



# HOUSING AND LAND RIGHTS NETWORK

## Habitat International Coalition

### KENYA SOCIAL MOVEMENT'S NETWORK

#### JOINT URGENT ACTION APPEAL:

KEN-FED 131121

#### Remedy Forced Evictions in Mukuru Kwa Njenga Slums, Nairobi

On Saturday, 13 November 2021, at 7:13pm (EAT), hundreds of families from Mukuru Kwa Njenga slums in Nairobi were left homeless by violent eviction and demolition of their community. It is emerging that the demolitions went beyond the intended marked territory that was initially to be on Catherine Ndereba Road, which had been encroached on by the public. The first round of demolitions in Mukuru Kwa Njenga, publicly announced on 8 October, started only three days later. Heavy road-building machinery, some bearing government logos and flanked by Kenyan police, flattened the homes and businesses along a 30-metre-wide strip of Catherine Ndereba Road.

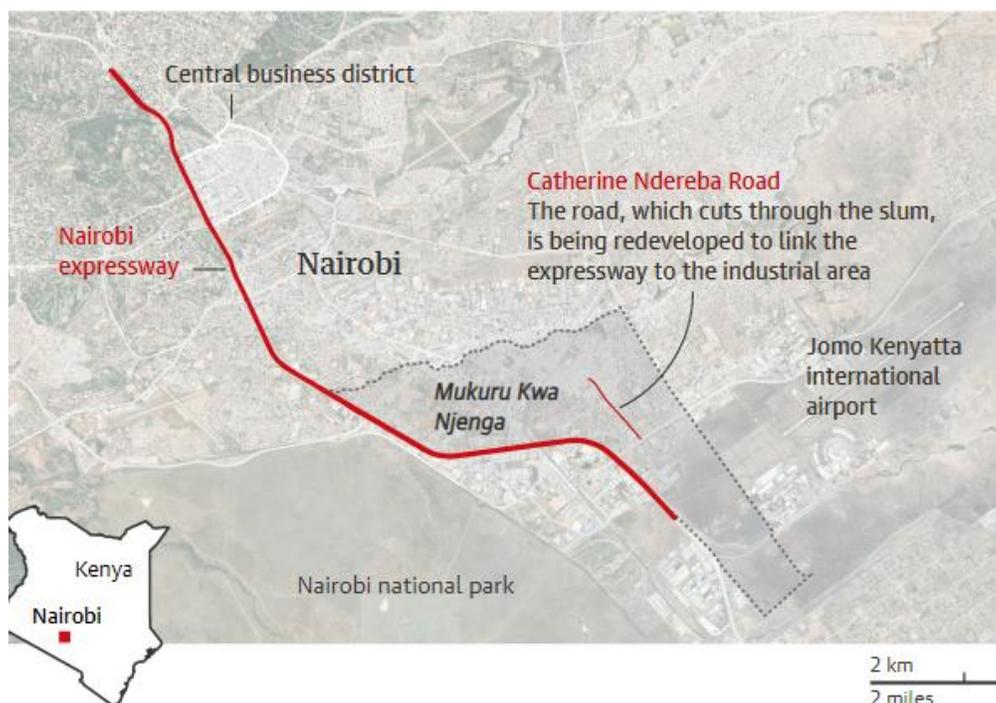


Figure 1: Map of the Mukuru Kwa Njenga area. Source: The Guardian/Google Earth.

The road connects Mukuru to the industrial area to the north, the airport to the east and the route of the new expressway to the west. Inhabitants report that, in November, The local authority - Nairobi Metropolitan Services arrived without warning and razed buildings on a large area of adjacent private

land where people had their homes. Orbit Chemical Industries, and private firm, apparently owns the land, which had been the subject of several complex court disputes.<sup>1</sup>

The land in question is in the area earmarked for public road construction. The primary targets for evictions are those who settled informally. The government attributes this encroachment to overpopulation and uncontrolled land settlement. According to some residents, some community members settled at the site prior to the road-planning process, enabling them to settle where they currently reside, at a prescribed distance from Catherine Ndereba Road.

Mukuru Kwa Njenga slums, as any other slum in Nairobi City County, has been faced by numerous challenges, like informal human settlements everywhere. However, but the Mukuru inhabitants have been able to make continuous physical improvements to their community. Whole families live—or, at least, survive—in tiny one-room corrugated iron shacks with very few basic utilities.

Residents have lived at Mukuru Kwa Njenga slums for more than 30 years, having occupied and built permanent structures on the land at the height of the country's urban slum-upgrading program. Some residents insist that they already had regularized their occupancy with the Ministry of Lands and Housing, and pay taxes.

