

Mandate of 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,

I have the honour to address you in my capacity as 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 resolution 43/14.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **demolition of homes and forced eviction of the Kibos community, an informal settlement in Kisumu County, Kenya. The forced eviction reportedly rendered about 3,500 people homeless, defied court orders of the Environment and Land Court of Kisumu resulting in a prima facie violation of the right to adequate housing and other human rights. Affected residents reportedly belong overwhelmingly to the Nubian minority in Kenya.**

According to the information received:

The Kibos community is a Nubian settlement located for nearly 84 years in Kisumu country. Most of its residents belong to the Nubian minority that has experienced historical injustices linked to statelessness and land ownership. The settlement began in 1938, when the British colonial Government resettled the community from a location close to Kisumu airport to make place for its extension. Since then there has been no attempt by the State to guarantee the residents security of tenure.

The ownership of the land on which Kibos is located has been challenged repeatedly, with Kenya Railways claiming its ownership and threatening to evict the community. The ownership issue was challenged by the community and a court case to clarify the ownership was pending in the Environment and Land Court in Kisumu.

Fearing their community could be evicted, community members of the Kibos community and their legal representatives filed on 5 February 2021 at 11:00 AM a Certificate of Urgency seeking the Court's intervention. The Court served the same day at 4:15 PM an order to the County Commissioner of Police to halt any evictions until the matter would be heard by the Court on 10 February 2021.

However, when receiving the Court order the County Commissioner of Police reportedly tore up the application and proceeded on the same day at around 5:00 PM to the informal settlement of the Kibos community to oversee the

marking of houses for demolition that were painted with an X.

During the same evening at around 9:00 PM Kenya Power and Lightning Company disconnected the power supply to the homes. At around 10:30 PM representatives of Kenya Railways accompanied by armed police arrived in the informal settlement and police started firing tear gas into the homes. Excavators and other heavy equipment were used to bring down homes, the mosque and two nursery schools. As the authorities proceeded to demolish buildings, a child trapped in the debris was crushed to her death while her mother cried for time to remove her from the house. Reportedly the County Commissioner oversaw the demolition of all buildings. About 3,500 people have been made homeless as a result of the eviction and housing demolitions.

The eviction was carried out at night, during the rainy season, and with insufficient notice, and no time for residents to salvage belongings in contravention of applicable protections governing evictions in the Land Act of Kenya, Act No. 6 of 2012. Further, the nightly curfew of 10:00 PM to 4:00 AM imposed as part of COVID-19 containment measures remained in place, restricting movement of affected residents and of those who might render assistance to them.

On Sunday 7 February 2021 some of those rendered homeless were moved to a makeshift camp supported by Kenya Red Cross a few kilometers away from the informal settlement, however, others have decided to remain at the eviction site.

The forced evictions in Kibos were conducted less than a month after the Supreme Court of Kenya, had made on 11 January 2021 a final judgment on the right to housing in another forced eviction case, that also saw judicial orders prohibiting an eviction being ignored by public authorities (*Mitu-Bell Welfare Society vs The Kenya Airports Authority and 2 others*, Petition NO. 3 of 2018). Thus forced evictions carried out for development projects in disrespect of Court orders and national law appear to be a more general problem.

Reportedly since 5 February 2021 other communities in Kisumu county, such as Bondeni, Shauri Moyo (in Muhoroni), Bandani, Otonglo Market and Lela have also been subjected to partial or total evictions.

On 10 February 2021, the Environment and Land Court of Kisumu summoned the Kenya Railways Corporation to show cause why they should not be held in contempt of court for ignoring the conservatory orders and for failing to appear in court. In a hearing held on 11 February, the Court upheld the status quo of the conservatory orders and granted the community an official order to allow to return to the site of their destroyed settlement.

While it is appreciated that the High Court (Environment and Land) ordered the return of the community back to the disputed land pending the hearing of the case, the community members are only allowed to construct makeshift

houses, meaning they remain exposed to various risks. The affected communities are reportedly facing increased risk of contracting COVID-19 as many of them shelter now in tents with no possibility of maintaining physical distance and following other public health recommendations to keep themselves and their families safe from the virus.

While I do not wish to prejudge the accuracy of the information received, I would like to express my utmost concern about the forced eviction of residents of the Kibos community and the reported death of a child during the eviction. The reported facts would not only violate several international human rights norms. They also suggest that the moratorium on evictions during the COVID-19 pandemic announced by the Cabinet Secretary on 11 May 2020 and a court order by the Environment and Land Court in Kisumu were disrespected by local police, Kenyan Railways, and the County Government of Kisumu.

