



## **Open Letter to Hon. Kiraitu Murungi, Minister for Justice and Constitutional Affairs, Kenya**

Kenya-Cairo-Geneva, 4 March 2004

Hon. Kiraitu Murungi  
Minister for Justice and Constitutional Affairs  
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Transmitted by Fax: +254 (0)20 316-317

Your Excellency:

The Coordination Office and Sub-Saharan Africa Regional Office of the Habitat International Coalition's Housing and Land Rights Network (HIC-HLRN) and the International Secretariat of the World Organisation against Torture (OMCT) would like to express their deep concern about the state of housing rights in Kenya. The Government's invitation of the UN Special Rapporteur on the Right to Adequate Housing to conduct a mission on the situation of housing rights in the country, the support of its different ministries during the mission, its acceptance of the human-rights approach in its policies, and its creation of new laws and new bodies to promote and implement respect of human rights are promising. Yet, we want to ensure that your Government will take seriously into account all following issues, all of which the Special Rapporteur has mentioned in his preliminary observations on 21 February 2004.

HIC-HLRN and OMCT first matter of concern, as well as it has been that of many other local and international organizations in the past week, is the threat of eviction, according to the Centre on Housing Rights and Evictions, over 330,000 people living in Kibera - Sub-Saharan Africa's largest slum. The plans of destruction now have been stopped, but the threat still exists and 2,000 people already have been rendered homeless on 8 February 2004. The Government's plan is twofold: to clear settlements on land that had been earmarked for road reserves, in order to construct road bypasses; and to demolish all structures near the railway line, power-lines and adjacent roads for safety reasons. If it is implemented as such, the plan will make 150,000 people homeless by the destruction of 17,600 structures on road reserves; 108,000 people would lose their homes in the demolition of 20,210 structures nearby the railway line; and another 76,100 by the destruction of 3,255 houses located near power lines. Many areas would be affected, in Nairobi and in other parts of the country.

While the causes may appear logistically legitimate, their implementation definitely will not be if the Government does not provide for any fair alternative solutions nor compensation schemes, in compliance with the international treaties to which Kenya is bound. Moreover, the argument stating that the structures were built illegally does not take into account that the construction took place with the consent of the previous government, and because of the lack of a low-cost housing policy that would allow poor people to afford decent homes in a safe place. Also, this situation should create an immediate opportunity for genuine

consultation with the slum dwellers. The consultation should include the people affected including the women, Government ministries involved, provincial administration, local authorities, the Kenya Human Rights Network and concerned civic organizations. The consultation is a critical step in the procedure toward the Government's compliance with General Comment No. 7 on Forced Evictions of the UN Committee on Economic, Social and Cultural Rights (1997), elaborating the requirements under treaty to avoid such forced evictions.

If these evictions are carried out as such, they will create an exodus to the slums, further worsening the situation of some of the 168 slum areas Nairobi counts, and in which 55 per cent of the city's population live, while they occupy only one per cent of the total land. HIC-HLRN and OMCT are also deeply concerned by this global situation, and support the Special Rapporteur's urgent call for "a comprehensive citywide strategy and action plan based on consultation and participation, to identify geographical housing alternatives, which will enable those relocated to sustain their livelihoods. "

As a general principle, we urge the Government to review its policies along the approach of indivisibility of rights when looking at housing rights, including land, water, access to public services but also to environmental goods. By practicing evictions as proposed, the Government would contradict 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 capacity-building; participation; resettlement and compensation. All these entitlements are recognized in international law and treaties, and as such, the Kenyan Government would derelict to its obligations under, *inter alia*, articles 2, 7, 11, 12, 13 and 15 of the International Covenant on Economic, Social and Cultural Rights, which Kenya accessed to on 3 January 1976. 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 reminded that all these elements, to be considered as respected, should be obtained in an environment of nondiscrimination, gender equality, rule of law, and nonregressivity.

We urge your Government to compensate the 2,000 people already affected, and intervene urgently to find a durable solution for those threaten, especially since, as the Special Rapporteur pointed out in his observations, "the current practice has created a great deal of insecurity amongst poor Kenyans, including internally displaced people, forest dwellers, including indigenous peoples such as the Ogiek, and slum dwellers. This is affecting the credibility of the Government in the eyes of its own people and of the international community."

We thank you in advance for your careful consideration of this serious matter. We also look forward to receiving information [regarding the measures taken by your government to address this situation in accordance with international human rights law.](#)

Yours Sincerely,

Habitat International Coalition, Housing & Land Rights Network (HIC-HLRN)  
World Organisation against Torture (OMCT)

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