Despite the state's human rights treaty obligations relating to housing and eviction, the government has not offered compensation or alternative location for resettlement.

Forced evictions in Kenya have primarily targeted marginalized people who have lived for years without access to secure land and housing tenure, and without adequate amenities such as clean water, sanitation, health services or education. People lost clothing and other personal belongings, and dozens of families are now sleeping in makeshift tents amid the rubble and the open sewage now overflowing during the seasonal rains. Left with no way of making money, some have not eaten in days. At least one person has died in a partially demolished building, amid reports of children being injured in the process.

### **State Obligations**

The already-executed and still-planned evictions and demolitions, with their grave human and material consequences, violate the human rights to adequate housing, property, decent work, adequate food, family life, equal protection under the law, personal security, fair trial, decent work, education and health, among others. All these rights are guaranteed and enshrined in 2010 Constitution, in particular Article 43 on economic, social and cultural rights, including “the right to accessible and adequate housing, and to reasonable standards of sanitation.” This guarantee is also enshrined as a human right in international and regional human rights treaties that the Republic of Kenya has ratified and provided for in Article 2 (6)<sup>2</sup>.

### *Forced Eviction*

The forced evictions and threatened eviction of inhabitants of the Mukuru Kwa Njenga communities contravene these norms and the obligations of the state and successive governments to respect, protect and fulfill human rights for all. These rights include the human right to adequate housing enshrined in

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<sup>1</sup> Ed Ram, “How Nairobi’s ‘road for the rich’ resulted in thousands of homes reduced to rubble,” *The Guardian* (8 December 2021), <https://amp.theguardian.com/global-development/2021/dec/08/how-nairobis-road-for-the-rich-resulted-in-thousands-of-homes-reduced-to-rubble>

<sup>2</sup> CoK 2 (6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Kenya ratified in January 1976.

The Kenyan Constitution also provides national objectives that guide the state and all its organs and institutions in making policies and laws to contribute to establishing, enhancing and promoting a sustainable, just, free, and democratic society. In Kenya, disputes involving land ownership may be resolved either by a court or through various other means of dispute resolution. However, human rights defenders claim and witness that, in many cases such as this, government officials reportedly ignore implementing judgments or already issued certificates of tenure, and instead act on the orders of those with influence. The legal right to a fair hearing has been interpreted to require that a final binding decision by a court or tribunal must be enforced and cannot be ignored. Moreover, the Committee on Economic, Social and Cultural Rights (CESCR), monitoring ICESCR implementation, has advised states in its General Comment No. 7, that, in the case of an eviction, states provide "legal aid to person who are in need of it to seek redress from the courts" among the other procedural protections that should be applied to evictions.<sup>3</sup>



*Figure 2: A victim of demolition crushed to death by a slab during eviction . Source: Rukia Ahmed, resident of Mukuru:.*

The African Commission on Human and Peoples' Rights (African Commission), the body set up to oversee the implementation of the African Charter on Human and Peoples' Rights, has issued a resolution on the right to adequate housing and protection from forced evictions in Africa, and called on all African states to put an end to all forms of forced evictions.<sup>4</sup>

International standards provide that an eviction should be undertaken only as a last resort and in accordance with the following eight principles: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) 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; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts. Furthermore, evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the

<sup>3</sup> CESCR, General Comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions, 16 May 1997, E/1998/22, annex IV, para.

15(g), [https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1\\_Global/INT\\_CESCR\\_GEC\\_6430\\_E.doc](https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1_Global/INT_CESCR_GEC_6430_E.doc).

<sup>4</sup> African Commission on Human and Peoples' Rights, 231: Resolution on the right to adequate housing and protection from forced evictions, 22 October 2012, <http://www.achpr.org/sessions/52nd/resolutions/231/>.

case may be, is available.<sup>5</sup> An eviction must comply with each and every one of these prerequisites, in order to be lawful. Otherwise, it is classified in international law as a “gross violation.”<sup>6</sup>

### *Demolitions*

According to evictions and resettlement Bill of 2012<sup>7</sup>, requires the authorities to issue an enforcement order giving all persons likely to be affected by demolitions at least 21days advance notice. Where a local planning authority seeks to take any administrative action affecting the rights, interests or legitimate expectations of any person, that authority must act lawfully, reasonably and in a fair manner.

### *Use of Force*

Other uses of force remain a concern for those subject to evictions and demolitions in Kenya. In all circumstances, police and other law enforcement officials should base their conduct on international human rights law and standards, including the United Nations Code of Conduct for Law Enforcement Officials (the Code of Conduct) and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (The Basic Principles). Both place strict limitations on the use of force. Principle 4 of the Basic Principles states: "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result." The force used to carry out the evictions, including teargas spray, firearms and the ill-treatment of men, women and children, clearly contravene Principle 4.



