



LISTENING TO THE POOR?

HOUSING RIGHTS IN NAIROBI,

**KENYA**

REPORT



MISSION

COHRE fact-finding mission to Nairobi, Kenya

Final report, June 2006

LISTENING TO THE POOR?

HOUSING RIGHTS IN NAIROBI,



KENYA

COHRE FACT-FINDING MISSION TO

NAIROBI, KENYA

Final report, June 2006

**Centre on Housing Rights & Evictions (COHRE)**

COHRE International Secretariat  
83 Rue de Montbrillant  
1202 Geneva  
SWITZERLAND  
tel.: +41.22.7341028  
fax: +41.22.7338336  
e-mail: [cohre@cohre.org](mailto:cohre@cohre.org)  
web: [www.cohre.org](http://www.cohre.org)

**COHRE Housing & Property Restitution Programme (HPRP)**

83 Rue de Montbrillant  
1202 Geneva  
SWITZERLAND  
tel.: +41.22.7341028  
fax: +41.22.7338336  
e-mail: [restitution@cohre.org](mailto:restitution@cohre.org)

**COHRE Women & Housing Rights Programme (WHRP)**

Private Mail Bag CT 402  
Cantonnements  
Accra  
GHANA  
tel.: +233.21.238821  
fax: +233.21.231688  
e-mail: [women@cohre.org](mailto:women@cohre.org)

**COHRE ESC Rights Litigation Programme (LP)**

8 N. 2nd Avenue East  
Suite 208  
Duluth, MN 55802  
USA  
tel./fax: +1.218.7331370  
e-mail: [litigation@cohre.org](mailto:litigation@cohre.org)

**COHRE Right to Water Programme (RWP)**

83 Rue de Montbrillant  
1202 Geneva  
SWITZERLAND  
tel.: +41.22.7341028  
fax: +41.22.7338336  
e-mail: [water@cohre.org](mailto:water@cohre.org)

**COHRE Global Forced Evictions Programme (GFEP)**

PostNet Suite 247  
Private Bag X9118  
3200 Pietermaritzburg  
SOUTH AFRICA  
tel.: +27.33.3423437  
e-mail: [evictions@cohre.org](mailto:evictions@cohre.org)

**COHRE Americas Programme (CAP)**

Rua Demétrio Ribeiro 990/202  
90010-313 Porto Alegre, RS  
BRAZIL  
tel./fax: +55.51.32121904  
e-mail: [cohreamericas@cohre.org](mailto:cohreamericas@cohre.org)

**CAP – US Office**

8 N. 2nd Avenue East  
Suite 208  
Duluth, MN 55802  
USA  
tel./fax: +1.218.7331370  
e-mail: [bret@cohre.org](mailto:bret@cohre.org) (Eng.)  
e-mail: [mayra@cohre.org](mailto:mayra@cohre.org) (Eng. & Span.)

**COHRE Asia & Pacific Programme (CAPP)**

(Postal address) PO Box 1160,  
Collingwood, VIC 3066  
(visitors address) 124 Napier Street,  
Fitzroy, VIC 3065  
AUSTRALIA  
tel.: +61.3.94177505  
fax: +61.3.94162746  
e-mail: [cohreasia@cohre.org](mailto:cohreasia@cohre.org)

**COHRE Africa Programme**

Private Mail Bag CT 402  
Cantonnements  
Accra  
GHANA  
tel.: +233.21.238821  
fax: +233.21.231688  
e-mail: [cohreafrica@cohre.org](mailto:cohreafrica@cohre.org)

© Copyright 2006 The Centre on Housing Rights and Evictions (COHRE), Geneva, Switzerland

*Listening to the Poor? Housing Rights in Nairobi, Kenya* (revised edition)

ISBN: 92-95004-32-9

All rights reserved

Copies are available from COHRE International Secretariat (see contact info. above)

The Centre on Housing Rights and Evictions is registered as a not-for-profit organisation in Australia, Brazil, Ghana, The Netherlands, Sri Lanka, Switzerland and the USA.

Prepared by: COHRE Africa Programme Fact-Finding Mission

Editors: Malcolm Langford, Jean du Plessis (COHRE Africa Programme) & Rob Stuart (COHRE Editor)

Contributors: Malcolm Langford, Marie Huchzermeyer, Malick Gaye, Michael Kihato and Alfred Omenya. Opiata Odindo of Hakijamii Trust also contributed to the Update section.

Graphic design: Ontwerpburo Suggestie & illusie, Utrecht, [www.illusie.nl](http://www.illusie.nl)

Printed in The Netherlands by USP bv, Utrecht

Photos in Sects. 1, 2, 4, 5 & 6: COHRE fact-finding team.

Front cover photo (rally against evictions, Feb. 2004, Nairobi) and photo in Sect. 3: courtesy of Christ the King Catholic Church, Laini Saba, Kibera.

## Update, March 2006

In the year that has followed the launch of the original version of this report (the ‘Consultation Report’) in March 2005, the Government of Kenya has taken a number of positive steps to address some of the concerns raised by COHRE. However, most of COHRE’s recommendations have not been implemented.

### Policy initiatives

The most positive steps taken by the Government have been policy initiatives. In January 2006, the Ministry of Lands publicly announced its intention to develop guidelines on forced evictions through a process of consultative review and formulate a comprehensive legal framework on evictions in Kenya. The Ministry has prepared a draft set of guidelines and commenced consulting with stakeholders. As the Government initially promised such guidelines in March 2004, COHRE hopes that this process will be completed and the definitive guidelines issued as soon as possible.

Meanwhile, the Ministry of Housing is developing a new Housing Act. To this end, a Draft Housing Bill (2006) has been published and partially discussed by a limited number of stakeholders. COHRE welcomes a number of positive elements in the draft bill, including its first-listed objective – “affirm and facilitate progressive realization of the right to adequate housing” –, the provision for evictions guidelines, and the proposed establishment of a tribunal to adjudicate complaints. However, there is no clear provision or system for incremental slum upgrading, and COHRE fears that some aspects of the draft bill may actually hinder slum-upgrading projects. Also, there is no clear indication as to whether the evictions guidelines will draw on international law. Nonetheless, the dissemination of the draft bill is providing stakeholders with an opportunity to give their input.

In March 2005, Kenya’s Attorney General, Hon. Amos Wako, during his appearance before the United Nations Human Rights Committee in New York, stated:

*... that the Government of Kenya had stopped evictions in Kibera and other informal settlements and that future eviction, if necessary, will be done according to the established international and United Nations standards on evictions.*

The Human Rights Committee responded by recommending that:

*The State party should develop transparent policies and procedures for dealing with evictions and ensure that evictions from settlements do not occur unless those affected have been consulted and appropriate resettlement arrangements have been made.*

At a conference in October 2005, former Assistant Roads Minister Joshua Toro called for adequate compensation for people displaced during road construction, noting that:

*Compensation for the psychological effects of being moved should also be included.*

## Recognition of informal settlements

So far, the Government has taken no steps to formally recognise the existence and rights of the residents of informal settlements, particularly in relation to their rights to be protected from forced eviction and to have access to basic services, including water and sanitation, energy, garbage disposal, education and health services. It is hoped that the Government will heed and implement the 1997 recommendation of the official Nairobi Informal Settlements Coordination Committee (NISCC) that:

*It is imperative that any actions relating to informal settlements in Nairobi are preceded by a clear expression of good intent on the part of the authorities. This should include: the formal recognition of all existing settlements; a moratorium on all demolitions; [and] an immediate stop on allocations of all public land that is already settled.*

## Evictions

In most cases, the threatened evictions in connection with planned infrastructure in Nairobi and elsewhere, which are the subject of this COHRE report, are still suspended. Unfortunately, however, the Government has made no effort to resettle or compensate the 1 000-2 000 victims of the eviction and demolition at Raila Village, Kibera. Remarkably, given the scale of this mass eviction, there has been no work on the bypass road, the officially-stated reason for the demolition. However, there have been negotiations on the resettlement of residents and businesses presently located on the railway reserves in Kibera and Mukuru, to pave the way for privatisation of the railway in mid-2006. A relocation plan (Relocation Action Plan for Improving the Safety along Kenya Railway Line, supported by the World Bank) has been developed and is intended to form the basis of discussions with the concerned community group (Ngazi Ya Chini). The plan substantially attempts to ensure compliance with the World Bank Guidelines on Involuntary Resettlement. Most worrying, however, has been the absence of genuine community participation in the negotiations and consultations so far.

In the settlements that are the subject of this COHRE report, a number of forced evictions have occurred — affecting market traders in Laini Saba, Kibera, among others. Furthermore, a Member of Parliament has claimed that the fires in Mukuru on 12 February 2006, which left over 20 000 people homeless, were deliberately started as a land-grabbing exercise.

Sadly, Government-implemented evictions in other parts of Kenya have continued unabated during the past 12 months. Furthermore, in cases of eviction by private individuals the Government has only occasionally intervened to ensure that these evictions comply with international human rights standards. The largest and most widely publicised eviction of the past 12 months occurred in Mau Forest, where, following a spate of smaller yet serious evictions that affected hundreds of residents, in early June 2005 approximately 50 000 persons were evicted, though Government spokespersons claimed the figure was no more than 10 000. Whereas the official reason for the eviction — protection of water catchment areas — has some merit, none of the correct procedures were followed: there was no prior consultation with the affected residents on alternatives to eviction, no due process and no adequate resettlement. Instead, structures were summarily demolished or set alight by law-enforce-

ment and local council officials acting under direct orders from the Government. More than 5 000 houses and several granaries were destroyed, leading to mass homelessness and internal displacement. Even though the Government recently undertook to provide resettlement for the Mau Forest evictees, it is not known how many have actually benefited. Moreover, it was not clear from this undertaking – announced during the constitutional referendum campaign in October 2005 – whether the planned resettlement would be an isolated measure to take place at some time in the future or whether it represented a significant advance towards a more systematic approach to resettlement.

Meanwhile, thousands of Kenyans have been subjected to forced evictions in many other parts of the country. COHRE has received the following reports on major eviction cases:

- On 29 May 2005, Administration Police forcibly evicted over 120 families from purportedly private lands at Ndundori in Lanet, Nakuru, even though no court order authorised the police to do so.
- On 16 July 2005, 30 houses were demolished in Kibagare settlement, Uthiru estate, leaving 140 residents – including children – destitute and homeless. These evictions were carried out by Nairobi City Council *askaris* (armed guards) and Administration Police.
- On 23 September 2005, Government-owned bulldozers were used to demolish the homes of 850 families in Deep Sea settlement, Westlands, Nairobi.
- On 25 January 2006, 20 families were evicted from houses in Tudor Estate, Mombasa. Reportedly, the houses are to be sold to private developers.
- On 26 January 2006, 4 000 residents of Eburu Forest in Naivasha were evicted by police officers and hired youths led by the local District Officer.
- On 29 January 2006, more than 3 000 residents were evicted from Mt Elgon Forest by a General Service unit, regular police, Administration Police and forest guards. Attempts to provide the evictees with food aid were blocked.
- On 30 January 2006, two recently evicted elderly men were speared to death by herdsmen.

## **Good governance in the informal settlements**

The Government has taken no noticeable measures to improve governance in the settlements. The Provincial Administration still enjoys significant formal and de facto powers in the settlements without any clear mechanisms of accountability to local communities or even parliament, since the Administration reports directly to the President.

One positive initiative has been the accountability sessions organised by members of the Korogocho settlement, whereby residents questioned officials from the local council, the Provincial Administration and various national funds about the allocation of fiscal resources.

## **Slum upgrading**

Progress on slum-upgrading policy and projects remains very slow. To date, there has been no official attempt to establish any national system for slum upgrading whereby communities who wish to commence upgrading can instigate the process within an official framework. The only

significant step is that the new Government programme for Integrated Land and Urban Sector incorporates slum upgrading as one of its key components. In relation to the Kibera-Soweto pilot project, the Kenya Slum Upgrading Programme (KENSUP) has now mapped and identified the structures and residents, put out a tender for the temporary relocation site and allocated Ksh 600 million (\$US8.4 million in April 2006) for the project, though a donors' conference has yet to be convened to secure pledges for the lion's share of the project costs. Residents' key concerns remain to be addressed, including: the immediate provision of tenure security and access to water and sanitation; community participation in the project design; provision of project information in written form – in Kiswahili – to community members; and an affordability formula for new units that will enable the beneficiaries to actually rent/purchase the units. A major issue that still needs to be resolved is the institutional design of the project: the high-level coordination by several Government ministries and UN-HABITAT is preventing the project from effectively engaging with the Soweto community. In early February 2006, residents of Soweto village formally protested about this to the Ministry of Housing and UN-HABITAT and were granted a meeting with the Executive Director of UN-HABITAT.

## Land reform

In March 2005, when the COHRE Consultation Report was released, the Government appeared to be seriously committed to establishing tribunals and other institutions, as recommended by the Ndung'u Report, to address the illegal and irregular allocation of land. Unfortunately, these tribunals have not yet materialised, although the Government has published LN 82 of 2005, *Government Lands Act (Amendment Bill)*, which provides for establishment of such tribunals. In addition, the former Ministry of Lands and Housing did issue a circular stating that individuals could take action to reclaim public land for the Government, which led to some action but also fuelled fear of violence. More recently, the Kenya Anti-Corruption Commission has announced that it will receive irregularly or illegally acquired titles from individuals wishing to voluntarily hand back public land. Clearly, though, these steps do not constitute a systematic solution to the problem, and COHRE is adamant that a proper tribunal is needed. Even the recent announcement by the new Ministers of Justice and Constitutional Affairs and the acting Minister of Lands that the Government is to begin repossessioning irregularly allocated public land may not amount to much unless the legal infrastructure for orderly repossession is put into place. To this day, the Kiambiu settlement continues to face the problem of land-grabbing, and there has been no official response to the many residents' petitions on this issue.

A laudable development is that the process of formulating a national land policy has reached an advanced stage, with the publication of the first draft policy paper. The policy is now being fine-tuned for presentation to other stakeholders for validation. It is hoped that the policy will be adopted before the present parliament is dissolved for elections in 2007.

Finally, COHRE is disappointed that the option of establishing land banks for future housing development has yet to receive any significant attention, although the National Housing Fund, to be established under the Draft Housing Bill 2006, would have the authority to spend moneys on "acquisition of land for housing".

