

OPEN LETTER

President Mwai Kibaki EGH. M.P
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Harambee House
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Transmitted by Fax: +254 (0)20 225-0264

RE: 50,000 AT RISK OF EVICTION AND HOMELESSNESS, KIBERA (KENYA)

Dear Mr. President Kibaki:

We are deeply disturbed to have learned from the Housing and Land Rights Network (HLRN), part of Habitat International Coalition (HIC), and local members and affiliates in Kenya about the planned mass evictions of people living along Kenya's railway lines in Kibera. We strongly advise that the Government of Kenya halt any of the intended evictions and, rather, establish a Task Force comprised of representatives from the Kenya Railways Corporation, personnel from concerned Government agencies, and members of both the affected community and civil society in order that a meaningful and just solution be reached for all. To resolve such a complex problem, we advise the Kenyan Government to adhere to international standards concerning forced evictions and displacement, with particular reference to the UN's "Basic Principles and Guidelines on Development-based Evictions and Displacement" (2007)¹ which elaborate the obligations of the state when exceptional circumstances make evictions necessary. These obligations not only include consultation with affected communities, but, also, require that that the State provide alternative accomdation and compensation *prior* to the proposed evictions.

The land at the heart of this debate has been designated by the State as a railway reserve and comprises 100 ft on either side of the tracks. According to media reports, the Kenyan Railways Corporation (KRC), a parastatal company, served a public notice on 21 March 2010 to all the inhabitants living on this land to leave within 30 days to make way fro the planned expansion of the railway.² Approximately 50,000 people are at risk of eviction, violent treatment and homelessness having been offered no alternative solution by either the Kenyan Government or the Kenya Railways Corporation.

Neither the state nor the KRC has made any plans for compensation or relocation of the residents. The planned violation of the inhabitants' right to adequate housing will likely create a human catastrophe since most of the residents are among the poorest of Nairobi and have no alternative solution and/or shelter. Any evictions without proper and adequate resettlement will result in the disruption of access to schools, health services, sanitation, water and food.³ Moreover, in light of the large number of persons expected to be evicted, HLRN is concerned about the physical safety of the residents and fears that the lack of any precautions or safety measures will put the residents at risk of violence.

While the causes may appear logistically legitimate, their implementation definitely will not be if the government does not provide for any fair alternative solutions or compensation schemes, in compliance with the international human rights norms, including treaties, to which Kenya is bound. While Kenyan land laws and policies has generally been unclear and inadequate, Kenya is nonetheless bound to respect, protect, and fulfill the human rights to adequate housing.

Should the evictions take place as announced, the Government of Kenya would violate the human rights to livelihood, security, life, health, education, and of course adequate housing, among others. The latter includes the right to secure tenure; affordability; freedom from dispossession, damage and destruction; information, capacity and capacitybuilding; participation; resettlement and compensation. All these entitlements are recognized in international law and treaties, and as such, the Kenyan Government would violate its obligations, *inter alia*, under articles 2, 7, 11, 12, 13 and 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Kenya accessed on 3 January 1976. The manner in which the proposed evictions are being implemented thus far render the State already derelict in its obligations as elaborated in the UN Committee on Economic, Social and Cultural Rights (CESCR) General Comments Nos. 4 and 7 on the human right to adequate housing. Moreover, the potential ill-treatment of affected victims threatens to render the Kenyan Government in violation of Articles 7, 9 and 10 of the International Covenant on Civil and Political Rights (ICCPR). The Kenyan Government also has committed itself to respect Habitat Agenda 21 and ensure that alternative solutions are provided when evictions are unavoidable. Finally, it should be noted that all these elements should be applied in an environment of nondiscrimination, gender equality, rule of law, and progressive realization of human rights concerned.

Arbitrary eviction; “officials” failure to conduct effective consultation with the affected inhabitants; the government’s failure to provide reparations, including restitution and compensation; and the use of force, as well as being inconsistent with the necessity and proportionality principles, violate a bundle of human rights and several treaties to which Kenya is a ratifying party.

We look forward to your diligent efforts in this matter and thank you in advance for your attention.

We hope to hear from you about your constructive response.

Please be assured of our highest consideration.

Sincerely,

CC:

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¹ “Annex I: Basic Principles and Guidelines on Development-based Evictions and Displacement,” *Implementation of General Assembly Resolution 60/251 of 15 March 2006, Entitled “Human Rights Council”*, A/HRC/4/18, 5 February 2007, at:

<http://www2.ohchr.org/english/issues/housing/evictions.htm>

² Odula, Tom, “50,000 Kenyans Living Beside Railway Face Eviction,” *The Daily Caller*, 16 April 2010, at: <http://dailycaller.com/2010/04/16/50000-kenyans-living-beside-railway-face-eviction/#ixzz0lYQc2Twf>

³ Ibid.