seriously sick...⁴⁴

Similarly, the estimated 25,000 residents of Soweto East have no public primary schools. There are two private primary schools which charge Ksh 800-1,200 (US\$10-15) per child a year. Parents who cannot afford to pay are forced to send their children to distant public schools, and then only if they manage to enrol their children in the overcrowded public school system. Most children living in the settlements therefore do not have access to the government's free primary education programme launched in 2003.⁴⁵

As David, a resident of Korogocho and a father of three children, told Amnesty International:

It's not easy to get one's children to school. You have to sacrifice things for some time. Perhaps what you get per day is too little. So you have to go without food, without basics. Sometimes you overlap breakfast and lunch, to get them to school...⁴⁶

Many residents also highlighted the difficulties they experience because of lack of proper access roads and, consequently, the long distances they have to walk to reach public transport. The roads within the informal settlements are often narrow and passable only with difficulty, especially when it rains. Most residents said this severely restricts government services, including drainage systems, security services, fire emergency services, and access to emergency health care. A group of residents in Kibera Laini Saba village told Amnesty International:

Government officials have kept on telling us over the years that a road would be constructed but this has never been done... If there was a proper road passing through Kibera, the cost of public transport would come down and this would save us some money so we can attend to other needs... In addition, when it rains here, it is usually a big problem to walk through the mud and sewage on our way to work... We have to take matatus [public transport buses] from a place called Ngumo which is about three kilometres away from here... At the same time the lack of proper access roads contributes to widespread insecurity and high crime rates... There is no police post close to this village and police and security patrols are significantly hampered by roads... The police are usually resistant to come here because they say there are no roads... In addition, what do you think would happen here in the event of a big fire emergency?⁴⁷

3. VIOLATIONS OF THE RIGHT TO ADEQUATE HOUSING

“The bulldozer started flattening our houses with all the belongings inside...”

Jane Atieno, a resident of Deep Sea settlement

The burgeoning slums and the unacceptable living conditions for their residents are visible testament to the Kenyan government's failure to uphold the right to adequate housing for all, a right it is obliged to uphold under international human rights standards.

A chief obstacle to realizing the right to adequate housing is the lack of legal security of tenure for most residents of informal settlements. Many residents do not have clear protection from arbitrary rent increases, unreasonable restrictions on the use of the homes and land they occupy, or dispossession. When evictions do take place, they frequently do not respect due process and may be carried out with excessive use of force or accompanied by other abuses. As a result, forced evictions – those that are illegal under international law – are all too common.

Kenya is a party to the International Covenant on Economic, Social and Cultural Rights and is legally obliged to respect, protect and fulfil the right to adequate housing as provided by Article 11(1). The UN Committee on Economic, Social and Cultural Rights has clarified that legal security of tenure is one of the requirements to determine “adequacy” of housing. The government of Kenya is therefore obliged to adopt effective measures aimed at ensuring, at the very least, a degree of security of tenure sufficient to protect people from forced eviction, harassment and other threats. According to the Committee:

*“[L]egal security of tenure takes various forms, including, rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. **Notwithstanding 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. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.**”⁴⁸*

DENIAL OF SECURITY OF TENURE

The slums and informal settlements visited by Amnesty International delegates are on public and privately owned land, although most of the land is public or government owned. The majority of residents are tenants paying rent to landlords or structure owners who in turn do not own the land on which the houses and structures stand.

Kenyan land and housing law is extremely complex, and a majority of people living in the settlements do not have security of tenure. In the report on his visit to Kenya in February 2004, the UN Special Rapporteur on the right to adequate housing⁴⁹ noted that “the complexity of the legal system governing housing and land has done little to ensure security of tenure or to facilitate realization of the right to adequate housing”.⁵⁰

In addition, the haphazard or unplanned growth of settlements means that hundreds of families within them stay in structures or houses constructed on land reserved for roads, electricity lines and railway tracks, or on dumping grounds and river banks. The people staying on such land and most other residents interviewed by Amnesty International said they had no form of security of tenure – perceived or legal.⁵¹

In its slum upgrading strategy of 2005, the government admits that “a common denominator in the urban slums and informal settlements of Kenya is the lack of security of tenure and or residency”. It commits to “regularize land for purposes of integrating the settlements into the formal physical and economic frameworks of urban centres.” Four years on, this promise is yet to be acted upon.

According to the UN Human Settlements Programme (UN-HABITAT), security of tenure increases individual, household and community savings and expenditure towards improvement and development of homes.⁵² This helps improve standards of living and the achievement of housing rights. The fact that there is, by and large, no security of tenure in most of Nairobi's informal settlements and slums helps to explain the reluctance to improve housing and related infrastructure.⁵³

David, a resident of Kibera's Laina Saba, told Amnesty International:

*If there was private land, you have a right, and the government has a title deed. Because there is conflicting origin, and we don't know the owner of the land, so there is a temporary element, you don't invest. Because maybe one day, you rise up, and someone has destroyed your house, claiming it is his or hers, and he is claiming that they want to build here.*⁵⁴

No government in Kenya has consulted people living in informal settlements and slums to identify measures to give them a minimum degree of security of tenure, even though some settlements and slums have existed for nearly 100 years.

FORCED EVICTIONS

The lack of security of tenure means that informal settlement dwellers are particularly vulnerable to forced evictions, often carried out en masse with catastrophic consequences for individuals and families.

In fact, since the establishment of the very first informal settlements in Kenya, large-scale forced evictions have regularly occurred in a manner that contravenes international human rights standards. In the past decade, the Centre on Housing Rights and Evictions (COHRE); Kenyan NGOs, including Kituo Cha Sheria, Hakijamii and community-based organizations such as the Muungano wa Wanavijiji and the Nairobi Peoples' Settlement Network; and the UN Special Rapporteur on the right to adequate housing have all documented instances of forced evictions in Kenya's informal settlements and other areas.

Mass forced evictions have usually involved private developers claiming ownership of land on which some of the settlements stand, or government projects.

In the report on his visit to Kenya in February 2004, the UN Special Rapporteur on the right to adequate housing highlighted concerns about the practice of forced evictions. He recommended that "the Government should immediately put into practice the procedure called for under general comment No.7 of the Committee on Economic, Social and Cultural Rights. There is need for a clear evictions policy and specific legislation in this regard, such as a National Act on Evictions."⁵⁵

The government has said that it would comply with international human rights standards regarding any evictions, including in slums and informal settlements. For example, in March 2005 the Attorney General stated before the UN Human Rights Committee that any future evictions would be done in accordance with "established international and United Nations standards on eviction". The UN Human Rights Committee, in its Concluding Observations issued in March 2005 after consideration of Kenya's progress in implementing its obligations under the International Covenant on Civil and Political Rights, urged the government to "develop transparent policies and procedures for dealing with evictions and ensure that evictions from settlements do not occur unless those affected have been consulted and appropriate resettlement arrangements have been made".⁵⁶ The government pledged to develop guidelines on evictions and in 2006 formed a task force to this end. There has, however, been no discernible progress in the task force's work over the past three years.

More recently in December 2008, the Committee on Economic, Social and Cultural Rights expressed concerns about the practice of forced evictions in Kenya. It recommended:

The State party consider including a provision in its new draft Constitution to ensure that evictions are only used as a last resort, adopt legislation or guidelines strictly defining the circumstances and safeguards under which evictions must take place, in accordance with the Committee's general comment No.7 (1997) on forced evictions, and ensure that each victim of forced evictions is provided with adequate alternative housing or compensation and that he or she has access to an effective remedy.⁵⁷

It is also under an immediate obligation to provide a minimum degree of legal security of tenure to everyone, including protection from forced evictions, harassment and other threats. The government is not meeting its obligations under international human rights law to prohibit and prevent forced evictions. It has failed to ban in domestic law forced evictions or stop forced evictions by public and private actors. It has also failed to implement the recommendations of various international human rights monitoring bodies.

INTERNATIONAL STANDARDS ON EVICTIONS

Forced evictions are a violation of human rights that governments are obliged to prohibit and prevent. The UN Committee on Economic, Social and Cultural Rights define forced evictions as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection...” (General Comment No.7, paragraph 3). The UN Commission on Human Rights has also recognized that forced evictions constitute gross violations of a range of human rights, in particular the right to adequate housing (UN Commission on Human Rights Resolution 1993/77, para 1).