**Further information and documentation on Kenya: [www.cohre.org/kenya](http://www.cohre.org/kenya)**

# Contents

<b>List of acronyms and abbreviations</b>	<b>10</b>
<b>Executive summary (English)</b>	<b>11</b>
<b>Executive summary (Kiswahili)</b>	<b>15</b>
<b>1 Introduction: towards a constructive dialogue</b>	<b>20</b>
1.1 Origins of this report	20
1.2 Current situation	22
1.3 Scope of fact-finding mission	26
1.4 Informal settlements covered	26
1.5 The right to participation and information	26
1.6 The reality of poverty	29
<b>2 Lack of recognition</b>	<b>33</b>
2.1 Growth of informal settlements in Nairobi	34
2.1.1 Colonial years	34
2.1.2 Mixed approaches after independence	35
2.1.3 Politicisation of land and informal settlements in the 1990s	36
2.2 Legal uncertainty	40
2.3 Inadequate access to services and a healthy environment	42
2.4 Marginalised and vulnerable groups	43
2.5 Recognition of the diversity of land and housing systems	44
2.6 Recognition of contribution to economy and society	46
2.7 Statistical recognition	47
2.8 Conclusion: the right to the city	48
<b>3 Large-scale evictions</b>	<b>50</b>
3.1 Evictions in 2004	51
3.1.1 Raila Village demolition and evictions	53
3.1.2 Other evictions	57
3.2 Current threats: suspended eviction notices	57
3.2.1 Kibera	57
3.2.2 Mukuru	61
3.2.3 Mitumba	64
3.2.4 Korogocho	65
3.2.5 Kiambiu	65
3.3 Forced evictions law: “Only justified in the most exceptional circumstances”	66
3.4 Inter-Ministerial Committee ‘evictions document’	70
3.5 Prevention of forced evictions: moratorium, CORs, policy, law	71



3.6	Reconfiguring infrastructure projects	76
3.6.1	Railway reserves	76
3.6.2	Power lines	78
3.6.3	Bypass and link roads	79
3.6.4	Riparian reserves	80
3.6.5	Sewer lines	80
3.7	In situ upgrading and resettlement	80
3.8	Rural areas and small towns	82
<b>4</b>	<b>Good governance in the settlements?</b>	<b>83</b>
4.1	Intimidation and harassment	84
4.1.1	By Provincial Administration officials	84
4.1.2	By locally elected officials	85
4.1.3	By the police	85
4.2	Tenants and structure-owners	85
4.2.1	Rent Restriction Act	86
4.2.2	Affordability and quality of housing	87
4.2.3	Lack of protection against forced eviction	89
4.2.4	Representation of tenants	90
4.3	Governance: representative and effective?	90
4.3.1	Lack of acceptance of the Provincial Administration	91
4.3.2	Political and community leadership	91
4.3.3	Coordination of Government and other initiatives	92
4.3.4	Community policing	92
<b>5</b>	<b>Slum upgrading: towards a solution</b>	<b>93</b>
5.1	Slum upgrading: challenges	95
5.1.1	Slum conditions	95
5.1.2	Processes of displacement and loss of livelihood: patronage, disunity and disempowerment	96
5.1.3	Local upgrading initiatives and NGO support	97
5.2	Slum upgrading: Government initiatives	98
5.2.1	Slum upgrading and the National Housing Policy for Kenya	98
5.2.2	UN-HABITAT – Government of Kenya partnership (KENSUP)	102
5.3	Slum upgrading: analysis of the Kibera project	105
5.3.1	Community representation and participation	105
5.3.2	Ambiguities in the meaning of ‘participation’	107
5.3.3	Communication and access to information	109
5.3.4	Just housing?	109
5.3.5	The lack of recognition	110
5.3.6	Tenure uncertainty	111
5.3.7	Compensation for structure-owners	115
5.3.8	Potential for violence?	116
5.3.9	Prior slum upgrading: reference points for community fears and hopes	116
5.4	Slum upgrading: analysis of Korogocho	117

5.5	Slum upgrading: reform and replication	119
5.5.1	Slum upgrading: policy, framework and monitoring	120
5.5.2	Recognition	121
5.5.3	Addressing patronage, disunity and disempowerment	122
5.5.4	Emergency responses/basic services	123
5.5.5	Improving security of tenure/the process of securing tenure	123
5.5.6	Dealing with densities	124
5.5.7	Meaningful participation	126
5.5.8	Taking slum upgrading to scale	127
<b>6</b>	<b>Access to serviced land</b>	<b>130</b>
6.1	Land allocation: irregular and illegal	132
6.1.1	Case study of Kiambu: a lonely community battle against land-grabbing and harassment	133
6.1.2	Squatting on private land: the case of Deep Sea	136
6.2	Land tenure and the land policy reform process	136
6.3	Securing land	138
6.4	Women's land and housing rights	139
<b>7</b>	<b>Recommendations – Government of Kenya</b>	<b>141</b>
7.1	Short term	141
7.2	Medium term	143
<b>8</b>	<b>Recommendations – non-government actors</b>	<b>147</b>
	Donors, UN, World Bank	147
	Civil society	148
	Corporations	148
<b>ANNEXES</b>		<b>149</b>
	Annex 1: Legal resources on the right to housing	149
	Annex 2: Prior slum-upgrading cases	160
	A2.1 Mathare 4A	160
	A2.3 Huruma	161
	A2.3 Voi	163

## List of acronyms and abbreviations

<b>CBO</b>	community-based organisation
<b>COHRE</b>	Centre on Housing Rights and Evictions
<b>COR</b>	Certificate of Rights
<b>KENSUP</b>	Kenya Slum Upgrading Programme
<b>KOWA</b>	Korogocho Owners Welfare Association
<b>KPLC</b>	Kenya Power & Lighting Company
<b>KRC</b>	Kenya Railways Corporation
<b><i>Mungiki</i></b>	a ‘vigilante’ group
<b>NARC</b>	National Rainbow Coalition (‘The Government’)
<b>NCC</b>	Nairobi City Council
<b>NGO</b>	non-governmental organisation
<b>NISCC</b>	Nairobi Informal Settlements Coordinating Committee
<b>OCS</b>	Officer Commanding Station
<b><i>Taliban</i></b>	a local ‘vigilante’ group (not connected to the former Afghan regime)
<b><i>Wazee wa kijiji</i></b>	Kiswahili for ‘village elders’, often appointed by the Provincial Administration
<b>Exchange rate</b>	US\$ 1 = Ksh 81 (Kenyan shillings) <sup>1</sup>

<sup>1</sup> Exchange rate on 25 Nov. 2004.

# EXECUTIVE SUMMARY (ENGLISH)

In early 2004, the Government of Kenya announced large-scale evictions of residents living on certain public lands, including those in Nairobi's informal settlements. Some villages were actually demolished. This decision was made despite the Government's commitment to slum upgrading. Since the proposed evictions threatened to leave hundreds of thousands of people homeless in Nairobi alone, a national and international campaign was launched by civil society. In response to the call for housing rights of the poor to be respected, the Government suspended the evictions and promised to provide humane alternatives. However, this announcement was complicated by contradictory statements from various Government Ministers, and the continuing absence of a policy on forced evictions and adequate resettlement.

## The unacceptable face of forced eviction



On 8 February 2004, the homes of almost 2000 residents of Raila Village, Kibera Settlement, were bulldozed. One resident told COHRE: "My four children and I slept out in the cold. I only managed to recover a few things from the ruins. My house had a shop which I relied on for my needs. Now I do not have any income to pay school fees."

International law provides that evictions should only be carried out in exceptional circumstances. If an eviction is to be carried out there should be:

1. Consideration of alternatives to evictions in consultation with communities;
2. Due process, including adequate notice, information and access to legal remedies;
3. Provision of adequate resettlement within the maximum available resources of the country.

Furthermore, no one should be rendered homeless as a result of an eviction. *See* General Comment No. 7 on Forced Evictions (UN Committee on Economic, Social and Cultural Rights).

The Centre on Housing Rights and Evictions (COHRE), an independent, international non-governmental human rights organisation based in Geneva, then conducted a fact-finding mission in July 2004, after receiving an invitation from the Kenyan NGO Coalition on Land and Housing Rights. The mission team met with residents in the informal settlements of Kibera, Kiambiu, Mukuru kwa Njenga, Korogocho, Mitumba and Huruma. It also engaged in consultations with the Government,

UN-HABITAT, civil society, the Kenya National Commission on Human Rights, and several experts. The report of the fact-finding mission examines the need for substantial protections against forced evictions and other abuses in the informal settlements. These protections should be in full accordance with international law. It also critically analyses the lack of recognition of informal settlements, the implementation of slum upgrading programmes, and land policies.

## **Positive steps taken by Kenya**

The report finds that the Government of Kenya has taken some important steps to better protect the right to housing. These include:

- The adoption of a new housing policy;
- The initiation of a land policy process;
- The release of the Ndung'u report on land allocations;
- A recent decision to extend slum upgrading country-wide.

## **Key concerns remaining**

However, there are a number of key concerns that will need to be addressed if the Government is to live up to its claim that it is abiding by its obligations under international treaties (including the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights) to respect, protect and fulfil the right to housing. These key concerns are the following:

### **1. Lack of participation and public information**

International human rights treaties guarantee residents the right to participate in, and receive adequate information on, the development and implementation of housing policy. Nonetheless, residents of informal settlements told COHRE that they were rarely consulted about important issues like eviction decisions, alternatives to evictions and the design of slum upgrading policies.

### **2. No recognition of informal settlements**

Even though Kenya's informal settlements house the majority of the country's urban population, the residents of these settlements are treated as if they were invisible. The settlements in Nairobi provide vital labour for the city's economy, but the residents are denied access to basic rights like water, sanitation, garbage disposal, free primary school education and healthcare. They also live in constant fear of eviction. In 1997, a high-ranking Government-sponsored committee recommended that the settlements be formally recognised. This has not yet happened.

### **3. Mass evictions**

The mass evictions of residents living on railway reserves, power-line wayleaves and road reserves, which were proposed in January 2004, did not comply with the requirements of inter-

national standards including General Comment No. 7 on Forced Evictions and the resolutions of the UN Commission on Human Rights, which refer to forced evictions as “gross violations of human rights”. There was no consideration of alternatives, proper procedures were not followed, and there was no provision of alternative accommodation or land to avoid homelessness. Furthermore, Kenyan law was not complied with.

The actual demolition of most of Raila Village in Kibera (see photo in box above) and the removal of structures in Makuru kwa Njenga represented clear violations of international law including the Convention Against Torture. Nothing has been done to help the victims. COHRE’s investigation determined that there are viable alternatives to evictions, which would also allow the Government to enforce safety regulations and develop the necessary infrastructure.

#### **4. Lack of good governance and effective protections**

COHRE received consistent reports of abuses by officials in the informal settlements, particularly the Provincial Administration and major structure-owners. Tenants also lack effective protections.

#### **5. Slum upgrading: towards a solution?**

The report praises the initiative of the Government of Kenya and UN-HABITAT to enshrine slum upgrading in Kenya’s national housing policy and commence pilot projects. However, the COHRE mission found that residents of Soweto, Kibera, lacked a real voice in the project and feared that it would lead to their displacement and/or that they would be subjected to violence. No ‘tenure secure zone’ has been declared or enforced, and the focus on replacement housing means that the crucial needs of water and sanitation may be ignored for a long time.

#### **6. Insufficient access to serviced land**

Land is urgently needed for Kenya’s exploding urban population. The Government estimates that, between 1999 and 2015, the urban population will grow by 400 percent to 40 million people. However, COHRE found that land continued to be illegally allocated to speculators and that insufficient attention was being devoted to allocating serviced land for city growth.

#### **CASE STUDY**

##### **Land-grabbing v. slum upgrading: the case of Kiambiu**

In 1994, the informal settlement of Kiambiu (in Eastleigh South), with a population of between 50 000 and 60 000, was authorised to be upgraded. However, upgrading has proved impossible because the land meant for urban infrastructure and new homes has been illegally allocated. Much of it has been sold to developers, allegedly by a local councillor and officials of the Provincial Administration. Residents have also reported that they have been subjected to high levels of intimidation and physical harassment.

## RECOMMENDATIONS

### To the Government of Kenya:

This COHRE report has 25 recommendations directed to the Government. These include 11 *urgent action* points:

1. Declare and enforce a moratorium on forced evictions.
2. Investigate, with threatened communities, alternatives to forced evictions.
3. Provide victims of forced evictions with assistance and compensation.
4. Develop a policy and law on preventing forced evictions, consistent with international standards. The South African model could be adopted.
5. Formally recognise the informal settlements.
6. Provide access to basic services in informal settlements, in particular water, sanitation, garbage disposal, healthcare and free primary education.
7. Adopt a comprehensive and funded national policy for slum upgrading.
8. Officially declare Soweto, Kibera, a 'tenure secure zone' for the Kenya Slum Upgrading Programme (KENSUP) and ensure that the tenants are properly represented.
9. Carry out early social impact assessments for all major development projects.
10. Increase the accountability of the Provincial Administration to local communities.
11. Establish effective and legal mechanisms to enforce a temporary ban on the sale of undeveloped lands.

### To bilateral agencies, the World Bank, the United Nations, corporations and NGOs:

The report also makes the following key recommendations to non-government actors:

12. **Bilateral agencies:** Adopt in-country policies to prevent forced evictions through funded projects.
13. **World Bank:** Engage with civil society on projects that may result in evictions.
14. **UN-HABITAT:** Consider working with the Government to redesign the Kibera project.
15. **Bilateral agencies and corporations:** Provide grants to the proposed 'Slum Upgrading and Low Cost Housing and Infrastructure Fund' to be operated as a trust by the Ministry of Lands and Housing.
16. **NGOs:** Work together to empower communities in informal settlements and develop effective community representative mechanisms.

# EXECUTIVE SUMMARY (KISWAHILI)

*Kusikiza Maskini? Haki ya Nyumba katika Jiji la Nairobi*

## KWA MUHTASARI

Mapema mwaka wa 2004, Serikali ya Kenya ilitangaza kuhamishwa kwa idadi kubwa ya wakazi walioishi katika ardhi ya umma, zikiwemo sehemu za mabanda jijini Nairobi. Baadhi ya vijiji vilibomolewa. Hatua hiyo ilichukuliwa licha ya Serikali kusisitiza ina mpango wa kuboresha makao ya mabanda. Kwa vile uhamisho huo uliopendekezwa ulihatarisha kuwaacha bila makao maelfu ya wakazi wa Nairobi, kampeni za kitaifa na kimataifa zilianzishwa na mashirika ya umma. Nayo Serikali, iliposikia kilio cha kusisitiza kuwa maskini wana haki ya nyumba bora, ilisimamisha uhamisho huo ili kutafuta suluhisho bora zaidi. Lakini tangazo la kusimamishwa kwa mpango wa uhamisho lilivurugwa na taarifa kutoka kwa Mawaziri wa Serikali tofauti pamoja na kutokuwepo na sera maalum za kusimamia suala la kuhamisha maskwota kwa nguvu na suala la makao yanayofaa.

