



Submission to the United Nations Committee on Economic, Social and Cultural Rights

On the Occasion of Pre-Sessional Working Group Discussion

Kenya

Right to Housing and Water (Article 11(1))

5 November 2007

EXECUTIVE SUMMARY

1. The Centre on Housing Rights and Evictions (COHRE) is an international non-governmental organisation mandated to protect and promote housing rights. Based in Nairobi, Hakijamii Trust (Economic and Social Rights Centre) is non-governmental human rights organisation.
2. The majority of urban Kenyans live in informal settlements in slum-like conditions, while a number of informal settlements also exist in forest and rural areas. The housing rights of residents in other types of tenure arrangements, e.g. those living in tenements, are also precarious but the focus in this report will be on informal settlements.
3. The Government of Kenya has carried out evictions in informal settlements in urban and forest areas without regard to the prohibition on forced eviction in the Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). For example, in February 2004, the homes of up to 2000 residents of Raila village in Kibera settlement were demolished without notice and many were rendered homeless. In June 2005, up to 50,000 persons were forcibly evicted from Mau Forest with no resettlement or consideration of the circumstances of their original occupation. Major forced eviction threats hang over large urban settlements and many forest areas and 8000 residents of Embobut forest were ordered out on 7 June 2007. There is an increasing resort to eviction by private developers, and acquiescence by the government to these acts.
4. No policies and/or legislation exist in Kenya to ensure that evictions respect the provisions of the African Charter, particularly that evictions can only take place as a last resort that and due process is accorded, includes ensuring that no one is rendered homeless and that adequate resettlement is provided to the greatest extent possible. In January 2005, the Kenya Ministry of Lands commenced a process to develop eviction guidelines, but this initiative was stalled. In July 2007, the Task Force for eviction guidelines was reinvigorated and includes three civil society groups. The Committee is urged to engage the Government to support the Task Force to diligently complete its work, incorporating all relevant Covenant standards.
5. The Government has included slum upgrading as a priority in its 2003 housing policy and allocated some resources to a trust fund but there is no systematic programme for implementation. Concerns exist over lack of participation and eviction possibility in connection with a Kibera showcase project.
6. In 2002 the water sector reforms in Kenya culminated with the passing of the Water Act. Despite legislative and policy gains due to the reforms, the poor especially within the informal settlement remain largely underserved. The reforms were largely negotiated and developed without the participation and even after adoption, there is insufficient information about them and implementation strategies. There are distinct differences between the access to water and sanitation enjoyed by the poor and non poor: 58% of the total households in Nairobi, mostly residing in informal settlements, obtain water from water kiosks, water delivery services and illegal water connections. National basic sanitation coverage is estimated at 50%. Residents of informal settlements pay up to twice as much for water as others, with prices doubling during shortages. In instances where the poor are able to access water supply, water quality is not assured.
7. Statutory and customary law and practice, combined with traditional beliefs, create a highly unequal system of land and housing distribution for women. The current Constitution permits discrimination in the 'devolution of property on death', and while a draft Constitution, dating from 2002 corrects this; it is yet to be adopted. The Law of Succession contains certain exceptions that have a discriminatory effect on women. Women also face challenges in the settlements including absence of street lighting, vulnerability to assault and the brunt of forced evictions. Reports indicate that women with HIV/AIDS are often shunned and evicted from housing.

8. The ICECSR has not been incorporated into the constitutional and domestic legal framework of Kenya. Difficulties remain in invoking these rights in Court. Access to justice was enhanced by creation of Kenyan National Commission on Human Rights but it lacks the resources to properly carry out inquiries.

9. A list of issues for consideration in the periodic review is included at the end of this report.

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1. INTRODUCTION

Organisations Party to this Submission

The Centre on Housing Rights and Evictions (COHRE) is an international non-governmental organisation mandated to protect and promote housing rights throughout the world. COHRE has special consultative status with the Economic and Social Council of the United Nations (UN) as well as Observer Status with the African Commission on Human and Peoples' Rights.

Hakijamii Trust (Economic and Social Rights Centre) is a human rights non-governmental organisation based in Kenya with a focus on the promotion of economic and social rights through use of international standards. Through awareness raising and training, Hakijamii intends to empower communities to advocate for their rights as well as engaging with policy makers to change their attitudes and influence relevant policies and laws and conducting strategic litigation.

Informal settlements in Kenya

The *majority* of urban Kenyans live in informal settlements in slum-like conditions,¹ which not only deny them their economic, social and cultural rights but their precarious legal, social and economic position makes them vulnerable to violations of civil and political rights as well. A number of informal settlements also exist in forest and rural areas. While those living in informal settlements, mostly tenants, have no positive right under current Kenyan law to reside on the land, they have in almost all cases no alternative option since informal settlements represent the only means by which they can realise their human rights, including work and housing. Moreover, the Kenyan authorities have acquiesced in, and many government officials have profited from, the development of the informal settlements. Since the informal settlements are home to millions of Kenyans, it is critical that their human rights under the ICESCR are respected, protected and fulfilled.

This submission will concentrate on the right to housing, as secured under Article 11 of the Covenant. It is based on the ongoing work of both organisations in many informal settlements as well as a number of fact-finding missions in the period 2004 to present, focussing inter alia on documenting housing rights issues in Nairobi, the Mau Forest, and elsewhere.

2. FORCED EVICTIONS

The Republic of Kenya has ratified the relevant international treaties banning forced evictions from housing, most notably the Covenant. The Kenyan government specifically re-affirmed its commitment to in ensuing that evictions conform with human rights standards during its appearance before the UN Human Rights Committee in March 2005. The Attorney General stated in response to questions, under Article 17 of the ICCPR, about a proposed eviction in Kibera (a large informal settlement in Nairobi):

That the Government of Kenya had halted evictions in Kibera and other informal settlements and that future evictions, if necessary, would be done according to established international and United Nations standards on eviction.

¹ In 1983, it was estimated that 35 per cent of all urban households lived under slum conditions in informal settlements. In 1993, the figure was calculated to be 55 per cent of a proportionately much larger population. The Government acknowledges that, in the settlement of Kibera for example, 'About 94 per cent of the households lack basic physical and social infrastructure and security of tenure.' Government of Kenya, 'Kibera-Soweto Slum Upgrading Project', December 2004 at 1.1. See further discussion below.

The Human Rights Committee then recommended that:

The State party should 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.²

These commitments notwithstanding, Kenya has in recent years seen repeated episodes of forced evictions, including mass forced evictions.

In late January 2004, major eviction plans were announced. The Ministry of Public Works, Roads and Housing declared that it would evict all structures illegally built on land set aside for road reserves in order to build a bypass road.³ The Minister for Local Government announced that all road reserves would be cleared. The Kenya Power & Lighting Company (KPLC) gave notice on 29 January 2004 that it would evict all persons residing on power-line wayleave traces and KPLC land in the 'interest of public safety and provision of reliable power supply.'⁴ The Kenya Railways Corporation announced on the same day that it would evict all persons within 100 feet of the railway and on other railway lands.⁵ The notice for these two evictions expired on 2 March 2004. Research also indicates that the pressure for these particular evictions appears to stem from the proposed privatisation and corporatisation of the railway and electricity parastatals and a funding drive for the construction of the southern bypass.

Policy-driven forced evictions in both urban and rural areas have been normative in Kenya since early 2004, a number of pronouncements by government officials notwithstanding. A non-exhaustive list of some of the more serious documented cases follows below.

2.1 Raila Village Demolition

The majority of Raila village in Kibera was demolished on 8 February 2004 with the resulting displacement of 1,000 to 2,000 persons. The village is located in the west of Kibera, bordering Soweto West and Gatwikira. The eviction was ostensibly for a 60-metre wide southern bypass road, which was planned in 1973, but was never executed. On 8 February 2004, tractors began demolishing those structures within the path of the proposed bypass.

² *Concluding Observations of the Human Rights Committee: Kenya, 28 March 2005, CCPR/CO/83/KEN.*

³ The announcement of the construction of the bypass – which had been planned for over 30 years – may have been prompted by promises by donors and creditors to provide funding for the project.

⁴ See Notice in Daily Nation, 29 January 2004. Jeff Otieno, 'I will not be cowed, energy minister says', Daily Nation, 10 February 2004.

⁵ The notice was carried in a number of Kenyan daily newspapers yet most Kenyan have no access to such newspapers.



Demolition of Raila Village, 8 February 2004

The demolitions violated the prohibition against forced evictions for reasons including the following:

- Many evictees stated they had not been given notice of the evictions.⁶ One interviewee stated that he had believed the bypass would not affect his house. Some of the interviewees did not understand the term 'bypass' which is often used when referring to the road. Government officials claim that notice was given but no documentary evidence of this was found;
- The eviction took place on a Sunday morning when many of the evictees were in church. They were thus not able to salvage much personal property. Property was also reportedly stolen and looted;
- There was no consultation with the affected communities;
- There was no provision of alternatives to forced eviction;
- Legal remedies have not been provided. Victims have been unable to obtain legal redress because of intimidation⁷ and compensation has not been offered;
- The rights of disadvantaged and vulnerable people were not protected. For example, one bed-ridden resident with AIDS was rescued by friends moments before his house was demolished;
- There has been no post-eviction support of any kind. Instead, institutions like the churches have been left to provide assistance;⁸
- The evictions have negatively affected the neighbouring communities. For example, the demolitions included a clinic that had served the community;⁹
- The evictions further impoverished the affected persons. An interviewee relates that upon a visit to the area, he found people living in extremely inhuman conditions, with up to ten people (of all sexes and ages) in one room;
- Families have been separated and social ties strained.¹⁰ Rents within the surrounding area of the demolitions increased, creating more economic hardships for other poor residents; and
- Three years after the eviction, the road building had not yet begun.

⁶ One interviewee noted that the residents claimed this because the notices were in the unreachable mass media, most of which is in English.

⁷ In an interview with Dalmas Owino, secretary of the Kibera Rent and Housing Forum, he indicated that his efforts at mobilising the affected community have been hampered by intimidation by youths linked to a local politician.

⁸ In an interview with Rev. Richard of the Anglican Church in Gatwikira, he suggested that the fact that the government does not deal with the evictees after the eviction makes them resort to it that much more easily.

⁹ Joseph Mwendwa who worked as a caretaker of the clinic has been jobless five months since the evictions.

¹⁰ Two interviewees had their children go to the rural areas after the evictions as the victims could not support them in town.

2.2 Other Evictions in Nairobi and Urban Areas

Forced evictions in urban areas have been ongoing occurred since March 2004, including:

- On 16 July 2005, 30 houses were demolished in **Kibagare** settlement, Uthiru estate, leaving 140 residents including children destitute and homeless. The evictions were carried out by city council *askaris* (armed guards) and Administration Police.
- On 23 September 2005, the homes of 850 families in **Deep Sea** settlement were demolished with the use of government-owned bulldozers.
- A Member of Parliament has claimed that the fires in **Mukuru** settlement on 12 February 2006, which left over 20 000 people homeless, were deliberately started as a land-grabbing exercise.
- The homes of 1200 residents in **Molaa village, Donhom**, Nairobi, were reportedly demolished in August 2006 by a large contingent of police officers, leaving the families out in the cold. Despite the community having lived on the land since 1952 and being granted permission to stay by the Office of the President in 2002, a notice was handed to them just before the destruction commenced.
- On 2 September 2006 in **Komora** settlement within Savannah area, at around 6.30 am, two lorry loads of policemen in riot gear and another 100 hired youths descended on the village destroying and burning the structures. The alleged owner of the land had purportedly given a seven day notice to the residents to vacate but there was no court order to justify the involvement of the police officers. Most of the residents had stayed there from the 1960s. Over 600 families including school going children, women, the elderly and the sick were forced to stay in the cold for a number of days. There was no help of any sort from the Government.
- On 28 March 2007 the Municipal Council of Mombasa, accompanied by administrative police attached to the Provincial administration, invaded **Mburukenge** village, one of the peoples' settlements within Mombasa Island. The exercise continued the following day. At the end over 500 families had been displaced. To date it has not been established as to why the people were evicted. No notice was given to them and no effort has been made to provide resettlement.
- On 28 March 2007, a number of roadside traders near All African Churches Conference along **Waiyaki Way**, Westlands, were evicted by Nairobi City Council. It was ostensibly for the beautification of the city
- On 13 July 2007, over 100 traders along **Madaraka/Langata road**, Nairobi, were evicted by the city council.
- On 27 July 2007, over 1000 households in **Mukuru** settlement were evicted following an alleged court order to pave the way for private development. (See picture below.) It was then discovered that the court order affected fewer than 20 people, which meant the eviction of those who were not party to proceedings was clearly illegal.



Eviction in Mukuru. 27 July 2007

2.3 Mass Evictions in Forest Areas

Forced evictions have also been carried out on a massive scale in forest areas and the Ministry of Environment has stated that these actions will continue. These evictions have been justified on the basis that water catchment areas and forest cover must be protected and the Government must implement the recommendations of the Report of the Commission on Irregular allocation of Public Land (The Ndungu Report). While notice was often given, it is questionable whether some evictions were necessary and all evictions have been characterised by violence, destruction of property and schools, a lack of adequate resettlement and, in some cases, and a blocking of aid for the victims. In the instance of Mau forest, the eviction was carried out in contravention of a court order.¹¹ In an eviction on 23 March 2006 in Kipkurere Forest, at least 945 Ogiek residents¹² and 2 000 Nandi settlers were evicted and have been left homeless. The government has also failed to make allowance for traditional forest dwellers, such as the Ogiek, and take responsibility for the circumstances by which the more recent settlers inhabited forest areas.

A non-exhaustive list of the evictions in forest areas is set out below:

Sururu Forest, July 2004 (4 000 persons)

In July 2004, over 2000 families were forcefully evicted from Sururu forest in the Rift Valley

¹¹ It is worth noting that the Court took a very dim view of this defiance and subsequently sent the Clerk of Narok County Council to jail for contempt.

¹² Kenyan forests have been the home to traditional residents, such as the Ogiek people, for many centuries. In recent times, parts of forests have been encroached upon by agricultural communities, commercial logging interests or have been allocated to various groups by the government, often illegally. It is well known that Kenya has very low levels of forest cover, relative to its land mass, and that forests are one of the principal water catchment areas.

Province. This, notwithstanding the fact that the land they were occupying had been given to them by the government.

Mau Forest, June 2005 (10 000-50 000 persons)

Approximately 50 000 persons were evicted, though Government spokespersons claimed the figure was 10 000. Structures were summarily demolished or set alight by law-enforcement and local council officials acting under direct orders from Government. More than 5 000 houses and several granaries were destroyed, leading to mass homelessness and internal displacement. Even though the Government recently undertook to provide resettlement for the Mau Forest evictees, it is not known how many have actually benefited.

Eburu Forest, January 2006 (4 000 persons)

4 000 residents of Eburu Forest in Naivasha were evicted by police officers and hired youths led by the local District Officer.

Mt Elgon Forest, January 2006 (3 000 persons)

More than 3 000 residents were evicted from Mt Elgon Forest. Attempts to provide the evictees with food aid were blocked.

Kipkurere Forest, March 2006 (2945 families)

At least 945 Ogiek residents and 2 000 Nandi settlers were evicted from Kipkurere Forest and have been left homeless. An interim fact-finding mission report from the Kenya National Commission on Human Rights states that the settlements were burned, property and food stocks destroyed, children (half of the affected population) can no longer attend school, all residents, particularly children, lack food, proper clothing and shelter, no relief food has been sent by the government or any other agency and there are no medical services to deal with the likely increase in disease. The Government recently announced it would only settle 250 'squatters'.

Emborut forest Marakwet, June 2006 (8 000 families)

In April 2006 the Government gave eviction notice to more than 8 000 families staying in Emborut forest Marakwet (Rift Valley). Also targeted in that eviction were 52 public institutions including 20 primary schools and five secondary schools. On 17 June, the Government proceeded to evict the families from Embobut and Kipkunur forests; churches and schools were torched. On 7 June 2007,, further orders were given for eviction of another 8000 residents.

While the means by which rights to housing of residents in forest areas is realised should be balanced with environmental rights, there is an urgent need to develop a set of guidelines and institutional structure that allows for a proper process to determine which groups *do* need to be relocated and the procedures for relocation and resettlement. The guidelines should be developed in consultation with relevant stakeholders, including civil society, be consistent with international law and take account of the structures being established to implement the Ndungu report, e.g., the Land Tribunals. A moratorium on evictions in forest areas should be put in place until this framework is established. With regard, to the recent Kipkurere evictions, there is also an urgent need for the government to provide food and medical assistance to the families evicted.

