



CIVIL SOCIETY JOINT SUBMISSION FOR THE THIRD CYCLE OF THE UNIVERSAL PERIODIC REVIEW

1. Introduction

This report captures the human rights situation on access to housing, water and sanitation, forced evictions as well as statelessness and denial of citizenship in informal settlements in Nairobi County. It is a true description as submitted by Economic & Social Rights Centre (Haki Jamii)ⁱ, Nubian Rights Forumⁱⁱ, Social Justice Centre Working Groupⁱⁱⁱ and the Centre for Community Development and Human Rights^{iv}. We believe it to be a true account of events and facts and therefore can be used as a law and policy making tool. This report includes recommendations which in our view, the state should take to further ensure the respect, protection and fulfilment of human rights.

2. Human Rights Concerns and Recommendations

2.1 Access to adequate housing and Forced Evictions

Lack of access to adequate housing is a major challenge in Nairobi County especially in the informal settlements. More than half the population that lives in these informal settlements live in deplorable conditions. In addition, they lack access to clean and affordable piped water. As of 2015, 30% to 40% of residents in Kenya's Capital Nairobi live in informal settlements, which are crowded, with poor quality housing and lack of basic socio-economic services, such as access roads, education facilities, and sanitation facilities. The quality of housing determined by the affordability of building materials. The poor cannot access resources for shelter financing.

The Constitution of Kenya 2010^v establishes the right to housing as an enforceable socio-economic right, which provides that 'every person has the right to accessible and adequate housing and to reasonable standards of sanitation. The Constitution also guarantees every child the right to shelter. The entrenchment of the right to property and land rights further advances the right to housing. The Constitution obliges Parliament to enact legislation barring the State or any person from arbitrarily depriving a person of property or right over any property of any description with attendant restrictions and safeguards to human rights provided. Further, the IDP Act and the Great Lakes Convention contain elaborate procedures for evictions and resettlement.

In addition, in 2106, the government amended Section 98 of the Land Laws Act to include a provision to guide evictions. However, the amendment is silent on UN basic principles and guidelines on evictions and displacement of communities and groups. The National Slum Upgrading and Prevention Policy has been approved and adopted to guide the process of slum upgrading and prevention initiatives. It seeks to integrate the existing slums into the formal system, enabling them to enjoy reasonable basic amenities. It will also prevent formation of new slums by adhering to urban planning, provision of infrastructure and low-cost housing.

Further, the President rolled out the 4 pillars of development dubbed the Big 4 agenda that he intends to implement before 2022. One of the pillars is provision of affordable housing for which seeks to ensure adequate, standardized and well-spaced houses with continuous supply of clean water and electricity. It is noteworthy that the implementation of the policy priorities contained in the big 4 agenda has so far contravened human rights of various groups and people.

Despite the above developments, the Kenyan government has failed to conduct evictions in accordance with the set laws and policies and with due disregard to human rights principles and practices. Evictions are characterised by lack of proper consultation and involvement of local community and Civil Society stakeholders when effecting evictions. Presently, the government proceeds in effecting forceful evictions without compensation practices against the most vulnerable. Some of the cases of forced evictions which have been done through the implementation of mega projects affecting informal settlements include: -

- Railway line in Laini Saba and Soweto informal settlements on the railway project
- Kibera link road evictions by Kenya Urban Roads Authority (KURA) affecting residents in Kibera^{vi}.
- Deep-sea informal settlements by Kenya Urban Roads Authority (KURA).^{vii}
- City Carton Informal Settlements Forced Evictions 14th May 2019 by Kenya Urban Roads Authority (KURA).^{viii}
- Jomvu-Madukani Mombasa by Kenya National Highway Authority (KeNHA).^{ix}

Recommendations

- 1. The government should ensure that adequate resources are allocated through the national budget to provide social housing for the poor in both rural and urban areas.**
- 2. We recommend that the government implement the evictions and resettlements procedures contained in the IDP Act and the Great Lakes Convention to guide processes and avert the rampant human rights violations accompanying evictions. It is our considered opinion that eviction must not render persons homeless or vulnerable to other human rights violations, and that appropriate measures must be taken to ensure adequate alternative housing, resettlement or access productive land. The guidelines must ensure evictions are carried out in the most exceptional circumstances after all workable alternatives to eviction have been explored in consultation with the affected community, and after due process protections have been afforded to the individual, group or community. Further, evictions should consider resettlement of the affected persons especially the poor and marginalised slum dwellers who suffer both loss of homes and livelihoods.**
- 3. We recommend that the government enact and enforce the Evictions and Resettlement Procedures Bill that encompasses the United Nations basic principles and guidelines on evictions and displacement of communities and groups especially slum dwellers who suffer both loss of homes and livelihoods.**

2.2 Access to Clean Water and Sanitation

Lack of access to clean water and proper sanitation are major challenges in Nairobi County especially in the informal settlements. Many are forced to buy water from vendors greatly compromising its quality, and in addition to the scarcity, water rationing in Nairobi has become a norm. Consequently, there have been many cases of cholera outbreaks^x in Nairobi county due to the effects of consuming contaminated water. Many water pipes within Nairobi have been channelled parallel to sewer lines, with some private developers passing them through dirty trenches leading to frequent contamination.