### Uhamisho kwa nguvu haukubaliki kamwe



Mnamo tarehe 8, Februari, 2004, takriban wakazi 2 000 wa kijiji cha Raila walibomolewa nyumba zao. Mmoja wa wakazi hao aliwaambia maafisa wa Kituo cha Haki za Makao na Uhamisho [COHRE]: “Mimi na watoto wangu wanne tulilala nje kwenye baridi. Niliweza tu kuokoa vitu vichache kutoka kwenye mabomoko. Ndani ya nyumba yangu nilikuwa na duka ambalo nilitegemea kwa mahitaji yetu sote. Sasa sina pato lolote la kulipa kar o za shule.”

Sheria za kimataifa zinaeleza kwamba uhamisho kwa nguvu unaweza tu kufanyika katika hali za dharura pekee. Iwapo uhamisho wowote wa watu utafanyika, lazima yazingatie yafuatayo:

1. Kushirikiana na jamii inayohusika ili kutafuta njia zingine za kutumia badala ya uhamisho wa lazima;
2. Njia muafaka ya hatua kwa hatua — ikiwepo kuwapa wakazi noti ya kutosha, habari kamili na kuwawezesha kupata usaidizi wa kisheria;
3. Wanaohamishwa kupewa makao bora kwa kutumia rasilimamli za nchi.

Kadhalika, hakuna mtu anayepaswa kuachwa bila makao kutokana na uhamisho wa lazima. *Tazama* Taarifa ya Kijumla nambari 7 kuhusu Uhamisho wa Lazima (Kamati ya Umoja wa Mataifa inayosimamia masuala ya Haki za Kiuchumi, Kijamii na Kitamaduni) [General Comment No. 7 on Forced Evictions (UN Committee on Economic, Social and Cultural Rights)].



Kituo cha Haki za Makao na Uhamisho [The Centre on Housing Rights and Evictions (COHRE)], ambacho kinajisimamia, cha kimataifa wala si cha serikali na chenye Makao Makuu jijini Geneva, na kinachotetea haki za binadamu, kilifanya uchunguzi mnamo Julai, 2004 kufuatia mwaliko wa Mkusanyiko wa Mashirika yasiyo ya Serikali nchini Kenya [Kenyan NGO Coalition on Land and Housing Rights]. Uchunguzi ulihusu haki za ardhi na makao. Kundi la wachunguzi lilikutana na wakazi wa vijiji vya mabanda vya Kibera, Kiambiu, Mukuru kwa Njenga, Korogocho, Mitumba na Huruma. Kadhalika, watafiti hao walishauriana na Serikali, Shirika la Umoja wa Mataifa linaloshughulikia Makao [UN-HABITAT], mashirika ya umma, Tume ya Haki za Binadamu Kenya [Kenya National Commission on Human Rights] na wataalamu wengine wengi. Ripoti ya uchunguzi huo wa kupata ukweli kuhusu ardhi na makao inaonyesha haja ya kuwazuia maskwota kuhamishwa kwa nguvu na dhuluma zingine katika vijiji vya mabanda. Mbinu hizo za kuwazuia maskwota kudhulumiwa lazima zijengeke kwenye misingi ya sheria za kimataifa. Wachunguzi hawa pia walirejelea suala la vijiji vya mabanda kutotambuliwa, kutotekeleza miradi ya kuinua makao ya mabanda na kuzingatia sera za kusimamia masuala ya ardhi.

## **Hatua bora ambazo Serikali ya Kenya imechukua**

Ripoti imetambua kwamba Serikali imechukua hatua bora za kudumisha haki za makao. Hatua hizi ni pamoja na:

- Kuibua sera mpya ya nyumba;
- Kauanzisha mradi wa kuidhinisha sera maalum za kuelekeza masuala ya ardhi;
- Kutangazwa hadharani kwa Ripoti ya Ndung'u kuhusu ugawaji wa ardhi;
- Uamuzi wa majuzi wa kuinua hali ya makao ya mabanda kote nchini.

## **Masuala nyeti yanayobakia**

Licha ya hatua zote ambazo zimechukuliwa, kuna masuala ambayo lazima yazingatiwe iwapo Serikali itatimiza ahadi ambazo imetoa kwenye makubaliano ya kimataifa (ikiwepo makubaliano ya Kimataifa juu ya masuala ya Kiuchumi, Kijamii na Kitamaduni pamoja na Mkataba wa Afrika wa Haki za Kibinadamu na za Watu [International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights]) kwamba itaheshimu, kutetea na kutimiza haki za nyumba na makao. Masuala hayo nyeti ni kama yafuatavyo:

### **1. Watu kutojijusisha ipasavyo na kutokuwa na habari**

Makubaliano ya kimataifa kuhusu haki za kibinadamu huwahakikishia wakazi haki za kushirikishwa, kupashwa habari kamili kuhusu masuala ya maendeleo na utekelezaji wa sera za nyumba na makao. Licha ya hili, wakazi wa vijiji vya mabanda walifahamisha COHRE kwamba ni nadra kwao kuhusishwa au kupashwa habari kuhusu masuala muhimu kama kuhamishwa, hatua bora za kuchukuliwa badala ya uhamisho au mifumo ya sera za kuboresha hali ya maisha katika vijiji vya mabanda.

## **2. Vijiji vya mabanda kutotambuliwa rasmi**

Ingawa idadi kubwa ya wakazi wa miji humu nchini huishi katika vijiji vya mabanda, wakazi hao hupuuza kana kwamba hawapo au hawaonekani. Watu hao wanaoishi mabandani jijini Nairobi huchangia pakubwa kuinua uchumi wa jiji, lakini wananyimwa bidhaa za kimsingi kama maji safi, usafi wa mazingira, kusomba takataka, elimu ya msingi ya bure na huduma za afya. Kadhalika, wanaishi kwa wasiwasi kila wakati wakihofo kuhamishwa wakati wowote bila ilani. Mnamo 1997, kamati ya maafisa wakuu wa Serikali ilipendekeza makao hayo ya mabanda yaidhinishwe na kutambuliwa rasmi. Hili bado halijafanyika.

## **3. Uhamisho wa halaiki**

Kuhamishwa kwa idadi kubwa za watu wanaoishi kando ya reli, barabara na karibu ya sehemu zinakopitia nyaya za stima, ambako kulipendekezwa kufanyika Januari 2004, hakukutekelezwa kwa mujibu wa misngi ya kimataifa kama vile kwenye Maelekezo Rasmi nambari 7 kuhusu Kuhamishwa kwa Lazima [General Comment No. 7 on Forced Evictions] na makubaliano ya Tume ya Umoja wa Mataifa ya haki za Binadamu [UN Commission on Human Rights] ambayo yanataja uhamishaji wa lazima kuwa “uvunjaji wa kikatili wa haki za binadamu”. Hakukuwa na majadiliano ya kutafuta mbinu za kuepusha uhamisho huo wa lazima, hatua muafaka hazikufuatwa na hakukuwa na sehemu au makao ya muda kwa waliohamishwa ili wasiwe bila makao yoyote punde baada ya kufukuzwa. Kadhalika, sheria za Kenya hazikuzingatiwa.

Kubomolewa kwa mabanda ya kijiji cha Raila katika mtaa wa Kibera (ona picha hapo juu) na kuondolewa kwa mabanda katika kijiji cha Mukuru kwa Njenga kulidhihirisha kupuuzwa kwa sheria za kimataifa zikiwepo Sheria dhidi ya Mateso [Convention Against Torture]. Hakuna hatua ambayo imechukuliwa kuwasaidia waliohamishwa. Uchunguzi wa COHRE ulidhihirisha kwamba kulikuwa na mbinu tofauti ambazo zingetumiwa badala ya uhamisho huo wa lazima, na mbinu hizo zingewezesha Serikali kuhakikisha usalama wa wahasiriwa na kuwakidhiha mahitaji yao ya dharura.

## **4. Ukosefu wa utawala bora na sheria za kuwalinda**

COHRE ilipokea ripoti nyingi za maafisa wa Utawala wa Mikoa na baadhiya wenye majumba makubwa kuwadhulumu wakazi wa vijiji vya mabanda. Wakazi wanaokodi vyumba vya mabanda hawalindwi ipasavyo na sheria.

## **5. Kuboresha nyumba katika vijiji: Je, tunaelekea suluhisho?**

Ripoti inasifu hatua ya Serikali ya Kenya ikishirikiana na Shirika la Umoja wa Mataifa linaloshughulikia Makao [UN-HABITAT] kuidhinisha mradi wa kuboresha nyumba kwenye sera za kitaifa za nyumba na kuanzisha rasmi mradi. Lakini ripoti ilieleza kuwa wakazi wa kijiji cha Soweto, Kibera, hawakuhusishwa kikamilifu na kwa hivyo waliogopa kuwa wangetimuliwa au kudhulumuliwa kwa njia zingine. Hakuna makubaliano rasmi juu ya “mahali salama pa kuishi kwa muda uliotengwa” ambayo yaliidhinishwa rasmi kuhusu kupewa nyumba baada ya kuondolewa toka makaoni ili kuhakikisha wahasiriwa wanapata maji safi na mazingira bora huenda yakapuuza kwa muda mrefu.

## 6. Kutoweza kuishi katika ardhi yenye huduma za maji, stima na zinginezo

Ardhi inahitajika kwa dharura kufuatia ongezeko kubwa la wananchi katika miji. Serikali inakisia kwamba kati ya 1999 na 2015, idadi ya wakazi wa mijini itaongezeka kwa asilimia 400 hadi kufikia watu 40 milioni. Lakini, COHRE imetambua kwamba ardhi inaendelea kugawanywa kinyume cha sheria kwa wafisadi na kiwango cha ardhi yenye huduma tosha inayotengewa wakazi wa mijini hakitoshi kwa upanuzi wa sehemu hizo.

### KISA KILICHOTUKIA [CASE STUDY]

#### Unyakuzi wa ardhi dhidi ya uboreshaji wa makao ya mabanda: kisa ya kijiji cha Kiambiu

Mnamo 1994, kijiji cha mabanda cha Kambiu (Mtaa wa Eastleigh South) chenye idadi ya wakazi kati ya 50 000 na 60 000, kiliidhinishwa makao yake yaboreshwe. Lakini kuinua hali ya nyumba katika kijiji hiki kumekwama kwa sababu makao hayo yalipewa wakazi kinyume cha sheria. Sehemu kubwa ya ardhi hiyo imeuziwa wenye mali wanaodai kuen-deleza miradi ya maendeleo, na waliouza wanasemekana kuwa diwani mmoja akishiriki-ana na maafisa wa Utawala wa Mikoa. Kadhalika, wakazi wamelalamika kwamba wanad-hulumiwa mara kwa mara na hata kupigwa na kuumizwa.

## MAPENDEKEZO

### Kwa Serikali ya Kenya:

Ripoti hii ya COHRE ina mapendekezo 25 kwa Serikali. Haya ni pamoja na ***masuala 11 yanayopaswa kutekelezwa kwa dharura:***

1. Kutangaza na kutekeleza sheria rasmi kuhusu uhamisho wa lazima.
2. Kuchunguza, pamoja na makundi ya watu wanaotishwa kuondolewa walipo, mbinu za kuepusha kuhamishwa kwa lazima.
3. Kuwapa walioathiriwa na uhamisho wa lazima usaidizi na kuwalipa fidia.
4. Kuanzisha sera rasmi na sheria za kuzuia uhamisho wa lazima, kwa misingi ya sheria za kimataifa. Kwa mfano, sheria na sera za Afrika Kusini kuhusu suala hili zinaweza kuidhinishwa kwa matumizi humu nchini.
5. Kuvitambua rasmi vijiji vya mabanda.
6. Kutoa huduma za kimsingi kwa makao ya mabanda, hasa maji, mazingira safi kama vyoo, huduma za kuzoa takataka, huduma za afya na elimu ya bure ya msingi.
7. Kuidhinisha sera kamili ya kitaifa ambapo Serikali itagharamia uboreshaji wa makao ya mabanda.
8. Kutambua rasmi na kutangaza sehemu za Soweto na Kibera kuwa “mahali salama pa kuishi kwa muda uliotenga” Mradi wa Kenya wa Kuboresha Makao ya Mabanda [Kenya Slum Upgrading Programme (KENSUP)] na kuhakikisha wapangaji au wakazi wanawakilishwa ipasavyo.

9. Kufanya ukaguzi wa awali kutambua athari za kijamii zitakazotokana na miradi yoyote mikubwa ya maendeleo.
10. Kuongeza uwajibikaji wa Utawala wa Mikoa na makundi ya kijamii yanayoshughulikia maslahi ya wakazi.
11. Kuidhinisha sera za kutegemewa za kisheria zinazoweza kuzuia, angalau kwa muda, uuzaji wa ardhi ambazo hazitumiwi kwa miradi ya maendeleo.

**Kwa Mashirika yanayohusika, Benki ya Dunia, Umoja wa Mataifa, mashirika ya umma, na mashirika yasiyo ya kiserikali:**

Ripoti inatoa mapendekezo muhimu yafuatayo kwa wahusika ambao si wa kiserikali:

12. **Mashirika yanayohusika:** Kuidhinisha sera za humu nchini za kuzuia uhamisho wa lazima kupitia kwa miradi inayogharamiwa na mashirika hayo.
13. **Benki ya Dunia:** Kuyashirikisha makundi ya kijamii kwenye miradi ambayo huenda ikasaishia kwenye uhamisho wa lazima.
14. **Shirika la Umoja wa Mataifa linaloshughulikia Makao [UN-HABITAT]:** Shirika hili lianzishe mradi wa kushirikiana na Serikali ili kuandaa upya mwongozo wa kutekeleza mradi wa kuboresha mabanda ya Kibera.
15. **Mashirika yanayohusika na yale yasiyo ya Kiserikali:** Kutoa misaada ya fedha kwa mradi uliopendekezwa wa ‘Fedha za Kuboresha vijiji vya Mabanda kutekeleza mradi wa nyumba za malipo ya chini’ [‘Slum Upgrading and Low Cost Housing and Infrastructure Fund’] ambao utatekelezwa kama wakfu na Wizara ya Ardhi na Makao.
16. **Mashirika yasiyo ya Kiserikali:** Kuendeleza miradi pamoja kuyapa nguvu makundi ya kijamii katika vijiji vya mabanda na kuidhinisha uwakilishi muafaka wa makundi ya wakazi.



Residents meeting on  
housing issues in Kibera

1

# Introduction: towards a constructive dialogue

*There is no communication between the Government and the people. When Raila [Village] was demolished we didn't know what was going on .... We want to talk to the Government.*

Kibera resident

## 1.1 Origins of this report

In January and February 2004, the Government of Kenya announced its intention to evict large numbers of people in Nairobi, Kenya, on the grounds that they were illegally settled, either on land reserved for future road construction or on public land that was considered dangerous; for example, rail reserves and electrical wayleaves. (Electrical wayleaves are strips of land, usually 6 m wide, beneath power lines, which, for safety reasons, are not supposed to be occupied). There were also indications that the evictions might affect those living on riparian reserves (that is, land reserves on the banks of watercourses or other bodies of water).