Under international human rights law, evictions may be carried out only as a last resort, once all other feasible alternatives to eviction have been explored and genuine consultation has taken place with communities.

Evictions can only be carried out when appropriate procedural protections, identified by the UN Committee on Economic, Social and Cultural Rights, in paragraph 15 of General Comment No.7, are in place. These 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 an eviction;
- 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, regardless of whether they rent, own, occupy or lease the land or housing in question (General Comment No.7, paragraph 16).

Forced evictions also contravene the International Covenant on Civil and Political Rights, to which Kenya is a party. Article 17 provides for the right to the protection of the law against arbitrary or unlawful interference with a person's privacy, family or home.⁵⁸

Finally, forced evictions contravene the African Charter on Human and Peoples' Rights to which Kenya is also a party, in particular, Articles 14 and 16 on the right to property and the right to health, and Article 18(1) on the state's duty to protect the family. This principle was affirmed in 2001 by the African Commission on Human and Peoples' Rights in the case of *Social and Economic Rights Action Center & The Center for Economic and Social Rights v. Nigeria*.⁵⁹

The lack of legal protection against forced evictions under Kenyan law is evident in relation to forced evictions carried out at the behest of private developers. These evictions have led to destruction of families' property, businesses and livelihoods; the separation of families; and unquantifiable loss, such as psychological trauma. The case of an eviction in the Deep Sea settlement is an illuminating example.

DEEP SEA SETTLEMENT

The estimated 7,000 residents of Deep Sea settlement, some of whom have been there since its formation in 1963, live under the constant threat of forced eviction.⁶⁰ Over the years Deep Sea residents have been victims of forced eviction by different government authorities and private individuals and companies. In 2003 and 2005, a private company sought to claim ownership over the land and brought a case before the High Court against a group of residents for illegal occupation of the land.⁶¹ While the case was still pending, the company sought an interim court order, which was granted by the court in the absence of the residents or their representatives.

On 23 September 2005, the homes of about 850 families were demolished using bulldozers owned by the government.⁶² The residents were forcibly evicted without prior and adequate notice, without any attempt at consultation, without due process and other safeguards required under international human rights law, and without the provision of any alternative housing and compensation. Apart from a general newspaper notice, of which residents only became aware after the eviction, residents were given no specific notice regarding the evictions prior to the demolition of houses. Victims told Amnesty International delegates that the eviction was conducted in the middle of the night. One victim, Jane Atieno, said:

The bulldozers came just after midnight and the police and city council askaris [security personnel] ordered us to vacate the houses and take our children with us out of the houses... We inquired from the police and the security personnel as to why they wanted to demolish the houses. They continually told us, 'We are on duty'... After some minutes they fired teargas in the whole area. People were scrambling to get all they could from their houses... The bulldozer started flattening our houses with all the belongings inside..."⁶³

Another victim, Jane Oyaro, said that as a result of the evictions her family, including three children, had to sleep out in the open for three consecutive "very cold" nights. On the fourth day, they and other victims received humanitarian assistance from the local church and a local NGO, both of which helped them reconstruct their houses. For a few weeks after the evictions children could not attend primary school because their books, school materials and uniforms had been destroyed during the demolition.

As a result of media attention on the residents' plight and protests, and interventions by the church and NGOs, the evictions did not continue the following day. However, residents who lost their homes had to move in with neighbours and family.

The High Court subsequently ruled that the evictions were illegal.⁶⁴ This has not, however, halted subsequent attempted evictions. Residents spoke of a number of attempted demolitions and their suspicions about numerous incidents of arson. The latest fire was in December 2007 when about 200 houses were said to have been destroyed.⁶⁵ Most of the

residents interviewed by Amnesty International said that they believed the frequent fires were meant to make them vacate the land. Commenting on the December 2007 fire incident, resident Michael Dida said:

These people who have been evicting us were not satisfied with previous methods so they applied a different method – fire. On this particular day, it was a Sunday and many of us had gone to church when the fire apparently broke out and razed down some of the houses...⁶⁶

Residents also expressed their constant fear of forced evictions. Jacinta Wanjiku, who has lived in Deep Sea for over 20 years and been a victim of several forced evictions, stated:

Every time I hear a vehicle pulling over near the settlement, my first thought is always that it's a bulldozer yet again and that our houses would be demolished in order to make us leave this place.... The other day we heard that a nearby settlement was being demolished and we think we would be next...⁶⁷

Community leaders who have attempted to organize against the evictions have been targeted for individual forced eviction and harassed by government authorities. One of them told Amnesty International:

Since the 2005 demolition of houses I have faced continued harassment from local authorities because of my efforts in organizing this community to speak against attempts to forcefully evict us from this area... I have been arrested several times... and not charged with any crime in court and even threatened that I would not live here if I continued in my role as community leader... I am not for confrontation and we would be happy to have a dialogue with the government on the claims of private ownership of the land on which Deep Sea stands and see what options we, as the Deep Sea community, may have. However, we have never had an opportunity for this dialogue. As it is, this is just a lull before another eviction is attempted. The court case by the private developer remains pending...⁶⁸

A number of mass forced evictions have been in preparation for government infrastructure development in Nairobi, such as the construction of road bypasses and electricity and railway lines. Residents of informal settlements and slums have been most affected because these areas have been developed, often with the acquiescence of government officials, on land initially reserved for such infrastructure projects. Following a 2004 visit to Kenya, the UN Special Rapporteur on the right to adequate housing noted with regard to slum areas and informal settlements:

The land in question has been occupied for decades with the knowledge and consent of previous Governments... [For example], according to testimonies and other information received, people occupying plots near the railway line in Kibera [and whose houses were targeted for eviction] have paid a fee to Kenya Railways Corporation for "official permission" to live there...⁶⁹

KENYAN LAW ON FORCED EVICTIONS

Kenya's Constitution does not prohibit forced evictions, nor have its provisions been interpreted by the courts to include such a protection. There are also no specific Kenyan laws prohibiting or preventing forced evictions.

In individual cases, courts have called for alternatives to forced evictions. In *John Samoei Kirwa & 9 Ors. v. Kenya Railways Corporation*,⁷⁰ the High Court granted a temporary injunction against the eviction of residents in informal settlements on a railway reserve. The court stated:

"The plaintiffs [residents] are likely to establish that the notice was issued un-procedurally and unlawfully. They are also likely to establish at the hearing of suit that the notice was arbitrary and unreasonably inadequate..."

"It should be noted that human compassion must soften the rough edges of justice in all situations. The eviction of squatters not only means their removal from their houses but the destruction of the houses themselves. The humbler the dwelling, the greater the suffering and more intense the sense of loss. It is the dialogue with the person likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done.

"I am of the view that [if] squatters... [have] settled and have been in existence for a long time, say for twenty years or more, and... have improved and developed the land on which they stand [and that land] is required for a public purpose... alternative site or accommodation should be considered..."

"[I]t is clear that plaintiffs are likely to suffer irreparable loss. No one can quantify the amount of loss when children miss the benefit of free primary education or when their homes are demolished and their parents are evicted from the only known home... The applicants have shown in their averments that they have ploughed their farms and have even planted crops on it. They have also shown that they have been in occupation of the railway land reserve for over 30 years and the owner has not disturbed them."

However, this decision applies in relation to the facts of this case only and the remedy sought in the application – which was a temporary injunction rather than a court order permanently barring the eviction. Such individual court decisions are therefore of limited application for the millions of residents of informal settlements who lack security of tenure.

In addition, access to justice, especially for people living in poverty, is severely limited, particularly in terms of lack of legal awareness and the inability to afford court litigation. The legal process is also extremely slow, usually lasting many years before cases are determined.

COHRE and the UN Special Rapporteur documented that in February 2004 alone approximately 2,000 people had their homes demolished in a mass forced eviction in Raiba village in the western part of Kibera in order to provide space for a road bypass.⁷¹ Prior to this eviction, adequate notices were not served to the residents, and there were no government efforts to resettle or compensate the victims. Subsequent to the forced evictions,

hundreds of families became homeless and lost their livelihoods after homes were demolished with government bulldozers. A number of schools, kiosks and private health clinics serving the community were also destroyed during the forced eviction.⁷² The eviction was subsequently halted following national and international condemnation. More than five years later, the construction of the road bypass has yet to start.