Over the last ten years, water supply in Nairobi has drastically reduced from 1,000,000 litres per day to 700,000 litres per day despite the rapid increase in population. There has been a poor drainage system^{xi} in Nairobi due to improper planning of the construction of houses and roads. Most of the main sewers were constructed during colonial times and have never been expanded since, so some explode when overwhelmed, especially the ones which end up in informal settlements. As a result, many of residents here interact with raw sewage on a daily basis, sometimes in their own homes.

This massive water and sewer problem are accompanied with a structural lack of toilet facilities in popular poor neighbourhoods. In Kibera Mathare, Mukuru and Korogocho the private and public toilet proportion to the average number of residents using it in a day is 1:500, and most of them are accessed at a fee of Ksh.10 per visit. The same toilets double up as bathrooms and water points for domestic consumption. In the event of lack of water, which at times can last for three consecutive weeks, residents are forced to purchase water from vendors at an average cost of Ksh. 30 for a 20 litre jerrycan. Wealthier neighbourhoods hardly experience such water cuts, and if they do residents there have funds to purchase water tanks while informal settlement resident are limited in options.

The problem of sanitation continues. Garbage collection infrastructure has been partially privatized over the past two decades leaving many poor residents to part with a lot of money, percentage wise, to have their garbage disposed. Others live with their garbage around them, for want of facilities to safely dump their waste. Centralised and coordinated garbage collection points are absent in most of the poorer wards within Nairobi, forcing residents to dump waste at undesignated corners in their neighbourhoods. Those delegated by residents and/or the county government to dispose waste at times are forced to dispose them at the riverbanks and other open spaces due to cartels controlling the [main dumping site](#) at Dandora^{xii}. Concern over the continued existence of the dumping site and its effect has been raised by various other actors including human rights organizations.

In the second cycle of Universal Periodic Review, the Kenya CSOs recommended t^{xiii}hat the government, improves access to water and sanitation services particularly for rural and suburban communities. Despite the above recommendation, the informal settlements of Nairobi are still faced with poor water and sanitation problems and the government has not put measures to improve the conditions.

The government enacted the Water Act 2016 and operationalized it in 2017. The move was aimed at ensuring the Act conforms to the constitutional requirements and the international human rights standards. The National Water Policy is currently under review. The government further introduced structural changes in the water and sanitation sector. The Ministry of Water and

Sanitation (MWS) was established by the Organization of the Government, Executive Order No. 1 of 2018(revised) issued in June 2018. Its mandate is development and management of water resources, transboundary waters, water harvesting and storage, water services and sanitation regulation, dams and sanitation management^{xiv}. The Ministry of Water and Sanitation has recently developed the following documents to aid in the implementation of the regulatory framework

- a. Water Services Regulations 2019
- b. Water resources regulations 2019
- c. National Water harvesting and storage regulations 2019
- d. Strategic Plan for 2018 – 202

Recommendations

- 1. The county governments should immediately restructure systems to ensure that water is not privatized but rather easily accessible to every household. Water should be distributed according to the population density, this will be moving away from the current system that gives preference to the wealthier urban suburbs.**
- 2. Constructions of any kind along the sewer lines should be brought down immediately and the county government should expand the current sewer line system to accommodate the growing population.**
- 3. Finalisation and accent into law of the Sanitation Bill needs should be accelerated.**
- 4. On waste management, we recommend that the County Government introduces garbage collection and management systems that promote reclamation and recycling of waste material in slum areas.**

2.3 Statelessness and Denial of Citizenship

Nationality in Kenya is regulated by Chapter III and article 53 of the Constitution of Kenya 2010^{xv} and the Kenya Citizenship and Immigration Act 2011(KCIA^{xvi}). The 2010 Constitution removed gender discrimination in Kenyan citizenship law, and permitted dual citizenship for adults for the first time. As a result Kenyans who had acquired other nationality have been able to regain nationality. The constitution also states that every child has the right to a nationality from birth, and it provides for the first time that children of unknown parents shall be presumed to be Kenyan. The Citizenship and Immigration Act elaborates with more detail on the constitutional rules, and also provides temporary special procedures for stateless persons and others resident in Kenya since independence in 1963, and their descendants, to have the right to apply for citizenship in some circumstances, within a seven -year period of the adoption of the act and which period may be extended by the Cabinet Secretary.