2.4 Threatened Evictions

A number of individuals and communities are currently under durable threat of forced eviction in Kenya. These eviction threats were only 'suspended' in March 2004 and their status remains unclear.

Railway line in Kibera and Mukuru

This affects residents and traders in the Kiberan ‘villages’ of Laini Saba, Mashimoni, Kambi Muru, Kisumu Ndogo, Gatwikira, Soweto West and Kianda and Mukuru villages of Kwa Njenga, Quarry, Kwa Reuben, Kingstone and Uchumi. While some people did demolish their businesses, the majority found space made by their fellow traders. Relocation plans now seem to be moving according to the scheme prepared by the Government, the World Bank, the railway authorities and community groups. The latest development is advertising for consultancy services to design markets and other infrastructural facilities. Community representatives were elected to sit on the implementation committee.

On the face of it, things are moving on well. But it is apparent that the current project has only included those to be affected in Nairobi (Kibera and Mukuru in particular). It is not clear how the plight of the other affected people is going to be handled. There are already complaints from residents in Kibos (the Nubians and the market traders) that the Kenyan railway authorities have forced them to pay monthly rent on a Temporary Occupancy License (TOL) basis. The Nubians are even paying for the Mosque, which seems to be outside the reserve area. The terms of the TOL are not clear. It is important that the relocation is all-inclusive so that everyone staying on the railway reserve land will benefit. The ongoing negotiations should include all groups along the Railway line, not merely those in Nairobi alone.



Businesses on the railway line in Kibera provides livelihoods for many in Kibera and a regular transport route for residents

Link road in Kibera

The link road is supposed to connect with the southern bypass and to cut through Kibera with Mashimoni and Lindi on one side and Kambi Muru on the other. It emerges north at Makina and passes through the outermost eastern fringes of that settlement, continuing north until it emerges at the Kibera DO’s office. It is provisionally estimated that 10,000 persons are affected. No eviction notices appear to have been issued. Very little is known on the ground about this planned road.

The eviction for the bypass road is perhaps the most questionable given the age of the design – designed in 1958 according to one official¹³ and in 1974 according to others – and the subsequent growth of the city. On the other hand, there is a case for more infrastructure to ease the often crippling congestion on Nairobi’s roads. However, it is doubtful whether the link road needs to pass through the middle of Kibera. Given the number of people settled in Kibera, and the difficulties

¹³ Meeting with Omar Salat, District Officer, Kibera.

associated with relocating them, it may be necessary to weigh the relative effects of social and economic disruption on different communities. A land audit to determine whether suitable alternative land for road building, that will cause less disruption, should be conducted. The potential for compulsory acquisition with compensation as provided for under the Constitution¹⁴ needs some consideration with regard to privately owned land. Further, should the process of an exhaustive consideration of alternatives come up with a similar route, then the requirements of international law with regard to evictions as discussed above need to be complied with in full. It is critical that the Government not repeat the Raila village experience.

Power lines in Kibera, Mukuru, Korogocho, Kiambiu

The structures under power lines in Kibera fall within Soweto East, Silanga and parts of Lindi. The number of people affected is put at 76,175, living in 3,255 structures.¹⁵ Regulations require that a 6-metre buffer exist from the footprint of a high-tension power line. The requirement for power line wayleaves is reasonable because of the potential danger they pose to those living under them. Without the wayleaves, access for repairs to the power lines is very difficult, while the potential for fires is also real. However, as in other instances, there was no sufficient notice provided to the affected residents, nor any consultation process for consideration of alternatives to evictions. According to interviewees, they just found crosses painted on their structures the next morning. The potential negative socio-economic impact of the evictions is unquestionable. Soweto Baptist School, which falls right under the power lines, has up to 200 primary and secondary school students. The school caters for the poor, including AIDS orphans.¹⁶

Mukuru is also traversed extensively by *power lines*. There are the high voltage power lines from Jinja as well as the three-phase power lines to the industrial area. There is a particular need to move the residents away from the high voltage lines but the question is how, by what procedures, and what alternatives are being offered. Areas affected most by power lines within Mukuru area and the number of structures affected are:¹⁷ KwaNjenga (1,365); Quarry (365); and Kwa Reuben (500). The number of people to be affected is therefore more than 11,000 people. The number was initially put at 900, and included numerous community facilities such as a church, classrooms, the church community hall and over 25 public toilets.¹⁸

The total number of households in Kibera has been enumerated at 18,537 and virtually the entire settlement was included in the eviction announcements of early 2004, particularly in relation to power lines. The Catholic Church in Korogocho estimates that 2,500 people are living on power line wayleaves.

Kiambiu is an informal settlement in Eastleigh South Location, Nairobi. It has been occupied since 1950 and rapidly expanded to 10,000 persons during the 1990s. Many residents were evictees from other settlements. Kiambiu also reportedly represents an extreme case of land-grabbing and abuses of power by the chief, the former councillor and absentee structure owners, who account for at least 75 per cent of the structure owners. Residents estimated that 400 people (63 structures) are affected by the February 2004 eviction notice from Kenya Power Light to dwellers living under power lines.

¹⁴ Section 75(1) provides that this may be for reasons of 'town and country planning ...and public benefit'.

¹⁵ These estimates were obtained from a memorandum presented by Christ the King Church Laini Saba, Kibera to Mrs. G. N. Wanyonyi, Director of Housing. The exact definition of a structure in this instance is not clear; it most likely refers to a building that is divided into many single rooms – a common practice in Kibera.

¹⁶ Interview with Festus Mathenge, headmaster Soweto Baptist School.

¹⁷ The following are figures provided by a local community organisation, the Quarry Garbage Collectors Organisation. It represents number of structures not people.

¹⁸ Campaign Against Forced Evictions, Joint Paper, 17 March 2004.

Three churches are also affected. A significant number are also affected by an eviction notice from Ministry of Water to those living close to the river. However, the community was unable to accurately count the structures affected, since the Chief continued allocating land next to the water to the structure owners even during the eviction threat.

Alternatives to eviction are potentially available. Technological alternatives like underground cables (with access points for repair), or providing for overlapping routing (*e.g.*, the possibility of routing different combinations of power lines, railway lines, sewer lines, pipelines along the same reserves) can be explored. Wealthy residents residing on irregularly located land in other parts of Nairobi were able to pay for the re-routing of power lines and it is unclear why residents on informal settlements should be denied alternatives on account of their poverty. Costs and technical feasibility with all of these alternatives will obviously be an issue. Alternatives should be exhaustively considered and publicly communicated.

Other eviction threats

In addition, the following communities are under durable threat of forced eviction:

- ***Deep Sea settlement, Nairobi.*** There are unconfirmed reports that the local chief of Deep Sea, has been served with a court order for the eviction of the residents on a yet to be determined date. The residents are now living in fear and have appealed to NGOs and officials for assistance. If the eviction proceeds, it will affect over 7,000 residents.
- ***Mathare 3C settlement, Nairobi.*** There are also eviction notices being issued by a local chief in Mathare 3C on behalf of private individuals. These are clearly illegal as chiefs have no authority to deal on issues of evictions.
- ***Mukuru Kwa Reuben settlement, Nairobi.*** Following the recent evictions in Mukuru Kwa Reuben, there have been a series of similar notices being issued by other private developers. It is feared that these are indicators of imminent evictions.
- ***Usoma settlement, Kisumu, Nairobi.*** The colonial Government acquired part of their clan's land for the development of an airport. The initial arrangement of resettling those affected did not work out as planned. The Government recently decided that they wanted to upgrade the airport and give it international status. Usoma is part of the area to be affected. Instead of direct negotiation with the residents of Usoma, as is required under international human rights standards, the Airport Authority decided to deal with brokers who do not even stay on the land. This has created serious tension and fear among the community that they may be evicted at any time.

Amidst all of this, one positive sign is that on 21 August 2007, the Minister of Lands stopped a local authority (Olkejuado County Council) from evicting more than 2,000 people without following due process. Despite this good news, it is disconcerting that other government agencies do not seem to be aware of any clearly laid down procedure for conducting evictions. It would help if the Government, as it awaits the adoption of more comprehensive guidelines, could issue administrative guidelines for its officers to follow when embarking on evictions. This should be developed in cooperation with civil society.

2.5 Harassment in informal settlements

In General Comment No. 4, the Committee defined security of tenure to include “legal protection against forced eviction, harassment and other threats.” Many residents in informal settlements

reported harassment by the Provincial Administration, an arm of Government that reports directly to the President and is frequently entrusted with the oversight of informal settlements. COHRE and Hakijamii have received statements that members of the Provincial Government, particularly the area chiefs, sub-chiefs and their agents (for example, the Provincial Administration police), had perpetrated violence against residents of slums and squatter settlements.

In many parts of Kibera, residents reported that the chiefs and the so-called Village Elders, known as 'Wazee Wa Vijiji,' had pulled down structures and confiscated building materials whenever people try to improve their houses in Kibera.¹⁹ After the completion of the mission, the District Officer for Kibera allegedly shot a resident of Kibera after a group had protested that some residents had been evicted in order that a developer could purchase a plot of land.²⁰ According to the Korogocho Evictions Committee, the area Chief evicted tenants by night. He also prevented structure repairs, thus contributing to the physical degeneration of the settlements.²¹ In the settlement of Kiambiu, residents who tried to initiate community development projects or protest about illegal land-grabbing by speculators were physically harassed by groups associated with the provincial administration.

Intimidation is extended to non-construction activities. In Mitumba, the Chief arrested community members who were carrying out enumerations and had the process stopped.²² In the same settlement, the local Chief was said to have used some community members to evict others, thereby creating unnecessary tension amongst the dwellers.²³ There is evidence that community meetings are disrupted by the Provincial Administration or simply not allowed to go ahead, especially if they are to be held by factions that do not support the chiefs. Such scenarios were observed particularly in Kiambiu. Politicians have also reportedly hired youths to disrupt meetings.

At the same time, many residents stated that they were forced to rely on the protective powers of the Provincial Administration since the institution wielded a significant amount of power in the settlements. But the legitimacy of this institution is questionable and is to be abolished under the draft Constitution.

One government official acknowledged that there was rampant abuse of power by the Provincial Administration, which started in the previous government, but which has more or less continued unabated. Most officials from this institution that COHRE interviewed denied involvement in such activity but one chief was more candid.²⁴ He noted that while the informal settlement of Kibera is largely government land, it operates on a 'free market' and admitted that he allocates land and owns houses in the settlement. For his efforts he expects to be '*given a goat*' for the permission to build.²⁵ He commented that evictions were a straightforward matter, 'Removing someone from the railway line or power line is a small thing.' He justified forced evictions for the AMREF Medical Centre on the basis that health services were now provided to the settlement. According to him, the 'tenant is flexible; he can just go anywhere' although interviews with victims of evictions indicated this was not the case.

¹⁹ This issue was raised in all of the community consultations conducted across Kibera.

²⁰ Telephone conversation with Julius Ochieng, 12 September 2004; See Patrick Nzioka, 'Leave Us Out of Kibera Land Dispute, Says Oxfam' *The Nation*, 1 September 2004.

²¹ Meeting with community members in Kariobangi Social Hall, 12 July 2004.

²² Contributions from Mitumba residents in meeting with community members organized by Pamoja Trust, at Pamoja Trust, Ole Dume Road, 12 July 2004.

²³ Ibid.

²⁴ Interview conducted with Peter Muyala, Chief of Laini Saba, Kibera, 14 July 2004.

²⁵ Directly translated from a common Kiswahili euphemism for a bribe 'kupewa mbufi'.

In a number of settlements it was clear that some councillors sought to represent the interests of the residents, particularly tenants where they formed a majority of residents. In others, there was an absence of such intention and action. Some councillors, however, appear to be closely associated with members of the Provincial Administration in land speculation and physical harassment and intimidation of community leaders, as is demonstrated by the case of Kiambiu. A current councillor in Kibera is alleged to have engaged in a number of intimidatory activities in order to take control of the slum-upgrading project in Soweto.

Residents of smaller settlements located in the wealthier suburbs – *e.g.*, in Westlands, Deep Sea – also complained of police harassment.²⁶

2.6 Policy and Legal Framework

Planned and executed demolitions in Nairobi and other places in Kenya, such as Timari and Migori, were not confined to informal settlements – a small number of middle and upper class houses were also the target. The concern of COHRE and Hakijamii with informal settlements has been necessitated though by the sheer numbers to be evicted, and the relatively larger impact that they have on what are essentially very poor people.

Kenyan legislation regulating forced evictions, particularly of people living in informal settlements, remains fragmented and does not presently comply with international human rights law. One study concluded that 17 Kenyan laws are ‘outrightly hostile and unaccommodating’ in relation to informal settlements.²⁷ This conclusion applies to security of tenure, building standards (now partially amended), access to services, and ability to conduct economic and cultural life. Further, residents face harassment and summary arrest by law enforcement agencies since they fit the statutory definition of a vagrant. While some protections do exist – for example the need for a court order for evictions from government land – there is an urgent need for comprehensive legislation regulating forced evictions to ensure Kenya’s compliance with the African Charter. Moreover, the current Housing Policy does not mention evictions – it only briefly refers to the need for security of tenure and to minimise displacement during slum upgrading. The likelihood that a legislative framework on forced evictions could be adopted in the short-term is low since there is a significant parliamentary backlog in the passing of legislation. Given the urgency of the issues that need to be resolved, however, the government would do well to consider fast-tracking the urgently needed legislative review.

Legislation should be adopted to provide sustained protection from forced evictions. This could either take the form of separate legislation, or the provisions could be incorporated in the new process underway to draft a new Housing Act. Such a process should also seek to ensure consistency within the many pieces of legislation that affect informal settlements. This would include reform of the Rent Restriction Act to ensure that informal settlements are covered and that there are effective mechanisms for redress. It is important to note that Kenyan civil society groups have already made proposals for legislation on evictions and a housing law. These proposals should be considered and incorporated as appropriate.²⁸

²⁶ Contributions from Virginia Wanjiru, community leader, Deep Sea, during a meeting with community members organized by Pamoja Trust, at Pamoja Trust, Ole Dume Road, on the 12th of July 2004.

²⁷ These include Chapter IX Trust Land, of the Constitution of Kenya; Town Planning Act (Cap. 134); Land Planning Act (Cap. 303); Public Health Act (Cap. 242), Local Government Act (Cap. 265); Governments Land Act (Cap. 280); Trust Lands Act (Cap. 288); Registered Land Act (Cap. 300); Land Control Act (Ca. 302); Land Acquisition Act (Cap. 295); Valuation for Rating Act (Cap. 283); Rent Restriction Act (Cap. 266); Housing Act (Cap. 296); Vagrancy Act (Cap. 117); Trust of Lands Act (Cap. 58) and the Building Codes 1968 – Grade I and II (pursuant to the Local Government Act).

²⁸ In the draft National Housing Bill 2004, prepared by Civil Society in Kenya, the following is included:

In the meantime, *it is necessary for the government to immediately reinstate the moratorium on evictions issued by the Nairobi Informal Settlements Coordination Committee in 1997.*

The Kenyan Ministry of Lands has publicly announced its intention to develop guidelines on forced evictions through a process of consultative review and formulate a comprehensive legal framework on evictions in Kenya. The Ministry has prepared a draft set of guidelines and commenced consulting with stakeholders. However, the process stalled before the Taskforce was to begin its work. After calls from community groups and civil society from all over Kenya,²⁹ the Task Force was reconstituted in October 2007. The Committee needs to closely question the Government of Kenya on progress and approach in drafting the guidelines.

There is also a pressing need to develop appropriate short- and long-term tenure regularisation processes within the informal settlements. In the short-term, interim protection could be provided through measures such as the declaration of secure tenure areas, or perhaps the temporary occupancy licences provided for in Kenyan land law or certificates of occupancy as were adopted in Botswana. In the medium-term appropriate tenure models will hopefully be addressed by the current National Land Policy Process. With specific reference to any absolutely necessary resettlement processes, it is important that before any temporary or permanent resettlement occurs, the tenure system for the decanting site, and, where relevant, the return to the original site, or any alternative site(s), should be agreed upon by the residents.

The Government of Kenya committed itself in February 2004 to resettle those affected by the eviction notices. This should require as far as possible 'adequate alternative housing, resettlement or access to productive land, as the case may be, is available.'³⁰ Additionally, rents or housing costs in any new settlement must be affordable.