Thousands of residents were facing homelessness within months. The total number of people to be affected in the longer term was staggering, with initial reports indicating that it could be as high as 300 000 to 400 000 in the informal settlement of Kibera, Nairobi, alone.

Some of the evictions did go ahead, with devastating consequences for the victims. While the newly elected government of the National Rainbow Coalition (NARC) had gained significant public support for its policy of reclaiming State land allocated improperly under the previous regime, the sheer number of people to be affected by the evictions provoked strong local, national and international criticism. Letters of protest and concern were sent to the Government by many organisations and groups, including the Centre on Housing Rights and Evictions (COHRE).<sup>2</sup> The Special Rapporteur on Adequate Housing to the UN Commission on Human Rights, Mr Miloon Kothari, also raised the issue with the Government during a two-week mission to Kenya in February 2004, and later in his April 2004 report to the Commission.<sup>3</sup>

To its great credit, the Government did respond to the concerns and suspended its eviction plans. On 29 February 2004, the then Minister for Roads, Public Works and Housing announced the President's decision to this effect. The announcement was accompanied by official statements that the evictions would not proceed without alternative shelter being provided to evictees. However, some uncertainty resulted when various Ministers declared that the suspension did not apply to their departments. Such statements suggested that the suspension of the planned evictions amounted to a postponement rather than a cancellation of the announced plans, leaving a lingering fear that it was just a matter of time before the evictions would proceed.

In March 2004, on the invitation of a group of Kenyan organisations working on land, housing and related issues in Kenya, COHRE visited Kibera to observe the situation firsthand. On the basis of discussions conducted during that visit, the NGO Coalition Against Forced Evictions,<sup>4</sup> part of the NGO Coalition on Land and Housing Rights, requested that COHRE conduct a fact-finding mission to investigate the housing rights situation in Nairobi, with particular focus on Kibera, and develop recommendations for resolving the desperate situation. The mission would also be partially facilitated by the Kenyan statutory body that is mandated to monitor human rights, the Kenya National Commission on Human Rights.

The COHRE fact-finding mission was conducted by a team of African and international experts variously experienced in international law, urban planning and architecture, community development, slum-upgrading and enumeration of eviction threats. In July 2004 the team

2 COHRE is an independent, international non-governmental human rights organisation committed to protecting and promoting housing rights throughout the world. COHRE has special consultative status with the Economic and Social Council of the United Nations (UN), observer status with the African Union (AU), consultative status with the Organisation of American States (OAS), and participatory status with the Council of Europe (CoE). COHRE is based in Geneva, Switzerland, and has offices in The Netherlands, Ghana, South Africa, Thailand, Australia, the US and Brazil.

3 See: *Adequate Housing as a component of the Right to an Adequate Standard of Living, Report by the Special Rapporteur, Miloon Kothari, Addendum, Mission to Kenya (9-22 February 2004)*, Commission on Human Rights, 61st Session, E/CN.4/2005/48/Add.2, <http://daccessdds.un.org/doc/UNDOC/GEN/Go4/168/86/PDF/Go416886.pdf?OpenElement>

4 Members include: Kituo Cha Sheria (legal advice centre), Pamoja Trust, Maji na Ufanisi (Water and Development), African Network for the Prevention and Protection of Child Abuse and Neglect (ANPPCAN), Shelter Forum, Kutoka Network of Catholic Parishes in the Informal Settlements, Carolina for Kibera, Basic Rights Campaign, Concern, Kenya Human Rights Commission, and Shelter Forum.

visited six informal settlements to assess the threat of evictions at that time, potential alternatives to evictions, and the related policy and institutional framework. In addition, the COHRE team had meetings with Government officials, civil society, UN-HABITAT, foreign missions, bilateral agencies, and various experts. (See full list of interviewees in Box 1.3 at end of this *Introduction*.)

On 9 November 2004, COHRE had further consultations with the Ministry of Lands and Housing and UN-HABITAT. In the first week of December 2004, the draft Consultation Report, on which the present report is based, was released to a range of stakeholders including relevant Government ministries and parastatals (State-owned organisations). This was followed by a series of follow-up consultations. COHRE appreciates the written comments received from the Vice-President of Kenya, Mr Moody Awori, the NGO Coalition Against Forced Evictions, and the Kenya National Commission on Human Rights. In December 2004, the Kenya Slum Upgrading Programme (KENSUP) released a document that attempts to grapple with some of the issues raised in this report. COHRE acknowledges the valuable input it received from all the above consultations. The oral and written responses of the various stakeholders listed in this paragraph have been addressed at various places in the report. COHRE also recognises that fact-finding missions and studies previously conducted by other organisations have also produced recommendations on the right to housing in Kenya.<sup>5</sup>

COHRE will widely disseminate this report,<sup>6</sup> including a Kiswahili translation of the *Executive Summary*, continue to monitor the situation in Kenya, follow-up on its recommendations with the Government, and work with all stakeholders to ensure that Kenya's poor can effectively assert and realise their right to housing. Further information on COHRE's work in Kenya can be accessed at [www.cohre.org/kenya](http://www.cohre.org/kenya).

## 1.2 Current situation

The suspension of the planned mass evictions in Nairobi has largely been enforced, at least until the drafting of this report. However, a number of key questions and challenges remain.

Firstly, what steps have been taken to assist and compensate the victims of the forced evictions that have gone ahead?

Secondly, does Kenya have in place an adequate legal, policy-related and institutional framework to prevent forced evictions and ensure the progressive realisation of the right to housing? In 1997 the Nairobi Informal Settlements Coordinating Committee declared a moratorium on evictions.<sup>7</sup> However, in the absence of an effective framework, this moratorium does not appear to have been enforced and, as the announcements of evictions and actual evictions of early 2004 demonstrated, it can be flouted at will.

5 See, in particular: *Report of Habitat International Coalition (HIC) Fact-Finding Mission to Kenya on the Right to Adequate Housing*, compiled by HIC – Housing and Land Rights Committee (HLRC), Sept. 2001; The Law Society of Kenya Land Reform Programme, *Report: Mission to Kibera*, Nairobi, Aug. 2002.

6 The draft Consultation Report was compiled by the fact-finding team consisting of Malcolm Langford, Marie Huchzermeyer, Malick Gaye, Michael Kihato and Alfred Omenya. The present version is the result of editing by Jean du Plessis, Malcolm Langford and Rob Stuart.

7 The committee is a multi-stakeholder body that includes Government representation.



Thirdly, is the Government taking steps to adequately address the underlying issues that commonly lead to evictions and deprivation of housing rights? These include land-grabbing, insecurity of land tenure, shortage of land for settlement by the poor, abuse of power by certain branches of Government, and the lack of recognition of informal settlements.

Fourthly, is there a serious official commitment and capacity to ensure adequate participation by the affected communities in the design and implementation of policy and programmes on housing and land?

The Government of Kenya has taken a number of positive steps that should be acknowledged and built upon:

- An inter-ministerial document is reportedly being drafted to address forced evictions or, at least, to provide for the resettlement of those affected by the mass eviction notices of early 2004;
- A land-policy process has been initiated, including a plan for a highly participatory framework for development of the policy;
- Kenya Power & Lighting Company has indicated that it is adopting the World Bank Resettlement Guidelines for future network expansion, though these would not be applied to land under existing power lines;
- The National Housing Policy for Kenya was adopted in June 2004;
- The National Housing Policy includes slum upgrading as an objective, and national and local governments are collaborating on a number of slum-upgrading projects: in particular, the project in Kibera, Nairobi, and the proposed project in Nyalenda, Kisumu;
- A National Housing Development Programme has been drafted with the aim of putting the National Housing Policy into operation;
- The process of redrafting the *Housing Act* also appears to have commenced;<sup>8</sup>
- In December 2004, the Kenya Slum Upgrading Programme released a document providing further details for the possible adoption of a framework for country-wide slum upgrading;
- The Commission of Inquiry into Illegal and Irregular Allocation of Public Land has released its report.

COHRE acknowledges these efforts as a good start. However, as this report shows, there is still a great deal to be done before Kenya can claim that it is in compliance with its international legal obligations to progressively realise the right to housing (see Box 1.1). Furthermore, the absence of genuine or effective community participation in many of the efforts, as well as the slow pace at which some of the root causes of housing deprivation are being addressed, do give rise to serious concerns as to whether even the most positive steps – for example, slum upgrading – will improve access to housing for the poor. Moreover, there are indications that, so far, only resettlement following railway reserve evictions is being seriously addressed.

8 This process is foreshadowed in the National Housing Policy for Kenya (see para. 77). In Sect. 3, we make some recommendations on additional issues that should be included in the new Housing Act.



These efforts reflect the determination within the new government, which replaced the Moi administration in early 2003, to tackle the many socio-economic problems facing Kenya.<sup>9</sup> However, officials of the land and housing departments openly acknowledge that this is just a good beginning. In a meeting with COHRE, some of these officials described the situation with respect to land, housing and delivery of services in the informal settlements as “a mess” inherited from the “period of misrule and corruption” under the previous government, which was said to have been aided and abetted by unscrupulous external agencies. The officials said that they were determined to “sort out this mess” against overwhelming odds, and were committed to employing a set of policies, strategies and instruments that would “have a human face”.<sup>10</sup>

The NARC government was popularly elected on a reformist platform, with a pre-election manifesto and unqualified pledges during campaigns to protect the rights of Kenyans and redress the plight of vulnerable groups. To demonstrate a real commitment to the election manifesto and pledges, urgent steps are needed to resolve the deeply rooted problems in informal settlements and other marginal areas.

#### **Box 1.1: The right to housing in Kenya**

The Government of Kenya has been a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) since 1 May 1972. Article 11 of the Covenant recognises everyone’s right to an adequate standard of living, including food, clothing and housing. Governments are required to take steps to progressively realise this right to housing.

This right has been defined by the UN Committee on Economic, Social and Cultural Rights, the body mandated to monitor the implementation of the Covenant, as the right to live somewhere in security, peace and dignity. For housing to be adequate, according to the Committee, there must be secure legal tenure and available services, materials, facilities and infrastructure. The housing must also be affordable, habitable, accessible, appropriately located and culturally adequate.

»

- 9 A recent Government document frankly acknowledges many of the challenges – not all of them necessarily relating to the previous government – by listing the causes of slums and informal settlements as follows:
- a) The deficit in housing supply as a result of a combination of factors including high population and urbanization growth rates, coupled with high incidence of poverty among the population;
  - b) The inability of the country’s economy to cater for the housing needs of low income groups who form the majority;
  - c) Failure to give the housing sector its due priority in the general economic development ...;
  - d) Housing and urban development policies that tend to favour production of formal housing ...;
  - e) Prohibitive building standards and regulatory requirements making the production of formal housing unaffordable to low income households. The poor have no alternative but to live in cheap shelters available in slums and informal settlements;
  - f) Lack of effective land policy that tends to allow manipulation in land tenure and alienation;
  - g) Poor urban governance that does not foster effective and efficient development and delivery of urban services;
  - h) Politicization of development, land and shelter issues to the extent where some slums exist because they are created by powerful parties who benefit from them. ... such people remain vehemently opposed to the Government’s desire to eradicate slums through rehabilitation and would rather remain [sic] the status quo for selfish gains.
- See Government of Kenya, ‘Kibera-Soweto Slum Upgrading Project’, Dec. 2004, Subsect. 1.2.
- 10 COHRE meeting with senior land and housing officials, Nairobi, 10 Nov. 2004.

### Box 1.1: The right to housing in Kenya (*continued*)

The right to housing is also contained in other international covenants ratified by Kenya, including the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination Against Women and the African [Banjul] Charter on Human and Peoples' Rights.<sup>11</sup> The International Covenant on Civil and Political Rights also provides for the right to respect of home and privacy.

The Committee has subsequently stated that forced evictions are a *prima facie* violation of the right to housing. Evictions are only permissible in exceptional circumstances, and where they are unavoidable there must be: (i) consultation with residents; (ii) due process; and (iii) remedies to ensure no one is rendered homeless. (*See further*, Subsection 3.5 below).

Kenya's present Constitution does not explicitly recognise the right to housing. Article 70 recognises the right to protection of fundamental rights and freedoms without discrimination. These freedoms include protection of the privacy of a person's home. Many Courts have found that this right provides protection against forced eviction.<sup>12</sup> The Constitution also provides for the right to property, which usually adversely affects informal settlers, but may benefit them in terms of compensation for loss of personal property or structures as a result of eviction.

The current draft replacement constitution for Kenya contains the right to housing; however, it is not clear when that document will be passed. The President of Kenya did declare in a speech on 11 December 2002 that decent housing, like education, is a basic human right. The right to protection from arbitrary evictions can be found in the *Kenya Railways Corporation Act*, Cap. 397, Section 16(3). In addition, the rights to adequate housing, education and health are contained in the Children's Act. The *Rent Restriction Act* also provides some protection from evictions to tenants whose monthly rent is under Ksh 2 500.<sup>13</sup> While the legislation does not expressly apply to informal settlements, the relevant tribunal has heard applications from tenants living in such tenements. However, during the COHRE fact-finding mission, the effective application of these laws was found to be questionable (*see* Subsection 4.2.1 below).

Note: For international housing rights standards relevant to Kenya, *see* Annex 1 of the report.

11 The African Commission on Human and Peoples' Rights states that: "Although the right to housing or shelter is not explicitly provided for under the African Charter, ... the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing ...." *See: SERAC v. Nigeria*, African Commission on Human and Peoples' Rights, Decision 155/96, para. 60.

12 *See, for example: Marzari v. Italy* (1999) 28 EHRR CD 175 (European Court of Human Rights).

13 *Rent Restriction Act* (Cap. 266).

### **1.3 Scope of fact-finding mission**

The initial objective of the COHRE fact-finding mission was to assess the threat of evictions at that time, the possible alternatives to evictions, and the policy and institutional framework that would make such alternatives viable.

The scope of the mission was partly altered as a result of COHRE's consultations with the affected communities, since many community members reported a series of threats to housing rights that were consistent in pattern and therefore could not be considered in isolation. These included:

- Insufficient community participation;
- A shortage of reliable information from the relevant authorities;
- A lack of official recognition of informal settlements;
- Serious abuses of power, including harassment and illegal land-allocation;
- Insecure tenure and continuing small-scale evictions;
- Housing programmes that do not incorporate community views and lessons learned.

It was clear that any policy relating to the informal settlements – irrespective of its motivation – needed to address the above concerns.