Other planned evictions related to infrastructure development, such as the suspended construction of a road bypass through Kibera dating back to 2003, remain pending to this day.⁷³ If these were to be carried without a comprehensive plan to provide for relocation and adequate procedural and other legal safeguards for the affected residents, they would result in the forced eviction of thousands of families.

In relation to government plans related to infrastructure, such as the construction of roads and bypasses, Kenya's obligations under international human rights law mean that any evictions must be carried out as a last resort and with appropriate procedural protections required under that law.

In the absence of a law and comprehensive national eviction guidelines that comply with international human rights standards, mass forced evictions are likely to continue.

A particularly important current case is the threatened eviction of more than 100,000 people living in informal settlements along the Nairobi River basin, whose homes and informal businesses – located on the riparian (river bank) reserve – would be demolished to make way for a massive river clean-up project.

NAIROBI RIVER CLEAN-UP PROGRAMME

In 1999, the government and other stakeholders launched the Nairobi River Basin Programme to “restore, rehabilitate and manage the Nairobi River basin's ecosystem”.⁷⁴ The Ministry of Environment and Mineral Resources, the Ministry of Nairobi Metropolitan Development, the National Environmental Management Agency, the Ministry of Local Government, the Nairobi City Council, UN agencies⁷⁵ and the private sector are among the organizations involved.

In November 2008 the government announced that the latest phase⁷⁶ of the programme would involve a two-year river clean-up process. To achieve this, thousands of homes and businesses would be demolished in a number of informal settlements within a 30 metres riparian reserve.⁷⁷ Up to 127,000 people, most of them living and working in the informal settlements of Mathare, Huruma, Kiambiu, Korogocho, Mukuru and Kibera, would be victims of forced eviction if the river clean-up exercise goes ahead as planned and without a comprehensive relocation plan for the affected residents.⁷⁸ A number of schools, health centres and markets used by residents would also be demolished.

The programme's listed achievements so far include the generation of “sufficient public interest on environmental awareness” and “involvement of the private sector in the programme's interventions such as water quality monitoring and waste management”.⁷⁹ According to the UN Environment Programme (UNEP), the previous phases of the programme involved participation of Nairobi's residents.⁸⁰ The express acknowledgement of the role of

public participation should be read to include genuine consultation with the affected communities, including exploring all feasible alternatives to evictions. However, at present and despite concerns expressed to Amnesty International delegates by affected communities that mass evictions may be imminent, residents have not been adequately consulted by the government or other stakeholders in the programme.

All residents who spoke to Amnesty International said they remained in the dark about the details, timing and even existence of a plan on the river clean-up. All those who thought they would be affected said that they lived with the fear that they may be forcibly evicted from their homes and informal businesses at any time and without adequate notice. Most of them wondered where they would seek alternative accommodation and livelihoods.

Fredrick from Mathare told Amnesty International:

I heard [of the river evictions] but I don't know how far it will go from the river in terms of metres. I think it will affect me, and I will wait and see when it happens. I don't know for sure if the government will help us, but I hope they will. I haven't spoken to anyone about the evictions. But who can we talk to really? As it is, it is still unofficial because the area chief has not even called a meeting to talk to us about the river eviction like he did when the road evictions were done.⁸¹

Mama Frank from Korogocho told Amnesty International:

I think people should organize ourselves to resist eviction because as a united group there will be impact but individually we may not be able to resist... and we have nowhere to go.⁸²

The stated aim of the Nairobi River Basin Programme, expressed as a “restored riverine ecosystem with clean water for the capital city and a healthier environment for the people of Nairobi,”⁸³ is clearly important. There are obvious dangers associated with a lack of safe potable water and the threat of water-borne disease linked to the pollution of the river ecosystem.⁸⁴ A pollution monitoring analysis cites one of the main causes of pollution of one of Nairobi's rivers (Ngong)⁸⁵ as untreated waste water from small-scale enterprises in slums and “uncontrolled disposal of excreta and solid waste” from the major slum areas – including Kibera, Mukuru, Dagoretti and Satellite slum areas.⁸⁶ However, one of the greatest problems in the informal settlements is the lack of water and sanitation services and garbage disposal facilities, which forces the residents to use the Nairobi Rivers as a dumping site. Moreover, the informal settlements are not the only “main sources” of pollution cited by the monitoring study, which also mentions other “inappropriately sited disposal sites and untreated industrial waste water from factories”.

These are some of the critical issues that the government must urgently address if the planned river clean-up is to be sustainable and compliant with international standards. Dealing with the causes of pollution in the informal settlements would only be sustainable if residents have adequate access to essential services, particularly water and proper sanitation.⁸⁷ Any efforts to resolve the issue of the clean-up of the river should also ensure the participation of communities who may be affected in the decision-making process and

genuine consultation with them to identify all feasible alternatives to evictions.

If the demolition of homes and informal businesses is undertaken as currently planned and without consultation on an adequate relocation and resettlement plan if evictions are necessary, it will be socially and economically disastrous for thousands of people living and working in the informal settlements and slums.

On 21 January 2009, Amnesty International, COHRE and two Kenyan organizations – Hakijamii and Shelter Forum – wrote to the Kenyan government expressing this concern. They urged the authorities to ensure that national guidelines on evictions that comply with human rights standards and a comprehensive relocation plan are in place before any evictions are done. As of May 2009, the organizations had not received a response.

4. SLUM UPGRADING

“This is my livelihood, selling tomatoes. When I am told I have to relocate, I have no husband or job, where do they expect me to go? How will I put food on my table?”

Rose Awino from Kibera

The government's main response to the inadequate living and housing conditions in the informal settlements and slums is the major Kenya Slum Upgrading Programme (KENSUP). Since its establishment, slum upgrading has become the central plank of government policy on this issue.

In a narrow sense, “slum upgrading” refers to physical improvements in shelter and infrastructure in slums.⁸⁸ A broader definition by the Cities Alliance⁸⁹ describes it as “physical, social, economic, organizational and environmental improvements undertaken cooperatively and locally among citizens, community groups, businesses and local authorities”.⁹⁰ According to UN-HABITAT, slum upgrading improves inadequate living and housing conditions in slums and informal settlements.⁹¹

The Kenya government undertook some slum upgrading programmes in the 1990s, but these were ad hoc schemes and not widely implemented. It was only in the 2004 National Housing Policy that the government committed itself to developing low-cost housing and upgrading slums to improve the housing situation in the informal settlements”.⁹² The government's slum upgrading strategy of 2005 details its plans to “integrate the settlements into the formal physical and economic framework of urban centres and above all to guarantee security of tenure”.⁹³

According to UN-HABITAT, the government's attitude towards informal settlements changed after 2004 with the adoption of the National Housing Policy “from intolerance, whereby informal settlements were regularly demolished, to acceptance”.⁹⁴

KENYA SLUM UPGRADING PROGRAMME

In November 2000, in recognition of the continuing growth of slums and informal settlements, the government and UN-HABITAT agreed to start KENSUP. The programme aims to “improve the livelihoods of at least 5.3 million slum dwellers in Kenya by the year

2020".⁹⁵ The government renewed the collaboration with UN-HABITAT by signing a memorandum of understanding in January 2003 under which the government committed to "systematically upgrade slums in urban areas in Kenya".⁹⁶ Under KENSUP, UN-HABITAT would provide technical support and a lobbying role to the government and local authorities.⁹⁷ KENSUP was officially launched in October 2004 and the government is committed to mobilizing financial resources for the estimated total cost of Ksh 883.76 billion (US\$11.05 billion) for implementing the project between 2005 and 2020.⁹⁸

KENSUP involves three phases – inception, preparatory and implementation. According to the KENSUP strategy document, the first two phases have been concluded and the project is currently in the implementation phase.⁹⁹

So far, there have been a number of positive developments. The very fact that the programme was started and agreement reached with the government bears testimony to considerable political will. A number of studies, including baseline surveys, situational analysis,¹⁰⁰ and the selection of initial sites for the upgrading projects, have been completed. The programme's policy framework for upgrading has been finalized and a number of the proposed institutional organs earmarked for the programme's implementation have been put in place.¹⁰¹

The KENSUP pilot project, which is in Kibera's Soweto East, involves the temporary relocation of about 25,000 residents in batches into a decanting site while the new housing units are built in Soweto East. On completion of the new houses, the residents identified in the pilot project would move into them on the basis of their ability to afford the costs of owning or renting the new units.