The issue of locating adequate land is obviously difficult, particularly due to massive irregular and illegal allocation of land. Ownership of some vacant land around Kibera, for example, remains unresolved and embroiled in legal disputes. However, some experts and government officials said that sufficient public land is in fact available. Various Ministers have referred to plans to purchase 100,000 acres for resettling informal settlers. Moreover, the government has the power to acquire land under the Land Acquisition Act. Budgetary resources should be obtained and allocated for this purpose.

21(1) No person shall be evicted from premises covered under this Act and no demolition of premises covered under this Act shall be carried out except in the following situations:

(a) where a person or persons occupy railroad tracks, garbage dumps, river banks, shorelines waterway or any other area as the Minister may determine,

(b) where land has been gazetted under section 18 of this Act, or

(c) where a court has issued an order for eviction and demolition.

(2) No eviction or demolition orders shall be issued involving underprivileged and homeless persons unless:

(a) notice has been effected upon the affected person at least 30 days prior to the date of eviction or demolition

(b) there has been adequate consultation on the matter of resettlement with the duly designated representatives of the affected community,

(c) there is presence of local government officials or their representatives during the eviction or demolition,

(d) there is proper identification of all persons taking part in the demolition, and

(e) adequate provision has been made for the relocation of the affected persons.

²⁹ See for example, Peoples' Declaration on Eviction Guidelines, 27 September 2006, Nyayo Stadium.

³⁰ Committee on Economic, Social and Cultural Rights, *General Comment No. 7 on Forced Evictions (1997)* at para. 16.

As far as possible, it is important to allow for *in situ* resettlement to minimise the disruptive effects of relocation upon access to employment, schooling and socio-economic networks. Slum upgrading projects, however, are by no means easy to organise, resource, implement or replicate, particularly not in a context of poverty and underdevelopment. To be successful, slum-upgrading projects require careful design and management. In particular, local conditions need to be considered; housing affordability and project finance must be sustainable in the long-term; consultation and direct, meaningful and sustained community involvement are vital; and residents must be effectively protected from evictions and violence. In this context, it is to the immense credit of the Government and its development partners that slum upgrading features prominently in Kenya's recent housing policy: 'Upgrading of slum areas and informal settlements will be given high priority'.³¹ A major project has commenced in Kibera, the largest and socially most complex informal settlement in Nairobi. Unfortunately, few residents express significant positive sentiments about the design of the initiative.

3. SLUM UPGRADING

The grossly inadequate living conditions in the informal settlements are reflected in various official and other documents, including the detailed *Nairobi Situation Analysis* of 2001.³² For example, in the case of Kibera, one of 200 settlements in Nairobi, the document refers to serious problems including:

- uncertainty regarding structure-owners' and residents' rights;
- the inadequate construction of most of the dwellings;
- the letting of single rooms to whole households at densities of 250 units per hectare;
- associated overcrowding and lack of privacy.
- the haphazard housing layout poses particular challenges when it comes to introducing basic infrastructure and drainage.
- urban services – including social and health facilities – are not in place
- inadequate living conditions have led to high incidences of disease and mortality.
- lack of both clean water and proper disposal of human waste.³³
- inadequate collection of refuse
- No legal access to electricity with highly polluting fuels impacting residents' health.

³¹ Paragraph 30, National Housing Policy of Kenya.

³² *Nairobi Situation Analysis* (Nairobi, 2001), a report researched and compiled by a team of three resource experts at the University of Nairobi: Prof. Paul Syagga, Dr Winnie Mitullah and Dr Sarah Karirah Gitau (see, for a summary, *Habitat Debate*, Vol. 7 No. 3, Sept. 2001).

³³ Limited access to water is a direct cause of ill health. Clean water is accessible only commercially, and water-sellers charge rates that are significantly higher than in formal settlements. The only other water that is available free of charge comes from polluted sources such as the Nairobi Dam, into which Kibera's sewerage drains untreated. Another health concern is the very limited proper disposal of human waste, most of which ends up in open drainage ditches alongside public walkways, and in dumping areas that are readily accessible to children, goats and pigs.

While emphasising this crisis in living conditions, the *Analysis* also refers to the intensity and diversity of commercial activities and initiatives within the slums, which provide an essential livelihood to many of the residents and contribute to Nairobi's economy.³⁴ NGO-initiated water and sanitation programmes do provide some limited services on a cost-recovery basis and in the last year there has been some support and engagement for this by the newly formed Athi River Services Board. But these cannot address the needs throughout the settlement.³⁵

The power imbalances in Nairobi's informal settlements has been discussed above. The overly dominant role – often with use of force and coercion – played by the Provincial Administration and its police force is of continuing concern. The larger-scale and more powerful structure-owners appeared to be closely linked with these officials. This raises key questions about the key role such actors are often given in the few slum-upgrading process that have commenced.

The *Nairobi Situation Analysis* describes the allocation of land to structure-owners as a form of “semi-traditional allocation”.³⁶ This land allocation system forms the basis of a multi-layered patronage system that complicates the *de facto* tenure arrangements in Kibera and other settlements. In effect, it restricts security of tenure, or rights over land that has been secured. It also exacerbates and perpetuates the inadequate living environment, in particular the decay of tenement structures. For example, the process of obtaining permission to renovate a structure is complicated. The *Analysis* further notes that there is a tendency for a few owner-occupiers to develop into large-scale structure-owners and eventually to move out of the slums into better accommodation.³⁷

For slum-tenants, the multiple layers of patronage have led to high levels of marginalisation and insecurity, which in turn have resulted in low levels of confidence. There is a long history of tenants' issues not being addressed. Therefore, these people do not believe that they will ever obtain houses of their own. It is notable and praiseworthy that the Kenya Slum Upgrading Programme (KENSUP) has tried to address the tenants' issues directly. However, there are concerns about the fairness of the elections the Kibera project of tenant representatives and the position of smaller, vulnerable structure-owners - see further below.

A further challenge to slum upgrading is that no effective mechanisms are in place to regulate the relationship between structure-owner and tenant. Agreements between these two parties are seldom, if ever, formalised in writing; they simply negotiate the price and come to a verbal agreement. This creates a potential for tension – and even household-level evictions – during the slum-upgrading process. Indeed, there are frequent disputes between owners (landlords) and tenants, and only a small number of community-based organisations are in a position to assist with and/or mediate in such disputes.³⁸ One problem is that structure-owners and tenants alike have very low awareness of their rights and obligations.

Furthermore, the tenants' poverty poses serious problems of affordability. Unfortunately, for community organisations trying to bridge the divide between structure-owners and tenants, an ongoing challenge is that structure-owners “don't believe or accept” this reality. In addition, the question of rent in Kibera has been “massively politicised” in the past, to the extent that it has even been used as a campaign tool by local politicians. This is complicated by differences in political affiliation between resident and non-resident structure-owners. Councillors, in turn, are alleged to have been playing a role in perpetuating confusion between these two groups.

³⁴ *Nairobi Situation Analysis* (n. 33 above), p. 44.

³⁵ *Ibid.* pp. 55-56.

³⁶ *Ibid.* p. 48.

³⁷ *Ibid.* p. 44.

³⁸ For example, the Kibera Rent & Housing Forum and Christ the King Catholic Church.

3.1 Slum upgrading: Government initiatives

The 2003 National Housing Policy incorporates slum upgrading as one of its six aims: “Encouraging integrated, participatory approaches to slum upgrading, including income-generating activities that effectively combat poverty.” This position was welcomed and supported by UN-Habitat, which complimented the Government of Kenya on recognising informal settlements in its National Housing Policy and no longer treating them as illegal.³⁹ The Policy’s emphasis on integration, participation and poverty are important and commendable but the Policy seems to stop short of translating the objective of *combating poverty* in slums into meaningful policy instruments. This is only partly, but not fully, redressed in the draft National Housing Development Programme 2003-2007.

Under ‘Land-Use Planning and Management’, the Policy commits to the provision of incentives for “squatters to buy the land they occupy at subsidised rates”. However, it is not clear who these ‘squatters’ are, given that levels of owner-occupation within informal settlements are very low.⁴⁰ The Policy expresses concern about the decline in owner-occupation levels, but does not associate this with the growth of informal private tenements. Nor does it offer any clear solution to this potentially explosive problem. As a result, there is no clear indication of how the objective “to assist the low-income earners and economically vulnerable groups in housing improvement and production” is to be realised.⁴¹ The only clear reference the Policy makes to the tenancy situation in slums is in relation to rent restriction which the Policy distances itself from on the basis that it discourage people from investing in this sector. This is hardly an adequate response in a context such as Kibera, where so many people are very poor rent-paying tenants.

Poverty alleviation is one of the eleven elements of the National Housing Policy. The Policy envisages measures that could be relevant to slum upgrading, though they are not incorporated in the current KENSUP pilot project, discussed below. One such measure is the continuous revision of by-laws, standards and regulations to ensure that the poor have their basic needs met. Another relates to the harnessing of “poor people’s pragmatic approach to housing” through community-based organisations, and “well-defined popular participatory approaches”. This is expanded: “The government will develop and support approaches which focus on community organisations and personal empowerment in ensuring creation of small-scale economic activities and promoting innovative ways of mobilising finance.” As it stands, this policy statement assumes owner-occupation, though measures to achieve the assumed owner-occupation are vague.

The National Housing Development Programme 2003-2007 and a recent KENSUP document do provide further details; in particular, of micro-credit schemes.⁴² In the opinion of COHRE and

³⁹ COHRE consultations with UN-Habitat, 15-16 July 2004.

⁴⁰ As noted in Subsection 5.1.2 above, land distribution in the settlements involves semi-traditional subdivision of land, and not land invasion in the traditional sense of ‘squatting’. In 1997, the Nairobi Informal Settlement Coordination Committee (NISCC) noted: “There is very little true ‘squatting’.” The NISCC’s Development Strategy for Nairobi’s Informal Settlements engages more realistically with the slum situation than the current housing policy.

⁴¹ In all slums visited in Nairobi, residents were prevented from improving their structures through vigilante enforcement of the unwritten rules of patronage.

⁴² KENSUP states: “Efforts will be made to involve micro finance institutions (MFIs) in [the] shelter improvement programme and in the development of small and medium enterprises (Jua Kali) in slums and informal settlements. [A] conducive regulatory framework within central and local government agencies to enable small-scale industries and business to operate in upgrading and resettlement areas will be facilitated. Group formation and networking will be the main entry points for project activities, security for borrowing and flow of information. [There will be p]rovision of business support services and appropriate technologies to

Hakijamii, there is an urgent need to expand such programmes to enable effective participation of tenants and poorer structure-owners in the various slum-upgrading projects, including those in Kibera and Kisumu. Government and development partners should be encouraged to contribute to such programmes, providing there is a strong degree of community participation.

The National Housing Policy sets out the following slum-upgrading components:

- “security of land tenure”;
- “basic infrastructural facilities and services”;
- “improvement of housing structures”;
- “improvement of the socio-economic status of the target community”.

The National Housing Policy further commits the Government to “streamline acquisition of land for housing the poor, adopt appropriate tenure systems, planning standards to suit given slum settlements and prevent unwarranted destruction of existing housing stock and displacement of residents”. The Policy also commits the Government to “appropriate compensation measures ... for disposed [*sic*, presumably dispossessed] people” though encouraging “upgrading activities as opposed to demolitions in unplanned settlements”.

The basic infrastructure component of slum upgrading is to be financed through a “Slum Upgrading and Low-cost Housing and Infrastructure Fund, under the Ministry in charge of Housing, financed through exchequer and development partners”. The Policy further advocates the use of “cost effective, incrementally upgradeable and environmentally sound” and “labour intensive” technologies.

In relation to vulnerable groups, the Policy encourages “the formation of self-help groups” and the expansion of home-based activities through community-based organisations and NGOs. The Policy further encourages the establishment of homes for the elderly. It commits the Government to “provide the enabling hand in housing by forging partnerships with the private sector, community and other actors at different levels”. This statement is not expanded in relation to partnerships in slum upgrading. However, the Policy does specify roles for various stakeholders: NGOs and community-based organisations are to have a role in savings and small-scale building activities, capacity building and land acquisition; international agencies are to be involved in research, capacity-building, exchange of experience, and financial resources.

The National Housing Policy sets standards for urban middle- and low-cost housing. The former has a minimum of 60 m² floor space, the latter 40 m², both to be delivered through the mobilisation of finance from the private sector. In this context, there is no direct mention of housing subsidies, though the Policy mentions that “the amount of public funds allocated to the Housing Department will be increased”. Housing finance for low-income groups appears to be based mainly on “micro-financing and informal funding mechanisms”. It should be noted that while this is directed at the largest portion of the Kenyan housing demand, the Policy gives very little attention to the practical financing of housing for this sector.

The National Housing Development Programme does set out the various sources of income, the emphasis being upon the Government, donors and residents themselves for low-income forms of housing. The yearly budget allocation for the Kenya Slum Upgrading Programme (KENSUP) for 2004-5 was Ksh 6.075 billion (circa US\$ 75 million), whereby 45 000 units would be built each year. However, KENSUP documentation indicates that much smaller amounts will be allocated for the

enhance human resource development. This will also help in stimulating [the] ability to contribute in the programme as well as to afford housing outside the informal areas.”

short-to-medium term. The yearly budget allocation (2006/2007 estimates) for the Kenya Slum Upgrading Programme (KENSUP) is only Ksh 1 billion. For example, in the Kibera project US\$ 300 000 was meant to be initially allocated to the pilot project in Soweto village. Presumably, some funds will also be allocated to the Kisumu project. KENSUP recently indicated that a total of Ksh 150 million (US\$ 1.85 million) would be required for implementation of the Soweto project in Kibera. For the slum-upgrading programme to expand in way that is commensurate with the vast housing needs of the poor, particularly outside Kibera, Government and donors will need to provide greater *actual* allocations.

Another concern is that the pilot project envisages the demolition of tenements and the construction of units with 50 m² of floor space. Given the standards spelt out in the National Housing Policy, and the comparative experience discussed in Box 5.1 below, the residents' fear that the project will result in their displacement appears to have some basis. The danger is that projects intended for the poor will fail to benefit them, as they will no longer be able to afford to live in the housing provided.

3.2 Kenya Slum Upgrading Programme (KENSUP)

The Kenya Slum Upgrading Programme (KENSUP) is based on an agreement between UN-Habitat and the Government of Kenya made in November 2000, which led to the Collaborative Slum Upgrading Initiative with an initial focus on one settlement, Kibera. During the inception and preparatory phases of the programme, the following steps were to be taken:

- Creation of separate consultative working groups for slum dwellers, NGOs, Government, private sector and international development agencies;
- Drafting of a National Policy on Slum Upgrading;
- Making of proposals for statutory reforms and minimum standards;
- Commencement of initiatives to strengthen organisational structures and build collaboration between the various stakeholders, including tenants, structure-owners and Government.

Although these stages had officially been declared 'concluded', COHRE and Hakijamii cannot establish the exact extent to which these action points had in fact been completed, in particular the latter three steps. The implementation phase is to consist of: (i) tenure security; (ii) service provision; (iii) shelter; and (iv) strategy for the improvement of livelihoods.⁴³ The new NARC government renewed the partnership with UN-Habitat, with both parties signing a memorandum of understanding ('MOU') in January 2003.⁴⁴ In 2004, a number of the relevant bodies were established for implementation (*see* Box 5.2). On 4 October 2004, President Kibaki officially launched the project.

A brief document ('KENSUP Document') attached to the 2003 MOU reflects similar approaches to those of the National Housing Policy. While it translates the tenets of the Policy into more specific objectives, components and strategies, it does not deal with the relationship between structure-owner and tenant, apparently assuming owner-occupation. A recent KENSUP document openly acknowledges the difficulties of that relationship in Kibera, stating:

The slum-lords put up their own dwellings, and also construct extra ones for rent or sale. Most of them do not live in the slums but have experienced slum life and it is often the ... rent income that

⁴³ Syagga, Mitullah and Gitau-Karirah (n. 128 above).

⁴⁴ According to the MOU, UN-Habitat's role is facilitating advisory expertise, provision of specialised equipment, capacity building, study and training, assistance in the provision of basic infrastructure, assistance in the mobilisation of resources, and establishment of a trust fund. See Republic of Kenya, 'Memorandum of Understanding between the United Nations Human Settlements Programme and the Government of Kenya', Nairobi, 2003.

affords them better residence elsewhere. Naturally they grow to become the powerful people in the slums, providing not just dwellings, shops and other commercial entities but often even political leadership in the area. Such people will naturally, more often than not, be against the project as they may lose regular income from rent with the rehabilitation of the area. Where compensation is applicable, they may not be adequately appeased with the compensation that will be offered to them since it would not take into account the development value of the land.

