

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

REFERENCE:
UA OTH 47/2018

25 July 2018

Dear Mr. Onyuka,

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.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received.¹ Special Procedures mechanisms can intervene directly with Governments and other stakeholders (non-state actors) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning the **ongoing forced evictions and demolitions of houses, schools and business in the settlement of Kibera, Southwest of Nairobi for the construction of a road, whose public tender has been given to your company**. The evictions started on 23 July and has been conducted 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 30 000 people homeless and was carried out without any plan for resettlement and/or compensation in place.

According to the information received:

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

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 (Abdumajid 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 immanent 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 H Young & Co (EA) Ltd. to take all necessary measures to respect all applicable international human rights standards and provisions of national law. In accordance with "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, business enterprises must respect human rights, “(a) avoiding causing or contributing to adverse human rights impacts through their own activities, and addressing such impact when they occur; and (b) seeking to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.” (Guiding Principle 13). “In order to meet their responsibility to respect human rights, business enterprises should have : (a) a policy commitment to meet their responsibility to respect human rights; (b) a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute” (Guiding Principle 15).

The United Nations Guiding Principles require that business enterprises involve meaningful consultation with potentially affected groups and other relevant stakeholders. (Guiding Principle 18). The commentary on this Principle provides that this includes assessing human rights context prior to a proposed business activity, where possible;

identifying who may be affected. In this process, business enterprises should pay special attention to any particular human rights impacts on individuals, groups or populations that may be heightened risk of vulnerability or marginalization. To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In addition, the Guiding Principle 19 notes that business enterprises should prevent and mitigate adverse human rights impacts and take appropriate action in this regard. The Commentary on this Principle notes that “if the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it.” Furthermore, the Guiding Principles also note that in order for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted (Guiding Principle 29).

In its end of mission [statement](#) to Kenya the Working Group noted that “concerns were raised with the Working Group about confusion and uncertainty in relation to 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.²

We note with deep concern that the above described evictions seem to amount to forced evictions and thus must be considered as a serious violation of international human rights law. We would therefore like to warn your company about the risk of participation in a serious violation of human rights.

The full texts of the human rights instruments and standards recalled above are available on 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 company 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 information on any human rights due diligence that may have been undertaken by your company to prevent, identify and remedy the adverse human rights impact of your company’s activities for the construction of the bypass road from the Ngong Road to the Langata Link Road (M12) in accordance with the UN Guiding Principles on Business and Human Rights.
3. Please provide information on any steps taken to consult or seek feedback from potentially affected groups and on the nature and extent of consultations or

² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23356&LangID=E>

dialogues conducted with potentially affected stakeholders. If no consultations or dialogues were initiated, please explain why.

4. Please provide information on any other steps taken by your company to provide for or cooperate in their remediation of affected people through legitimate processes. Please provide information on steps taken by your company to establish any company-level grievance mechanisms to address adverse human rights impacts caused by your company and to deal with the concerns of affected communities and to deal with the concerns of affected communities.
5. Please provide information on any interaction that may have taken place between H Young and Company and the Government regarding the ongoing eviction and demolition. In particular, please provide information on whether the company had used any leverage to ensure the evictions comply with human rights standards and domestic norms.

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 Government of Kenya.

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 the company to clarify the issue(s) in question.

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

Please accept, Sir, 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