The pilot project is in the implementation phase. An enumeration process has identified the residents, and the area has been mapped and surveyed. A 600-unit temporary housing site has been completed and will accommodate the first 600 families (or 1,800 individuals) temporarily relocated when the slum upgrading begins. Relocation has not yet started because work on the sewerage system for the temporary housing site has yet to be completed.¹⁰² Meanwhile, the government is finalizing the framework and criteria for the relocation of the first 600 families.

Despite the progress, formidable challenges remain and there are fears that the design and implementation of the project do not comply with requirements under international human rights law. In particular, the government needs to ensure that the programme complies with the requirements identified by the UN Committee on Economic, Social and Cultural Rights to determine the "adequacy" of housing. These include: 1) legal security of tenure; 2) availability of services, materials, facilities and infrastructure; 3) location; 4) habitability; 5) affordability; 6) accessibility; and 7) cultural adequacy.¹⁰³ The government must also ensure that implementation of the project does not lead to forced evictions or involve direct or indirect discrimination.

Based on interviews with residents of Kibera's Soweto East village, Amnesty International identified that the government had failed to:

- guarantee a minimum degree of security of tenure;

- guarantee that no residents will be forcibly evicted as a result of the upgrading;
- take necessary measures to guarantee the affordability and accessibility of temporary and permanent housing units;
- provide adequate information to residents;
- undertake a genuine consultation with residents;
- ensure their participation in decision-making on the design and implementation of the project.

The UN Committee has stressed the importance of genuine consultation and participation by affected communities in the design of housing strategies, to ensure respect for human rights but also their relevance and effectiveness.¹⁰⁴ The Kenyan government also has to respect the right of communities to information and to participation in public affairs.¹⁰⁵

Of the residents on the pilot project site interviewed by Amnesty International, 45 out of 50 believed that the project was being implemented without effective and adequate consultation with them. In both individual interviews and focus group discussions, residents said that they were left to speculate about the project's implementation. As a result, there is widespread misinformation about the project, the cost of houses, the plans for housing construction and details about the process of ownership of any new houses in the redeveloped site. The lack of consultation has also raised fears about whether the housing will be affordable and meet the residents' needs, including in terms of location and their livelihoods.

Under the project, the community is to be represented by an elected 16-member Settlement Executive Committee (SEC)¹⁰⁶ whose main role is to act as a link between the Programme Implementation Unit and the community.¹⁰⁷ The local Chief and District Officer sit on the SEC as unelected members representing the Provincial Government Administration. SEC members are to be regularly involved in the project's meetings and expected to communicate agreed decisions to the community, particularly through the Provincial Government Administration.

Although the community has expressed concern that SEC members were not properly elected in 2005, the SEC has nevertheless been active since then. Amnesty International interviews with community members and three of the elected SEC members highlighted the concern that SEC members involved in regular meetings on various aspects of the programme feel by their own admission that it is often "advisable not to communicate certain decisions to the community".¹⁰⁸ Several SEC members do not attend the meetings at all. The result is a lack of communication between the affected community and the decision-makers in charge of the project's implementation.

Residents were not consulted on the design and location of the temporary relocation site. Their concerns, as expressed in interviews with Amnesty International, include:

- the size and cost of each unit (apartment buildings with three-bedroom units which may be unaffordable for most residents);

- the location (distant from their current place of residence and networks);
- impact on their livelihoods (they may not be able to operate their informal businesses from the relocation site).

A number of residents, mainly those engaged in informal businesses in the settlement, said that relocating to the temporary site would cut them off from their daily income. Wacira Kennedy, who operates an informal shoe-repair business in Soweto East, said:

We have been told that we would be temporarily relocated to the decanting site which you can see from here... I have no issue with initiatives such as the slum upgrading programme. However we should not suffer more because of the programme. But in this case I fear we would be badly off with the programme than we are now. I have lived here for about 22 years during which I have earned a living by being engaged in a number of informal businesses. For the last five years this shoe-repair business is my main source of income... We have not been told how things would work when you temporarily relocate to the decanting site... How long we would live there before the new houses are completed? In the meantime, do you think I am naïve to believe I can sustain this business at the decanting site? I am told there is not even enough space for these kinds of businesses... The decanting site is not suited to the needs of some of us.¹⁰⁹

Some women are also concerned that they may be excluded from the project because they were not registered when the residents were counted. Jocelyn Kemunto told Amnesty International:

I have got no hope in the ongoing upgrading project because it is my husband who was registered at the time of government enumeration exercise in 2005 and he went away with all the papers when we separated... I do not know where I would go with my children..."¹¹⁰

The KENSUP Secretariat informed Amnesty International delegates that the project will ensure that people in Jocelyn's situation will not be excluded but that the project has not yet developed guidelines to identify "exactly who are the vulnerable categories of people and how to ensure they are not excluded from the project".¹¹¹

The lack of information and consultation, coupled with the general failure of a number of past slum upgrading projects in Kenya to benefit the majority of the targeted urban poor, has led to a general distrust towards the project.

After considering Kenya's report on implementation of the International Covenant on Economic, Social and Cultural Rights and concerns around the implementation of the KENSUP Kibera project, the Committee on Economic, Social and Cultural Rights recommended that the government should ensure that the affected communities are effectively consulted and involved in the planning and implementation of such projects.¹¹²

There are also concerns about the affordability and accessibility of housing under the

KENSUP project. The Committee on Economic, Social and Cultural Right has stated:

*Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs.*¹¹³

The 2004 National Housing Policy states that “[a]ppropriate upgrading measures will be instituted for existing slum areas taking into account key upgrading components [including]... the socio-economic status of target communities...”¹¹⁴ However, fears about the ability of the majority of residents to rent housing units at the temporary relocation site and rent or own housing units at the final upgraded site dominated Amnesty International’s interviews with residents.

With regard to the temporary relocation site, residents said they had been assured that they would pay the same rent as they presently pay, but had received no categorical commitment to that end. Most of them said that they would not be able to afford higher rents and charges.

Government officials at the KENSUP Secretariat told Amnesty International that the rents to be paid at the temporary site had not yet been determined but that higher rents could not be ruled out. Officials of the KENSUP Secretariat said that the Ministry of Housing’s position is that “the government needs to financially subsidize any higher rents at the temporary site, and eventually the purchase of new housing units although there is no official government commitment on this at present”.¹¹⁵

Concerns about affordability mainly related to new housing units at the final redeveloped site which residents would be expected to own or rent. Amnesty International learned that the final amounts payable to own or rent new housing units are yet to be set. It also learned that the new housing units will mainly be high-rise and the costs will range from Ksh 400,000-900,000 (US\$5,000-11,250) to own a housing unit.¹¹⁶ According to the KENSUP Secretariat, there is no government commitment to subsidize the ownership of new housing units.¹¹⁷

Interviews with the residents and the KENSUP Secretariat indicate that insufficient attention has been paid to developing a feasible option for members of the community to rent, rather than own, housing units. Indeed, the implementation phase seems focused on initiating co-operative or micro-credit models that would encourage residents to save and focus on long-term mortgage options to buy a house.¹¹⁸ The majority of residents (mostly tenants and owners of small structures) doubted their ability to save¹¹⁹ enough to buy a new housing unit. As resident George Momanyi said:

We do not know what will happen to some of us who will not be able to afford the costs... It is possible we will lose out... It appears that to be part of the beneficiaries under KENSUP you must have substantially contributed some money in savings in order to have rights to benefit from the

*redevelopment...*¹²⁰

Amnesty International interviews with residents – tenants and structure owners alike – revealed that they are reluctant to accept the idea of co-operatives and buying units for several reasons, including distrust of the programme, indifference and inability to save as part of the co-operative or micro-credit schemes.