Under objectives, the KENSUP Document makes no mention of housing delivery. Besides operationalising concepts such as decentralisation, partnerships, participation, empowerment, the establishment of an institutional framework, relevant mapping, service improvement and measures to address HIV/AIDS, reference is made only to “shelter-related infrastructure”. This is important, given the strong and over-emphasis on pure housing delivery unfolding in the actual pilot project.

Furthermore, there is no clear indication of how the highly complex and potentially explosive problem of insecurity of tenure will be resolved. The KENSUP Document states that slums “selected for upgrading will be designated as a ‘secure tenure zone’, and an appropriate tenure system sought”.⁴⁵ A more recent KENSUP document provides some additional details – *see* below. However, given that discussions over, and recent tenders for, removal to decanting (temporary relocation) sites are underway in the pilot project, and given the deep uncertainties and insecurities expressed by the residents, there is great urgency to address the tenure question, and to inform the community about the process by which this will happen.

In December 2006, through a Government Gazette Notice the Minister of Finance also established the Kenya Slum Upgrading Fund. It provides for representation of the NGOs and CBOs. The Fund is supposed to facilitate the national slum upgrading program by providing the institutional framework for resource mobilization. It is a positive step and the hope is that it will be an effective vehicle for seeking the much needed resources for upgrading.

As the discussion of the next two projects makes clear, there is fundamentally a need to develop a proper national framework (in terms of law, policy and a programme) for ensuring slum upgrading realises and does not violate the right to housing. Such a framework should ensure communities can initiate the slum upgrading process according to certain criteria and the Government is able to effectively facilitate the process. Residents should be able to identify which aspects of slum upgrading deserve priority: e.g. security of tenure, services or quality and habitability. Rights to participation and protection from forced eviction should be respected throughout.

3.3 The Kibera project

Residents of Soweto village (which is located in the eastern part of Kibera, bordering Highrise, Silanga, Laini Saba and Lindi) have repeatedly expressed concern about the design of a major slum-upgrading pilot project that is currently underway in their community. At the most fundamental level, many Kibera residents fear displacement and loss of livelihood — a fear that needs to be urgently addressed.

Community representation and participation

Community participation in the KENSUP pilot project is facilitated through the Settlement Executive Committee (SEC). Members of this committee are drawn from the ‘target group’, in which various interest groups are represented. The local Chief and District Officer (Provincial

⁴⁵ ‘KENSUP Document’, p. 8.

Administration) are 'co-opted' members. Their primary role is to disseminate project information and bring people's ideas back to the Committee.

The tenants serving on the SEC at the time of writing this report were publicly nominated and elected. An open meeting (on 10 July 2004) preceded the election. Residents who attended the meeting were given the option of using a ballot or queuing system, and chose the latter. Although this structure is officially referred to as "fully participatory", it raises several concerns:

1. It is questionable whether the five tenants elected in a comparatively small meeting – of approximately 300 people – can represent the more than 50 000 tenants living within the pilot project area, particularly as there are no structures through which these representatives can engage with the individual tenant in the settlement.
2. There are serious doubts on the legitimacy of these elections. Only youth representatives were nominated and, allegedly, all five of them are directly linked to, and paid by, the local councillor. Structure-owners also attended the meeting, though it was meant to be for tenants only. There has been a consistent and steady stream of complaints that the local councillor, with the support of the 'tenant' representatives, has intimidated other SEC members.
3. It is questionable whether *small-scale resident* and *large-scale absentee* structure-owners have the same interests; the latter may overwhelm the former.

Ambiguities in the meaning of 'participation'

UN-Habitat officials indicated that the Kibera pilot project was intended to be demand-driven, with outcomes determined and designed by the community itself. But there is little evidence of this. There was a general feeling among community members that all the key issues relating to the Kibera Slum Upgrading Programme had already been decided and that the community was simply expected to 'rubber-stamp' the process. Conflicting Government statements on evictions and the Programme have added to the general anxiety. Particularly sensitive is the issue of the decanting (temporary relocation) site: the Government has been perceived to 'shift the goal posts' – literally, from Athi River to Kitengela to Lang'ata Women's Prison, etc. – without a clear policy on the process of engagement.

A UN-Habitat official informed COHRE that the agency would like to see high-rise blocks with units of 50 m² developed in Kibera, and that possible designs were being developed. These designs are to be tested first at the proposed decanting site. However, 50 m² is above the minimum standard for low-income housing as set out in the National Housing Policy for Kenya. This fact seems to confirm community fears that the new housing is actually intended for a higher-income group, and that the residents will not be able to return from the decanting site.

The UN-Habitat official also stated that the housing plans were to be professionally designed and approved by the Settlement Executive Committee, and that the designs would be redone if the community decided that they preferred single-roomed units. However, it is doubtful whether providing one design option – with a potential alternative – would qualify as participatory. Moreover, community leaders and residents reportedly saw the design for the first time on 4 October 2004, when it was published in a Kenyan newspaper.⁴⁶ As Kibera is a complex community, there is no guarantee that this approach will meet the diverse social and economic needs of the residents. More locally based, community-design solutions should be considered.

⁴⁶ Lucas Barasa, 'New plan to transform Kibera slums', Daily Nation, 5 Oct. 2004, p. 3.

Communication and access to information

None of the groups and individuals consulted in Kibera during the COHRE fact-finding mission had accurate information on the Government's plans, despite the apparent development of an official communications strategy using mass media.⁴⁷ There has not been a single document distributed to communities on the project in English or Swahili. The residents have called for more effective communication in relation to the slum-upgrading project. More meetings should be held, and announcements of such meetings should be more effective, made well in advance, and in all the languages spoken within the community. A memorandum of understanding between the community and the Government was requested, whereby the latter would make clearly written and signed commitments.

Just housing?

The majority of tenants and resident structure-owners in Kibera voiced their discontent with the Government's intention simply to build new houses. They fear that the poor will be 'exploited', especially if they are expected to relocate temporarily to a decanting site. Residents suggested a number of alternative approaches. Many expressed a preference for *in situ* upgrading, whereby they could continue to live in the village during the upgrading. Tenants expressed fears that they might not have the legal right to return to their original sites.⁴⁸ Another concern was poverty: "Upgrading is meant to make people live better, but nobody tells us how the poor will be addressed. What will become of their poverty?"⁴⁹ One Kibera NGO noted that the slum-upgrading programme had been "watered down to new housing development" and was "obsessed with new housing development rather than addressing the governance problem."⁵⁰

The lack of recognition

The lack of official recognition of informal settlements is a continuing problem, particularly in relation to security of tenure. Residents also expressed concern that the different poverty levels among residents were not recognised. The Nairobi Situation Analysis confirms that, on average, Kibera tenants are poorer than in other slums of Nairobi. Residents were concerned that their budgets were not being adequately taken into account in project planning. Another issue was vulnerable groups. As one community leader put it: "We're many generations; some are taking care of orphans. Some people are disabled, some can't even walk. Life should not be made more difficult for these people." It should be noted that the Settlement Executive Committee does include one representative of people with disabilities. Community leaders raised the question of whether the relocation site and the slum-upgrading design would cater for the special needs of such groups. If the community were made to move to a relocation site, some predicted that there would be more street children, as the existing system of orphan care would be disrupted.

Tenure uncertainty

Syagga, Mitullah and Gitau list the following losses that tenants may sustain during upgrading: loss of proximity to job opportunities; loss of sources of income; loss of homes; and loss of socio-economic

⁴⁷ COHRE meeting with NGO representatives at Pamoja Trust, Ole Odume Road, 11 July 2004.

⁴⁸ This view was repeatedly expressed during a COHRE meeting at Christ the King Catholic Church, on 7 July 2004, that was attended by over 100 residents, mostly from Soweto and Laini Saba.

⁴⁹ COHRE consultation with community members representing organising committees of Usafi, YMCA Centre, 11 July 2004.

⁵⁰ COHRE consultation with members of the Kibera Rent and Housing Forum, 11 July 2004.

networks.⁵¹ In relation to tenants, the fear is that in spite of forming the majority, they are poorly organised and are therefore the most likely to be forced out of the projects after upgrading.⁵² The following three sections assess the resulting tenure uncertainty.

Affordable housing? Uncertainty of financing

The financing of KENSUP has not yet been fully resolved. In relation to the Kibera-Soweto pilot project, the Kenya Slum Upgrading Programme (KENSUP) has now mapped and identified the structures and residents, almost completed a temporary relocation site of 600 units and allocated Ksh 488 million (US\$ 7 million) for the project, though a donors' conference has yet to be convened to secure pledges for the lion's share of the project costs. In particular, if the residents cannot afford the new housing, the programme will not be financially viable. UN-Habitat has indicated that it is developing a financial model that will help residents to retain their housing during and after upgrading. A revolving housing loan programme is envisaged. This is based on making the planned three-roomed house (50 m²) affordable. The cost of such a house is estimated to be US\$ 7 500. It would be possible to rent out one of the rooms, in order to enable loan repayments. Once the results of the socio-economic survey are available, the credit model will be adjusted to give a clear indication of whether the new housing will be affordable. UN-Habitat is also attempting to develop a mortgage guarantee mechanism that will enable formal financial institutions to give housing loans to low-income households.⁵³ UN-Habitat also recognises the role of the National Cooperative Union in Kenya, including their input into policy-making on housing finance.⁵⁴

In this context, COHRE and Hakijamii believe it may be instructive to look at lessons learnt in South Africa, where the government's much-lauded delivery of over a million houses to poor households was ultimately made possible only through full subsidisation, with no direct lending to the poor by formal banks.

In relation to possible displacement as a result of the externally designed housing solution, one UN-Habitat official indicated that people would be free to sell their unit.⁵⁵ This approach should be reconsidered, given the impoverishing effect of forces such as market displacement and 'downward raiding', and the need to develop housing and land-tenure systems such that housing stock for the poorer segments of society is preserved..

There are many residents who, for a variety of reasons, will not be able to pay the rents after the upgrade. They included current small-scale structure-owners, the elderly, the indigent and the thousands of temporarily employed individuals in Kibera with very erratic incomes. These categories, among others, are likely to be displaced if the slum-upgrading programme in Kibera follows the rigid path of 'rent-to-own'.

Some residents suggested that, regardless of the nature of ownership and management of the upgraded settlements, some form of rent-control should be instituted.⁵⁶ It was also proposed that

⁵¹ See Paul Syagga, Winnie Mitullah and Sarah Gitau-Karirah, 'Nairobi Situation Analysis Supplementary Study: A Rapid Economic Appraisal of Rents in Slums and Informal Settlements', prepared for the Government of Kenya and UN-Habitat, Aug. 2002., p. 30.

⁵² Sarah Gitau and Washington Olima, 'Land Tenure and Tenancy Concerns in Kibera: Final Report', WSP-ESA, The World Bank KENSUP Preparatory Group Task Force, Unpublished Report, Sept. 2000, p. i.

⁵³ COHRE consultations with UN-Habitat, 15-16 July 2004.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ COHRE consultation with community members representing organising committees of Usafi, YMCA Centre, 11 July 2004.

there might be a case for partial de-commodification of land, as the value of land is invariably reflected in the cost of accommodation, especially in the context of slum upgrading.⁵⁷

No declaration and enforcement of tenure secure zone

Programme documentation states that the area of the slum-upgrading pilot project will be established as a secure tenure zone. However, no progress seems to have been made towards ensuring that the slum-upgrading area is made a tenure secure zone before upgrading commences. KENSUP has recently stated that:

The settlements selected for upgrading will be designated as “tenure secure zone”. The appropriate tenure security systems to be introduced in any project area will be determined in consultation with residents, structure-owners and other stakeholders. As a first and definitive step, an analysis will be carried out to establish the nature of land tenure that obtains in each informal settlement. The tenure system to be adopted must, however, assure rights of occupancy to resident by first and foremost eliminating unlawful evictions and providing certainty of residence.⁵⁸

So far, no such provision has been made for the short-term; no moratorium on evictions has been declared or enforced. The Government owns the land, but the means by which tenure security is to be provided is not clear. Unless the existing households are given a clear form of recognition, which would enable them to avoid being evicted by their structure-owners, tenants will continue to be displaced as larger structure owners seek to take advantage of potential upgrading.

Indeed, Soweto residents staying on the slip road from Mbagathi were issued with a 7-day eviction notice dated 22 August. There was no provision for compensation or relocation. (See letter below.) Despite years of calling for improved participation in proposed upgrading efforts in Kibera, the affected residents were not involved in the planning of this road. The action is unlawful under Kenyan law. It violates human rights as protected in the constitution and in treaties ratified by Kenya. In March 2005, the Government promised the UN it would abide by these human rights standards. The plan also contravenes the letter and spirit of the current upgrading efforts in Kibera settlement. The eviction may jeopardise the entire upgrading programme in Kibera. After protests on 29 August, the notice was extended but it should be withdrawn to properly allow negotiations. The residents also presented a petition to the Permanent Secretary outlining their grievances and demands.

Temporary relocation and the right to return

It was originally planned that, during the KENSUP upgrading process, residents would be moved from Soweto East to either Athi River or Kitengela, both approximately 50 km from Kibera. The plans were shelved after vehement opposition from residents. At a project meeting in July 2004 the Government informed Soweto residents that it was in the process of constructing a decanting (temporary relocation) site, most likely near Lang'ata Women's Prison, southeast of Kibera, with three-roomed units that would be rented out at Ksh 2000. The site has been built and relocation of some residents is meant to proceed shortly. But there is confusion over possible future increase in costs of rent.

Many residents indicate that they did not want to move, mentioning housing projects in other parts of Nairobi that had commenced but never been completed. They feared there was little probability of ever coming back to Kibera once they had been moved to a decanting site. A very real fear exists on

⁵⁷ COHRE interview with Dr Winnie Mitullah, Fifth Floor, Gandhi Wing, University of Nairobi, 15 July 2004.

⁵⁸ Government of Kenya, 'Kibera-Soweto Slum Upgrading Project', Dec. 2004, Subsect. 5.3.

the ground that people will lose their current shelter, if they are not involved in planning, and determining the priorities and sequencing of, the upgrading. As a first step, it was suggested that everyone be given a registration number, to ensure that others do not benefit.

With continuing anxiety about the planned relocation and resettlement – particularly among those people living in power-line wayleaves and in link road and railway reserves – community leaders in Kibera emphasised the need for the Government to discuss resettlement, not just relocation, with those that would be displaced from the settlement. There is also uncertainty about what will happen to those residents who will not be able to return due to the decongestion objective of the project.

Long-term tenure model for project

No final decision appears to have been made on the tenure model to be adopted for the pilot project, although official statements indicate that it will be a hybrid form: rent to own, with the ability to sell occupation/ownership rights. It is also not clear whether the tenure system will be uniform or take account of previous circumstances. Many residents, including the Nubians (Section 5 above), quite justifiably feel that having stayed in an area for a long period of time should secure their rights to that area. Some NGOs pointed out that certain stereotyped beliefs are held on the land tenure system in Kibera — such as the idea of exploitative structure-owners and exploited tenants. This seemed to form the basis of some official statements that the slum-upgrading programme does not entail compensation of structure-owners. It has also been officially stated that land titles will be granted to the Nubians, and that a socio-economic survey will determine the rent-levels in a tenant purchase scheme that will lead to 30-year leases. We strongly recommend that the process of establishing secure tenure be built on a clear and detailed understanding of the existing tenure system, its variations, its strengths and its weaknesses in protecting the right to residence in Kibera.

Compensation for structure-owners

According to Syagga, Mitullah and Gitau,⁵⁹ structure-owners in Kibera would lose the following in the process of upgrading: investment in acquiring the right to build; protection fees paid to Chiefs; costs of structures; rents; income-generating opportunities and occupational premises. Some owners also point out that they have helped the Government fulfil its mandate to provide housing, and that the poor state of the structures is partly due to Government control of investment on its land in the informal settlements. In the context of slum upgrading in Kibera, Olima and Gitau, recommended that structure-owners be fully compensated for their structures.⁶⁰ If this is agreed, then the remaining question is what would be considered equitable in the case of speculators who have many structures.

However, Government officials have alluded to academic research which indicates that structure-owners have benefited through non-payment of taxes and have control of land at relatively low rates. Indeed, if compensation were to be paid for all structures in slum-upgrading projects, the process could be indefinitely stalled because of the prohibitive cost. Compensation should possibly only be paid in special cases where structure-owners depend on rental incomes for their livelihoods. Such cases, the NGOs urged, should be covered by some form of compensation regime. Obviously, there are clearly some difficult choices to be made. The Government has already made pledges regarding compensation, and there is concern that failure to honour these may lead to violence. From

⁵⁹ See Paul Syagga, Winnie Mitullah and Sarah Gitau-Karirah, 'Nairobi Situation Analysis Supplementary Study: A Rapid Economic Appraisal of Rents in Slums and Informal Settlements', prepared for the Government of Kenya and UN-Habitat, Aug. 2002, p. 17, p. 29.