*Figure 3: Mukuru demolition victim (70), once landlord turned homeless beggar. Source: Gazeti App..*

### **Civil Society Calls for Solutions**

Since 2000, the HLRN Violation Database has recorded 43 major housing and land rights violation cases of various dimensions in Kenya over the past ten years, affecting more than 5.3 million citizens across the country. However, this record remains incomplete without consistent and thorough local monitoring.

<sup>5</sup> [CESCR, General Comment No. 7](#), *op. cit.*, paras. 15–16.

<sup>6</sup> UN Commission on Human Rights, “Affirms that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing” in “forced eviction,” resolution 1993/77, 10 March 1993, para. 1, <http://www.hlrn.org/img/documents/ECN4199377%20en.pdf>; and “Reaffirms that the practice of forced eviction that is contrary to laws that are in conformity with international human rights standards constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing” in “Prohibition of forced evictions,” resolution 2004/28, 16 April 2004, para. 1, [http://www.hlrn.org/img/documents/E-CN\\_4-RES-2004-28.pdf](http://www.hlrn.org/img/documents/E-CN_4-RES-2004-28.pdf).

<sup>7</sup> AN ACT of Parliament to set out appropriate procedures applicable to forced evictions; to provide protection, prevention and redress against forced eviction for all persons occupying land including squatters and unlawful occupiers; and to provide for matters incidental and connected thereto

In this context and in light of these current cases, HIC-HLRN and the Kenya Social Movements Network (KSM-NET) are demanding that the relevant authorities:

1. Immediately rescind eviction orders and cease processes of evictions and land rights violations,
2. Enact a post land reform policy that guarantees security of tenure and
3. Ensure the irreversibility of the land reform program.

More specifically:

No. 1 operationalizes the principle that no evictions take place without a prior impact assessment of the legal and material issues involved and values at stake.

No. 2 calls for an orderly pursuit of social justice through respect for the spectrum of tenure types and corresponding claims. The resulting policy would eliminate corruption and apply social-justice and due diligence principles to adjudicate disputes.

No. 3 safeguards from dominating concentrations of land ownership and protecting the superior right to the land of the indigenous majority

### **Specific Recommendations for the National Government and Nairobi City County Authorities**

Within these principles, KSM-NET calls upon:

- The President to be true to his words whereby he emphasized the irreversibility of the land reform and ensured that government would work on policy that promotes and protects the beneficiaries of the land reform and also put an end to the continued violations of the rights.
- Director General, Nairobi Metropolitan Services, Lt. General Mohammed Badi to put an immediate stop to apparent political and capital-driven land rights violations taking place in Nairobi City County.
- The Land Commission to conduct and publish a thorough and transparent land audit in areas of land disputes, including areas where the state and its organs seek the removal of inhabitants under any pretext, and to take urgent measures to resolve land eviction cases given that security of tenure is key to resolving most cases and thus should be looked into as a priority, and to do so applying the human rights approach and Kenya's corresponding state obligations in adjudicating land disputes.
- All state institutions to adhere to the dictates of the Constitution and value human rights, in particular adequate housing, continuous improvement of living conditions and land rights of the poor and vulnerable.
- All state institutions to seek accountability and liability of those (officials and others) engaged in corrupt land deals.
- All relevant organs of the state to ensure the conditions for legal evictions (General Comment No. 7) are met before initiating any eviction process.
- The relevant organs of the state to conduct an impact assessment as provided for in Section 6 (c)(h) of Eviction and resettlements Bill<sup>8</sup> in advance of any evictions or resettlement, as well as currently displaced persons, in order to ensure reparations for those affected.
- Each County to conduct and publish a thorough and transparent land audit in areas of land disputes, including areas where the state and its organs seek the removal of inhabitants under any pretext.

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<sup>8</sup> (c) an environmental, economic and social impact assessment shall be done; and (i) a holistic and comprehensive environmental, economic and social impact assessment and resettlement action plan shall be conducted which shall include but not be limited to: - (cc) evaluating, enumerating and recording of individuals, families and their assets;

- All relevant organs of the state to apply the UN Basic Guidelines and Principles for Development based Evictions and Displacements<sup>9</sup> at all stages of displacement processes.

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<sup>9</sup> UN Basic Guidelines and Principles for Development-based Evictions and Displacements, A/HRC/4/18, 18 May 2007, [https://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf).