### **1.4 Informal settlements covered**

As Nairobi has an estimated 199 informal settlements, there is a disheartening abundance of cases from which to select when investigating housing rights in the Kenyan capital. Within the few days available to them, the COHRE fact-finding team visited the settlements of Kibera, Mukuru, Korogocho, Mitumba, Kiambiu and Huruma and met with representatives from Kahawa West Soweto and Deep Sea. The most extensive visit was to Kibera, that being the settlement with the largest number of people affected by the actual and threatened evictions. COHRE also visited the demolished settlement of Raila Village, southwest of Kibera. The team spoke with individual residents, community-based organisations, faith-based organisations and members of the Provincial Administration working in informal settlements.

This report reflects the key housing rights issues and ideas that, during the fact-finding mission, were identified by residents of informal settlements, as well as by organisations working with and among them. Many of these concerns and proposals were subsequently relayed to Government officials during meetings.

### **1.5 The right to participation and information**

By far the strongest message from residents of informal settlements was that they wished to be treated as far as possible as partners in the development process, rather than as simply passive 'beneficiaries'. Residents interviewed by the COHRE fact-finding team continually expressed frustration over the lack of information. This sentiment was expressed in relation

to a wide range of existing housing issues, including threats of large-scale and small-scale evictions, slum upgrading, land allocation, and management and access to essential services. Indeed, the right to participation and information is a recurring theme in the many issues raised in this report.

**Box 1.2: Importance of participation and information — Stara KICAK Rescue Centre**

This centre was started by Josephine Mumo with the aim of caring for orphaned children in the Gatwikira area of Kibera, Nairobi. Supported by donors, the school feeds and educates vulnerable children in the settlement. Among the 250 pupils there are 70 orphans: 15 from single parents, 15 neglected and at least 6 suffering from HIV/AIDS.

The school currently rents land from the Kenya Railways Corporation, at Ksh 1 500 per annum. The centre also runs home-based care programmes, helping children affected by rapes, sodomy and other forms of sexual abuse and violations. For medical treatment, the centre has made arrangements with St Mary's Hospital, Nairobi, which waives some of the charges.

Unfortunately, the School is in a state of confusion: although they have donors willing to help them expand their activities, including such philanthropists as the legendary Jamaican actor and singer Harry Belafonte, since the announcements of the planned evictions they have no idea what is going to happen to them — whether the school and centre will be demolished or not.

The right to participation is part of international human rights law. With regard to the right to adequate housing, General Comment No. 4 on the International Covenant on Economic, Social and Cultural Rights (to which Kenya is a signatory) states:

*While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another ... [this duty] will almost invariably require the adoption of a national housing strategy .... Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.*<sup>14</sup>

14 Committee on Economic, Social and Cultural Rights, *General Comment No. 4 on the Right to Adequate Housing*, (1991), para. 12. The full text is reproduced in Annex 1.

The requirement for participation is even more strongly emphasised in relation to the threat of forced evictions. In this respect, General Comment No. 7 states:

*States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.*<sup>15</sup>

Moreover, citizens and residents have a right to information, as clearly expressed in the African Charter on Human and Peoples' Rights.<sup>16</sup>

However, participation and sharing of information are not only important because these requirements are imposed by international laws and standards: participation is the cornerstone of international best-practice strategies to deal with poverty and provide low-income housing, simply because of the enormous value it adds to projects. Participation can secure trust, which in turn promotes co-operation and unleashes community energy and knowledge, and with it reliable, appropriate information – all of which are indispensable ingredients in the design of appropriate and sustainable development processes.

The recently adopted National Housing Policy for Kenya does incorporate principles of involving all the target groups in housing development, and provides the basis for participation of the vulnerable groups. One of the objectives of the policy is: "To promote inclusive participation of the private sector, public sector, community-based organisations, non-government organisations, co-operatives, communities and other development partners in planning, development and management of housing programmes."

However, there is still a need to institute a practice of providing opportunities for direct and localised participation, representation and measures of direct control of and by the vulnerable groups. (See Box 5.3 on street committees and Box 5.7 on degrees of participation.) When participation fails, Kenyans should also have the right to legal remedies for violations of the right to housing and the protection against forced eviction. (See further, Subsections 3.3, 3.5 and 4.2 below.)

Some of the Government officials interviewed by COHRE understood that communities could engage with difficult challenges and reach consensus on technical issues if they were enabled. In relation to the KENSUP slum-upgrading process, there also appears to be an awareness of this problem and the need to integrate consultation and participation into the housing delivery process.<sup>17</sup> However, unhelpful and patronising stereotypes of the poor still dominate the thinking of some officials.

15 Committee on Economic, Social and Cultural Rights, *General Comment No. 7 on the Right to Adequate Housing: Forced Evictions*, (1997), para. 14. The full text is reproduced in Annex 1.

16 Article 9(1) states: "Every individual shall have the right to receive information"; African Charter on Human and Peoples' Rights, 21 I.L.M. 58 (1982), *entered into force* 21 Oct. 1986.

17 "The actors expressed the feeling that they do not seem to be aware of an overall master plan for the upgrading programme..."; KENSUP, 'Communication Strategy', unpublished discussion document, p. 24.

## 1.6 The reality of poverty

COHRE acknowledges the reality of poverty in Kenya as a whole, and in settlements such as Kibera in particular. The national poverty head-count in 2000 was 42 percent, while 23 percent of the population was living on less than a dollar a day. National GDP growth in 2002 was only one percent, although it should be noted that there is a large inequality in incomes (the urban Gini coefficient for income inequality stands at 52 percent). The general situation is therefore worse in marginalised communities such as those in informal settlements. While primary and secondary school enrolment has recently increased, the numbers of people with urban access to sanitation and water are falling. Urban services in almost 200 informal settlements in Nairobi are very poor, with residents paying between 3 and 30 times more for water than the rest of the city. The effects of HIV/AIDS have also been enormous; by the year 2001, 890 000 children between 0-14 years were AIDS orphans.<sup>18</sup> For an overview of the Kibera settlement, see Box 2.2.

Thus the challenges faced by the Government and the people of Kenya are clearly formidable. This impacts on the right to adequate housing, and on the ability of the Government to create an environment in which that right can be fully and comprehensively realised. The assertions and recommendations made in this report are therefore not made lightly.

Nevertheless, it is important to remember that in terms of General Comment No. 7 the lack of resources cannot be used as an excuse when it comes to the most basic elements of the right to adequate housing, such as upholding the right to protection from forced eviction: "... the State's obligation to ensure respect for that right is not qualified by considerations relating to its available resources."<sup>19</sup> Furthermore, the budgetary resources allocated to housing programmes in Kenya seem very limited in comparison to other allocations.

Given this non-negotiable obligation, and in the light of the information gathered during the COHRE fact-finding mission, the main assertion of this report is that the best first step forwards is to begin listening to – and, in listening, to begin learning from – the poor themselves. Unless the Government and other key players are focused on and committed to tackling poverty and violations of housing rights in the marginalised sectors of the society, the result will be that informal settlements and their squalid conditions will continue to assimilate more homelessness rather than annihilate it.

18 World Bank, *African Development Indicators* (Washington, D.C.: The World Bank, 2004).

19 General Comment No. 7 (n. 15 above).

### **Box 1.3: COHRE consultations in July 2004**

#### **Ministries**

Ministry of Lands and Housing – various senior officials. Ministry of Justice.

*Unfortunately, COHRE was unable to arrange meetings with all Ministries and offices concerned with housing, evictions or related issues. In some cases, this was due to the inability to find a mutually convenient time: for example, with the Vice-President, Mr Moody Awori. In other cases, COHRE's requests for a meeting with the Government or international organisations were not answered or were refused.*

#### **Parastatals**

Kenya Railways Corporation (KRC)

Kenya Power & Lighting Company (KPLC)

#### **Provincial Administration**

Provincial Commissioner

District Officer, Kibera

Chief for Mukuru kwa Njenga

Assistant Chief, Laini Saba, Kibera

#### **UN, foreign missions, bilateral agencies and the World Bank**

UN-HABITAT: various senior officials

DFID and British High Commission

Embassy of France

*Surprisingly, the World Bank declined COHRE's request for a meeting on the basis that they are not involved in the issue.*

#### **Experts**

Professor Paul Syagga

Professor Ngau

Dr Winnie Mutullah

Dr Titus Agwanda

#### **Civil Society**

NGO Coalition Against Forced Evictions

Shelter Forum

Kituo Cha Sheria (legal advice centre)

Pamoja Trust

Kenya Land Alliance

Maji na Ufanisi (Water and Development)

African Network for the Prevention and Protection of Child Abuse and Neglect (ANPPCAN)

Shelter Forum

Kutoka Network of Catholic Parishes in the Informal Settlements

Basic Rights Campaign

Concern

Mazingira Institute

ITDG (Intermediate Technology Development Group)

The Kenya Planners Institute.

»

### **Box 1.3: Consultations in July 2004 (*continued*)**

#### **INFORMAL SETTLEMENTS**

In addition to interviewing more than 30 individual residents or groups of residents in the informal settlements, COHRE met with the following settlement-based CBOs and NGOs:

##### **Kiambiu**

Kiambiu Usafi Group, Kiambiu  
Kiambiu Youth Group, Kiambiu  
Muungano Wa Wanavijiji Kiambiu (villagers' association)

##### **Kibera**

Anglican Church, Gatwikira  
Baptist Church, Soweto  
Christ the King Catholic Church  
Soweto Usafi Group  
Kibera Rent and Housing Forum  
Railway line traders  
St. Charles Lwanga School, Ronald Baraza  
CBOS based in Makina  
Stara KICAK Rescue Centre  
Kibera Grassroots Initiative  
CBO, Kianda  
MMK – Muungano wa Maendeleo na Maisha Kianda (development and life association)  
Ushirika wa Usafi (sanitation cooperative)  
Lindi Shilanga Self-help Group  
Soweto Self-help Group  
NASU  
Jitahidi C.S.H.G.  
Kicosep  
Bukhungu C.S.H.G.  
Jitahidi C.S.H.G  
MUUM  
Makina Usafi na Maendeleo

##### **Korogocho**

Concern Worldwide  
Muungano Savings Group  
Demolition Committee  
Jitahidi Upate  
Settlements Committee  
River Rights Activists  
Human Rights Activists  
St John's Catholic Church  
Koskoba Kenya  
Sema (paralegals)

»



**Box 1.3: Consultations in July 2004 (*continued*)**

**Mukuru kwa Njenga**

Railway Hawkers Association

St Mary's Catholic Church

Mukuru kwa Njenga garbage collectors

**Mitumba**

Mzee wa Kijiji (village elder)

Muongano Savings Group

**Huruma**

Muongano Savings Group, Huruma

**Other settlements**

Muongano Savings Group, Kahawa West Soweto

Muongano Savings Group, Deep Sea

Residents of Kibera go  
about their daily life



2

## Lack of recognition

*We in Kibera are Kenyans. We are the Government, and therefore the land is equally ours.*

Mary Wanjiku, 35-year resident of Kibera

*The ‘illegal city’ is an important aspect of urban development .... In Nairobi, the capital city of Kenya, illegal settlements provide accommodation for the majority of residents.*

Winnie Mitallah and Kivutha Kibwana<sup>20</sup>

During the COHRE fact-finding mission, it became evident that residents of informal settlements are involved in a protracted struggle for recognition. The leader of a non-governmental organisation working in the informal settlement of Kibera put it this way: “People have lived in Kibera for more than 60 years, but are still considered squatters.” The majority of Kenya’s

20 Winnie Mitallah and Kivutha Kibwana, ‘A Tale of Two Cities: Policy, Law and Illegal Settlements in Kenya’, in Edesio Fernandes and Ann Varley (eds.), *Illegal Cities: Law and Urban Change in Developing Countries* (Zed Books, 1998), pp. 191-212 at p. 191.

urban population live in such settlements, yet few of these communities have been legally recognised. This quasi-legal status deprives these residents of access to essential services and Government schooling, and exposes them to the constant threat of eviction and harassment. In 1997, the Nairobi Informal Settlements Coordination Committee recommended a framework for recognition.<sup>21</sup> However, it has not yet been adopted.

In itself, the failure to officially recognise informal settlements is not necessarily a violation of international law, although it certainly frustrates efforts to realise the residents' right to housing. What clearly violates international legal standards is the Government's failure to ensure, within the shortest possible period of time, the required minimum level of access to various services in the settlements.

## 2.1 Growth of informal settlements in Nairobi

### 2.1.1 Colonial years

The current official perception that informal settlements are illegal can be traced back to the colonial era in Kenya.<sup>22</sup> Originally, unauthorised settlements sprang up because Africans were displaced by the arrival of European settlers. The Europeans expropriated large tracts of land around Nairobi and did not allow Africans to enter the city unless they had a permit. Basic, temporary accommodation was only provided to those Africans – mostly men – who were formally employed.<sup>23</sup> Africans were viewed as temporary sojourners in urban areas. There were only limited efforts to provide housing for them – for example, at Pumwani in 1923.

In processes similar to those taking place in modern Kenya, informal dwellings began to spring up in areas not authorised for settlement. The residents of those settlements were either originally from Nairobi or had migrated into the city. The settlements lacked services, and the colonial government's response to them alternated between indifference and outright hostility. Not only did the European colonists declare the settlements unlawful, they also generally believed that they were havens for prostitution, illicit brewing and, later, African nationalism. It was such attitudes that led to the colonial government's first major forced evictions and demolitions of unauthorised structures in Kenyan urban areas, legally sanctioned by laws like the *Vagrancy Act* and *Public Health Act*. For example, Kileleshwa was demolished in 1927 after European settlers in surrounding areas complained that it was a 'breeding ground for crime and disease'.<sup>24</sup> The same fate befell Kariokor in 1931 and Pangani in 1938.

21 The Nairobi Informal Settlements Coordination Committee (NISCC), *A Development Strategy for Nairobi's Informal Settlements* (Republic of Kenya, Oct. 1997).

22 See Mitullah and Kibwana (n. 20 above), pp. 196-199.

23 Ibid.

24 T. Parsons, '“Kibera is our blood”: The Sudanese Military Legacy in Nairobi's Kibera Location', 30 *The International Journal of African and Historical Studies* (1997), p. 1.

With an increasing influx of Africans from rural areas, informal settlements soon began to dot the urban landscape. The Mathare settlement absorbed many rural immigrants, as well as evictees from other locations. Kibera, established in 1912 when the ‘Nubians’ (Sudanese ex-soldiers) were granted permission to settle in Makina (see Box 2.4, in Subsection 2.5 below), also served as an urban entry point for rural immigrants.<sup>25</sup>

### 2.1.2 Mixed approaches after independence

After achieving independence in 1963, Kenya experienced a phenomenal increase in urban populations and demand for housing. This was due to several factors: continued rural-urban migration; population growth due to improvements in healthcare services; the expansion of city boundaries; and the relaxation of influx controls.<sup>26</sup> This is evident in the figures:

- In 1962, Kenya’s urban population was 7.8 percent of the total population; by 2002 it was 35.2 percent.<sup>27</sup>
- The housing shortfall has grown correspondingly: by 1990, the annual shelter deficit had reached 40 000 units; by the year 2000 it was 80 000 units; and by 2003 the official estimate was 150 000 units, though in all probability the real figure was much higher.
- In 1983, it was estimated that 35 percent of all urban households lived in slum conditions in informal settlements. The figure frequently quoted today is 55 percent of a much larger population, at least in Nairobi.