Rose Awino from Kibera told Amnesty International:

*This is my livelihood, selling tomatoes. When I am told I have to relocate, I have no husband or job, where do they expect me to go? How will I put food on my table? How will I feed my children? I think it is useless because if there is no assistance coming my way, there is no hope. We are being asked to pay Ksh 400 and gradually pay the rest of the money. Can this stall sustain the Ksh 400, buy food, pay rent and pay school fees? It cannot.*¹²¹

The Committee on Economic, Social and Cultural Rights has stressed the obligation of states to ensure the accessibility of housing. It has stated that disadvantaged groups, including the elderly, children, people with disabilities and those living with HIV/AIDS, “must be accorded full and sustainable access to adequate housing resources. Both housing law and policy should take fully into account the special housing needs of these groups.”¹²²

The KENSUP strategy document expressly acknowledges the need to plan and cater for “vulnerable households and disadvantaged groups”.¹²³ In practice, however, no measures appear to be in place to ensure that these households and groups will benefit from the proposed project and be able to afford housing units as owners or tenants. Moreover, all the people with disabilities interviewed by Amnesty International expressed concern that the design of the new housing units at the temporary and final sites would not meet their needs.

In its slum upgrading strategy document, the government said that it would designate slum upgrading areas as “tenure secure zones”.¹²⁴ It also pledged to “determine appropriate secure tenure systems to be introduced in consultations with residents, structure owners and other stakeholders... and assure rights of occupancy to residents by first and foremost, eliminating unlawful evictions and providing certainty of residence”. Four years later, these commitments are yet to be effected. The government has not declared the area a “tenure secure zone” or guaranteed that forced evictions will not happen. In interviews, the KENSUP Secretariat referred to plans to consult affected residents, structure owners and others on possible systems to guarantee security of tenure,¹²⁵ but left it unclear when this consultation would take place.

Residents interviewed by Amnesty International expressed fears about their lack of security of tenure and absence of official guarantees against forcible evictions during the project's implementation. Most said that the lack of such guarantees means that forced eviction will remain a threat for the duration of the upgrading project.

Residents are also concerned that there is no guarantee that they will be able to return to the site after it is upgraded, and most fear that they might be evicted if they cannot afford the temporary or permanent housing units and would then have to leave the area. Summing up

the general feeling, one resident said that “the Kibera upgrading project would end up enriching the rich and big people”.¹²⁶

In the short term, the majority of residents said they did not believe that the concept of temporary relocation would work.¹²⁷ They also feared that the corruption or abuse of power that they believe characterized past upgrading projects would mean that they would not benefit from the upgrading, even if they had money saved.

IMMEDIATE NEEDS SACRIFICED

The KENSUP programme, intended to be implemented between 2005 and 2020, is a commendable commitment by the government. However, more than five years after the launch of the Kibera pilot project there are serious concerns arising out of the slow pace of the programme. This is particularly the case given the government's ambitious plan to “expand and upscale the programme during the programme's first 10 years to five major Kenyan towns which host 75% of Kenya's urban residents”.¹²⁸

This report has highlighted the immediate needs of millions of urban poor in relation to security of tenure and access to essential services. The government must urgently address these needs notwithstanding its focus on slum upgrading as a long-term solution.

The KENSUP strategy document attempts to address the need for immediate and short-term government interventions by indicating that “relevant and appropriate city/town development activities addressing slum prevention, housing development and poverty alleviation will be initiated... concurrently and as desirable”.¹²⁹ Local authorities are expected to be the primary drivers of upgrading initiatives which address housing needs. Under the KENSUP strategy document, they are expected to make applications for inclusion of individual local authority upgrading projects into KENSUP. Thus far, and four years since the strategy was finalized, the Nairobi City Council (under which Nairobi's urban governance and provision of services fall) has yet to initiate a single programme aimed at addressing the housing challenges in Nairobi's slums and informal settlements, nor applied for the inclusion of any slum upgrading initiative as part of KENSUP.¹³⁰ This is explained by the lack of autonomy, capacity and competence by local authorities, including the Nairobi City Council.¹³¹

As a result, the immediate needs of people living in slums in relation to drinking water, sanitation and housing continue to be neglected. It is essential that these be prioritized alongside longer term slum upgrading projects.

The Slum Upgrading and Low Cost Housing and Infrastructure Fund,¹³² which is to ensure the “sustainability and eventual replication of the programme countrywide”, is yet to be established.¹³³ According to the KENSUP strategy document and the memorandum signed by the government and UN-HABITAT, the government is to establish the fund, with the assistance of UN-HABITAT, to manage financial and material resources mobilized for the programme.¹³⁴

The government admits that slum upgrading initiatives taken without measures to address the wider development problems of urban areas, including housing development programmes, are unlikely to solve problems and deter the future development of other slums.¹³⁵ The official Housing Policy states that “to further address proliferation of slums and informal

settlements, the Government will ensure supply of minimally developed but incrementally upgradeable low-income housing". This promise remains largely unfulfilled.

FAILING THE MOST VULNERABLE

The proliferation of new informal settlements and slums and worsening housing conditions in existing settlements is due in part to the housing deficit, especially for the urban poor.¹³⁶ The official Housing Policy indicates that "escalating housing costs have tended to push prices steadily beyond the reach of the majority of urban dwellers in Kenya" and promises the "provision of housing for low-income earners who are the majority of urban dwellers".¹³⁷ The Housing Policy defines urban low-income housing as "housing comprising a minimum of two habitable rooms, cooking area and sanitary facilities, covering a minimum gross floor area of 36 square metres for each household with physical infrastructure and services which comply with existing by-laws".

In response to the prevailing housing shortage, particularly in relation to the urban poor, the government proposes that it will:

*Institute machinery, which will allow for mobilization of housing finance from the public sector, private sector, local communities and from international agencies... The National Housing Corporation, Local Authorities and other agencies will facilitate the provision of planned, surveyed and serviced plots for new residential areas as Site and Service schemes. The Government will give tax incentives... to individuals and institutions who invest directly or through approved housing finance system in actual low-income development. A proportion of [public] provident and pension funds will be directed by proposed legislation towards low-income housing as a viable and secure investment on behalf of the contributors.*¹³⁸

The commitment has not been put into practice. In Nairobi, the local authority's existing public renting housing stock – estimated at fewer than 20,000 units – is grossly inadequate.¹³⁹ The process of allocation of these units has over the years been "marked by a long waiting list and low vacancy".¹⁴⁰ With the lack of clear and specific policies on land use and urban planning, it has been observed that the City Council cannot "coherently and creatively respond" to the challenge of housing in Nairobi.¹⁴¹ Further, the statutory authorized housing authority – the National Housing Corporation – although vested with a possible mandate to construct low-cost housing, has almost exclusively concentrated on the middle- and high-income housing market on the basis of better cost-recovery.¹⁴²

The Kenyan government is obliged to prioritize the most vulnerable and marginalized groups while allocating resources and in its policies and programmes. Despite this, its housing policies, including schemes for low-cost public housing, have not prioritized people living in slums and settlements or other groups who may face the greatest difficulties in accessing their right to adequate housing.

5. CONCLUSION AND RECOMMENDATIONS

“How long we would live there before the new houses are completed? In the meantime, do you think I am naïve to believe I can sustain this business at the decanting site?”

Wacira Kennedy, who operates an informal shoe-repair business in Kibera's Soweto East

The Kenyan government has for decades failed to take the minimum steps required to respect, protect and fulfil the right to adequate housing for the residents of Nairobi's slums and informal settlements. Millions of Kenya's urban poor live in these settlements without the minimum degree of legal security of tenure that Kenya is obliged to provide for everyone. As a result, they live under the constant threat of forced eviction from their homes and businesses.

The lack of security of tenure and the poor living conditions in Nairobi's slums are the consequence of government failure officially to recognize the growth and proliferation of informal settlements and to include them in the city's development plans. The recent commitment to slum upgrading is a positive step. However, this commitment falls short of the comprehensive plan that is needed to recognize informal settlements and slums and to start improving housing conditions in these communities now.

In addition, in the early stages of the slum upgrading programme, the government has failed to ensure that affected communities are adequately consulted and can participate effectively in the programme's implementation. Residents fear that slum upgrading will result in housing that is unaffordable and unsuitable for them, leading to many of the programme's intended beneficiaries being displaced from their homes.

In light of these findings, Amnesty International's makes the following recommendations.