These temporary procedures recall the provisions of Kenya's independence constitution^{xvii}, which adopted the standard provisions of the Commonwealth countries on acquisition of citizenship: those born before the constitution came into force became citizens automatically, if one parent was also born in Kenya; and those born or resident in Kenya without a parent born there could register as Kenyan citizens during a two year period after independence. Those born after independence became citizens automatically based on birth in Kenya. In 1985, however, the

constitution was amended to remove rights based on birth in Kenya with retroactive effect to independence. The temporary measures are accompanied by measures that the stateless cannot meet. For instance, they require that stateless person must show proof of lawful and continuous residence since 1963. The measures lock out children of British versus citizenship who are neither British nor Kenyan. They cannot meet the threshold because the provision only applies to children whose parents are stateless and who have lived in Kenya since 1963. Additionally, the measures also lock out stateless person who came in after 1963 but who are for all intents stateless. They include descendants from Zimbabwe, Burundi and Rwanda.

The registration of persons act cap 107^{xxviii} laws of Kenya regulates registration of Kenyans by birth and Kenyans by registration while the registration of births and deaths act regulates the registration of births and deaths cap 174 laws of Kenya.^{xix} These two laws are pivotal in reduction and protection of statelessness because they give an initial basis for the recognition of all persons by the Kenyan state.

The Children's Act ^{xx}article section 11 provides for the right of children to a name and a nationality, but not to birth registration. However, the registration of birth and death act makes birth registration compulsory.^{xxi} The Citizenship and Immigration Act section 22(I) g^{xxii}, provides for a right to a birth certificate, but only for Kenyan citizens. Only an estimated 60% of births are registered, creating additional challenges to proving nationality^{xxiii}. Most stateless communities continue to be discriminated in the issuance of birth certificates especially in areas where statelessness is less understood by government officials.

Ethnic minority communities such as the Nubians, Shona, Pemba, Kenyan Somalis, Boni, Maasai and Awer remain undocumented up to date^{xxiv} and are often subjected to vetting while applying for citizenship documents. Section 15 of the Kenya Citizenship and Immigration Act, 2011^{xxv} provides very clear instances when a Stateless person can be registered as a citizen while Section 9 of the Registration of Persons Act, 2015^{xxvi} deals with the issuance of identity cards. Despite these, these ethnic minorities are still not being registered and risk missing out on the National Identification Integration Management System (NIIMS) and National Education Management Identification System (NEMIS) registration process.

Recommendations

1. The Government of Kenya should ensure there is a document which is proof of nationality from birth in line with article 53 of the constitution and the charter on the rights and welfare of the child .They should also move to grant all stateless persons citizenship and eliminate discriminatory vetting processes that put communities at risk of statelessness .

2. The Government of Kenya should develop and implement a non-discriminatory process of registering stateless persons and children in line with the recommendations that were contained in the case of the children of Nubian descent.

ⁱ Hakijamii is a national human rights organization founded in 2004 and registered in Kenya in 2007 as a non-governmental organization (NGO). Its core agenda is to support and work with marginalized groups, especially

in urban areas, to advocate for their economic and social rights. The organization has the following programs; Litigation Land and Housing, Health water and Sanitation, Education, Social Security and Research and budget analysis.

ⁱⁱ The Nubian Rights Forum is a community based civil and human rights organization in Kibra whose primary aim is to agitate and champion for the rights of the marginalized and minority Nubian community across citizenship, land and human rights issues such as Gender Based Violence civic education on the constitution, conflict resolution, campaigning and lobbying, peace building and reconciliation. The organization which was founded in 1997 has gained wide acclaim and acceptability by the people as primary advocates on citizenship and nationality. Although the organization is deeply rooted in Kibra, it has further reach with partners in as far as Mombasa, Garissa and Wajir through their maiden citizenship paralegal program adopted as a best practice.

ⁱⁱⁱ The Justice Centres Working Group (SJCWG) is a consortium of 12 justice centres mainly based in the Eastland's part and informal settlements of Nairobiⁱⁱⁱ. The justice centres are all community-based organisations, that advocate and fight for human rights in all spheres of their respective communities. The working group forms a platform for collective bargaining, where a single justice centre would otherwise find a challenge.

^{iv} Centre for Community Development and Human Rights is a rights-based community organization founded in Kibra with an aim of improving livelihoods through the promotion of and access to human rights and sustainable development initiatives. The Centre was founded as an initiative to bridge the gap between government responsibility and community realities in access to rights and opportunities for development in Kibra Constituency. Our focus is on *inter alia*, human rights and governance, quality education, social cohesion and development. We work in partnership with state departments and offices, like-minded civil society organisations, non-governmental organizations and community-based organizations in furthering our agenda.