In the 1960s and early 1970s, various policies were implemented to address the shortage of housing. Sessional Paper No. 5 of 1966/7, ‘Housing Policy for Kenya’, while emphasising the construction of subsidised public housing for rental, also provided for the demolition of informal settlements.<sup>28</sup> Thus a number of slum clearances, for example those in Pumwani and Grogan, echoed the pre-independence demolitions: the prescriptions of the *Public Health Act* were used as justification. Urban planning was generally regarded as regulatory, interventionist and controlling:<sup>29</sup> an acceptable urban housing unit had to be built with suitable materials and was defined as having at least two rooms, a kitchen and toilet, and a maximum of five occupants.<sup>30</sup> However, such demolitions proved largely ineffectual since they only displaced, but did not solve, the problems. Furthermore, the publicly provided or publicly funded housing disproportionately favoured the middle and upper income groups.

25 See Mitullah and Kibwana (n. 20 above).

26 Ibid.

27 World Bank (n. 18 above).

28 Government of Kenya, ‘Kibera-Soweto Slum Upgrading Project’, Dec. 2004, Subsect. 1.3.

29 ‘Nairobi Situation Analysis’ (Nairobi, 2001), a report researched and compiled by a team of three resource experts at the University of Nairobi: Prof. Paul Syagga, Dr Winnie Mitullah and Dr Sarah Karirah Gitau (see, for a summary, *Habitat Debate*, Vol. 7 No. 3, Sept. 2001).

30 Government of Kenya (n. 28 above).

In the mid- and late 1970s, with new development theories linking basic needs and growth, there were some spirited attempts to improve the conditions of the poor in Kenya. Squatter upgrading and site-and-service provision were typical of these attempts. Most of the projects were initiated during the period of the National Development Plan of 1974-1978. The 1970-74 Development Plan had stated that demolition would be postponed until the housing shortage was eliminated.<sup>31</sup> However, there had been no radical change in urban management. Regulations on minimum standards for housing construction were rigid.<sup>32</sup> A focus on owner-occupation and full cost recovery, coupled with the financial pressures of that time, also made it difficult to implement these plans. Therefore, informal settlements continued to grow.

In the 1980s, Kenya was plagued by a debt crisis<sup>33</sup> and international financial institutions imposed structural adjustment policies, severely restricting social spending. This only served to increase the size of informal settlements, as the then government withdrew from active policy intervention: “[T]he authorities adopted a *laissez faire* approach, generally not undertaking demolitions, but not instituting large scale improvement projects either.”<sup>34</sup>

### 2.1.3 Politicisation of land and informal settlements in the 1990s

In the 1990s, the dominant and official approach to housing policy was ‘enablement’. Besides site-and-service provision and slum upgrading, greater emphasis was placed upon facilitating the role of other actors in housing. To a large extent, this approach was informed by the neo-liberal agenda: the creation of institutional capacity and an open-market environment for expanding private activity in the formal sector. Regulations that were seen as inhibiting the development of the low-income housing sector were repealed. The so-called ‘Code 95 regulations’ were adopted, redefining a dwelling house and easing the exacting standards for house construction.<sup>35</sup> This approach, mainly led by the World Bank, emphasised attending to the needs of the chronically poor while promoting macro-economic stability. Furthermore, the urban sector was increasingly seen as the new frontline in poverty alleviation and development.<sup>36</sup>

However, the 1990s were politically tumultuous for Kenya. The then government was under enormous international pressure concerning its governance record, particularly with regard to corruption and lack of respect for human rights. Donor-funding largely ceased and the government faced a liquidity crisis. At the same time, the restrictions on political space were being challenged through the adoption of a multi-party system of democracy, and the ruling party, KANU, faced credible opposition, arguably for the first time since independence. In this context:

31 Ibid.

32 For example, shelter regulations at that time provided for a minimum standard that was defined as a self-contained housing unit, with its own kitchen and toilet, built of stone and concrete blocks and measuring 38 m<sup>2</sup>. This standard was obviously unrealistic for low-cost housing.

33 The annual debt ballooned from US\$ 2.65 billion in the period 1975-1984 to US\$ 6.19 billion in the period 1985-1994.

34 NISCC (n. 21 above).

35 ‘Nairobi Situation Analysis’ (n. 29 above).

36 C. Zanetta, ‘The Evolution of the World Bank’s Urban Lending in Latin America: from Sites and Service to Municipal Reform and Beyond’, 25 *Habitat International*, (2001), pp. 513-533.

- The use of land as a reward for political loyalty became indispensable to the ruling party;
- As political representation became ethnicised, so did the implementation of land policy;
- Informal settlements in urban areas became recruiting grounds for ‘armies-for-hire’, largely composed of poor and jobless youth. This situation persists to this day in various informal settlements.<sup>37</sup>
- In supporting the ruling elite, the role of the Provincial Administration – a colonial creation – became increasingly important. See Box 2.1 and Section 4 below.

#### **Box 2.1: The Provincial Administration<sup>38</sup>**

To a large extent, Kenya’s present-day system of local Chiefs is a remnant of colonialism. It was established under the *Native Administration Ordinance*, which, with several other ordinances, was intended to control the African population. The Chiefs are now part of the Provincial Administration, which falls under the Office of the President. Senior to Assistant Chiefs (in charge of sub-locations) rank under District Officer (in charge of a division), District Commissioner (in charge of a district) and Provincial Commissioner (in charge of a province). While their legal powers have been partially curtailed under *The Chiefs Authority Act* (Cap. 128), they still command significant authority within the settlements. Reports of abuses of power by Chiefs are covered in Section 4 below.

It is important to note that some projects were initiated in order to support informal settlements, including the Mathare 4A project funded by the German banking group Kreditanstalt für Wiederaufbau (KfW) and the Small Towns Development Project funded by the German sustainable development agency GTZ. (The former project is analysed in Annex A2.1 of this report.) However, as the Government of Kenya recently concluded: “[T]hese interventions do not seem to have adequately served the growing number of low-income groups and therefore the informal settlements have continued to thrive in most urban centres in Kenya.”<sup>39</sup>

As government land, on which the majority of informal settlers resided, passed into the hands of private individuals, clashes involving private landed interests increased. These so-called ‘land clashes’ between different ethnic groups, especially in Rift Valley Province, created a large number of internally displaced persons (IDPs), who inevitably ended up in urban informal settlements. To illustrate the multiple injustices often faced by evictees, one man interviewed by COHRE, Samuel Ihugo, who had originally fled Rift Valley because of the political clashes there, was evicted in February 2004 after residing in Kahawa West Soweto for seven years.

37 The COHRE fact-finding team never met a member of these groups, yet slum-dwellers often spoke of them. In Kibera, the so-called *Taliban* [not to be confused with the former Afghan regime] was often mentioned in fear. It is reportedly used as ‘a political stick’ when the necessity arises.

38 For a critique, see Wachira Maina, ‘Where the axe must fall’, *Sunday Nation*, 19 Mar. 2000, [http://www.nationaudio.com/News/DailyNation/19032000/Comment/News\\_Analysis2](http://www.nationaudio.com/News/DailyNation/19032000/Comment/News_Analysis2)

39 Government of Kenya, ‘Kibera-Soweto Slum Upgrading Project’, Dec. 2004, Subsect. 1.3.

This politicisation of land resulted in a dramatic increase in evictions by demolition, including:

- Muoroto and Kibagare, where over 30 000 people were displaced in 1990;
- Soweto Village in Loresho, home to over 7 000 at the time of the October 1996 eviction, in which three people lost their lives;
- Mitumba Village adjacent to Wilson Airport, home to 2 000 residents in 1993;
- Kingstone Village, home to 2 000 residents in 1993;
- City Cotton, evicted twice, in 1989 and 1996;
- Agare Village, home to 4 000 residents in May 1995;
- Tudor in Mombasa, home to 3 000 in September 2000;
- Laini Saba, where 300 families were evicted in January 2000;
- Mathare North, Jangwani Village, home to 3 000 residents in December 1999;
- Mathare North, Area One, home to 300 families in June and October 1999;
- Mpaka Road, where the structures and wares of 40 kiosk-owners were destroyed in July 2000.<sup>40</sup>

Common elements in all these demolitions were: the excessive use of violence and force; the use of the Provincial Administration and State machinery to effect them; the loss of property and sometimes life; the lack of provision of alternatives; the absence of compensation or relocation; and the use of subterfuge, with the demolitions often occurring in the night or early in the morning.

In 1997, the Nairobi Informal Settlements Coordinating Committee (NISCC) issued a moratorium on demolitions: “[N]o demolitions of informal settlements should be allowed without consultation with the affected communities and without the provision of appropriate alternative accommodation.” The Provincial Commissioner subsequently issued circulars to all Divisional Officers and Chiefs in Nairobi instructing them to implement this moratorium.<sup>41</sup> Unfortunately, it has not been respected.

40 Christine Bodewes and N. Kwinga, ‘The Kenya Perspective on Housing Rights’, in Scott Leckie (ed.), *National Perspectives on Housing Rights* (The Hague: Kluwer Law International, 2003), pp. 221-240.

41 Sarah Gitau and Washington Olima, ‘Land Tenure and Tenancy Concerns in Kibera: Final Report’, WSP-ESA, The World Bank KENSUP Preparatory Group Task Force, unpublished report, Sept. 2000, p. 24.



## Box 2.2: Kibera Settlement

Kibera is located seven kilometres southwest of Nairobi city centre, in Lang'ata Division. It covers an area of 550 acres (approx. 220 hectares). The settlement is bisected by the Nairobi-Kisumu Railway and surrounded by various housing estates, a golf course, a dam, vacant Kenya Winery Agency land and land earmarked for the proposed Southern Bypass. On the whole, the settlement slopes downwards towards the southeast, the site of the Nairobi dam. The settlement is divided into 13 villages (or 16, depending on how the villages are defined).

In 1912, a group of 'Nubian' (actually Sudanese) ex-soldiers were granted temporary allocation licences for land in Kibera in return for their service in the British Army. In 1933 they were declared Tenants of the Crown under a rationalisation of the land. In 1950 they were allocated 500 acres (approx. 200 hectares) in the northwest part of Kibera, where they still form the majority of residents and structure-owners, though their area has gradually diminished with the Government allocating land to housing estates. The Nubians maintain an ancestral claim to Kibera even though they lack title deeds. Following the assassination of the influential Luo cabinet minister and KANU Secretary General, Tom Mboya, in July 1969, many Luos fled the conflict and settled in Kibera, rapidly increasing its ethnic diversity. Kibera was relatively safe and 'neutral' in comparison to neighbouring Dagoretti. The settlement also absorbed a large proportion of the rural migrants that came to Nairobi. Kibera is strategically located near the city centre and the industrial areas, which are a source of casual employment. The cost of living there is often lower than in other settlements, which is why it is often the first destination for rural migrants.

Kibera has the reputation of being the largest and most densely populated slum in Africa. Whereas it housed only 80 000 people in 1980, a 1995 survey estimated its population at 750 000.<sup>42</sup> However, a 1999 census, upon which the new slum-upgrading project is based, counted 350 000. The Kenya Slum Upgrading Programme (KENSUP) recently stated that Kibera was "home to over 600 000 people".<sup>43</sup> Housing conditions are exceedingly poor in Kibera. There are no Government services. The Government recently concluded that: "About 94 percent of the households lack basic physical and social infrastructure and security of tenure". The absence of sanitation and garbage disposal has severe health effects on the community. Structure-owners have some security of tenure, depending on the arrangements they have made with the Provincial Administration and Councillors. However, the recent eviction threats have demonstrated how precarious that tenure is. This has knock-on effects for tenants: under the current informal tenure arrangements, they have even less security of tenure than the structure-owners. The landlord-tenant relationship is also marked by ethnic division: structure-owners tend to be Nubians and to a lesser extent Kikuyu and Kamba, whereas tenants tend to be Luo and Luyia. This has led to clashes in the past, most notably in December 2001 when the local Member of Parliament announced that tenants in some villages did not have to pay rent. The structure-owners and tenants are also largely divided along socio-economic and religious lines. A large portion of the structure-owners are absentee owners, although this pattern is not uniform across Kibera. Corruption in the Provincial Administration (particularly among the Chiefs and Assistant Chiefs), as well as among elders, police and structure-owners, appears to be common. Residents interviewed by COHRE also reported harassment.

42 Peter Ngua, *Baseline Survey of Slums and Squatter Settlements and Inventory of NGOs and CBOs*, prepared as part of a Collaborative Study of the Department of Urban and Regional Planning, University of Nairobi and Faculty of Environmental Studies, York University, Oct. 1995.

43 Government of Kenya, 'Kibera-Soweto Slum Upgrading Project', Dec. 2004, Subsect. 1.1.





Kibera settlement

## 2.2 Legal uncertainty

According to a study of Kenyan policy and law on informal settlements, seventeen of the country's laws are “outrightly hostile and unaccommodating” in relation to such settlements.<sup>44</sup> This applies in the areas of tenure security, building standards (now partially amended), access to services, and ability to conduct economic and cultural life. Furthermore, as residents fit the statutory definition of a ‘vagrant’, they are susceptible to harassment and summary arrest by law-enforcement agencies.

Long-term occupiers of private land are legally entitled to claim adverse possession if they can prove that they have used the land continuously for 12 years in a way that is consistent with their being the registered owner.<sup>45</sup> This right accrues to the adverse possessor only when a motion is brought in court, and it is generally not easy to prove. With the high cost and inaccessibility of court processes in Kenya, the utility of this remedy to the poor is dubious. Settlers on Government land – the majority – cannot acquire any such prescriptive rights over land. This is often justified by asserting that the State should continue to hold Government land in trust for the general public. However, this approach is increasingly being questioned.

According to one Government official interviewed by COHRE, dictates of social justice and equality demand that there be some kind of recourse for the ‘squatters’. Residents of informal settlements find it very difficult to understand how they can be evicted after living for so

44 These include: Chapter IX (Trust Land) of the *Constitution of Kenya*; *Town Planning Act* (Cap. 134); *Land Planning Act* (Cap. 303); *Public Health Act* (Cap. 242), *Local Government Act* (Cap. 265); *Governments Land Act* (Cap. 280); *Trust Lands Act* (Cap. 288); *Registered Land Act* (Cap. 300); *Land Control Act* (Cap. 302); *Land Acquisition Act* (Cap. 295); *Valuation for Rating Act* (Cap. 283); *Rent Restriction Act* (Cap. 266); *Housing Act* (Cap. 296); *Vagrancy Act* (Cap. 117); *Trust of Lands Act* (Cap. 58) and the *Building Codes 1968 – Grade I and II* (pursuant to the *Local Government Act*). See Mitullah and Kibwana (n. 20 above), p. 207.