Forced evictions as the case reported above have been considered for many years by the United Nations as a gross violation of human rights, in particular the right to adequate housing and other human rights (see Commission on Human Rights resolution 1993/77). In this connection I would like to bring your Excellency's Government's attention to article 11 on the right to adequate standard of living of the International Covenant on Economic, Social and Cultural Rights, ratified by Kenya in 1972 and to General Comment No. 4 the Committee on Economic, Social and Cultural Rights on the right to adequate housing which states that "instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."

In addition, I would like to express my concern that the reported death of a child constitutes a violation of the right to life enshrined in Article 6 of the International Covenant on Civil and Political Rights. In a similar vein the right to life is violated if persons are rendered homeless without providing adequate shelter and protection against the elements of nature or a life threatening virus. Reference in this respect is made to General Comment No. 36 of the Human Rights Committee, which underlines that State failure to adequately protect vulnerable persons, including persons in situation of homelessness may constitute as well a violation of the right to life. This is in particular the case in the above mentioned situation when State entities such as Kenya Railways or the Kenyan Police have actively contributed to a life threatening situation by destroying housing of individuals without providing alternative accommodation meeting basic adequacy standards.

General Comment No. 7 of the Committee on Economic, Social and Cultural Rights on forced evictions further stipulates that forced evictions are only permissible under international human rights law in exceptional circumstances and after all procedural protections have been met. This includes inter alia the exploration of all feasible alternatives to avoid evictions, genuine consultation with the affected residents and tenants, adequate and reasonable notice, adequate compensation for any loss of property, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. Evictions should furthermore never result in individuals being rendered homeless or vulnerable to the violation of other human

rights (paragraphs 13, 15 and 16).

Similarly, the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex 1) specify that evictions can only take place in 'exceptional circumstances'; that they must be authorized by law, and ensure full and fair compensation and rehabilitation. The Guidelines also state that any settlement agreement must satisfy the criteria of adequacy, accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.

I would also like to draw your attention to the reports of the previous Special Rapporteur on access to justice for the right to adequate housing (A/HRC/40/61) which stresses that individuals must have access to justice and have their right to housing claims adjudicated by relevant judicial bodies, including claims related to planned evictions and housing demolitions. In this respect, I expressly welcome the orders of the Environment and Land Court of Kisumu that aimed to safeguard the right to adequate housing and protect the community from forced eviction, including its subsequent decision to allow the members of the evicted community to return to their former place of residence.

Furthermore, the reported forced eviction appears to have been carried out in contravention of several procedural protections set out in Articles 152C and 152G of the National Land Act, Act No.6 of 2012: No official notice was given, nor were formal orders to carry out the evictions presented; dignity and life of the affected residents were not protected, inadequate measures to protect vulnerable persons appear to have taken; and inadequate opportunity had been given to the affected residents to demolish first themselves their homes and salvage their belongings. Further, carrying out the eviction during the nightly curfew placed even greater hardship on the affected residents.

Article 152C of the Land Act, Act No.6 of 2012 specifies that the National Land Commission shall cause a decision relating to an eviction from public land to be notified to all affected persons, in writing, by notice in the Gazette and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction. No publication of the eviction was however made neither in the Gazette nor in a national newspaper. Furthermore, Article 152G of the Land Act specifies that all evictions shall be carried out in strict accordance with the following procedures, including among other a) be preceded by the proper identification of those taking part in the eviction or demolitions; (b) be preceded by the presentation of the formal authorizations for the action; ... (d) be carried out in a manner that respects the dignity, right to life and security of those affected; (e) include special measures to ensure effective protection to groups and people who are vulnerable such as women, children, the elderly, and persons with disabilities; f) include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction; (g) include mechanisms to protect property and possessions left behind involuntarily from destruction; (h) respect the principles of necessity and proportionality during the use of force; and (i) give the affected persons the first priority to demolish and salvage

their property. Several of these provisions appear as well not to have been respected.

The eviction also ignored the ruling of the Supreme Court from 11 January 2021 in *Mitu-Bell Welfare Society vs The Kenya Airports Authority* that recognizes that where the Government fails to provide accessible and adequate housing to all the people, it is at minimum obliged to protect the rights and dignity of those in the informal settlements.