⁶⁰ Sarah Gitau and Washington Olima, 'Land Tenure and Tenancy Concerns in Kibera: Final Report', WSP-ESA, The World bank KENSUP Preparatory Group Task Force, Unpublished Report, Sept. 2000, p. ii.

a human rights perspective, however, what is most important is that the livelihood needs of the small-scale and the particularly vulnerable structure-owners should be taken into account.

Potential for violence?

The potential for violence during the slum-upgrading process is patently obvious. Kibera community leaders continue to reiterate their concerns about possible loss of life during the slum-upgrading process. The rent riots of 2001 led to a large number of deaths, and the tensions between Nubian landlords and Luo tenants remain largely unresolved. Moreover, the recent protests over evictions in Laini Saba – which left one resident dead – indicate how fragile the system is. In addition, those groups hostile to the slum upgrading and/or the potential empowerment of other groups have closed down a number of community meetings. For the Soweto community to engage effectively with KENSUP, some form of physical protection for residents will most likely be needed.

Prior slum upgrading: reference points for community fears and hopes

For Kibera's residents, previous slum-upgrading projects and housing developments in various parts of Nairobi, particularly those that have failed, form a troubling point of reference. Past development initiatives in Nairobi – for example, Jamhuri Estate in the 1960s, and Nyaho Estate, Fort Jesus, Olympic Estate and Nyaho Highrise in the 1970s and 1980s – set a precedent of distrust, because 'down-raiding' happened and informal settlement residents were displaced.⁶¹ Residents constantly referred to the case of the Highrise development – adjacent to Soweto – in the 1990s. In this upgrading, residents were temporarily moved from the site during construction of high-rise apartments. Although these residents were given legal rights to return, many could not afford the new rents and resettled in Soweto and Laini Saba. As one resident who had lived in the area for 35 years stated: "We are afraid that the slum upgrading will lead to demolitions We don't want it to be like Highrise. I even have receipts for Highrise but rich people came and took the houses".

Conclusion: Response by Government

In early 2006, residents took action writing to UN-Habitat and the Ministry and have now gained an audience with Ms Tibaijuka, Executive Director of UN-Habitat, and have had regular meetings with the Permanent Secretary of the Ministry of Housing. The issue was also extensively raised in the multi-stakeholder National Roundtable on Slum Upgrading held on 13 November 2006. The Permanent Secretary of the Ministry of Housing promised to consider fresh elections for the Settlement Executive Committee – which is widely considered as non-representative - and improve communication flows. Information was also provided by UN-Habitat about a plan to provide basic services to one part of Soweto village as pilot project, though complaints have already emerged about the process of participation for these projects.

3.4 The Korogocho project

The Korogocho settlement displays similar characteristics to Kibera, though it is on a much smaller scale and has a more planned layout. The total number of households has been enumerated at 18 537; the largest of the settlement's seven villages consists of 3 481 households.⁶² Most of the land in Korogocho is Government-owned, and was often illegally allocated to structure-owners by the Chief (Provincial Administration). The City Council provides metered water to private kiosks in the settlement, which sell the water to residents at a profit. In 2002, 60 percent of the residents did not have access to a toilet. The pit latrines are shared by an average of 50 people per latrine. Municipal

⁶¹ COHRE interview with Kibera Grassroots Initiative, 8 July 2004, at the office of the District Officer, Kibera.

⁶² Pamoja Trust, 'Korogocho Informal Settlements Enumeration Report' (Pamoja Trust, Nairobi, July 2001).

garbage collection is inadequate, and NGOs have attempted to resolve this shortfall. They have also attempted to improve drainage channels.⁶³

Livelihoods are largely earned in the informal market, contravening official laws of health, environment, safety and labour. Those involved are therefore subject to police harassment, even though this economic activity is “essential in the functioning of the legal city”.⁶⁴

Land rights in Korogocho are contested. Resident and absentee structure-owners are represented (after paying a membership fee) by the Korogocho Owners Welfare Association (KOWA). KOWA claims that the land was allocated to structure-owners, and that they therefore have sole rights in the land regularisation process. A second, more inclusive organisation is the Korogocho Village Committee, which was formed at the request of the Government⁶⁵ and consists of two representatives of each village — one elected by the structure-owners, the other by the tenants.⁶⁶

Surprisingly, given KOWA’s apparent influence, an enumeration process that was initiated by Pamoja Trust in 2001 encountered many obstacles, including false claims and accusations, and threats of violence.⁶⁷ However, it was possible to move forward as community confidence was built through savings groups initiated by Pamoja Trust. Structure-owners were included in the savings groups, but it was decided not to compensate structure-owners, for the reason that they had benefited in the past.

Community representatives from Korogocho have indicated that there is a continuing process of disempowerment. Similarly to Kibera, parts of the Korogocho slum are on road and rail reserves and under power lines. The Chiefs had given permission for this land to be used for residential purposes. Subsequently, however, these residents began to be evicted. The community tried to count how many people were affected and tried to discuss the evictions with the Councillor. In the meantime, some residents had already been forcibly removed — and some had lost their lives in the process. The evictions were suspended, but not properly stopped. One resident told COHRE: “Right now, people are coming at midnight to evict.” In the eviction process, people were told “go back to where you came from”. However, they have lived in Korogocho for many years, and it was impossible for them to return to their original rural areas.⁶⁸

Korogocho tenants fear that the envisaged upgrading of Korogocho will lead to more evictions and demolitions. Actually, the upgrading should be an alternative to demolition.⁶⁹

The land tenure issue is arousing many fears in Korogocho. Community representatives speculate that if KOWA members are granted their claim for freehold titles (which is indeed a minority request with an unsound legal basis), the land will enter the open market and multi-storey construction will soon displace the current tenants. Community representatives are calling for measures that will ensure that the structure-owners do not construct units that tenants cannot afford. Most residents are in favour of one collective title for all, so that the middle class will not be served. This claim by the

⁶³ Kenya Human Rights Commission, ‘Case Study: Korogocho Slums. National Civil Society Conference on Land Reform and the Land Question’, presented at ‘Land Reform for Sustainable Development’, KCCT Mbagathi, 21-23 May 2002, Nairobi.

⁶⁴ Ibid.

⁶⁵ COHRE group discussion with community representatives from Korogocho, facilitated by CONCERN, 12 July 2004.

⁶⁶ Pamoja Trust, ‘Korogocho Informal Settlements Enumeration Report’ (Pamoja Trust, Nairobi, July 2001).

⁶⁷ Ibid.

⁶⁸ COHRE group discussion with community representatives from Korogocho, Kitimaro, Soweto Kahwa, Mitumba, Huruma and Deep Sea Westlands at Pamoja Trust, 12 July 2004.

⁶⁹ Ibid.

residents, in opposition to KOWA, is supported by an announcement by President Moi in 2001 that the residents would be granted tenure security.⁷⁰

As in Kibera, the land tenure problem in Korogocho is compounded by patronage and vested interests. Chiefs and structure-owners join forces to remove roofs of structures if the tenants are unable to pay their rent. Furthermore, it is believed that many wealthy people in the Government own structures in Korogocho. Their perception is that unity within the settlement reduces the power of the Chiefs. However, this unity is now threatened by the land claims made by KOWA.⁷¹

Tenants in Korogocho are calling for the Government to fix the rent so as to prevent exploitation, and for decent rules to govern rent collection so as to prevent harassment. They are also calling for a forum through which they can provide input into the slum-upgrading programme and, beyond that, into slum-upgrading policy. Networking between different settlements through grassroots savings schemes places the community representatives in a good position to address slum issues more broadly than just those faced by themselves. The need for land reform and the new constitution were also indicated as priorities. The community representatives considered all these processes important in preventing the reproduction of slums. For them, a major concern was that “slum dwellers and government are not speaking the same language”. It was felt that slum upgrading needed to go beyond providing new houses, to address economic activity, education and infrastructure.⁷²

4. RIGHT TO WATER AND SANITATION

In 2002 the water sector reforms in Kenya culminated with the passing of the Water Act, the Act which was gazetted in October 2002 gained legislative force in 2003. The Water Act introduced new water management institutions to govern water and sanitation. While water resources remained vested in the state, the water reforms saw the introduction of the commercialisation of water resources as part of the decentralization process and the participation of stakeholders in the management of national water resources. Though the right to water and sanitation is not explicitly provided in the Water Act, through the water sector reforms, the right to water and sanitation was formally recognised in a number of key policies.

Undeniably the water sector reforms have led to significant progress within the water sector. However despite legislative and policy gains due to the reforms, the poor especially within the informal settlement remain largely underserved with minimal changes in water and sanitation coverage. This has been primarily due to insufficient focus on the poor and the historical and contemporary failure to involve residents of informal settlements in the development of the water sector reforms process, subsequent access to information about the reforms and opportunities available to residents of informal settlements in its implementation.

4.1 Water sector institutions, laws and policy in the national framework

The Constitution of Kenya does include explicit provisions with regard to the Right to Water. The right to life⁷³ impliedly encompasses clean and sufficient water as a right. There is no section that specifically talks about water as a right. The Proposed Constitution of Kenya, 2005 provides for the right to water in section 65. It further states that water “...should be in adequate quantities and of

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Chapter V of the Constitution of Kenya

reasonable quality". The draft was not passed during the November 2005 national referendum thus rendering it un-operational.

The Environmental Management and Co-ordination Act (1991), deals with matters concerning the management of the environment, complementing the mandate of the Water Resources Management Authority. The Act entitles every person to a clean and healthy environment with corresponding obligations to protect and manage the environment;⁷⁴ the act establishes the National Environment Council (NEC), National Environment Management Authority (NEMA), provincial and district environment committees, and the Public Complaints Committee. These organs create avenues for public participation. Residents of the informal settlement are routinely targeted as polluters responsible for the mismanagement of their environment. These blanket accusations, despite the residents lack of alternatives or acceptable technical options have limited the residents willingness or ability to actively engage the structures.

Under the Public Health Act (Cap 242), the Local Government Act (Cap 265) and its by-laws, local governments are charged with the responsibility of ensuring proper storage, collection, transportation, safe treatment and, disposal of waste⁷⁵. This is with the ultimate goal of protecting public health, safeguarding the environment and maintaining public cleanliness – all in order to keep public places healthy and aesthetically attractive.

It is clear that although Kenyan law provides for entitlements to water and sanitation, it does not provide for the implementation of rights guaranteed under international law. However, the Government is nevertheless bound by international law to guarantee to its citizens the human rights contained in international instruments that it has ratified with regard to water and sanitation.

The Water Resources Management Authority established under section 7 of the Water Act, is bestowed with the responsibility of offering effective management of water resources. Notwithstanding the WRMA's function of developing principles, guidelines and procedures for the allocation of water resources, Kenya faces a problem with water allocation with informal settlements getting far less water than other settlements since the water utilities divert water to high income areas.

The Water Resource Trust Fund established under section 83 of the Water Act, has the role of harnessing financial resources for the water sector in order to develop water and sanitation in areas without adequate water services, there is still a huge problem in informal settlement areas where costs of affording water remain high for the residents.

The Water Appeals Board established under section 84 of the Water Act. Section 85 (2) provides for the power of the Board to adjudicate disputes within the water sector. There are a lot of people who are not aware of such a body hence continue having their rights violated.

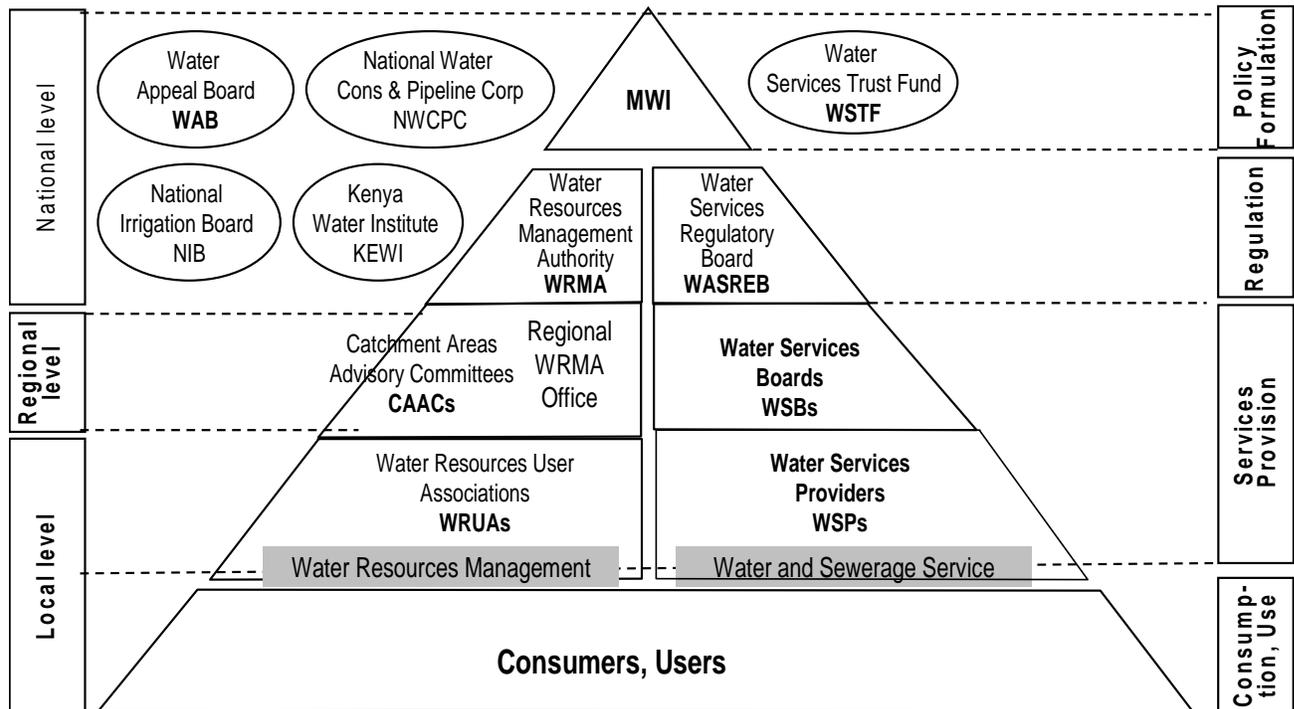
The Water Services Regulatory Board is established under section 46 of the Water Act. The Board is charged with the responsibility of improving management and development of water resources with community participation. A number of CBOs provide water, sanitation and solid waste management services. But these contributions are in most cases, neither appreciated nor encouraged by central and local governments.

⁷⁴ S. 37

⁷⁵ Section 160(a) of the Local Government Act gives city councils the power to 'establish and maintain sanitary services for the removal and destruction of, or otherwise dealing with, all kinds of refuse and effluent and, where any such services is established, to compel the use of such service by persons to whom the service is available'.

The Water and Sanitation Trust Fund (WSTF) was also established under the Water Act to provide resources to initiatives targeted at the poor. The WSTF has thus far focused on rural areas and is only beginning to address urban areas with pilot sites that are in peri-urban areas of Nairobi, rather than the inner-city informal settlements such as Kibera.

A schematic representation of the institutional framework for the water sector under the Water Act 2002.⁷⁶



The separation of policy, regulatory and service provision and the devolution of responsibilities for water resources management and water services provision to local level functions have principally increased mechanism to improve accountability and transparency in the water and sanitation sector. While lauded for enhancing stakeholder participation and expanding water and sanitation services provision and water resources management, residents of informal settlements are unable to secure the gains. Without the development of coherent and sustainable implementation strategies to ensure community participation and information exchange, residents of the informal settlement are denied opportunities to claim service provision.

4.2 Non-discrimination and attention to vulnerable and marginalised groups

Areas of ‘low-potential’ have historically been neglected in Kenya as a policy choice originally reflected in a government Sessional Paper of 1969. As a result, people areas such as informal settlements have historically been neglected in the allocation of public resources and capacity.

Kenya does not have an anti-discrimination law in place, the current Constitution’s bill of rights however includes provisions of non discrimination⁷⁷ through which implicit recognition and protection of the right against discrimination can be drawn. The access to water and sanitation is

⁷⁶ National Water Services Strategy.

⁷⁷ Constitution of Kenya Article 70

intended to benefit and improve the lives of entire communities, nonetheless women and children stand to gain exponentially. A holistic approach to improving access to water and sanitation must therefore take into account the social and economic condition of women and other vulnerable groups in informal settlements and identify a specific strategy to address their needs.