To the Kenyan government

- Immediately cease all forced evictions, legislate and enforce a clear prohibition on forced evictions, and develop and adopt guidelines for evictions that comply with

international human rights law. Until such steps have been taken, impose a moratorium on mass evictions.

- In relation to planned mass evictions regarding the Nairobi River Basin Programme and planned construction of government infrastructure, ensure genuine consultation with the affected communities to identify all feasible alternatives to evictions, put in place appropriate procedural and legal safeguards, and develop a comprehensive relocation and compensation plan.
- Ensure that implementation of the slum upgrading programme complies with the government's obligations in relation to the right to adequate housing. This includes the obligation to consult adequately with affected communities regarding slum upgrading and to ensure the affordability and accessibility of housing, particularly for the most disadvantaged sections of the community.
- Ensure that the slum upgrading programme and policies address immediate needs in relation to security of tenure and access to essential services, in addition to medium- and long-term goals.
- Ensure a minimum degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats, including for those living in informal settlements and slums, in line with government commitments under the slum upgrading strategy.
- Ensure, as pledged in the official housing policy, the development of low-income housing to meet the housing needs of the majority of urban poor, giving priority to the most marginalized and vulnerable groups in allocating public housing.
- Ensure the right to adequate housing and other economic, social and cultural rights enshrined in international human rights treaties to which Kenya is a party are included in the proposed new Constitution and reflected in domestic legislation.

To UN-HABITAT and UNEP

- Ensure that the collaborative projects, in particular the Kenya Slum Upgrading Programme (involving UN-HABITAT) and the Nairobi River Basin Programme (involving UNEP) comply with human rights standards, including the government's obligation to consult properly the affected communities.
- Assist the Kenyan government – both central and local authorities – in fulfilling its obligations to guarantee the right to adequate housing.

ENDNOTES

¹ *An Inventory of the Slums in Nairobi* (unpublished report), Pamoja Trust, 2009, p.10, citing "Inventory of Nairobi slums", Matrix Consultants, 1998.

This report adopts the definition of "slums" and "informal settlements" used by UN-HABITAT (UN Human Settlements Programme). In *Enabling shelter strategies: Review of experience from two decades of implementation*, UN-HABITAT, 2006, p.4, UN-HABITAT states that "informal settlements" are commonly taken to 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".

² See box on International Standards on Evictions, p.17 of this report.

³ Historical accounts indicate that the origin of Nairobi was linked to the construction of the Kenya-Uganda railway, which reached the site of present-day Nairobi in 1899 and marked the first step towards the city's establishment.

⁴ *Women, Slums and Urbanisation: Examining the Causes and Consequences*, Centre on Housing Rights and Evictions (COHRE), May 2008, p.108.

⁵ See *An Inventory of the Slums in Nairobi*, p.102. The government's slum upgrading strategy puts the estimated Kibera population at "500,000 residing on 225 hectares of land".

⁶ The government document indicates that there are 12 villages in Kibera. Other accounts indicate that there are up to 16 villages.

⁷ See *An Inventory of the Slums in Nairobi*, pp.103-108.

⁸ See *Women, Slums and Urbanisation*, p.109.

⁹ See *An Inventory of the Slums in Nairobi*, pp.37, 40.

¹⁰ See *An Inventory of the Slums in Nairobi*, p.191.

¹¹ A. Lamba, "Land Tenure Management System in Informal Settlements: A Case Study of Nairobi", 2005, unpublished MSc thesis (International Institute for Geo-information Science and Earth Observation), available at http://www.itc.nl/library/Papers_2005/msc/gim/lamba.pdf (accessed 30 April 2009), pp.59, 61-62.

¹² See A. Lamba, "Land Tenure Management System in Informal Settlements".

¹³ Amnesty International delegates conducted 140 individual interviews and five focus group discussions each with a group of 10 individuals in all of the settlements visited. A sixth focus group discussion was conducted in Kibera. The five settlements were chosen out of Nairobi's approximate 200 informal settlements for different reasons. Kibera is Kenya's largest slum and part of it is the site of the government's main slum upgrading project; Mathare is one of the main sites of an intended mass eviction in relation to a river clean-up exercise; Mukuru Kwa Njenga is illustrative of a settlement on land

over which there are claims of ownership by private individuals; Korogocho is the site of an ongoing planned slum upgrading project; and Deep Sea is the site of a past forced eviction whose effects are still felt by residents today.

¹⁴ The terms “landlord” and “structure owner” are used interchangeably in this report. In the context of the settlements, structure owner is more prevalently used as the equivalent of a landlord in the slums. The use of structure owner often expresses the reality that in most cases, landlords do not have legal rights over the land on which houses/structures in the settlements are built. There are owners of small structures who are mainly resident in the settlements and reside in their structures, and owners of larger structures who often own and rent out structures/housing units. Because of the availability of interviewees, Amnesty International interviews with structure owners mostly focused on small-scale structure owners living in the settlements.

¹⁵ W. Mitullah, “Understanding Slums: Case Studies for the Global Report on Human Settlements, 2003 – The Case of Nairobi, Kenya,” 2003.

¹⁶ See W. Mitullah, “Understanding Slums”, pp.3-4.

¹⁷ T.J.C. Anyamba, “Nairobi’s Informal Modernism,” available at <http://www.kutokanet.com/issues/culture/nbinformalmodern.pdf> (last accessed 9 April 2009).

¹⁸ P.Syagga, W. Mitullah and S. Karirah-Gitau, *Nairobi Situational Analysis: A Consultative Draft, 2001*, UN-HABITAT and Government of Kenya, 2001 (hereafter *Nairobi Situational Analysis*), pp.33-34.

¹⁹ See *Nairobi Situational Analysis*, p.35.

²⁰ See A. Lamba, “Land Tenure Management System in Informal Settlements”, pp.61-62; and *An Inventory of the Slums in Nairobi*, pp.185-6.

²¹ Amnesty International interviews, 24 February 2009.

²² *Slum upgrading Programme Volume 1: Implementation Strategy 2005-2020*, Government of Kenya, 2005 (hereafter *Slum Upgrading Strategy*), p.4.

²³ *Listening to the Poor? Housing Rights in Nairobi, Kenya*, COHRE, 2006, p.42.

²⁴ See *Slum Upgrading Strategy*, pp.17-18.

²⁵ Amnesty International interviews, 26 February 2009.

²⁶ *Human Rights Development Report (2006)*, UN Development Programme, p.14.

²⁷ See W. Mitullah, “Understanding Slums”, p.11 (citing S. Wasao, “Characteristics of Households and Respondents in Population and Health Dynamics in Nairobi’s Informal Settlements,” African Population and Health Research Centre, Nairobi, 2002).

²⁸ *Summary of the National Water Services Strategy 2007-2015*, Government of Kenya, Ministry of Water and Irrigation, 2007, p.1.

²⁹ See Water Act No.8 of 2002. As stated by the UN Special Rapporteur on the Right to Adequate Housing in relation to the Kenyan government’s privatization of essential services, “while human rights law does not prevent the provision of basic rights and services, including water, electricity, education and sanitation, through private companies as such, States have the responsibility to ensure that such privatization does not infringe on the human rights of the population”. See *Adequate housing as a*

component of the right to an adequate standard of living, report by the Special Rapporteur, Miloon Kothari, Addendum on his Mission to Kenya (9-22 February 2004), U.N. Doc E/CN.4/2005/48/Add.2, para 19.

³⁰ Amnesty International focus group discussions in Kibera's Soweto East and Laini Saba, 3 March 2009.

³¹ See *Human Rights Development Report (2006)*, p.14.

³² Amnesty International interviews, 27 February 2009.

³³ See *Human Rights Development Report (2006)*, p.14.

³⁴ See *Summary of the National Water Services Strategy 2007-2015*, p.1.

³⁵ Amnesty International interviews, 24 February 2009.

³⁶ Chapter 242 of the Laws of Kenya, which regulates public health and sanitation and grants authority to local authorities to monitor compliance in relation to sanitation.

³⁷ Amnesty International interview with the Nairobi City Council, Planning Department, 6 March 2009. During this interview, Amnesty International delegates were informed that the council was also hampered by lack of adequate resources – human and fiscal – as well as corruption, competence and the lack of autonomy in making decisions.

