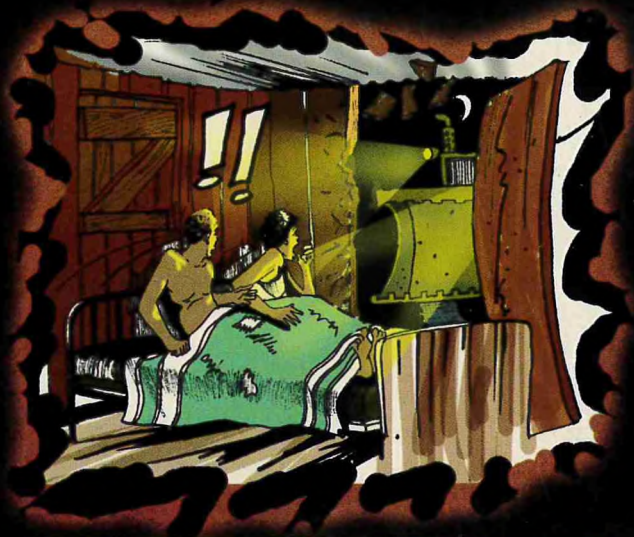


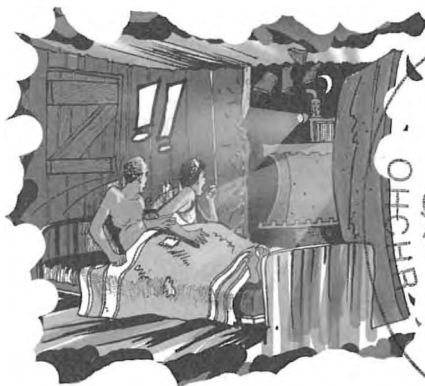
Guidelines on

HUMAN RIGHTS AND FORCED EVICTIONS



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Guidelines on HUMAN RIGHTS AND FORCED EVICTIONS

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Contents

1.0	Introduction	3
2.0	General Comment No.7 on Forced Evictions	5
2.1	General Comment No.2 on International Technical Assistance Measures	8
2.2	General Comment No.4 on the Right to Adequate Housing	9
2.3	Habitat Agenda: Goals and Principles, Commitments and Global Plan of Action, 1996	10
2.4	World Bank Operational Directive 4.30 on Involuntary Resettlement	11
2.5	UN Comprehensive Human Rights Guidelines on Devopment-based Displacement (1997)	13

Introduction

Cases of threats of or actual forced evictions remain unfortunately common. What is most noticeable is that no common procedure is followed and this applies to the many government organs or non state actors that are often involved in carrying out forced evictions. Despite promises to come out with an official national guideline, not much has happened. In the meantime many communities, mainly the poor, continue to suffer from brutal and inhuman evictions carried out with little or no regard to the rights of the affected. This continues to happen despite the fact that Kenya is a signatory to key international human rights treaties that explicitly state that forced evictions are a gross violation of human rights unless conducted within clearly accepted procedures. Development or donor agencies are equally liable as they continue to support projects that at times result in forced evictions.

This short booklet briefly outlines measures that should be strictly followed by the Government and other actors with regard to forced evictions. It is particularly intended for the use by community groups who are faced with threats of forced evictions whether by the Government or any other party. It is hoped that the community groups will use it to hold all those who attempt to evict them accountable to these human rights standards in order to discourage such practices and to propel the Government to speed up the process of developing and implementing a national prevention and control of forced evictions legislation.



General Comment No.7 on Forced Evictions

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights recognized the right to adequate housing. Kenya became a party to this Covenant in 1972. In 1997 the United Nations Committee on Economic, Social and Cultural Rights adopted General Comment No. 7 on Forced Evictions.

The Comment requires that:

- States must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.
- States must enact legislative and other measures that are adequate to prevent and, if appropriate, punish forced evictions carried out without appropriate safeguards by private persons or bodies.
- Private landlords, developers and international institutions such the World Bank are equally expected to abide with the laid down standards.
- Evictions must be justified with a reasonable cause

- The Government should explore all feasible alternatives prior to carrying out any forced eviction, with a view to avoiding the use of force or precluding eviction all together.
- More vulnerable groups such as women, children, youth, older persons, indigenous people and ethnic and other minorities should be particularly protected against forced evictions.
- Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights.
- Those who are evicted should be granted some form of alternative housing. The process for any relocation and the resettlement should not violate other human rights. This would include rights to physical integrity and access to work, education and health care.
- All individuals should have a right to adequate compensation for any property, both personal and real, which is affected.

When forced evictions are unavoidable the following conditions must be complied with:

- An opportunity for genuine consultation with those affected;
- Adequate and reasonable notice to all the affected persons prior to the scheduled date of eviction;
- Information on the proposed evictions and where



- applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- Where groups of people are to be affected, government officials or their representatives must be present during an eviction;
 - All persons carrying out the eviction must be properly identified;
 - Evictions are not to take place in bad weather or at night.
 - There must be provision for legal remedies; and
 - There should be legal aid to persons who cannot afford legal services.

Provided that in all instances an eviction should never result in rendering anybody homeless. These are the very minimum requirements. Kenya has agreed to abide by them and any eviction that is done without following them is therefore illegal and anybody participating in such an eviction should be held accountable.

2.1

General Comment No.2 on International Technical Assistance Measures

This was adopted in 1990. It deals with the obligations of the World Bank and IMF concerning the financing of projects involving evictions (eg Railway expansion). It provides that:

- International agencies should avoid involvement in projects which promote or discriminate against individuals or groups contrary to the provisions of the international human rights standards, or involve in large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation.
- Every effort should be made, at each phase of a development, to ensure that human rights are duly taken into account.