Sessional Paper No. 1 (2004) calls for collaborative processes in promoting gender awareness and equity in all development efforts. Amongst others, the gender policy provides for capacity development to strengthen women's and men's participation in programme planning and development.⁷⁸ This is however not the case, women in the informal settlement have faced marginalisation. The current water institutions are gender neutral in their design. It is therefore necessary to formally require the representation of women in such institutions.⁷⁹ Notably however the National Water Resources Management Strategy⁸⁰ and the Draft National Water Services Strategy⁸¹ specifically raise the issue of representation of women in decision-making as an important cross-sectoral topic to be mainstreamed in water sector policies.

The urban informal settlements have consistently been neglected by the government. There is deficiency in terms of resources and capacity and secondly, there is no commitment to provision of water and sanitation irrespective of whether residents are legally settled.⁸² Attention to the vulnerable and the poorest can only be achieved through proper identification of levels of access by the vulnerable. This can only be achieved through collection and dissemination of accurate information and the participation of the community.

4.3 Participation and access to information

The Water Act and the Water Resources Management Strategy recognise the participation of stakeholders in decision-making. However, they do not specifically require the participation of the poor in decision-making. Stakeholder participation in the water sector has rarely involved the representatives of poor communities who are underserved in regard to water and sanitation, or who are currently not provided services by the government.

Information concerning water and sanitation is lacking, the public have no access to essential water quality and environmental health data. The multi-stakeholder dialogues in the development of water and sanitation legislation, policies and programmes, include token representatives from informal settlements, thus not knowing and appreciating the needs of the residents of the informal settlements critical issues most likely go unnoticed.

The dynamic surrounding information exchange places the burden on residents of the informal settlement to access information on water and sanitation. Critical documents when available are priced beyond the reach of the poor. The development of popular version of policies and laws remain the purview of civic society organizations, and not the water sector. The communities give information but they do not get the opportunity to influence later decisions because the information gathered is not shared and the decisions are made by others.

⁷⁸ Ministry of Gender, Sports and Culture, *Sessional Paper No. 1 on Gender Policy* (Government of Kenya, 2004).

⁷⁹ P. Kameri-Mbote, *Gender Issues in the Management of Water: An Analysis of Kenya's Legal and Institutional Framework*, *University of Nairobi and International Environmental Law Research Centre (Draft, 2007)*, p.21.

⁸⁰ *National Water Resource and Management Strategy*, ch.5.3.

⁸¹ *National Water Service Strategy*, 6.4.

⁸² *General Comment No. 15 states in this regard*, "No household should be denied the right to water on the grounds of their housing or land status," para. 16.

4.4 Transparency and accountability

Under the Water Act the Water Services Regulatory Boards have the overall responsibility of issuing licenses to the Water Services Boards. The Boards assume the responsibility for the provision and regulation of water services within their areas of jurisdiction through service provision agreements with Water Services Providers. There is however no requirement that the service provision agreements are made public undermining accountability and transparency. More significantly, the participation of communities especially within the informal settlement is curtailed, leaving room for speculation into the content of the service provision agreements. Residents of informal settlements are also not able to monitor service provision, make informed demands or seek redress.

While complaints mechanisms have been institutionalised within water companies and water service boards, they remain privy to those connected to networks. The Water Act does not provide a justiciable right to water and sanitation to individuals and groups. Coupled with the contemporary insignificant opportunities for monitoring and accountability, residents of the informal settlements are denied legal avenues to seek redress in the courts.

In the absence of regulations governing informal service providers within informal settlements, residents have little leverage to demand service, accountability or monitor service provision. This in part leads to a further disempowerment of the poor and the inability to demand their basic rights.

4.5 Water availability and allocation

The Citizens report card on Urban Water, Sanitation and Solid Waste Services in Kenya done by the Water and Sanitation Programme (World Bank and UNDP) indicates that 58% of Kisumu residents access water from the Kisumu Water and Sewerage Company either directly through the mains or through the mains or from kiosks.

There are distinct differences between the access enjoyed by the poor and non poor, with almost the entire non-poor population using mains connections in or around the home and the non poor relying on kiosks. The Report Card indicates that there is inequity in terms of service provision between the poor and non poor.

The reality at the municipal water availability is often challenging. Demand for all water uses (essential and non-essential) exceeds supply in most Kenyan urban areas, leading to frequent water shortages. Water Services Providers tend to address this challenge by cutting off supply to specific areas (where this is technically feasible) and/or for specific portions of the day. The poor especially those in informal settlements who do not have adequate storage facilities bear the brunt of water rationing.

4.6 Water quality and hygiene

Water quality standards and monitoring in Kenya adheres to the WHO guidelines as provided in the Kenyan water quality standards developed by the Kenya Bureau of Standards. The Ministry of Water and Irrigation has designated a division responsible for water quality and pollution. The WRMA has the responsibility of monitoring raw water quality specifically in shallow wells, rivers and dams. In line with the National Health Sector Strategic Plan (2006) the Ministry of Health is similarly charged with monitoring water quality and is responsible for water quality surveillance in a number of districts.

Closer to the consumer level, the Water Services Boards in collaboration with the Water Services Providers are responsible for water quality at water points and piped systems. Both institutions are accountable to the Water Services Regulatory Board. This responsibility extends to the selection and extraction of new water sources and water points. While Water Service Providers are responsible for ensuring that water supplied to the informal settlements meets approved water quality standards, there is inadequate monitoring of both formal and informal water supply. Where water quality is successfully tested, the Pro-Poor Implementation Plan for Water Supply and Sanitation (PPIP - WSS) 2007 creates an obligation on the part of the Water Services Providers to provide information to its consumers on water quality.

For residents of the informal settlement, this lack of information has life threatening implications as the decision to utilize water purification methods is not based on any authoritative analysis. Nonetheless residents of the informal settlement continue to pay for water of dubious quality.

The Nairobi Water and Sewerage Company, which provides water to kiosks and some households requires owners and households to install their own piping and officially requires the use of metal pipes. However, most operators use often termed illegal low quality plastic water pipe connections (spaghetti networks). The uncoordinated networks follow the winding and irregular paths of Kibera mostly along existing channels including open sewers full of solid and liquid waste and contaminated water. These pipes often burst, with the result that the residents are provided with contaminated water. The Nairobi Water Company has not taken any action to install secure piping or to effectively regulate the kiosk owners.

For Water Service Providers such as the Nairobi Water and Sewerage Company, compromised water quality standards Kibera is wholly blamed on the spaghetti networks, a characteristic in a number of informal settlements. Accordingly the Nairobi Water and Sewerage Company is reluctant to assume responsibility for water quality.

In the Kenyan national framework, the Ministry of Health has the overall mandate for hygiene education and basic sanitation where facilities do not rely on sewerage systems, such as pit latrines which are predominant within the informal settlement.

However, key official documents of the Ministry of Health such as the National Health Sector Strategic Plan of Kenya (2006) gives little attention to basic sanitation and hygiene education. Though the Ministry of Health Strategic Plan recognizes the need for national hygiene campaigns, specific action remains to be taken. The lack of ministerial coordination between the Ministry of Health and the Ministry of Water and Irrigation is most glaring within the informal settlement where attention to hygiene education and basic sanitation is most needed by the vulnerable and the poor.

4.7 Physical accessibility of water and sanitation

Estimates of water coverage provided by the Ministry of Water and Irrigation stand at 47% nationally; 60% in the urban areas and 40% in the rural area. With respect to sanitation the Ministry estimates a national cover of 50%. While indicative of the magnitude of the lack of water and basic sanitation coverage nationally, these statistic due to information insufficiencies fail to take into account the actual realities in informal settlements.

The UNDP Human Development Report 2006 states that more than 1 million people living in informal settlements in Nairobi depend on private vendors as a secondary water source which in itself is expensive than in formal settlements.

58% of the total households in Nairobi, mostly residing in informal settlements, obtain water from water kiosks, water delivery services and illegal water connections. The settlement of Kibera illustrates the situation in regard to water and sanitation, and the government's neglect of these areas.
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The National Water Services Strategy affirms that all Kenyan's are entitled to sustainable access to safe water and basic sanitation. As provided in the National Water Services Strategy, Water Services Regulatory Boards and Water Services Boards are expected to ensure that contracted Water Service Providers make provision for the extension of services to the poor. Currently there is indication that the Water Services Regulatory Boards will require the explicit provision within Service Provision Agreements concluded between the Water Services Boards and the Water Services Providers setting out the planned extension into poor areas such as the informal settlement.⁸⁴

WSBs and WSPs must extend their services progressively to areas that are still served by informal providers either by linking up with informal providers and ensure fulfillment of minimum requirements, or by extending their own systems in order to guarantee the same advantages to the poor that the presently connected consumers have.⁸⁵

Following the water sector reforms the Water and Sanitation Trust Fund was established to primarily focus on ensuring the improvement of water accessibility by the poor and disadvantaged through the provision of financial support for investment into water services.⁸⁶ Operationalised in 2004, the Water and Sanitation Trust Fund investments have been focused in the rural area and many urban and peri urban informal settlements are yet to benefit.

Despite the inequalities in the access to water and sanitation by the poor generally, the Water and Sanitation Trust Fund has been allocated a small fraction of total budget. This has the overall effect of perpetuating further inequity in water and sanitation access and diminishing the intended pro-poor investments by failing to prioritize the needs of the poor specifically in the informal settlements.

As previously noted, the sustainable access to water and basic sanitation can only be achieved through meaningful consultation and the participation of its intended beneficiaries. Residents of the informal settlements however remain in the dark about intended developments to improve access through initiative of the Water Services Trust Fund and Water Services Providers. On the other hand Water Services Providers, such as the Nairobi Water and Sewerage Company inevitably admit to an institutional lack of capacity to engage residents of the informal settlement citing the lack of sufficient credible community groups in Kibera with which it can partner.

Ultimately to ensure sustainability, Water Services Trust Funds and Water Services Providers should include residents of the informal settlement in the determination of procedures and guidelines to ensure access. For instance, where water kiosks have been established by the Nairobi Water and Sewerage Company, residents of the informal settlement are rarely consulted before connection.

⁸³ The information in this section is based on focus group dialogues conducted by Umande Trust between 23 December 2005 and 2 January 2006 with residents of Kibera, the report of which was vetted and verified by 55 representatives from across Kibera in a review session on 26 July 2006. Information drawn from other sources is specifically cited.

⁸⁴ Munguti Katui Katua et al, *Kenya-German Development Cooperation in the Water Sector, Assessment from a Human Rights Perspective* (GTZ, 2007) p. 27. This report is available at the web-site of the German Institute for Human Rights, <http://www.institut-fuer-menschenrechte.de>

⁸⁵ *The Water Services Regulatory Board Tariff Guidelines and Model* p.5

⁸⁶ *Strategic Framework of the Water and Sanitation Trust Fund, 2005 to 2008, para. 3.1.*

As a result the locations of new water point connections fail to take into account the degree of lack of service and feasibility as well as security needs for residents of informal settlements especially women who are particularly vulnerable to attack when accessing facilities at night.⁸⁷ Similarly the failure to take into account local conditions and the prevailing interest groups within the informal settlement has led to water points falling into the hands of “water mafia’s” notorious for extorting residents through uncontrolled price hikes and artificial water shortages with impunity.⁸⁸

In Kibera, according to surveys conducted by the World Bank-UNDP Water and Sanitation Programme (WSP), up to 85% of the households draw water from private and community owned kiosks. This sector includes structure owners and service providers (rental housing, businesses and water kiosks). The average distance to the nearest water kiosk is about 40 metres and consumption ranges from 16 – 20 litres per capita per day.

The NWSS aims reduce water collection time to an average of 30 min. Residents of the informal settlements, unlike their counterparts in the rural setting may not have to contend with long distances to access a water point, but are faced with long queues. In Kisumu, the 2007 Citizen’s Report Card on Urban Water, Sanitation and Solid Waste Services in Kenya⁸⁹ it was reported that the average collection time took between 1.5 to 2.5 hours a day to access water for personal and domestic use. Access was hampered by long queues, queue jumping and heckling. For women who 67% of households reported as being primarily responsible for water collection outside their homes, this posed an additional burden.

The National Environmental Sanitation and Hygiene Policy sets 2015 as a target for access by all households, educational institutions, markets and other public places to “hygienic, affordable, functional, and sustainable toilet and hand washing facilities”. The policy however fails to determine what is meant by access.⁹⁰

The apparent lack of policy attention to access to sanitation is evident at the informal settlement. In Kibera, about 70 percent of households have neither a formal or informal connection to a sewer and rely on pit latrine that is not always emptied when necessary. About 68 percent of households rely on shared latrines with an average of 71 people per toilet. This problem is not necessarily always a question of affordability as a primary obstacle to construction of facilities is the lack of lack to construct new toilets or empty pit latrines that get full.

The Nairobi City Council (NCC) operates latrine exhaustor services. However, the exhaustor trucks are unable to move through congested areas. Because of the high expenses involved and delays in accessing the service, small-scale sanitation providers manually exhaust over 80% of the pit latrines for a cost of between Ksh 300 and 500. This they do by directing the waste into a sewer or into drainage channels particularly during the rainy seasons.

Government agencies do not appear to have a plan to improve the sanitation situation in Kibera and other informal settlements of Nairobi. There are not indications of any hygiene awareness campaigns,

⁸⁷ Patricia Kameri Mbote, *Gender Issues in the Management of Water: An Analysis of Kenya’s Legal and Institutional Framework* (2007) Paper prepared for the workshop entitled ‘Legal Aspects of Water Sector Reforms’ to be organised in Geneva from 20 to 21 April 2007 by the International Environmental Law Research Centre (IELRC)

⁸⁸ *Munguti Katui Katua et al, Kenya-German Development Cooperation in the Water Sector, Assessment from a Human Rights Perspective* (2007) p. 28

⁸⁹ *Executive Summary*

⁹⁰ *Munguti Katui Katua et al, Kenya-German Development Cooperation in the Water Sector, Assessment from a Human Rights Perspective* (2007) p. 26

plans to construct public toilets, efforts to set aside public land for these, or any programmes to assist households to construct their own toilets.

4.8 Affordability of water and sanitation

The main objective of the Water Services Regulatory Board Tariff Guidelines and Model, April 2007, “is to establish tariffs that balance commercial, social and ecological interests by ensuring access to all while allowing Water Service Boards and Water Service Providers to recover justified costs”.⁹¹ The Tariff guidelines further specify that Water Service Boards and Providers should apply tariffs at Water Kiosks for a minimum consumption of 20 liters which should be affordable.⁹²

The Water Services Regulatory Board Tariff Guidelines and Model, April 2007 further provides for “a “pro-poor” policy that allows for the provision of a lifeline tariff for poor households. This can be done by a “social block tariff”, charging a lower percentage of the average tariff (e.g. 50-70%) for the consumption of up to 6m³”.⁹³ In line with government policy, all customers are expected to be metered. In sufficient metering, inadequate billing and collection compromises subsidization, with huge amounts of outstanding payments for water bills particularly by government institutions.⁹⁴ Where metering has not been achieved, Water Service Boards and Water Services Providers are required in the medium term to fix a monthly charge for its customers.⁹⁵ The Tariff guidelines further provide for rising block tariffs for metered residential customers to increase cross subsidization, reduce water wastage and unaccounted for water.

Under section 5.9 of the Tariff guidelines, specific provision for water tariffs at water kiosks and standpipes are provided. The rationale for the provision of water to the poor through the water kiosk system is the cost of household connections⁹⁶ which is viewed beyond the reach of the poor especially in the informal settlement. These costs include connection fees due on installation, maintenance costs for the meter and the cost for monthly billing for consumption as a standing charge. Based on the poor credit performance of consumers in low income areas, the Tariff guidelines conclude that poor households cannot afford to pay a monthly bill regularly. Unaccounted for water which the National Water Services Strategy estimates at 60% leads to both economical and technical losses.

On this basis the Tariff guidelines recommend the water kiosk system for low income areas such as the informal settlement. The guidelines specifically provide that the water price per cubic metre should not be higher than the social block of the tariff. The Water Services Provider is required to control the tariffs at the kiosk to ensure the poor can afford to pay the price and that they benefit from the social lifeline tariff. To ensure that kiosk operators have sufficient incentive to provide the service, the guidelines propose a minimum number of between 300 – 500 consumers per tap.

