

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:
OL OTH 68/2018

26 October 2018

Dear Ms. Njoki,

We have the honour to address you in our capacities 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 acknowledge the receipt and thank you for your prompt response of 26 July 2018 regarding communication OTH 47/2018 which concerns 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.**

We take note of the response to our queries, including that your company denies any allegations of human rights abuses or breaches of the Guiding Principles on Business and Human Rights; that, as a contractor, your company has no control of the steps taken to remedy or prevent the alleged human rights abuses, and has no leverage over your contractor; and that your company has not been involved or implicated in any human rights abuses as you have not taken part in the alleged forced eviction.

Video footage available to us shows bulldozers and excavators demolishing informal homes and schools, and we have been informed that no alternative accommodation or resettlement assistance was provided to concerned individuals. Moreover, it does not appear that there was a plan in place to ensure that the children concerned could be admitted to other schools. We would like to seek further clarification as to whether Hyoung took part in the demolitions of these structures, or directed, approved or provided technical equipment for the demolitions. More generally, even if another company or the Government carried out the demolition, if Huoung was aware that this was taking place in order to make way for the road construction, your company should still have taken steps to address this harm and to mitigate it.

We are aware that you have been contracted by the Kenya Urban Roads Authority to construct the Ngong Road- Kibera- Kungu Karumba – Langata Road (mission link no. 12). However, according to the United Nations Guiding Principles on Business and Human Rights¹, business enterprises have an independent responsibility to respect internationally

¹ Available at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

recognized human rights. Similarly, the Basic Principles and Guidelines on Development –based Evictions and Displacement (A/HRC/4/18) note that “while a variety of distinct actors may carry out, sanction, demand, propose, condone or acquiesce to forced evictions, States bear the principle obligation for applying human rights (...). This does not, however, absolve other parties, including (...) transnational and other corporate, of all responsibilities.” (paragraph 11).²

Accordingly, a company is required to take steps to prevent or mitigate adverse human rights impacts that are linked to its operations, including by assessing actual or potential adverse human rights impacts, including those impacts that may be linked to its operations by its business relationships, including through meaningful engagement with potentially affected groups. On this basis, a business enterprise should take appropriate action to prevent and mitigate adverse impacts, including by using its leverage to the greatest extent possible.

Your company does not need to be directly involved in the ongoing demolitions and evictions for the alleged adverse human rights impacts to be a matter of direct concern, as these alleged adverse human rights impacts may still be directly linked to your operations. In this regard, your response provides no indication that your company has taken any steps to identify the risk of adverse impacts, nor that your company has considered any steps to seek to prevent or mitigate such impacts.

In cases where a company deems that it lacks leverage to prevent or mitigate an adverse human rights impact, it should consider ending the business relationship, or if it chooses to continue the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the adverse impact.

We believe that a proper process of human rights due diligence would have led your company to consult the potentially affected stakeholders.

Concerning, the process of human rights due diligence followed, we trust that your company has developed an environmental impact assessment. We would like to ask if this environmental impact assessment included an assessment of social and human rights impacts. Through its human rights impact assessment, the company should in this case have identified the risk of infringement of the right to housing and the prohibition of forced evictions. The **Basic Principles and Guidelines on Development-based Evictions and Displacement, (A/HRC/4/18)** and the General comment N°7 of the UN Committee on Economic, Social and Cultural rights provide guidance as to **how these rights should be respected by your company. As mentioned in the Basic Principles, evictions should only be carried out after a comprehensive resettlement plan has been published to protect vulnerable groups and after sufficient time has been provided for public comment to the proposed plan. In addition, evictions should never result in individuals rendered homeless (A/HRC/4/18, para 37 and 43).**

² Available at: https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

We would therefore appreciate any information you may be able to provide concerning the human rights due diligence process followed by your company in this specific case.

We would also like to make a reference to Target 11.1 of the Sustainable Development Goals adopted by the United Nations General Assembly – “By 2030, ensure access for all to adequate, safe and affordable housing and basic services, and upgrade slums”. It is clear that the Sustainable Development Goals cannot be met by Governments alone and that private investment will play a significant role. It is essential, that private investment be better directed to meeting the needs of the quarter of the population of cities living in informal settlements. This means adopting a new commitment to human rights responsibilities within the residential housing and construction sectors. The Guiding Principles on Business and Human Rights, requiring that investors avoid any activity that results in displacement of communities or the destruction of habitat, must be applied to ensure that a reasonable component of any private development and investment in land or housing is directed towards the housing needs in informal settlements. A global initiative, led by States and international financial institutions, is required to provide reliable mechanisms for capital investment in upgrading, directed by communities themselves. (Please see a report of Special Rapporteur on the right to adequate housing, A/73/310/rev.1)

As per Principles 22 and 31 of the Guiding Principles on Business and Human Rights, a business enterprise that has contributed to adverse impacts should engage in remediation, by itself or in cooperation with other actors. Operational-level grievance mechanisms can be one effective means for enabling remediation when they meet certain core criteria, as set out in Principle 31. In this regard, we would appreciate any information you may be able to provide about any such grievance mechanism of your company.

We would like to thank you for taking the time to respond to our questions and engaging with us. As noted, we use this process to alert key duty bearers to their responsibilities. We would be pleased to meet with you to further discuss these questions, and we hope our response helps clarify how the Guiding Principles on Business and Human Rights should be understood.

Please note that this letter as well as your responses will be included in the communications reports of special procedures submitted to the Human Rights Council (available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>).

Please accept, Ms. Njoki, the assurances of our highest consideration.

Anita Ramasastry
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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