^v ⁸ Constitution of Kenya Article 40 (2) a, b

^{vi} The construction of the Yaya-Kibra-Langata road also known as Missing Link number 12 began in February 2016 from the Yaya side by Kenya Urban Roads Authority (KURA). Kibra land is Government owned. On 3rd of February 2016, KURA officials came to Kibra to place beacons to show exactly where the road would pass cutting across the slum affecting residential homes, businesses, places of worship and schools. The Project Affected Persons (PAPS) came together to demand answers from the Government. They held a peaceful demonstration on 18th of February 2016 that started at the Dc's grounds in Kibra to the Ministry of Transport and Infrastructure offices at Transcom House seeking to know among others, when the construction would begin, where the community schools, pupils and places of worship would be relocated to and where the affected communities would be resettled. In March 2016, some PAPS took the government to court. One group was the Nubians, case No. 974 of 2016. This case was eventually ruled in favour of the government in April of 2018. However, in his ruling, the judge prohibited the government from evicting the residents of Kibra without putting in place a Resettlement Action Plan (RAP). The second case was filed by the owner of Egesa School, an informal school that was affected. This case was also ruled in favour of the Government. When the evictions finally happened on 23rd July 2018, approximately 2, 000 homesteads were demolished, affecting about 10, 000 people, most of them children and women. There were 8 schools that were demolished, leaving the pupils without alternatives, with the standard eight candidates mostly affected as the KCSE exams were set to take place in October.

^{vii} ⁹ www.worldurbancampaign.org/economic-and-social-rights-center-hakijamii-deep-sea-evictions-aftermath

^{viii} <https://www.standardmedia.co.ke/article/2001278438/opinion-forcible-evictions-are-inexcusable>.

^{ix} <https://reliefweb.int/report/kenya/14-hospitalised-nairobi-after-cholera-outbreak>

^x <https://reliefweb.int/report/kenya/14-hospitalised-nairobi-after-cholera-outbreak>

<https://www.the-star.co.ke/counties/nairobi/2019-03-28-outbreak-14-cholera-cases-reported-in-nairobi/>

^{xi} <https://www.standardmedia.co.ke/article/2000162122/exposed-nairobi-s-woeful-drainage-system>

<https://www.standardmedia.co.ke/article/2000159948/poor-drainage-causes-traffic-mayhem-in-nairobi>

^{xii} The Dandora waste dumping site is a major dumping site located at the East of Nairobi about 8 kilometres away from the city centre in Kenya and is a major disposal site of waste generated from various activities in Nairobi. The dumping site was established in the mid-1970s by the then City Council of Nairobi and occupies about 30 acres of land. In 2001 it was reportedly deemed to be full. The dumpsite was reported to receive around 2,000 tonnes of waste daily in 2007 which figure could have gone up as a result of increase in population. A study conducted by the United Nations Environmental Programme (UNEP) in 2007^{xii} found that high levels of toxic heavy metals were noted in the Dandora soil samples. Health wise, 50% of the children were found to be having blood lead levels above 10 micrograms per decilitre of blood indicating exposure to high levels of environmental lead. The results obtained indicated high potential risk both to the environment and human health that can be attributed to the dumping site. The study also found evidence of the presence of hazardous waste, such as chemical and hospital waste, on the dumpsite attributed to industrial wastes such as fall-offs, used chemicals, raw materials, expired products and substandard goods. The pilot study linked environmental pollution to public health.

^{xiii} Kenya CSO UPR mid-term report recommendation Nos. 142.147; 142.154; ESCR Rec 50; CRC Rec 56a.

^{xiv} <http://www.water.go.ke/downloads/>

^{xv} <http://www.kenyalaw.org/lex//actview.xql?actid=Const2010>

^{xvi} <http://www.kenyalaw.org/lex//actview.xql?actid=No.%2012%20of%202011>

^{xvii} Section 30 of the sixth schedule constitution of Kenya 2010

^{xviii} <http://www.kenyalaw.org/lex/actview.xql?actid=CAP.%20107>

^{xix} <http://www.kenyalaw.org/lex/actview.xql?actid=CAP.%20149>

^{xx} <http://www.kenyalaw.org/lex/actview.xql?actid=CAP.%20149>

^{xxi} Children's act Of 2001

^{xxii} Kenya citizenship and immigration act no 12 of 2011
<http://www.kenyalaw.org/lex/actview.xql?actid=No.%2012%20of%202011>

^{xxiii} https://www.unicef.org/infobycountry/kenya_statistics.html

^{xxiv} Ndubi, M. (2017). The Shona: A Stateless Community in Kenya Yearning to gain Citizenship. Nairobi: UNHCR Kenya.

^{xxv} See <http://www.kenyalaw.org/lex/actview.xql?actid=No.%2012%20of%202011>

^{xxvi} See <http://www.kenyalaw.org/lex/actview.xql?actid=CAP.%20107>