The situation in Kibera, demonstrates the three main challenges to ensuring affordability as provided under the Tariff guidelines. One, that the poor will automatically benefit from the social block tariff, two that Water Services Providers have the capacity or the will to monitor service provision at the informal settlement and three, the inability of the poor to pay for services. The majority of the residents pay Ksh 2-3 per 20 litre container (i.e. Ksh 100-150 per cubic metre). The prices increase to between Ksh 10-20 in times of shortages, which occur on average four times per month. In the

⁹¹ p.4

⁹² p. 5

⁹³ *Id s. 5.5*

⁹⁴ *Pro-Poor Implementation Plan for Water Supply and Sanitation (PPIP - WSS) 2007 p. 12*

⁹⁵ *The Water Services Regulatory Board Tariff Guidelines and Model p.5*

⁹⁶ *The guidelines recommend payment in installments for single household connections s. 5.12*

absence of any alternative water supply or the ability to purchase water from alternative sources, residents are forced to utilize existing water kiosks.⁹⁷ The Water Services Provider, Nairobi Water and Sewerage Company has established a flat rate of Ksh 10 per cubic metre for bulk supply to water kiosks serving informal settlements.

Even with this low rate, kiosk operators charge as much as 10 times the price charged by the Water Services Provider instead of Ksh 15- 20 per cubic meter if the supply were improved. The high cost charged by kiosks is justified by the corresponding high costs of operation which include construction of a kiosk (Ksh 75,000 approximately), second, bribes to utility officials to 'speed up' connections (which can come to up to a quarter of the cost) and the fact that kiosk operator often choose the option of registering for domestic household connections where they are charged higher rates due to many requirements for registering as bulk consumers.

The development of the water tariff guidelines has serious implications for the poor especially in the informal settlement where formal water and sanitation provision is viewed as too high in cost and too low in return. This suggests at a very minimum that residents of the informal settlements ought to accept inferior service provision until such time as resources allow. Meanwhile opportunities to progressively deal with service provision in the informal settlement such as the development of the Water Services Regulatory Board Tariff Guidelines and Model are lost by neglecting to include residents of the informal settlements as principal participants and stakeholders. Cost options are closed without regard to the residents own determination of their ability to pay, an analysis of indirect cost such water purification and storage and available payment options.

While the Tariff guidelines respond to the need to subsidise water and sanitation cost for low-income users, the guidelines are passive on full disconnection of access when water and sanitation bills are unpaid. The lack of policy guidelines regulating disconnections means that the water sector reforms have yet to integrate genuine inability to pay into disconnections. This omission has significant repercussions for the poor.

5. WOMEN'S HOUSING RIGHTS

Customary laws and practices, traditionally held beliefs of patriarchy, and inadequate and discriminatory laws combine to create a highly unequal system of land and housing distribution. The UNDP Human Development Report of 2001 cites women's insecure property rights as a major cause of Kenya's economic troubles, contributing to low agricultural production, food shortages, underemployment and little income for most rural residents.

Informal settlements in Nairobi are therefore often home to thousands of women who were driven by in-laws out of their rural and urban homes and land upon the death of their husband. In two separate missions to Kenya, as well as through research on women's inheritance rights in sub-Saharan Africa,⁹⁸ COHRE found that family pressure, social stigma, physical threats and often extreme violence directed at the widow force her to seek shelter elsewhere, often with children. In addition, a Human Rights Watch (HRW) report on Kenya states:

Adhiambo Nyakumabor, whose husband died of AIDS in 1998, and left her HIV positive with

⁹⁷ *Sumila Guliyani et al, Water for the Urban Poor: Water Markets, Household Demand and Service Preferences in Kenya, (2005) Water Supply and Sanitation Sector Board Discussion, Paper Series No 5, p. 34*

⁹⁸ The Women and Housing Rights Programme (WHRP) of COHRE travelled to Nairobi in February 2003 and January 2005 to conduct interviews with women in Mathare slum, as well as to meet with women's rights NGO's concerned with these matters. COHRE has been working closely with Education Center for Women's Development, ECWD, a Nairobi based NGO on the issue of inheritance rights in Kenya.

five children, went from being relatively affluent to destitute after her husband's family took her property. Her in-laws grabbed household items from her Nairobi home and took over her house and land on the island of Runisga, even though Nyakumabor helped pay to construct the house. Soon after her husband's death, Nyakumabor's father-in-law called a family meeting, told her to choose an inheritor, and ordered her to be cleansed by having sex with a fisherman. Nyakumabor refused, causing an uproar. She felt ostracized and went to Nairobi ... She now struggles to meet her family's needs and her landlord in Nairobi's Kibera slum has threatened to evict her because she cannot always pay the rent on time.⁹⁹

Property grabbing takes places regardless of age (girls are commonly denied any share in their father's estates), and affects all economic classes.

Women are still subjected to discriminatory widowhood practices such as 'widow inheritance' or 'widow cleansing', especially prevalent in western Kenya, and in particular ethnic groups. In such case, widows are told that unless they undergo such rituals, they will not be allowed to stay on their matrimonial house and land. Widow inheritance refers to a union of the widow and a male relative of the deceased and widow cleansing refers to the forced sex between the widow and a man paid to have sex with her, which is thought to cleanse her of her dead husband's spirit. It has been reported that one in three women in western Kenya is forced to undergo the cleansing process.¹⁰⁰ Even undergoing such practices, however, does not ensure a widow housing and land. Indeed, many stories exist where women underwent the process but were still pressured off the land. It should be noted that there is no such practice for widowers. In addition to being contrary to the right to housing, property and right to non-discrimination these practices are also inconsistent with the right to security of the person. In so far, as these practices create a high risk of women contracting life-threatening diseases such as HIV/AIDS, they also violate the right to life.

Besides the impact on a women's rights to security of person and the enormous health risks, such practices are also symptomatic of a much larger issue, that of women being seen as property and thus not worthy of themselves owning property. This is a prevailing attitude in Kenya, one found even in the Courts and among government officials. Human Rights Watch reports: 'A government appointed senior chief in Kajiado district spelled out women's status as chattel: 'A woman and the cows are a man's property.'¹⁰¹ The Human Rights Committee has previously stated that the right to equal legal capacity, as set forth in Article 16 of the ICCPR, means that 'women may not be treated as objects to be given together with the property of the deceased husband to his family.'¹⁰²

The HRW report goes on to explain that officials, whether police or government, do not like to get involved in women's property rights cases, rather leaving that as a personal and 'normal' matter, not one that requires legal attention.¹⁰³ COHRE met with several women who had been disinherited and were now residing in Mathare slum. Each one stated that local officials, traditional leaders and police ignored their pleas. One woman reported that a local lawyer attempted to help some women with their inheritance rights cases, but was later killed, reportedly for this action. The local police took no

⁹⁹ Human Rights Watch, *Double Standards: Women's Property Rights Violations in Kenya* (Vol. 15, No. 5(A) – March 2003) page 22. All names used in the report are not the interviewees real names for privacy reasons.

¹⁰⁰ Beatrix Nyakisumo, "A vile custom that must go", *Africanews*, May 1997, online http://www.peacelink.it/afrinews/14_issue/p6/html (retrieved January 14, 2002, as reported by Human Rights Watch, *Double Standards: Women's Property Rights Violations in Kenya* (Vol. 15, No. 5(A) – March 2003), p.13.

¹⁰¹ Human Rights Watch, *Double Standards: Women's Property Rights Violations in Kenya* (Vol. 15, No. 5(A) – March 2003), p. 34.

¹⁰² Human Rights Committee, General Comment No. 28 Equality of rights between men and women (article 3) UN Document CCPR/C/21/Rev1/Add.10 (2000) Paragraph 9.

¹⁰³ Human Rights Watch, *Double Standards: Women's Property Rights Violations in Kenya* (Vol. 15, No. 5(A) – March 2003), p. 36.

action to investigate the murder.¹⁰⁴ In interviews with some Kenyan women's rights NGO's, allegations were made that Courts are biased in their handling of women's inheritance and property dispute cases.¹⁰⁵

It is not clear that the government has taken sufficient action to eliminate this discrimination against women in law and in fact. The current Constitution, while outlawing discrimination on the basis of gender, goes on to permit discrimination in certain customary laws, including among other things, 'devolution of property on death or other matters relating to personal status.'¹⁰⁶ This is clearly incompatible with Article 3 of ICCPR read together with Article 11 and other Covenant rights.

The Constitution of Kenya is currently under review and we welcome the draft of the Constitutional Review Commission which provides: 'Women and men have an equal right to inherit, have access to and manage property' and 'Any law, culture, custom or tradition that undermines the dignity, welfare, interest or status of women or men is prohibited.'¹⁰⁷ Despite promises by the President of Kenya to introduce this new constitution by 30 June 2004, there is no indication as to when the new constitution will be adopted.

Equally problematic, the Law of Succession, which is meant to provide housing and land to the surviving spouse, holds certain exceptions for women that have a discriminatory effect on women. For instance, property rights in the marital property terminate at the remarriage of the surviving widow, but not at the remarriage of the surviving widower. Thus, men have greater rights under this Act.

Lack of effective remedies for women remain a problem. It has already been noted that women who seek assistance from the Court around housing and land disputes encounter many difficulties in accessing justice.

5.1 Women in informal settlements

Women face particular challenges in the informal settlements of Kenya. The absence of street lighting and the presence of normal police force mean they are vulnerable to sexual assault and other violations of the security of person. The small number of special police allocated to informal settlements fall under the Provincial Administration, a separate arm of government accounting directly to the President and a very powerful actor in informal settlements. The absence of Kenya Police in the settlements is alarming considering that at least half of the urban population reside in the informal settlements.

Women often suffer the most as a result of forced evictions, since they often run small businesses from their homes, rent out a small number of rooms in their structures, and are responsible for children and their school fees. COHRE interviewed one woman who had been evicted on 8 February 2004:

She is currently a resident of Gatwikira, where she pays Kshs 800.00 a month for a two-roomed shack. She is a single mother of four, with two daughters attending secondary school. She was amongst those evicted from Raila Village, to make way for the Northern

¹⁰⁴ As reported by Pamela (name changed upon request), a woman living in Mathare slum, COHRE Interview, 15 Jan 2005.

¹⁰⁵ COHRE interview with Ann Njogu, Centre for Rehabilitation and Education of Abused Women, Nairobi, Feb 2003.

¹⁰⁶ Constitution of Kenya Article 82(4), last amended 1998.

¹⁰⁷ Sections 37(2) and (3).

Bypass. She was previously a structure owner, thus she did not have to pay any rent. But after her eviction she became a tenant. She initially managed to secure some resources and rented a room in the nearby middle income Langata Estate, as an emergency measure, where she paid Kshs 5000.00 – e.g., ten times the rent paid in Kibera. She could not pay for the second month so she had to look for alternatives within the slum. A friend agreed to rent her one room at Kshs 800.00. However, her situation remains precarious and her two children in secondary school have started defaulting in their fees.¹⁰⁸

The majority of women in informal settlements are single mothers who have left the rural areas or other urban centres in search of a means of survival. In 2002, women headed 37 per cent of all households in Kenya, and that number has most likely grown due to the prevalence of HIV/AIDS.¹⁰⁹ In the informal rental market in informal settlements, single women face particular difficulties in finding rental accommodation. A Kenyan study concluded:

What is significant are the unique housing preferences of single and female-headed households, and the reluctance of structure owners to rent their housing units to them ... In Kenya, the stereotype notion of women, especially single women as unreliable renters is held not only by formally housing landlords, but also structure owners.¹¹⁰

The prevalence of HIV/AIDS in informal settlements is also a large risk for women. It has been found that one in five Kenyans living in urban areas is infected with the HIV/AIDS virus, with many not knowing their status. Women are often forced by violence or other means of coercion, such as in exchange for small amounts of money or temporary accommodation, into risky sexual behaviours. Infected women, often having been driven from the rural areas after traditional widowhood practices as mentioned above, also contribute to the spread of the virus.

COHRE and Hakijamii have received reports that women with HIV/AIDS are often shunned, and kicked out of housing in the slums. In the Mathare settlement, there were cases of women left homeless after being thrown out of the house by family or landlords after they have been diagnosed with the virus.¹¹¹ One woman, Ann, a widow infected with the virus, was evicted with her three children from her small dwelling she rented in Mathare (after having been earlier driven by her in-laws from her rural home that she had shared with her husband prior to his death) after she could no longer afford the rent. She was homeless for a period and has since passed away. Her children now live in a one room mud shack, next to an open sewer drain, with their grandmother.¹¹²

5.2 Slum upgrading and women

Another concern has been the tendency of some slum upgrading programs – for example in Mathare 4A¹¹³ and Kibera – to ignore small structure owners, often women, who survive on a small number

¹⁰⁸ An interview with a woman, at St. Charles Lwanga Primary School, Raila Village, on the 9th July 2004: See Centre on Housing Rights and Evictions, *Listening to the Poor: Housing Rights in Nairobi*, (forthcoming 2005).

¹⁰⁹ Republic of Kenya, *Economic Survey 2002* (Nairobi, Government Printer, 2002) p. 2, as cited by Human Rights Watch, *Double Standards: Women's Property Rights Violations in Kenya* (Vol. 15, No. 5(A) – March 2003) page 9.

¹¹⁰ See Paul Syagga, Winnie Mitullah and Sarah-Karirah, *Nairobi Situation analysis supplementary Study: A Rapid Economic Appraisal of Rents in Slums and Informal Settlements*, Prepared for Government of Kenya and UN-Habitat, August 2002.

¹¹¹ General discussion with group of community women, COHRE Interview, Mathare slum, February 2003.

¹¹² COHRE Interview with Joyce, Mathare slum, Nairobi, 15 January 2005.

¹¹³ In the Mathare 4A project, the majority of structure owners in Mathare 4A were single mothers, renting out rooms in their homes as their only source of income. Compensation to these structure owners was determined

of rental payments for survival. The focus on tenants is very commendable since the larger Kenyan informal settlements are dominated by a small group of structure owners, or 'slum lords,' often with strong political connections,¹¹⁴ and tenants are often neglected in, and evicted during, such programs. But the smaller group of impoverished structure owners should not necessarily be ignored. COHRE and Hakijamii therefore welcomes the acknowledgement, in a document produced by the Government of Kenya shortly after a COHRE consultation in 2004, of the existence of poorer structure owners and the need to protect their livelihoods.¹¹⁵ We look forward to the development of criteria for their protection as envisioned in the document.

6. ETHNIC MINORITIES: NUBIANS IN KIBERA SETTLEMENT

The Nubians¹¹⁶ are descendants of Sudanese soldiers used by the British during colonial-era military campaigns. Kibera was approved as a site of settlement for Sudanese soldiers after active service. It constituted 4,198 acres of 'reserve shamba' or 'native reserve', but European settlers began to complain of crime and disorder. These appeared to be common arguments against any well-located African settlement. Several plans were made to move the ex-soldiers but they all floundered. Even the newly independent government declared in 1969 that what remained of Kibera was state land, thereby attempting to extinguish Nubian claims to it.¹¹⁷ Meanwhile the Nubians continue to assert their claim to Kibera, despite many attempts at moving them.

The Nubians in Kibera expressed frustration at their inability to obtain security of tenure. Many are structure owners, and argue that the failure to provide them with legal title after a century of occupation has prevented them from improving their houses. In addition, the land to which they claim title has over the years been eroded by the influx of people who saw it as an attractive location to obtain work during and after the colonial period.

At the same time, the tenants renting from the Nubians – many of them Luos, an ethnic group – are fearful that they may suffer as a result of the provision of legal title to Nubians. Regularisation of the land could lead to higher rents and therefore evictions of those tenants who cannot afford it. Any solution will therefore need to take account of various conflicting interests. Some government officials reported that plans are apparently proceeding to provide Nubians with 300 acres of land within Kibera, held in trust for their use. But no further information is available and while many promises have been made in the past, the Nubian community is still waiting for legal guarantees of their right to the land.

by the implementing agency with no mechanisms for appeal, and did not reflect the real investment and loss of livelihood.

¹¹⁴ See generally, See UN-Habitat, *Rental Housing: An essential option for the urban poor in developing countries*, UN-Habitat, Nairobi, 2003 at chapter IV.

¹¹⁵ The document states that, 'While the project will address the issue of single-family headed households, it will pay particular attention and devise strategies by which women are empowered to support their households and improve their living conditions' and 'In certain circumstances, displaced structure owners may be invited to claim compensation.'

¹¹⁶ The term 'Nubian' which is the common name for these Sudanese descendants is incorrect. It arose out of the need for them to portray themselves as an indigenous Kenyan group after independence, and has no reference to the 14th century Christian Kingdom of Nubia.

