

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context**

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Excellency,

We have the honour to address you in our capacity as Working Group on the issue of human rights and transnational corporations and other business enterprises and Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, pursuant to Human Rights Council resolutions 35/7 and 34/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **ongoing forced evictions and demolitions of houses, schools and business in the settlement of Kibera, in the Southwest of Nairobi started on 23 July, without adequate notice, consultation with, and compensation for the affected individuals**. We would also like to bring your attention that this planned destruction will reportedly render up to 30.000 people homeless and was carried out without any plan for resettlement and compensation in place. The eviction is carried out to allow for the construction of a road, whose public tender has been given to a Kenyan business, H Young & Co (EA) Ltd.

According to the information received:

The Kibera informal settlement is located approximately 5 kilometres southwest of Nairobi city center and has a size of approximately 2.5 square kilometres. Though there is no recent census, it is estimated that it has an average population of more than nine hundred thousand people living in the informal settlement. Many Kibera residents live in extreme poverty, earning less than \$1.00 per day. The Government owns most of the land, while 10% of people are landlords. The remaining 90% of residents are tenants. In July 2017, the President Kenyatta granted land titles to Nubian Community members on this land.

The evictions are linked to the Southern bypass project aimed to decongest traffic in Nairobi by connecting the bypass road from the Ngong Road to the Langata Link Road (M12). In 2016, the Kenya Urban Roads Authority (KURA) awarded a 1.23 billion KES contract for construction of the road to the Kenya business enterprise H Young & Company (EA). This engineering construction and infrastructure company was founded in 1951 and has had many projects in the East African region.

During 2016 residents of the Kibera informal settlement filed a case before the High Court challenging the expected demolition and displacement (Abdulmajid Ramadhan and 3 Others v. Kenyan Urban Roads Authority and Others ELC Pet. 974 of 2016). The case was filed against KURA, the National Land Commission, the Attorney General, the National Environmental and Management Authority and H Young Company to stop imminent forced eviction of Kibera residents. Certified orders of injunction against continuation of construction of the road were granted on 31 August 2016 and later extended.

On 28 April 2018 the presiding High Court judge ordered in this case that: “In the interests of justice and in order to avoid human suffering, I order that the Petitioners herein be included in the Lang’ata/Kibera Roads Committee and be actively involved in the Resettlement Action Plan (RAP) for the Project Affected Persons (PAP). I order further that the 1st, 2nd and 5th Respondents shall not evict or demolish the houses belonging to the Petitioners until the agreed resettlement plan for the persons affected by the road project in question is put in place.”

On 3 July 2018, the Secretary of the National Building Inspectorate and Chairman of the Multi-Sectoral Committee on Unsafe Structures, disseminated a public notice to Kibera residents in the affected Kambi DC and Mashimoni areas giving them a deadline of 16 July for the removal of ‘illegal structures on the road reserve’. The note indicates that upon the expiry of the notice ‘any structures or property found on the specified corridor will be demolished or removed from the road reserve at the trespassers’ risk and cost’.

On 9 July 2018, the Working Group on Business and Human Rights, sent during its official country visit a letter to the Director General of KURA, expressing concerns about the immanent mass eviction of people living in Kibera and asking the authority what steps it has taken, or required the construction company to take to ensure that any negative human rights impacts caused by the planned mass eviction and resettlement, are identified and mitigated, including on the rights to housing, security, food, health and education. The letter also asked whether a resettlement plan had been in place and whether the eviction notices responded to the mandatory requirements of the Section 152 G of the Land Laws Act of 2012 of Kenya. Furthermore, the Working Group asked if affected individuals would be compensated for the intended mass eviction. To date to our regret no official response has been received to these questions and concerns.

On 10 July 2018 a meeting between KURA, Kenya National Commission on Human Rights, the National Land Commission, civil society organisations and representative of Kibera residents at risk of eviction was held to prevent the forced

eviction and reduce high tensions in the informal settlement following the eviction notice. The meeting was also attended by the United Nations Human Rights Advisor to Kenya. The main aim of the meeting was to prevent forced evictions and to ensure that affected residents would be resettled according to the national laws governing involuntary displacement and relevant international human rights standards. It was agreed that before commencing any evictions, a resettlement action plan (RAP) would be developed that would include a survey of how many residents and assets would be affected. This RAP would specify the financial compensation that resettled residents would receive. In addition, it was agreed that a meeting with community representatives would be held on 21 July 2018 to discuss the way forward, including the financial compensation of tenants and the owners of the affected structures.