³⁸ See, for example, M. Muiruri "Clock ticks for landlords who break waste disposal laws", *The Standard*, 1 April 2009, available at <http://www.eastandard.net/InsidePage.php?id=1144010476&cid=470> (last accessed 7 April 2009). According to the 2003 Kenya Demographic and Health Survey cited in M. Huchzermeyer, *Slum-upgrading initiatives in Kenya within the basic services and wider housing market: A housing rights concern*, COHRE Discussion Paper No.1/2006, p.10, only 2.9 per cent of the city's population was reached by municipal refuse collection.

³⁹ In many cases, toilets are privately owned or put up by NGOs with a few put up by the City Council. However, the use of these involves fees. Even then, the available toilets are often not evenly distributed, as in Laini Saba in Kibera.

⁴⁰ Amnesty International interviews, 3 March 2009.

⁴¹ Chapter 242 of the Laws of Kenya. Particularly specific to the obligations of owners of buildings and landlords in relation to sanitation are the "Drainage and Latrine Rules", which form part of the subsidiary legislation under this Act.

⁴² Amnesty International interviews, 26 March 2009.

⁴³ See *An Inventory of the Slums in Nairobi*, pp.103-107.

⁴⁴ Amnesty International interviews, 3 March 2009.

⁴⁵ Introduced by the government in 2003, the free primary education programme led to the scrapping of school levies in the 18,000 public primary schools countrywide. In addition, the government introduced some limited form of financial grants to cater for the purchase of books and other learning necessities based on the student population in each and every public primary school in the country. The programme has been credited with huge rises in primary school enrolment rates, although a number of challenges have been documented in relation to its implementation.

⁴⁶ Amnesty International interviews, 27 February 2009.

⁴⁷ Amnesty International interviews, 3 March 2009.

⁴⁸ UN Committee on Economic, Social and Cultural Rights, General Comment 4, *The Right to Adequate Housing*, UN Doc.E/1992/23, para 8(a) (emphasis added).

⁴⁹ The full title is the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living.

⁵⁰ See *Adequate housing as a component of the right to an adequate standard of living*, para 9-10.

⁵¹ See *Enabling shelter strategies*, p.161. This states that “security of tenure” exists in two forms – legal security of tenure, under which there is discernible acceptance or proof of rights over land/dwellings and legal guarantee against forcible eviction; and “perceived or de facto security of tenure”, which may entail “illegal occupation of a dwelling or land and acquisition of security of tenure in practice as a result of prohibition against eviction, provision of basic services, support from politician, customary rituals, etc”. Amnesty International interviews took into account both forms of security of tenure. Most of the residents interviewed – whether or not they had some document to show ownership rights over dwellings – said that they did not feel safe against forced evictions or at liberty to invest in improving their housing. The government admits to the dominant lack of security of tenure in its slum upgrading strategy.

⁵² See *Enabling shelter strategies*, pp.160-161.

⁵³ For a recent assessment of the relation between security of tenure and other aspects of housing rights in Kenyan informal settlements and slums, see generally *Tenure options for informal settlements: Assessment of tenure options in selected informal settlements in Kisumu and Nairobi*, Shelter Forum 2007.

⁵⁴ Amnesty International interviews, 3 March 2009.

⁵⁵ See *Adequate housing as a component of the right to an adequate standard of living*, para 82(c).

⁵⁶ *Concluding Observations of the Human Rights Committee: Kenya*, UN Human Rights Committee, CCPR/CO/83/KEN 29 April 2005, para 22.

⁵⁷ *Concluding Observations: Kenya*, UN Committee on Economic, Social, Cultural Rights, E/C.12/KEN/CO/1, December 2008, para 31.

⁵⁸ See *Concluding Observations of the Human Rights Committee: Kenya*, para 22.

⁵⁹ *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, African Commission on Human and Peoples' Rights, Comm. No.155/96 (2001).

⁶⁰ Amnesty International interviews, 2 March 2009.

⁶¹ Amnesty International interviews, 2 March 2009. The case remains pending.

⁶² *Forced evictions: Violations of Human Rights - Global Survey on Evictions*, COHRE, 2006; Amnesty International interviews with residents of Deep Sea, 2 March 2009.

⁶³ Amnesty International interviews, 2 March 2009.

⁶⁴ *Kenya Housing Rights Update*, COHRE and Hakijamii Trust, 2008, p.7.

⁶⁵ Amnesty International interviews, 2 March 2009.

⁶⁶ Amnesty International interviews, 2 March 2009.

⁶⁷ Amnesty International interviews, 2 March 2009.

⁶⁸ Amnesty International interviews, 2 March 2009.

⁶⁹ See *Adequate housing as a component of the right to an adequate standard of living*, para 74 (emphasis added).

⁷⁰ High Court of Kenya, Bungoma, HCCC No.65 of 2004 (unreported).

⁷¹ See *Forced evictions: Violations of Human Rights*, pp.54-55; *Adequate housing as a component of the right to an adequate standard of living*, para 72.

⁷² See *Forced evictions: Violations of Human Rights*, pp.54-55.

⁷³ Amnesty International interviews with residents of Kibera, 7 December 2008, 23 February 2009 (in relation to intended construction of a road and road bypass through Kibera, and intended construction of a concession of part of the Kenya-Uganda railway line passing through Kibera). Many of the residents pointed to identification marks, indicating that their houses were earmarked for demolition.

⁷⁴ For background, see *The Nairobi River Basin Programme*, UN Environment Programme (UNEP), http://www.unep.org/roa/Nairobi_River_Basin/About_Nairobi_River_basin/projectAims.asp (last accessed 1 April 2008).

⁷⁵ According to *The Nairobi River Basin Programme*, “the Nairobi River Basin Programme (NRBP) is a multi-stakeholder initiative that brings together the Government of Kenya, UNEP, UN-HABITAT, United Nations Development Programme (UNDP), the private sector and civil society”.

⁷⁶ This is presumed to be phase three of the programme. According to *The Nairobi River Basin Programme*, this phase was originally intended to be completed by December 2008. Phases one and two of the NRBP involved research and baseline studies on the nature and sources of pollution of Nairobi's rivers; the extents and effects of pollution and the extent to which Nairobi's residents could be engaged to “develop partnerships in support” of the programme. See *Nairobi River Basin Programme – Phase III: Resource Booklet on Pollution Monitoring Activities*, Network for Water and Sanitation (NETWAS) International, 2006, p.7. This NETWAS International study was done and published as part of the Nairobi River Basin Project.

⁷⁷ The background information on the programme does not mention the government's plan for evictions.

⁷⁸ See “127,000 people living near Nairobi River to be moved”, *The Daily Nation*, 14 April 2009, available at <http://www.nation.co.ke/News/-/1056/560462/-/u49Ijw/-/index.html> (last accessed 15 April 2009).

⁷⁹ See *The Nairobi River Basin Programme*, “Achievements of the Programme”, http://www.unep.org/roa/Nairobi_River_Basin/About_Nairobi_River_basin/projectAims.asp (last accessed 1 April 2008).

⁸⁰ See *The Nairobi River Basin Programme – Phase III: Resource Booklet on Pollution Monitoring Activities*, http://www.unep.org/roa/Nairobi_River_Basin/Phase_III/default.asp (last accessed 1 April 2008) commenting on previous phases of the programme.

⁸¹ Amnesty International interviews, 24 March 2009.

⁸² Amnesty International interviews, 27 March 2009.

⁸³ See *The Nairobi River Basin Programme*.

⁸⁴ See *Nairobi River Basin Programme – Phase III: Resource Booklet on Pollution Monitoring Activities*.

⁸⁵ This is part of the Nairobi River Basin Project. The other rivers targeted in the clean-up are the Nairobi and Mathare rivers.

⁸⁶ See *Nairobi River Basin Programme – Phase III: Resource Booklet on Pollution Monitoring Activities*, p.14.

⁸⁷ Indeed, the Nairobi River Basin Project acknowledges as a challenge, on the UNEP website cited above, the mismatch between Nairobi's population and its urban services and views the programme as an opportunity to put in place "an integrated environmental management and urban planning process".

⁸⁸ See *Enabling shelter strategies*, p.182.