**Lt. Mohammed Badi**  
**Director General**  
**Nairobi Metropolitan Services**  
**Kenyatta International Convention Center**  
**Harambee Avenue, Nairobi.**  
Mobile: +254 20 273153 Email: [directorgeneral@nms.go.ke](mailto:directorgeneral@nms.go.ke)/info@nms.go.ke

Dear Sir,

We are writing to you on behalf of Kenya Social Movements Network (KSM-NET) and the Housing and Land Rights Network of Habitat International Coalition (HIC-HLRN) with grave concern for thousands of residents in Mukuru Kwa Njenga Slums who have recently been evicted from their homes. We are also deeply troubled by the reported treatment of the residents who are currently seeking redress for evictions they have been subjected to.

Community members have built permanent structures on the land, and some insist they have regularized their residency with the Ministry and pay taxes. The government has not offered compensation or alternative location for resettlement.

We are convinced that an urgent solution is required to prevent the violation of the human rights of these communities. According to international human rights law, and as per 2(6) of CoK<sup>10</sup> the Government has the obligation to respect, protect, and fulfil the human rights of its citizens. Evictions and demolitions, with their grave human and material consequences, violate the human rights to adequate housing, property, decent work, adequate food, family life, equal protection under the law, personal security, fair trial, decent work, education and health, as well as the constitutional right not to be deprived arbitrarily of the right to use and occupy agricultural land, among others.

Having ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 1 May 1972, the Republic of Kenya is treaty bound to conduct itself according to Human Rights Standards. Thus, by conducting and threatening these evictions, Kenya may be violating articles 6, 7, 10, 11, 12 and 13 of the Covenant, including the duties specified in the General Comments Nos. 4 & 7 on the human right to adequate housing and on forced evictions.

Following minimum international norms, eviction should be undertaken only as a last resort and in accordance with the following eight principles: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) 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; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts<sup>11</sup>.

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<sup>10</sup> (6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

<sup>11</sup> Part IV—Court Procedures During Eviction Proceedings

Furthermore, evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available. Failure to adhere to these norms constitutes a “gross violation” of human rights, in particular adequate housing.

The African Commission on Human and Peoples’ Rights has furthermore issued a resolution on the right to adequate housing and protection from forced evictions that asked countries to put an end to all forms of forced evictions.

HIC-HLRN and Kenya Social Movements Network (KSM-Net) are calling on Kenyan authorities to:

1. Immediately rescind eviction orders and cease processes of evictions and land rights violations,
2. Enact a post land reform policy that guarantees security of tenure, and
3. Ensure the irreversibility of the land reform program.

Within these principles, we join as Kenya Social Movements Network (KSM-Net) to emphasize the irreversibility of the land reform and ensuring that government work on policy that promotes and protects the beneficiaries of the land reform and put an end to the continued violations of the Constitution of Kenya.

We look forward to hearing of your efforts to ensure that state institutions adhere to the dictates of the Constitution and value human rights, in particular adequate housing, continuous improvement of living conditions and land rights of the poor and vulnerable.

We also encourage your intervention to see to it that all state institutions seek accountability and liability of those (officials and others) engaged in corrupt land deals and that all relevant organs of the state ensure that the conditions for legal evictions are met before initiating any eviction process. This would begin with an impact assessment in advance of any evictions or resettlement, as well as currently displaced persons, in order to ensure reparations for those affected.

We also urge that the Land Commission cooperate with the Counties to conduct and publish a thorough and transparent land audit in areas of land disputes, including areas where the state and its organs seek the removal of inhabitants under any pretext. In doing so, we recommend that all relevant organs of the state apply the UN Basic Guidelines and Principles for Development-based Evictions and Displacements.

We thank you for your attention on this urgent matter and kindly request you to keep us informed about the remedial actions taken by your good offices.

Sincerely,

**Hon. Dr. Fred Matiangi**  
**Cabinet Secretary**  
**Ministry of Interior and Coordination of National Government**  
Email: interior@kenya.go.ke, ps.pais@kenya.go.ke.

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Within these principles, we join as Kenya Social Movements Network (KSM-Net) to emphasize the irreversibility of the land reform and ensuring that government work on policy that promotes and protects the beneficiaries of the land reform and put an end to the continued violations of the Constitution of Kenya.

We look forward to hearing of your efforts to ensure that state institutions adhere to the dictates of the Constitution and value human rights, in particular adequate housing, continuous improvement of living conditions and land rights of the poor and vulnerable.

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We thank you for your attention on this urgent matter and kindly request you to keep us informed about the remedial actions taken by your good offices.

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**Parliamentary Committee**  
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