However, on 20 July 2018, before completing the survey, publishing a draft resettlement action plan, and holding the promised consultations with community representatives to discuss resettlement options and the issue of compensation, the Director General of the Kenya Urban Roads Authority issued a press release saying that “residents are requested to salvage their structures and relocate over the weekend”. According to reports received, the statement was not distributed to the affected residents and only posted on the website of the Kenya Urban Roads Authority on 23 July 2018 after the evictions and demolitions had already started.

In the early morning hours of 23 July 2018, at about 5:00 AM, the Government used the police and bulldozers to demolish houses, local businesses and schools. Some residents were noticed the day before, some not. It is, however, obvious that on the day of the demolition, people were not given sufficient time to collect their belongings. At the end of the day, three schools and hundreds of houses were destroyed, leaving people homeless, without any alternative accommodation, resettlement support and compensation. Video footage from the eviction shows residents looking for personal belonging in the rubble of their homes and school children searching the ruins of destroyed schools for their textbooks. The demolition is expected to affect over 2500 households, accounting for tens of thousands of people. However, there is no accuracy on the actual number of people affected by this eviction given that details of the ongoing survey to assess the number of people living in the homes in the development site were not yet published. The Government has publicly declared that no compensation or resettlement would be granted, or just “as a good will gesture”, arguing that the demolition is carried out on Government land.

Reportedly many evicted residents, including young children, had to spend the night in the open with insufficient protection against the cold in the middle of the Kenyan winter. In the morning of 24 July 2018 the Kenyan National Commission on Human Rights issued a statement, calling for an immediate cessation of the on-

going demolitions and evictions in Kibera pending the finalization of the enumeration and relocation of affected persons. The Commission urged the Government to offer adequate humanitarian support to respond to the immediate needs of the affected people including shelter, food and clothing. However evictions and demolitions in Kibera continued on the second day.

According to information received, most individuals belonging to the affected community are not opposed to the construction of the road, but insist that the Government puts in place a compensation and resettlement plan, including a plan how to resettle the schools and other community facilities serving the community which are located in the resettlement area. There is a lack of process where affected individuals are consulted in a previous, informed and transparent manner.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to the Government to take all necessary measures to respect all applicable international human rights standards and provisions of national law. The alleged forced evictions and massive destruction would violate the right to an adequate standard of living, including the right to housing, the right to water, the right to education, the right to food and the right to work. Moreover, this eviction is reportedly in breach with the mandatory procedure for evictions under the Land Laws (Amendment) Act, Act No 26 of 2016, enumerated in its section 152 G and articles 21 (3), 21 (4) and 22 of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, Act No. 56 of 2012.

We wish to remind your Excellency's Government that in accordance with the International Covenant on Economic, Social and Cultural Rights, ratified by Kenya in May 1972, the States recognize the right of everyone to an adequate standard of living for himself and his family, including adequate housing. This right is reflected in the article 40 and 43 of the Constitution of Kenya.

In 2016 the UN Committee on Economic, Social and Cultural Rights reiterated, in its Concluding Observations on Kenya, the concerns that persons living in informal settlements are under constant threat of eviction due to the lack of legal security of tenure and that forced evictions continue without prior notice and provision of adequate alternative housing or compensation. The Committee recommended that the State party take concrete steps to guarantee security of tenure for all, including residents of informal settlements. It also recommended that the State prioritize the enactment of the Evictions and Resettlement Bill; implements judicial orders that provide remedies to victims of forced evictions as a matter of priority and adopts a moratorium on mass evictions at the national level until adequate legal and procedural safeguards are in place (E/C.12/KEN/CO/2-5, para 47-48).

The United Nations Basic Principles and Guidelines for Development Based Evictions and Displacement (A/HRC/4/18)” provide, that “all persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education” (para. 16). They also require “effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; and a reasonable time period for public review of, comment on, and/or objection to the proposed plan” (para. 37). The Basic Principles furthermore specify that “evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. The State must make provision for the adoption of all appropriate measures, to the maximum of its available resources, especially for those who are unable to provide for themselves, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted” (para 43). In addition the Basic Principles include detailed guidance on relocation and compensation. For example they specify that “all those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for the loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process.” Compensation should also be provided for the loss of informal property such as slum dwellings (para 61).