The landmark judgement of the Supreme Court states, in paragraph 153 that, “The right to housing in its base form (shelter) need not be predicated upon “title to land”. Indeed, it is the inability of many citizens to acquire private title to land, that condemns them to the indignity of “informal settlements”. Where the Government fails to provide accessible and adequate housing to all the people, the very least it must do, is to protect the rights and dignity of those in the informal settlements. The Courts are there to ensure that such protection is realized, otherwise these citizens, must forever, wander the corners of their country, in the grim reality of “the wretched of the earth”.

The Supreme Court furthermore reasoned that “it is not lost to us that the eviction that triggered these proceedings was carried out in contravention of a court order. Neither are we oblivious of the fact that, during the eviction, the appellants’ houses and property, including schools, were destroyed. This Court, cannot close its eyes to these uncontroverted findings on record. Actions by state organs, carried out in flagrant disregard of court orders, do undermine our constitutional order, more so, if they result in the violation of citizens’ rights.” (para. 156)

The alleged disrespect by the police and the Kenyan Railways Corporation of a Court order and of the procedural protections contained in the Land Act of Kenya is a serious concern as such alleged conduct seriously questions the status of the rule of law in the country, in particular if such contraventions are not investigated and subject to sanctions that are proportionate to the gravity of the reported violations. The non-appearance of Kenya Railways on 10 February 2021 before the Environment and Land Court of Kisumu after the eviction when the case concerning the ownership of the land was due to continue, reinforces the perception that there is a more systematic problem of disrespect of the judiciary and rule of law by some public authorities that needs to be addressed urgently.

Evictions, not respecting Court orders and national legislation governing evictions appear to be a general problem. In this context I would draw to your attention not only to the Judgement of the Supreme Court from 11 January 2021, but as well to my earlier communications concerning other forced evictions sent to your Excellency Government’s attention on 20 May 2020 and 19 August 2020 respectively (JUA KEN 1/2020 and JAL KEN 3/2020). I am still looking forward to receive detailed replies to these two communications.

Given the situation I urgently call upon the Government to:

- initiate an independent and impartial inquiry into the forced evictions and the reported death of a child with the view to holding those

responsible for these human rights violations to account;

- immediately ensure that all those rendered homeless have access to adequate alternative housing and that their right to remedy including reparation, restitution and guarantee of non-repetition is upheld;
- ensure nationwide adherence to the moratorium on evictions during the pandemic as announced by the Cabinet Secretary on 11 May 2020;
- suspend all evictions by State Agencies, including by Kenya Railways until new guidelines governing eviction and resettlement are in place that are in full conformity with the United Nations Basic Principles and Guidelines on Development Based Evictions and Displacement (A/HRC/4/18, Annex I) and international human rights standards;
- ensure that after the pandemic, no eviction will be carried out in the country in contravention of applicable international human rights standards, the procedural protections of the Land Act of Kenya and Court orders.

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, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please indicate the legal basis for the eviction of the residents of Kibos community and other communities in Kisumu County, such as Bondeni, Shauri Moyo (in Muhoroni), Bandani, Otonglo Market and Lela, especially in light of the reported interim order requesting a suspension of the eviction by the Environment and Land Court.
3. Please indicate to what extent the evictions carried out have violated or were in conformity with all procedural protections set out in Articles 152C – 152 G Land Act, Act No. 6 of 2012 of Kenya.
4. Please indicate which measures have been taken by the authorities to provide alternative accommodation to the persons evicted and to ensure the no one is left homeless. Please share as well any information on any plans to relocate the Kibos community and other communities and

efforts made by the Government to ensure that these plans meet international human rights standards, including in relation to the right to adequate housing.

5. Please provide detailed information on any measures taken to ensure that affected persons evicted are compensated for the destruction of their homes and possessions and to ensure their rights to legal recourse.
6. Please provide more detailed information on investigations undertaken concerning to the reported death of a child during the eviction, including any efforts to ensure that any person responsible for the death of the child is held accountable.
7. Please provide any details about any investigations undertaken concerning the alleged violations of the Land Act of Kenya, the defiance of the national eviction moratorium during the pandemic, and of a Court order by the local County Commissioner, including his alleged participation in the above mentioned eviction. Please specify which disciplinary or other sanctions have been imposed on him or other public officials and police officers who reportedly participated in the unauthorized eviction resulting in an alleged death of a child and the destruction of homes and property of 3,500 persons.
8. Please indicate what measures have been taken to protect the right to health of former residents of Kibos community, whose health have been put at increased risk due to the evictions and the COVID-19 pandemic.

While awaiting a reply, I 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.

I may publicly express these concerns in the near future as, in my view, the information is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. Any public statement will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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standard of living, and on the right to non-discrimination in this context