45 See: *Limitation of Actions Act* (Cap. 22). The doctrine of adverse possession is the remnant of common law and statutory actions that emerged in Britain in the 17th century, often expressed in the Latin maxim of *nec vi, nec clam, nec precario* (not by force, nor stealth, nor the licence of the owner).

many years on land that they perceive to be their own. Understandably, fine distinctions between what is and what is not Government land are lost on them — a common refrain is: “we are the Government, and therefore the land is equally ours”.<sup>46</sup>

Whereas appropriate protection of private property and public land is necessary to safeguard other private and public interests, the housing rights of the poor need to be respected and given sufficient priority (*see further*, Subsection 3.3 below). Lack of legal recognition also deprives residents of access to Government services, and makes them more vulnerable to abuse. More than anything else, it is the quasi-legality of the settlements that breeds uncertainty and insecurity among the residents, and is conducive to infringement of their rights by Government and private actors. For this reason, on 25 June 2003 slum-dweller representatives wrote to the Minister of Roads, Public Works and Housing, asking:

*That the existing informal settlements be formally recognized as residential areas and where this may not be possible for one reason or the other, the residents should be informed and appropriate alternatives be found to resettle them.*<sup>47</sup>

Significantly, a Government-initiated committee made the same recommendation, among others, in 1997 (*see* Box 2.3).

**Box 2.3: Recommendations of the Nairobi Informal Settlements Coordination Committee**

*It is imperative that any actions relating to informal settlements in Nairobi are preceded by a clear expression of good intent on the part of the authorities. This should include:*

- the formal recognition of all existing settlements*
  - a moratorium on all demolitions*
  - an immediate stop on allocations of all public land that is already settled*
- For the purpose of recognition it will be necessary to define the limits of existing settlements and to ensure that construction of houses in existing informal settlements does not take place.*

The current Government has not explicitly taken up these recommendations but the recent National Housing Policy does endorse a policy of slum upgrading as well as emphasising the need for tenure security:

20. *The Government recognizes that security of land tenure as well as availability of adequate quantities of land in suitable locations at affordable prices is a central requirement for clearing the backlog of housing demand for the urban poor.*<sup>48</sup>

46 COHRE interview with Mary Wanjiku, resident of Kibera for 35 years.

47 Kituo Cha Sheria, *Housing the Poor? Issues to Ponder* (2003), App. 1.

48 Sessional Paper on National Housing Policy for Kenya, Ministry of Roads, Public Works and Housing, Oct. 2003, para. 20. The policy was approved by Parliament in June 2003 (‘National Housing Policy for Kenya’).

## 2.3 Inadequate access to services and a healthy environment

In addition to the threat of forced eviction and obstacles to the creation of space for economic activities and socio-cultural life, residents of informal settlements are denied a range of essential services including electricity, water, sanitation, garbage collection, education and health-care centres. In addition, the Government's highly publicised policy of free primary education does not apply directly to the majority of Nairobi's children. Headmasters of Kibera schools run by churches told the COHRE fact-finding team of the ongoing struggle to secure finances, not only to teach children but also to protect their buildings from the threat of demolition.

Residents interviewed by COHRE repeatedly complained about the lack of services. It is remarkable, to say the least, that the 'illegality' of the informal settlements excludes them from the city authorities' planning and budgeting, even though they house approximately 55 percent of the city's population. For example, the various villages of Kibera are visibly criss-crossed by pipes supplying water to central collection points, where entrepreneurs sell it to the community at exorbitant prices — anywhere between *three and thirty times* the normal council charge. Therefore, residents sometimes have no alternative but to use polluted water, including that from the reservoir of the Nairobi dam. Hardly surprisingly, residents report high incidences of water-borne diseases, including diarrhoea, dysentery, typhoid and cholera, to which children and the HIV-infected are especially vulnerable. Indeed, the main reason why many of the local community organisations were formed was to improve access to safe water.

Sanitation is another major problem. Raw sewage is deposited into ruts and trenches alongside the narrow streets, and many houses are located right on top of these open sewers. Lack of toilets means that in some settlements, for example Gatwikira in Kibera, people dispose of human waste in paper bags that they fling out of their windows at night (a practice known locally as 'flying toilets'!). Where there are pit latrines, they tend to be over-used and a fee is charged, which many people cannot afford.

The roads in these settlements are little more than dirt paths that are narrow and impassable or even totally inaccessible to emergency services. As the dwellings are very close together and often constructed of highly flammable materials, fires are frequent and tend to cause unacceptably large losses of life and property. The settlements have no garbage collection services. During the rainy season, the roads are transformed into an unsanitary bog of mud and sewage.

Another serious problem in the settlements is the lack of safe energy supplies, which are critical for ensuring a number of residents' rights, including treatment of unsafe water, studying for primary, secondary and further education, and development of small businesses. For women, the lack of street lighting and light reflected from houses means that they are more likely to be sexually assaulted at night. In the settlement of Mukuru kwa Njenga, the COHRE fact-finding team saw the effects of the electricity being cut off: at sundown the streets were almost completely dark, despite the constant flow of people through the settlement. While COHRE understands that illegal connections of electricity are dangerous and result in power losses and system failures, the authorities should develop the power grid so that informal settlements have access to safe and affordable energy.

There are few Government health facilities in the settlements. In Korogocho, for example, the people have access to only one clinic owned by Nairobi City Council. Given a choice, the residents would naturally opt for the better services of private clinics, though few of them can really afford to do so. In general, therefore, medical care is sought only as a last resort.<sup>49</sup> In the informal settlements visited by COHRE there are also very few facilities for community activities and recreation.

Furthermore, as many of these informal settlements are under-policed there are numerous ‘no-go’ zones at night. A number of residents even told COHRE that they had been the victims of police abuses, including extortion and bribery. The Provincial Administration police were often implicated. Due to the inadequate police presence, the communities have come up with their own solutions — some positive and some negative. As noted in Subsection 1.2 above, Government officials have admitted that services in the settlements are extremely inadequate. However, the Government has not yet acknowledged its obligation to ensure that residents are given access to such services in the near future.

All these problems in the informal settlements are intimately linked to issues of land and basic services, yet a feeling repeatedly expressed during COHRE interviews is that Kenya’s overall policies on land and housing do not reflect the urgent need for remedial measures. To alleviate the deplorable conditions in which the urban poor live, top priority should be given to providing safe drinking water, sanitation and physical security.

In a formal response to the draft Consultation Report, on which the present report is based, the Vice-President of Kenya, Mr Moody Awori, emphasised that it is important to consider not only the residents’ housing rights but also the role informal settlements play in degrading the environment. He stated: “Informal settlements are characterised by degradation of the environment and in most cases develop outside the formal urban plan.” COHRE agrees that the presence of informal settlements does lead to significant environmental degradation and that this is a key issue for residents. However, it is not the settlements themselves that are one of the greatest causes of pollution but the lack of services within them. Provision of proper sanitation and garbage disposal would bring about a rapid and dramatic improvement of living conditions.

## **2.4 Marginalised and vulnerable groups**

Marginalised and vulnerable groups are neglected in the informal settlements. While maintaining dignity is a great challenge for all residents, it is far more so for women and children, people with HIV/AIDS, the disabled and the elderly. At the Stara Rescue School in Kianda, the founder, Josephine Mumo, told COHRE of the high incidence of rape and child abuse by men in the community. Six out of the 60 children that had been tested at the school were found to be HIV positive. The Raila Village evictions of February 2003 also illustrated how injustices are aggravated when the victims are vulnerable people: for example, the demolition left an unemployed AIDS-sufferer homeless and a single mother could no longer afford her children’s school fees and meals (see Subsection 3.1 below).

49 Concern, *An Analysis of Poverty in Korogocho*, Nairobi, Kenya, 2002.

Another serious concern is the relatively narrow definition of ‘vulnerable groups’ in various policies. The National Housing Policy defines the vulnerable as: the poor, women, children in difficult circumstances, the handicapped, the elderly, and displaced persons. Inexplicably, the terminally ill and those living with HIV/AIDS are excluded. However, the draft National Housing Development Programme 2003-2007 appears to address the latter group, and a recent Government document consistently and strongly emphasises those living with HIV/AIDS.<sup>50</sup>

The plight of the elderly was a commonly aired concern. Interviewees were worried about how this group would be catered for in the event of any further evictions or relocations. Many elderly people are structure-owners; the rent from a few rooms is often their sole source of income. It was generally felt that the needs of this group deserved special attention and protection. (For discussion of the issue of whether displaced structure-owners should be compensated, and the recent official response to related concerns, see Subsection 5.3.7 below.)

Cultural values and norms also play an important role in housing issues. For example, in some communities it is taboo for sons to share living quarters with their mother and sisters.<sup>51</sup> Given the critical land and housing shortage, it is very difficult for such values and norms to be maintained. When the authorities and development agencies consider options such as slum upgrading, it is clearly essential that they take account of cultural aspects of housing.

## 2.5 Recognition of the diversity of land and housing systems

Not only do the informal settlements house a wide variety and a colourful mix of communities, but the land tenure systems also show great diversity — even within individual settlements. Where land is publicly or privately owned, structure-owners may have acquired *de facto* tenure through temporary occupancy licences issued by a Government agency, through a letter or verbal assurance from a Chief, or even through counterfeit or irregular title deeds. In the case of the ‘Nubians’ (see Box 2.4 below), the claim to land is based on an historical grant of the land for housing. In addition, many schools, churches and health centres within the informal settlements have made some form of arrangement with one or more of the Government authorities.

50 Government of Kenya, ‘Kibera-Soweto Slum Upgrading Project’, Dec. 2004. See further, discussion in Sects. 3 and 5.

51 This emerged in COHRE interviews with members of the Nubian community.

#### Box 2.4: The case of the Nubians

The case of the Nubians<sup>52</sup> in Kibera is indicative of the failure to protect the needs of minority groups. The Nubians are descendants of Sudanese soldiers used by the British in their military campaigns of the early 20th century. Kibera – 4 198 acres (approx. 1700 hectares) of ‘reserve *shamba*’ – was approved as a settlement site for Sudanese soldiers who had finished their active service. However, European settlers soon began to complain about crime and disorder there – common arguments, apparently, against any well-located African settlement.

Several plans were made to move the ex-soldiers, but they all floundered. Even the newly independent government declared in 1969 that what remained of Kibera was State land, effectively extinguishing Nubian claims to it.<sup>53</sup> Despite many attempts to move them, the Nubians continue to assert their laid claim to Kibera.

The Nubians in Kibera told COHRE of their frustration at their inability to obtain tenure security. They strongly oppose the slum-upgrading process, preferring to build their own homes.<sup>54</sup> Many are structure-owners, and argue that the failure to provide them with legal title after a century of occupation has prevented them from improving their houses. In addition, over the years the land area to which they claim title has been reduced by the influx of people who saw it as an attractive location to obtain work during and after the colonial period.

At the same time, the tenants renting from the Nubians – many of them Luos – are fearful that they may suffer if the Nubians are granted legal title. Regularisation of the land could lead to higher rents and thus evictions of those tenants who cannot afford them. Any solution will therefore need to take account of various conflicting interests. Plans are apparently proceeding to provide Nubians with 300 acres (approx. 120 hectares) of land within Kibera, to be held in trust for their use.<sup>55</sup>

The different tenancy patterns are similarly complex (*see further*, Subsection 4.2 below). In Kibera, for example, the COHRE fact-finding team met residents who had lived in the settlement for up to 40 years and others who had been living there for a short period of time. While major absentee structure-owners dominate the larger settlements, there is a sizeable proportion of owner-occupiers and minor resident ‘landlords’. In addition, many of the

52 The term ‘Nubian’, the common name for these Sudanese descendants, is a misnomer. It arose out of their need to portray themselves as a distinct group after independence, and has no reference to the 14th century Christian Kingdom of Nubia.

53 Parsons, ‘Kibera is our blood’ (n. 24 above).

54 As landlords, their opposition may be equally driven by economic interest, though those interviewed by COHRE did not admit to this. Many Nubian households derive a substantial amount of their income from rents.

55 This was confirmed during COHRE interviews with the Kibera District Officer and the Ministry of Justice. No copies or further details of the plan were made available to the COHRE fact-finding team.



villages are divided along ethnic lines, particularly in Kibera. Furthermore, ‘landlords’ within a particular setting are more likely to come from different ethnic and income groups than their tenants, which increases the potential for tension and conflict.

Many residents expressed frustration at simplistic assumptions about land tenure in the informal settlements. Distinctions that have evolved over decades determine the daily reality of hundreds of thousands of people, and need to be properly understood by policy-makers and policy-implementers. It is important to thoroughly investigate and analyse the different types of residents and land tenure, and to reflect these in housing and land policies. Any attempts to simplify existing land and housing tenure arrangements without taking account of the complexities is likely to lead to conflict. Moreover, the Government will have to tackle the presence of mafia-style land syndicates operated by well-connected land cartels and members of the political elite. Unless the Government is prepared to eliminate such corrupt groups, it is unlikely that physical and housing security in slum areas will be attainable in the near future.

## **2.6 Recognition of contribution to economy and society**

Even though poverty levels are high in these informal settlements, there is also a great deal of innovation and economic activity within them. The settlements also provide livelihoods as they form the basis of the wider ‘informal sector’, which has grown tremendously in recent years to cater for the less trained and educated members of society, as well as to provide alternatives in the face of a constricting formal job market. Furthermore, it is often forgotten that these settlements are the labour pool for the industries and middle-class estates that, in many cases, are located nearby. In discussions with the COHRE fact-finding team, residents often expressed the feeling that they are an undervalued resource.

Residents have compelling reasons for living in informal settlements. A common theme that emerged during the COHRE mission was the fact that slums provide the poor with an affordable means to access the city. One woman interviewed by COHRE said she would never leave Kibera because it is an inexpensive place to live: food, clothing, transport and rent are cheap, while trading and business opportunities are relatively good. It is also very easy to get into the city centre.<sup>56</sup>

The Government of Kenya has recognised this aspect of the informal settlements in the recent National Housing Policy (*see* Box 2.5). Unfortunately, as COHRE’s dialogue with some Government officials and Ministers indicates, the destructive view that the informal settlements are “animal-like” and “crawling with criminals” still prevails among those in authority.