It should be noted that the above mentioned amended Land Laws Act of Kenya, which sets out mandatory procedures to be followed during evictions, - while an improvement to earlier legislation - still fails to meet international human rights standards applicable to involuntary resettlement. The law does not prohibit forced evictions and provides an inadequate legal framework for resettlement and compensation. We therefore urge the Government to implement the 2016 recommendations of the Committee on Economic, Social and Cultural Rights, and to adopt a moratorium on mass evictions until national legislation complies with the General Comment No. 7 on forced evictions and with the United Nations Basic Principles and Guidelines for Development Based Evictions and Displacement (E/C.12/KEN/CO/2-5, para. 48).

We note with deep concern that the above described evictions seem to amount to forced evictions and thus must be considered as a gross violation of international human rights law. We would, therefore, like to warn the responsible Government authorities and the developer, the construction company H Young & Co (EA) Ltd. about the risk of participation in a gross violation of human rights.

We appeal to the Government of Kenya and the Kenya Urban Roads Authority to immediately halt the forced eviction of residents in the Ngong Road –Kibera-Kungu Karumba-Langatea Link Road, and to develop in consultation with the affected

community the agreed Resettlement Action Plan that should meet all criteria outlined by national law and the United Nations Basic Principles and Guidelines for Development Based Evictions and Displacement.

The Resettlement Action Plan should at minimum provide details concerning an adequate resettlement area which provides secure long-term tenure for all affected residents living in the eviction area, details concerning the compensation for costs of resettlement and loss of property; and details concerning the provision of adequate short term or long-term housing. It should be reiterated that alternative housing and land needs to be provided prior to the evictions and the demolition of any homes. The resettlement plan should furthermore include information concerning the relocation of the school located in the development area or set out how it is will be ensured that all resettled children will have access to free basic schooling within the vicinity of the resettlement area and access to affordable secondary schooling. Furthermore, the implementation of the resettlement plan needs to be monitored by the Government at all stages of the resettlement and construction process.

As an immediate measure the Government needs to provide urgently shelter, food and clothing to people that have been rendered homeless and ensure that the children of evicted residents can attend school.

Moreover, we wish to bring to the attention of your Excellency's Government that in accordance with the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011, States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, and redress such abuse through effective policies, legislation, regulations and adjudication. (Guiding Principle 1) State should also exercise adequate oversight when they contract with business enterprises to provide service that may impact upon the enjoyment of human rights (Guiding Principle 5). Moreover, according to the Guiding principle 25, the State must take appropriate steps to ensure that those affected have access to effective remedy.

In its end of mission [statement](#) to Kenya the Working Group noted that "concerns were raised with the Working Group about confusion and uncertainty about the regulations and safeguards in the context of forced evictions, resettlement, and compensation" and that stakeholders had the Government to provide support and guidance on issues of compensation and resettlement.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any steps taken by relevant your Excellency's Government to ensure that it has a full understanding of the human rights impacts of the Langata Road Project. Please indicate if this process has been carried out in consultation with potentially affected individuals.
3. Please indicate measures that your Excellency's Government has taken, or required the company to take, to ensure that any adverse human rights impacts caused, including mass evictions and resettlement, have been identified and mitigated, including on the rights to housing, security, food, health and education.
4. Please indicate whether your Excellency's Government has adopted a resettlement action plan and when and where it has been published, setting out compensation for tenants, home and shop owners with particular attention at vulnerable groups. If not, please indicate the reasons.
5. Please provide information on the measures taken to ensure that the people whose houses, schools and houses have been demolished have provided prior to the eviction with access to an alternative accommodation, work, and education facilities and to a suitable area for long-term resettlement near Kibera.
6. Please provide information regarding the observance of the Section 152 G of the Land Laws (Amendment) Act, Act No. 26 of 2016 regarding the mandatory procedures that must be followed before an evictions takes place. If not followed, what were the motives?
7. Please provide information about measures taken by your Excellency's Government agencies to ensure that affected people have access to effective remedy and are adequately compensated.
8. Please advise about the steps taken by the Government to ensure that business enterprises such as H Young & Co (EA) Ltd. respect human rights in line with the UN Guiding Principles on Business and Human Rights, including by

conducting human rights due diligence to prevent, mitigate and remediate adverse impacts.

9. Please provide information about steps undertaken or planned to adjust national legislation to ensure its full compliance with international human rights standards, in particular General Comment No. 7 on forced evictions and the Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18).

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Please be informed that a letter on the same matter has also been sent to the involved company.

We intend to publicly express our concerns, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue(s) in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Dante Pesce

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Leilani Farha

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context