2.2

General Comment No.4 on the Right to Adequate Housing

This was adopted in 1991. It provides that:

- All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.
- Governments must take measures to confer legal security of tenure upon those persons and households lacking such protection.
- Governments must give priority to groups living in unfavorable conditions (informal settlements) by giving them particular consideration and policies and legislation should not be designed to benefit those who are already advantaged at the expense of others.
- Forced evictions can only be justified under the most exceptional circumstances and in accordance with the requirements of international human rights law.

2.3

Habitat Agenda: Goals and Principles, Commitments and Global Plan of Action, 1996

This was adopted in 1996 at Istanbul. All the Governments (Kenya included) committed themselves to:

- Protect all people from, and provide legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided.

Kenya houses the headquarters of UN Habitat and should therefore be in the forefront in complying with these requirements.

Agenda 21 adopted during the UN Conference on Environment and development had also resolved that people should be protected by law against unfair eviction from their homes or land.

2.4

World Bank Operational Directive 4.30 on Involuntary Resettlement

The World Bank is probably the most critical actor in the financing of most of the projects that have human rights implications and most of such projects have normally resulted in the forced evictions of millions of people. In a bid to respond to this disastrous situation the Bank developed Operational Directive 4.30 on Involuntary Resettlement. Key components of this Directive are:

- That involuntary resettlement (forced eviction) should be avoided or minimized where feasible, exploring all viable alternative designs;
- That where displacement is unavoidable, resettlement plans should be developed;
- Displaced persons should be compensated for their losses equivalent to the full replacement cost prior to the move;
- Displaced persons should be assisted to move and supported during the transition period;
- Displaced persons should be assisted in their efforts to improve their former living standards,

income earning capacity, and production levels, or at least restore them;

- Particular attention should be given to the poorest;
- The affected people should be encouraged to participate in the planning and implementation of the resettlement and appropriate community organizations established or existing ones be used for this purpose.
- Displaced persons should be integrated socially and economically into the host communities.
- Land, housing, infrastructure and other compensation should be provided to the adversely affected communities.
- The absence of legal title to land by such people should not be a bar to compensation.
- A detailed plan, timetable and budget should be worked out.
- The responsibility for resettlement rests with the borrower. For example, if it is the Government of Kenya that has borrowed the money then it has to be responsible for resettlement.

These guidelines were developed by the Bank itself and it should therefore be held strictly accountable for their violations in projects where it is involved. Affected groups can effectively use them to demand compliance from the Bank in such projects.

UN Comprehensive Human Rights Guidelines on Development-based Displacement (1997)

The need for development remains one of the most cited reasons for forced evictions. This may include road construction, expansion of energy projects, construction of airports, construction of railways, dams, mining and many others. These guidelines that were developed in 1997 are meant to address such cases. Key components of the guidelines are:

- That the Government should ensure that eviction impact assessments are carried out prior to the initiation of any project so as to secure the human rights of those to be affected.
- That the Government should ensure that no person, groups or communities are rendered homeless or are exposed to the violation of any other human rights as a result of the forced eviction.
- That the Government is encouraged to adopt constitutional protection against forced eviction.
- That the Government should fully explore all

- possible alternatives to forced eviction and fully consult with all those who are to be affected and where no agreement can be reached the affected groups should have access to a court or an independent tribunal to decide on the matter.
- That all persons threatened with forced eviction have the right to a fair hearing and effective remedies.
 - That the Government should adopt laws prohibiting any forced evictions without a court order.
 - That all persons who are evicted on public interest shall have a right to resettlement which shall be just and equitable.
 - That no resettlement shall take place until a full resettlement policy is in place.
 - That resettlement must ensure equal rights of women, children and other vulnerable groups.
 - That the cost of resettlement shall be borne by the person proposing such resettlement.
 - That the resettlement should be done in consultation with all the affected persons.
 - That a period of least ninety days will be given prior to the resettlement.
 - That government officials and other neutral observers should be present during the resettlement to ensure that no force, violence or intimidation is involved.

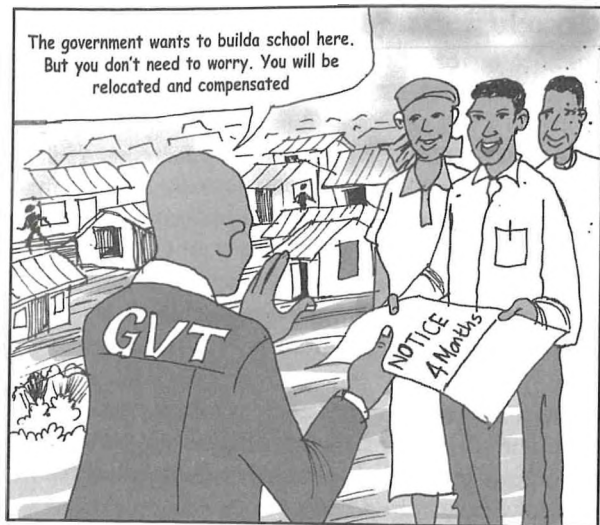
Conclusion and Kenya's promise

All these measures are meant to strike a clear balance between the requirements of human rights and the need for social, economic and legal readjustments. It is very important that at any time the government plans to engage in any forced eviction it is reminded of these standards that have achieved universal acceptance.

Indeed the Government of Kenya in its response to the United Nations Human Rights Committee in New York in 2005, the Attorney General of Kenya unequivocally stated that:

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

To date this remains the official position of the Government and it should be held accountable to it.



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