⁸⁹ The Cities Alliance, a global coalition of cities and their development partners, was launched in 1999 with initial support from the World Bank and UN-HABITAT. The Alliance is committed to improving the living conditions of the urban poor through promoting City Development Strategies and city-wide and nationwide slum upgrading.

⁹⁰ See Cities Alliance website, <http://www.citiesalliance.org/activities-output/topics/slum-upgrading/slum-upgrading.html> (last accessed 16 May 2009).

⁹¹ See *Enabling shelter strategies*, p.182.

⁹² *Sessional Paper No.3 on National Housing Policy for Kenya*, paras 28-30, Government of Kenya 2004, (hereafter *Housing Policy*).

⁹³ See *Slum Upgrading Strategy*, p.17.

⁹⁴ See *Enabling shelter strategies*, p.35.

⁹⁵ Foreword to the *Slum Upgrading Strategy*.

⁹⁶ Memorandum of Understanding between the United Nations Human Settlements Programme and the Government of Kenya, January 2003.

⁹⁷ See *Slum Upgrading Strategy*, p.23. The Memorandum of Understanding between UN-HABITAT and the Government of Kenya, Article III, provides that UN-HABITAT would, on request by the government, provide: services of advisory experts; equipment and supplies not readily available in Kenya; assistance in the provision of core elements of necessary infrastructure; and seminars, training, demonstration projects and any other service agreed on in project documents. In addition, UN-HABITAT "shall assist the Government in the mobilization of financial and other resources for the Programme, including liaison with and coordination of members of the Cities Alliance and/or other bilateral and multilateral donor agencies that may support the Programme".

⁹⁸ See *Slum Upgrading Strategy*, p.37.

⁹⁹ See *Slum Upgrading Strategy*, p.11.

¹⁰⁰ See *Nairobi Situational Analysis*.

¹⁰¹ See *Slum Upgrading Strategy*, p.25, detailing the institutions concerned with KENSUP's

implementation, including the “supreme organ”, the Inter-Agency Steering Committee; the KENSUP Secretariat charged with the day-to-day running of the programme; the SEC which acts as “a link between the Programme Implementation Unit and the settlement community” and the Kenya Slum Upgrading, Low Cost Housing and Infrastructure Trust Fund to act as a central depository of all mobilized financial resources for slum upgrading.

¹⁰² Amnesty International interviews with the KENSUP Secretariat, 5 March 2009.

¹⁰³ UN Committee on Economic, Social and Cultural Rights, General Comment No.4, UN Doc.E/1992/23, para 10.

¹⁰⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No.4, UN Doc.E/1992/23, para 12.

¹⁰⁵ International Covenant on Civil and Political Rights, Articles 19(2) and 25(a).

¹⁰⁶ The SEC comprises two representatives of community-based organizations; one NGO representative; two representatives of faith-based organizations; five tenants; two structure-owners; one representative each for people with disabilities; widows; and the local Chief and District Officers (as the representatives of the government). The two government representatives are unelected.

¹⁰⁷ See *Slum Upgrading Strategy*, p.25.

¹⁰⁸ Amnesty International interviews with three members of SEC and affected residents, 23 February 2009.

¹⁰⁹ Amnesty International interviews, 23 February 2009.

¹¹⁰ Amnesty International interviews, 23 February 2009.

¹¹¹ Amnesty International interview with the KENSUP Secretariat, 5 March 2009.

¹¹² See *Concluding Observations UN Committee on Economic, Social and Cultural Rights: Kenya*, para 30.

¹¹³ UN Committee on Economic, Social and Cultural Rights, General Comment No.4, UN Doc.E/1992/23, para 8(c).

¹¹⁴ See *Housing Policy*, paras 30, 33.

¹¹⁵ Amnesty International interviews with the KENSUP Secretariat, 5 March 2009.

¹¹⁶ Amnesty International interviews with the KENSUP Secretariat, SEC members and residents, 23 February and 5 March 2009.

¹¹⁷ Amnesty International interviews with KENSUP Secretariat, 5 March 2009.

¹¹⁸ Amnesty International interviews with KENSUP Secretariat, UN-HABITAT, 5 March 2009.

¹¹⁹ Amnesty International focus group discussion, 27 February 2009.

¹²⁰ Amnesty International interviews, 23 February 2009.

¹²¹ Amnesty International interviews, 23 February 2009.

¹²² UN Committee on Economic, Social and Cultural Rights, General Comment No.4, UN Doc.E/1992/23, para 8(e).

¹²³ See *Slum Upgrading Strategy*, p.20, listing these categories as including “women, orphaned children, widows, the sick, physically or mentally challenged, the elderly, the stigmatized and single parent household”.

¹²⁴ See *Slum Upgrading Strategy*, p.17.

¹²⁵ Amnesty International interviews with KENSUP Secretariat, 5 March 2009.

¹²⁶ Amnesty International focus group discussions, 27 February 2009.

¹²⁷ Amnesty International focus group discussions, 27 February 2009.

¹²⁸ See *Slum Upgrading Strategy*, p.9, referring to Nairobi and four other Kenyan towns – Mombasa, Kisumu, Nakuru and Eldoret.

¹²⁹ See *Slum Upgrading Strategy*, pp.9-10.

¹³⁰ Amnesty International interviews with the Nairobi City Council's Planning department, 6 March 2009.

¹³¹ Amnesty International interviews with the Nairobi City Council's Planning department, 6 March 2009. During this interview the City Planning department admitted to a “lack of capacity and legal autonomy to undertake slum upgrading initiatives”.

¹³² See *Slum Upgrading Strategy*, p.25. This provides for the Kenya slum upgrading fund “to act as a central depository of all mobilized financial resources for slum upgrading”.

¹³³ See *Slum Upgrading Strategy*, p.25; Memorandum of Understanding between UN-HABITAT and the Government of Kenya, Article VIII.

¹³⁴ See *Slum Upgrading Strategy*, p.25; Memorandum of Understanding between UN-HABITAT and the Government of Kenya, Article VIII.

¹³⁵ See *Slum Upgrading Strategy*, p.16.

¹³⁶ See *Housing Policy*. This notes in its Foreword that in the next 10 years (from 2004) “the average annual urban housing demand is estimated at 150,000 units, but only an estimated annual average supply of only 30,000 – 50,000 units is expected to be produced if factors that constrain housing production are not addressed”.

¹³⁷ See *Housing Policy*, p.11.

¹³⁸ See *Housing Policy*, p.11.

¹³⁹ Amnesty International interview with Nairobi City Council, City Planning Department, 6 March 2009. See also M. Huchzermeyer, *Slum-upgrading initiatives in Kenya within the basic services and wider housing market*, p.21, which stated in 2006 that the Nairobi City Council's entire housing stock including units that are managed by the National Housing Corporation, comprised only 18,235 units “roughly the amount of households residing in the Kibera-Soweto pilot project area”.

¹⁴⁰ See *Nairobi Situational Analysis*, p.91.

¹⁴¹ See *Nairobi Situational Analysis*, p.95.

¹⁴² Amnesty International interviews with Ministry of Housing officials, 5 March 2009. The National Housing Corporation is established pursuant to section 3 of the Housing Act, Chapter 117 of the Laws of Kenya (in operation since 1953).



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KENYA THE UNSEEN MAJORITY: NAIROBI'S TWO MILLION SLUM-DWELLERS

More than half of Nairobi's population live in slums and informal settlements with little access to clean water, toilets, health care, schools and other essential public services. They also live under the constant threat of water-borne diseases, violence and forced eviction from their homes and small businesses.

The Kenyan government has for decades failed to take the minimum steps required to respect, protect and fulfil the right to adequate housing for the urban poor, including the provision of some level of security of tenure. Its recent commitment to upgrading slums is a positive step, but falls far short of the comprehensive measures needed to address the needs of these communities now and in the future.

The experience of Nairobi's slum-dwellers starkly illustrates that people living in poverty not only face deprivation but are also trapped in that poverty because they are excluded from the rest of society, denied a say, and threatened with violence and insecurity.

Issued as part of Amnesty International's Demand Dignity Campaign, this report calls on the Kenyan authorities to act immediately to stop forced evictions, consult properly the communities affected by commercial, infrastructure and upgrading projects that threaten their homes, and ensure that all those who have to be evicted are offered appropriate and affordable alternative accommodation and adequate compensation.

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