¹¹⁷ T. Parsons, 'Kibera is our blood': The Sudanese Military Legacy in Nairobi's Kibera Location', 30 *The International Journal of African and Historical Studies* (1997) 1.

7. THE STATUS OF THE COVENANT UNDER KENYAN DOMESTIC LAW AND ADEQUATE REMEDIES FOR COVENANT VIOLATIONS

The ICESCR has not been incorporated into the constitutional and domestic legal framework of Kenya, difficulties remain in invoking these rights in Court, although the application of the fundamental rights in the constitution, and the Children's Act,¹¹⁸ are yet to be fully tested. For example, cases relating to protection against arbitrary interference with the home have been relatively unsuccessful in Kenya. Courts often display a tendency to only examine whether procedures for an eviction conforming with national legislation were followed, as opposed to the fundamental constitutional right of Kenyans to the 'protection for the privacy of his [or her] home'.¹¹⁹

During the mass eviction threat of February 2004, two cases were separately launched. In the first case, *Nderu & Others v Kenya Railways Corporation*,¹²⁰ the High Court at first instance granted an injunction against the eviction, but only to the effect of extending the 30-day notice period by an additional ten days. This ruling cannot be considered consistent with Article 11 ICESCR or the constitutional right to protection of the home: the eviction notice took no account of the fact the residents and traders had lived and operated on the railway lands in Kibera for up to 20 years in some cases; there was no consultation with residents, including consideration of alternatives to the eviction; no compensation for loss of property;¹²¹ and no accounting for the fact that most residents would be left homeless as a result of the order. It was estimated at the time that up to 108,000 persons would be evicted from railway lands in the Kibera settlement.¹²² The eviction was also unlawful under domestic law, as the provisions of the Kenya Railways Act were not followed and the Provincial Administration, the authority given the responsibility of physically evicting residents, does not have legal authority to carry out such activities.¹²³

In an almost identical case affecting another informal settlement, the High Court in Eldoret was, however, prepared to consider these arguments during the application for an injunction. The Court concluded in *Kirwa and Nine Ors v. Kenya Railways Corporation*¹²⁴ that "The plaintiffs [residents] are likely to establish that the notice was issued unprocedurally and unlawfully. They

¹¹⁸ In *Nyumbani Children's Home & Anr. v Education Minister & Anr.* (9 January 2004) children from a children's home living with HIV/AIDS sued the government in the Kenyan High Court over discriminatory practices displayed by some public schools, 'which adamantly and unreasonably refused to admit children living with HIV.'¹¹⁸ Following the Court's direction that counsel, education officials and representatives from the children's home should meet and work out an amicable solution in the best interest of the children, a consent agreement was reached under which all the children were granted places in public schools: see 'Landmark Suit a Big Victory for the Kenyan Child', *The Children Act Monitor*, January 2004, Issue No, 0013/04.

¹¹⁹ See, Opiata Odindo, 'Litigation and Housing Rights in Kenya' in Malcolm Langford and Bret Thiele (eds.) *Current Issues in Litigation of Economic, Social And Cultural Rights* (forthcoming University of NSW Press, 2005).

¹²⁰ (Civil Suit. No. 189 of 2004, High Court of Kenya).

¹²¹ It is notable that the European Court of Human Rights recently ruled that the property of informal dwellers – for example structures - was protected under Article 1 of Protocol 1 to the European Convention on Human Rights and Fundamental Freedoms. In *Öneriyildiz v. Turkey* (No. 48939/99), European Court of Human Rights, 18 June 2002, compensation was awarded to the settlers due to the failure of the government to protect their possessions from a methane gas explosion. Pecuniary damages of 4,000 euros were awarded to the individual applicant. The Constitution of Kenya prohibits deprivation of property in Article 70.

¹²² The figure was later revised downwards as NGOs were given more time to assess the situation: see Centre on Housing Rights and Evictions, *Listening to the Poor: Housing Rights in Nairobi*, (forthcoming 2005).

¹²³ COHRE conducted an interview with the Provincial Commissioner, the official responsible for the oversight of the Provincial Administration. He was clear that officials under his authority had no mandate to allocate land or to carry out evictions without authority. It is noted that the Provincial Administration under the Chiefs' Act 1998 has no express authority to carry out evictions.

¹²⁴ Civil Suit No. 65 of 2004, High Court of Kenya – Bungoma).

are also likely to establish at the hearing of suit that the notice was arbitrary and unreasonably inadequate.” However, the Kenya Railways Corporation was not represented at the hearing so it is difficult to determine the direction of future jurisprudence.

Kenya has taken positive steps with the creation of the Kenya National Commission on Human Rights (the Commission) in 2003,¹²⁵ a number of obstacles remain. The newly-established Commission has powers to receive complaints and is able to institute procedures which may lead to timely provision of remedies. After receipt of a complaint, the Committee may, in its discretion, call for information from the government and institute an inquiry into the complaint.¹²⁶ If the inquiry discloses a violation of human rights, the Commission can recommend to the relevant authority that persons be prosecuted or that other appropriate action be taken against such authorities; commence legal proceedings in its own name before the High Court; or recommend to the claimant a course of action other than judicial proceedings.¹²⁷ However, the ability of the Commission to respond effectively is largely dependent on its resources, and these are very limited. Without sufficient resources, the Commission is unlikely to take up worthy cases; or it may close initial investigations after receiving an ostensibly satisfactory response from the government.

One of the other major obstacles in access to justice is intimidation of victims. For example, the 1,000 - 2,000 victims of the Kibera demolitions of 8 February 2004 initially approached lawyers to take their case to Court, in order to seek compensation and adequate resettlement. However, intimidation by youth ‘militia’ associated with the Ministry that carried out the eviction resulted in the former residents withdrawing under duress their instructions to their lawyers to file a claim. Former residents, many now destitute, have so far been provided with no assistance by the government:

8. SUMMARY OF ISSUES FOR CONSIDERATION

Forced evictions

1. The decision to draft guidelines on eviction and eventually reform Kenyan law is welcome. However, will the Government of Kenya impose a moratorium on forced evictions, as originally declared by the Nairobi Informal Settlements Coordination Committee in 1997, until such guidelines are in place? If any evictions are absolutely necessary, how will the Government ensure they comply with Article 11 of the Covenant?
2. Will the proposed guidelines on evictions comply with Article 11 of the Covenant, in particular General Comment No. 7 and in particular ensure, *inter alia*, that:
 - a) Eviction is in all cases an exceptional measure of last resort, when all other options have been tried and exhausted;
 - b) Consultations first occur with affected communities in order to find mutually acceptable alternatives;
 - c) Evictions may only be carried out in certain prescribed circumstances;
 - d) Any eviction must be carried out humanely and with appropriate procedural protections;
 - e) Evicted persons must be adequately resettled, under circumstances leaving them (at least) no worse off than before..
 - f) Eviction by private actors are also covered.

¹²⁵ The Kenya National Commission on Human Rights Act, 2002.

¹²⁶ Section 22, The Kenya National Commission on Human Rights Act, 2002.

¹²⁷ Section 25, The Kenya National Commission on Human Rights Act, 2002.

4. What steps are being taken to ensure that victims of past forced evictions in urban and forest areas are provided with assistance in accordance with Article 11, including access to resettlement sites, compensation and effective access to basic services and schools.

5. Has the Government of Kenya developed a policy and law requiring thorough social impact assessments for activities that may result in eviction, and a mechanism for community participation to examine whether specific evictions are absolutely necessary, and whether there are alternatives to eviction?

6. Will the Government of Kenya put in place a comprehensive relocation and compensation plan for any proposed evictions that are necessary due to exceptional circumstances, including in forest areas that is accordance with international human rights and Internally Displaced Persons standards.

7. Has the Government of Kenya reviewed existing legislation to ensure it is consistent with Article 11? In particular, will the Government amend Section 130 of the *Government Lands Act*, repeal or amend the *Vagrancy Act* and amend Section 61 of the *Trust Land Act* to ensure protection from forced eviction.

Harassment

8. What has the Government of Kenya done to ensure municipalities and the Provincial Administration do not physically or otherwise harass residents in informal settlements. Do residents have sufficient police protection against harassment? Can residents effectively bring complaints about abuses of power and violations of human rights by local municipal officials or office bearers, Provincial Administration or any other branch of Government or elected official?

Security of tenure and recognition of informal settlements

9. What is the Government of Kenya doing to improve security of tenure in informal settlements in accordance with Article 11 and General Comment No. 4?

10. Will the Government of Kenya provide legal recognition to urban informal settlements, as proposed by the Nairobi Informal Settlements Coordination Committee in 1997?

Slum upgrading and services

11. Does the Government of Kenya have a *comprehensive* national policy and programme for improving and upgrading informal settlements? Has there been participation in the development of this policy and programme? Does the policy provide that human rights standards must be respected in the process? Does the policy and programme provide for ensuring that residents can immediately access a minimum standard of housing, in particular essential services and security of tenure? Does it provide for progressive realisation of the right to adequate housing. Have sufficient resources been allocated?

12. Do residents of informal settlements have access to basic services – in particular water, sanitation, garbage disposal and energy – as well as access to basic healthcare and free primary education for children.

13. In relation to the KENSUP upgrading project in Kibera settlement, will the Government of Kenya: (a) conduct in-depth community consultations in order to fully appreciate the legitimate fears that residents have of displacement and violence? (b) officially declare Soweto a ‘tenure secure zone’ and enforce a moratorium on evictions in the settlement as well as provide a mechanism – including

police protection – to prevent intimidation of residents by various interest groups? (c) ensure that the Settlement Executive Committee is participatory and its membership is fairly and freely elected? (d) provide information in English and Swahili to the community on the slum upgrading plans and develop a participatory planning process?

Water and sanitation

14. The water sector reforms have identified the need to focus on the poorer areas such as informal urban settlements, arid and semi-arid regions. What steps has the Government taken to identify and develop indicators to measure the extent to which different groups have access to water and sanitation in ensuring that vulnerable and marginalised groups are not discriminated against?

15. The need for comprehensive data collection on access to water and sanitation has been identified by the Government. To what extent will proposed data collection take into account ethnicity, age, disability, gender, religion, income and other related grounds so as to identify discrepancies and set priorities for intervention?

16. The National Water Resources Management Strategy and the Draft National Water Services Strategy addresses the issue of representation of women in decision-making as an important cross-sectoral topic to be mainstreamed in water sector policies. However: (a) To what extent has the Government guaranteed the inclusion and participation of women in programme planning and development? (b) How does the Government intend to ensure gender parity in water sector institutions? (c) What efforts have been made to ensure that physical security is ensured, especially for women and girls, when accessing water and sanitation? (d) What efforts are being made to target schools for water supply and for construction of sanitation facilities– including facilities segregated by sex?

17. Does the Government of Kenya promote and facilitate participation from the poor communities who are underserved, as stated in the General Comment no. 15 which states *inter alia*, that “The right of individuals and groups to participate in decision making processes that may affect the exercise of their right to water must be an integral part of any policy, programme or strategy concerning water?”

18. Has the Government of Kenya produced and disseminated information to the public about the situation of access to water and sanitation in the different regions? What methods are used to disseminate information and in which languages?

19. What steps have been taken to ensure that there is a thorough participatory evaluation of legislation, policy and institutional arrangements in place to for the provision of water and sanitation so as to assess their adequacy to the human right to water? Is there participation in the design of budget priorities for the water and sanitation sector?

20. How does the Government plan to address the public lack of awareness of the water sector reforms especially in low income areas?

21. How will the Government ensure that policy reform processes involve the genuine and informed participation of representatives of poor and other marginalised groups?

22. The Kenya National Commission on Human Rights (KNCHR) was established in 2003 as an independent governmental organisation mandated to protect, promote and enhance the respect of human rights in Kenya. The KNCHR is therefore strategically positioned to independently monitor the provision of water and sanitation. Does it have sufficient capacity?

23. What steps have been put in place to ensure that complaints mechanisms that have been institutionalized within water service providers and water service boards, are open to the underserved and those not connected to formal networks.
24. What mechanisms are in place to promote monitoring and accountability of service provision by informal and formal water service providers within the informal settlements?
25. Have communities been given full access to information concerning water, water services and the environment held by public authorities in order to enable informed participation as well as ensure transparency? Will the agreements between the Water Service Regulatory Boards and the Water Service Providers be public?
26. The National Water Services Strategy estimates that 60% of water supply is unaccounted for. How does the Government intend to address operational efficiency of utilities and respond to economical and technical losses incurred as a result of leakages and unaccounted for water?
27. The separation of water supply and resource management functions in the water sector is a positive development. To ensure policy coherence, how does the Government intend to incorporate policy gains in the water sector to other government agencies? How will the Government improve ministerial coordination between the Ministries of Local Government, Land, Environment, Health and Water and Irrigation in order to ensure the observance of matters relating to hygiene awareness and public health?
28. The Pro-Poor Implementation Plan for Water Supply and Sanitation (PPIP - WSS) 2007 creates an obligation on the part of the Water Services Providers to provide information to its consumers on water quality. How will the Government ensuring that water and sanitation service providers (public and private) comply with service delivery standards especially in the informal settlement?
29. How will the Government guarantee that water service providers and water services boards prioritize the extension of services to low income areas such as informal settlements to reach the underserved and unserved? What steps is the government taking to provide financial support and training is given to households and communities to assist them establish small-scale facilities (where network access is not possible)?
30. How will the government guarantee that the Water and Sanitation Trust Fund has sufficient resources and capacity to undertake intended pro-poor investments?
31. What proportion of the Government's budget (including international assistance provided to government) is devoted to water and sanitation? What proportion of the budget for water and sanitation is provided to areas of low coverage (arid and semi-arid areas, informal settlements)? What steps is the Government of Kenya taking to obtain sufficient financial and other aid to be given to Kenya to accelerate coverage improvement beyond that possible with domestic resources?
32. What is Government policy on illegal connections? Is there a required process to formalise such connections or offer alternative connections?
33. Will the Government take steps to ensure that outstanding payments for water bills particularly by government institutions are paid?

34. How will the Government ensure that water and sanitation service providers both public and private comply with tariff guidelines as may be finalised under the Water Services Regulatory Board Tariff Guidelines and Model?

35. General Comment No. 15 also states: “Under no circumstances shall an individual be deprived of the minimum essential level of water.” What procedural and substantive protections have been put in place where households cannot pay?

Women’s rights

36. Will the Government of Kenya amend the Constitution and the *Law of Succession* to ensure equal rights to inheritance for women?

37. Has the Government of Kenya taken steps to educate police, government officials and courts on the equal rights to inheritance for women and the need to protect widows from violence and disinheritance and undertaken education and awareness campaigns directed towards women and their communities.

38. Has the Government of Kenya eliminated the practice of widow cleansing, including through legislative means.

Nubian community

39. Will the Government of Kenya recognise the historical land rights of the Nubian community within Kibera settlement as promised to them by the British and Kenyan authorities?

Land policy

40. Will the Government of Kenya establish effective mechanisms to enforce the temporary ban on the sale of all undeveloped land declared by the Minister for Housing and Lands?

41. Will the Government of Kenya ensure that each case of illegal or irregular land allocation is investigated separately as to the origins of the allocation, and establish a land tribunal for such purposes as suggested by the Ndungu Commission?¹²⁸ Will those who knowingly perpetrated the illegal sale, transfer and allocation of forest land be investigated and prosecuted?

42. How will the State ensure there is sufficient land for providing access to housing for the urban poor?

Access to justice

43. Is the *Rent Restriction Act* consistent with international standards? Will the Government of Kenya provide readily accessible dispute resolution mechanisms near or in informal settlements, particularly for tenants?

¹²⁸ Report of the Commission of Inquiry into Illegal and Irregular Allocation of Public Land, *Republic of Kenya*, June 2004, p. 188: “Given the fact that each case of a suspected illegal or irregular allocation of public land must be dealt with on its own merits, it is recommended that a Land Titles Tribunal be immediately established to embark upon the process of revocation and rectification of titles in the country.”

44. In submissions to courts, does the Government of Kenya urge the judiciary to interpret the law consistently with the International Covenant on Economic Social and Cultural Rights, including those cases involving residents of informal settlements.

45. Will the right to housing be made justiciable under the Constitution? Will the judiciary be provided with training on its application?

46. Can the government provide information on the number of judicial or quasi-judicial complaints filed concerning evictions, including the number of complaints filed? How many persons were provided with compensation, restitution or adequate resettlement as result of breaches of international or domestic law in relation to forced evictions?

Right to information

47. Does the Government of Kenya have a policy and law providing for the right to information concerning Government decisions in housing and development?

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