56 COHRE interview with resident of Makina, Kibera.

### **Box 2.5: National Housing Policy for Kenya – recognition of contributions**

17. The Government recognizes the ingenuity exhibited by poor people in their quest for shelter. It will continuously revise by-laws, standards and regulations relating to planning, building and environmental management to ensure that the poor urban citizens will have access to their most basic needs including access to shelter, food, infrastructure, water, health and other basic services; and to be engaged in activities that can sustain their livelihoods.
18. The Government will promote small-scale building materials industry and encourage labour intensive construction techniques to foster income generation. Special areas within informal settlements will be earmarked for *Jua kali* activities [that is, activities by skilled artisans in the informal sector] and support activities which target poverty alleviation particularly among the vulnerable groups.
19. The poor people's pragmatic approach to housing will be harnessed and put to maximum utility by community based organizations through effective and well defined popular participatory approaches. Community involvement as a planning tool will be advocated in all housing programmes targeting the poor.

## **2.7 Statistical recognition**

There is a glaring lack of accurate, consistent and up-to-date statistics on informal settlements in and around Nairobi; the available data shows large discrepancies. As one author notes: “[T]he variations in the population levels reflect the different methodologies applied in arriving at the estimates. It seems that every person dealing with informal settlements generates baseline data on the population levels of the informal settlements, a recipe for great controversy.”<sup>57</sup> The lack of reliable data illustrates two related structural problems: firstly, the historical and deeply entrenched tradition that authorities neglect informal settlements; and secondly, the fact that the need for such data, for example for developmental purposes, does not often arise.

The problem was emphasised at the ‘Inception Workshop on Development of Guidelines for Land Tenure Security for the Informal Settlements of Nairobi’, at Fairview Hotel, which identified the following key concerns in relation to data:

57 ‘Nairobi Situation Analysis’ (n. 29 above), p. 35.



- *Need to identify what data is available and who holds it;*
- *Need to assure quality, accessibility and usefulness of the available data;*
- *Need to develop an inventory on information on informal settlements;*
- *Need to validate the inventory;*
- *Need to harmonise the data collected from various sources and*
- *Community involvement and participation in the mapping processes.*<sup>58</sup>

COHRE acknowledges that several surveys have been done in Nairobi's informal settlements in recent years. However, there is an urgent need to collate and refine the information gathered, to eliminate inaccuracies and fill gaps.<sup>59</sup>

## 2.8 Conclusion: the right to the city

All the information presented in the previous subsections demonstrates that there is a long way to go in recognising that all Kenyans have a right to the city, that all citizens have an equal right to participate in, contribute to, and benefit from Nairobi. As one commentator put it:

*The right to the city ... would affirm, on the one hand, the right of users to make known their ideas on the space and time of their activities in the urban area; it would also cover the right to the use of the centre, a privileged place, instead of being dispersed and stuck into ghettos (for workers, immigrants, the 'marginal' and even for the privileged).*<sup>60</sup>

In itself, the failure to officially recognise the informal settlements is not a violation of international human rights law, yet it certainly obstructs any efforts to ensure that the residents of these settlements realise their right to adequate housing. The obligation to establish tenure security requires that residents' status should be legally recognised in some way. However, this does not necessarily mean that land titles should be issued to structure-owners; indeed, such a step may impair the right to housing in some or many of the settlements. Nevertheless, steps should be taken to give residents official recognition and protect them from forced eviction. They will thus be formally entitled to access Government services and live without fear of harassment or eviction. In Subsections 3.5 and 6.2, below, COHRE makes recommendations on various tenure possibilities.

58 Workshop report, p. 26. 'Development of Guidelines for Land Tenure Security for Informal Settlements in Nairobi' is a Swedesurvey project financed by the Swedish International Development Cooperation Agency (SIDA), the Kenyan Ministry of Lands and Settlements, and Nairobi City Council. The recipient of the services is the Ministry of Lands. The guidelines will serve as the basis for establishing Nairobi City's land tenure policy.

59 For example, Matrix Development Consultants, 'Nairobi Informal Settlements: An Inventory', report prepared for USAID/REDSO/ESA (unpublished, 1993); Ngau (n. 42 above).

60 H. Lefebvre, *Writings on Cities*, (Blackwell Publishers, 1996), p. 34. See also: *Proposal for a World Charter of the Right to the City*, Social Forum of the Americas – Quito – July 2004: "1(1). Everyone has a right to the city without discrimination and in accordance with the principles and norms established herein....1(2).The city is a culturally rich and diversified cultural space that belongs to all the inhabitants. Everyone has the right to find in the city the necessary conditions for his/her political, economic, social and environmental development while assuming the duty of solidarity."

What clearly violates international standards – in particular the rights to housing, water, health and education – is the Government of Kenya’s failure to ensure a minimum level of access to a range of essential urban services, including healthcare and education. In respect of the latter, all Kenyan children have a right to free primary education, an obligation contained in international instruments to which the Government has committed itself. In respect of water and sanitation, General Comment No. 15 on the Right to Water states:

*37. In the Committee’s view, at least a number of core obligations in relation to the right to water can be identified, which are of immediate effect:*

- (a) To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;*
- (b) To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups;*
- (c) To ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household;*
- (d) To ensure personal security is not threatened when having to physically access water;*
- (e) To ensure equitable distribution of all available water facilities and services;*
- (f) To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups;*
- (g) To monitor the extent of the realization, or the non-realization, of the right to water;*
- (h) To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups;*
- (i) To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation.*



Demolition of Raila Village,  
8 February 2004

## Large-scale evictions

*It is people being demolished, not buildings.*

Kibera resident during COHRE consultations

*Slums in Kenya have emerged historically; we did not wake up in the morning and find slums there; why should the current government think they can sort out this problem within a day?*

Reverend Richard, Gatwikira Anglican Church, Kibera

Residents' fears over security of tenure dominated COHRE's discussions and interviews in Nairobi's informal settlements. This heightened anxiety is the result of the recent mass eviction threats, as well as memories of evictions under the current, and more particularly, the previous government. Tenants in most communities told the fact-finding team that they felt vulnerable to eviction by structure-owners (*see further*, Subsection 4.2 below). Many Kibera residents viewed the new slum-upgrading scheme in their settlement as a potential cause of eviction; they feared that tenants would be evicted in preparation for upgrading, in connection with relocation, and/or due to unaffordable rents after upgrading (*see further*, Section 5 below).

It is clear that the majority of Nairobi's citizens do not yet enjoy security of tenure, even though this is an internationally recognised element of the right to adequate housing. This section of the report analyses current eviction threats, and a number of actual evictions that occurred in 2004, in the context of international human rights law. It also examines alternatives to evictions and makes proposals for legislative and policy change. In addition, it analyses the obligation upon donor organisations, which are financing the various infrastructure projects underlying the eviction threats, to play an active role in preventing forced evictions.

Since completing its fact-finding mission to Nairobi, COHRE has become increasingly concerned about the large number of forced evictions – often violent in character – that have been taking place in rural and forest areas. Another serious concern is that kiosks in various parts of the Kenyan capital have been hastily demolished without prior consultation and provision of alternatives, depriving many street sellers of their livelihood and, in some cases, their home.

### 3.1 Evictions in 2004

When the newly elected government of the National Rainbow Coalition (NARC) came to power in 2002, there was a strong sense of urgency that the abuses and excesses of the previous regime headed by Daniel arap Moi must be reversed, especially with regard to land. In 2004, however, the emphasis shifted to evictions with the ostensible purpose of reclaiming State land. It should be noted that the demolitions in Nairobi and other Kenyan towns – Timau and Migori – were not confined to informal settlements; a number of houses belonging to middle- and upper-class Kenyans were also demolished. The reason why the COHRE fact-finding mission focused on the informal settlements was that forced evictions there would affect large numbers of very poor people, who are inevitably the hardest hit by eviction. This is not to say that smaller-scale eviction threats should be ignored: forced evictions are devastating to all individuals and families, regardless of the number of people affected or their income-bracket.<sup>61</sup>

In late January 2004, the authorities announced plans for a series of mass evictions in Nairobi. The Ministry of Public Works, Roads and Housing declared that it would evict all structures illegally built on land reserved for the building of a bypass road.<sup>62</sup> The Minister for Local Government announced that all road reserves would be cleared of structures. Reportedly, no eviction notices were issued at the time, so confusion reigned as to exactly whom would be affected. The exact route for the link road through the middle of Kibera was only ascertained by COHRE during its fact-finding mission in July 2004.

On 29 January 2004, the parastatal Kenya Power & Lighting Company (KPLC) gave notice that in the “interest of public safety and provision of reliable power supply” it would evict all persons residing on power-line wayleaves and other KPLC land.<sup>63</sup> The Provincial Administration in Kibera, which was charged with carrying out this eviction, reportedly declared that all peo-

61 See Jean du Plessis, ‘The problem of forced evictions and the need to develop community-based, locally appropriate alternatives: lessons and challenges from Agbogbloshie, Ghana and Pom Mahakan, Thailand’ (2005), <http://www.wits.ac.za/informalsettlements/Jean%20du%20Plessis.pdf>

62 The announcement of the construction of the bypass – plans for which had existed for over 30 years – may have been prompted by donors’ and creditors’ pledges to provide funding for the project.

63 See notice in *Daily Nation*, 29 Jan. 2004. Jeff Otieno, ‘I will not be cowed, energy minister says’, *Daily Nation*, 10 Feb. 2004.

ple living within 30 m of power lines would be evicted, whereas the minimum safe distance required by regulations is only 6 m. The COHRE fact-finding team noted that the KPLC used safe distances that differed widely from one settlement to another. On the same day, the Kenya Railways Corporation (KRC) announced that it would evict all persons living within 100 feet (approx. 30 m) of the railway and on other KRC lands.<sup>64</sup> The notice for these two evictions expired on 2 March 2004.

According to some sources, eviction notices were also issued by the Ministry of Water, particularly in relation to settlements near waterways and sewer lines.<sup>65</sup> Apparently, these notices were temporarily revoked even before the other notices (mentioned in the preceding paragraphs) were suspended. COHRE was unable to confirm reports that the Local Government had also served eviction notices to residents living near sewer lines.

At the time, local NGOs estimated that a total of 330 000 to 400 000 people would be evicted in Kibera alone. These figures have since been revised downwards, because these organisations carried out follow-up surveys and were able to determine the precise areas designated for eviction.

On face value, many of the official reasons given for the evictions were sound. High-voltage power lines are an obvious hazard to people living under them. On many occasions, the COHRE team observed that the poles are inside the informal structures themselves, and the potential for accidents is very high. Sparks from the power lines can easily cause fires, as the structures below them are generally built with flammable materials. In February 2004, a fire in Mukuru brought down major power lines, causing a two-day power outage in various parts of Nairobi. Another problem is that the structures are so tightly packed in the settlements that accessibility is difficult, both for emergency services and infrastructure repair workers. However, there are potential alternatives (*see* Subsection 3.6 below). While KPLC staff cited reasons of human safety, as well as efficiency (which is degraded by electrical power losses due to short-circuiting), it appears that talks on funding for the rationalisation, expansion and potential privatisation of the parastatal were instrumental in the sudden announcement of the evictions and the short notice periods given. In mid-2004, the World Bank and the Nordic Fund provided financing for KPLC's Energy Sector Recovery Project,<sup>66</sup> though according to officials and World Bank documents the resettlement policy only applies to future expansion of the power network.

While encroachment on the railway line in Kibera is less of a hazard, there is still a real potential for fatal accidents given the proximity of settlements to the line. Nonetheless, KRC's concern with clearing the railway reserve appears to be mainly motivated by its planned privatisation. The World Bank Group – through the International Finance Corporation (IFC) – and Canarail are the 'lead transaction advisors' in assisting the Government to prepare the concessioning process for privatisation.<sup>67</sup> There are alternatives that should be considered (*see further*, Subsection 3.6 below), although the involvement of the World Bank means that its resettlement guidelines will, or should, become operative.

64 The notice was published in a number of Kenyan daily newspapers, though most Kenyans have no access to such newspapers.

65 COHRE discussion with communities in Kiambu.

66 See Nordic Development Fund, 'EUR 10 million Credit to Kenya for Energy Project', 18 Nov. 2004, [www.ndf.fi/templateneews.shtml](http://www.ndf.fi/templateneews.shtml)

67 Chris Mburu and Fuastine Rwambali, 'EA Railways Move Closer to Private Hands: Kenya and Uganda Seek Joint Rail Investor', *The East African*, 12-18 July 2004, pp. 1, 3.

The proposed route of the Southern Bypass is perhaps the most questionable aspect of these planned evictions because, according to one official,<sup>68</sup> it was designed in 1958 and, according to others, in 1974. Since then, the city has grown enormously. There is undoubtedly a case for more infrastructure to ease the often crippling congestion on Nairobi's roads. However, it is doubtful whether the link road needs to pass right through the middle of Kibera (*see further*, Subsection 3.6 below).

The resurrection of plans for the bypass, the evictions already carried out on its route through the southern part of Kibera, and the eviction threats related to the link road, which is planned to run right through the middle of Kibera, appear to be connected to a Government drive to obtain financing for rehabilitation and extension of roads. Whereas World Bank credit facilities for roads were suspended during the Moi regime,<sup>69</sup> in November 2004 the Minister of Roads and Public Works did sign loan agreements for the Southern Bypass<sup>70</sup> with the World Bank, the European Union and the Nordic Fund.<sup>71</sup> These donors appear to be funding different sections of the road, which do not seem to include the sections in Nairobi itself.<sup>72</sup>

Following the January 2004 announcements of evictions, some structures were voluntarily moved after those concerned reached agreement to this effect with the relevant Government authority. For example, kiosks were moved back from the railway line. Similarly, some roads in Kibera were widened by having structures removed. However, on 8 February 2004, Raila Village was demolished without any such prior consultation (*see* Subsection 3.1.1 below), triggering a national and international campaign to stop the remaining evictions. The Government of Kenya then suspended the planned evictions. On 29 February 2004, this presidential decision was announced by the then Minister for Roads, Public Works and Housing, Hon. Raila Odinga, at a rally in Kibera.

### 3.1.1 Raila Village demolition and evictions

Of the communities of hundreds of thousands facing eviction following the January 2004 announcements, only an area of Raila Village was actually demolished before the evictions were suspended. Hopefully, the details of this demolition should convince proponents of the forced evictions of the traumatic effect they will have on residents, and persuade them to reconsider their plans. The area of Raila Village that was affected is located in the western part of Kibera, bordering Soweto West and Gatwikira. The Southern Bypass reserve, which is 60 m wide, unfortunately runs straight through parts of Raila Village. As stated in the previous subsection, plans for the road have been resurrected as a partial solution to traffic congestion in the inner city. On 8 February 2004, bulldozers began demolishing housing structures in the path of the proposed bypass. One resident was bed-ridden in his house at the time (*see* Box 3.1 below); many others became homeless *and* lost their livelihoods (*see* Box 3.3 below).

68 COHRE meeting with Omar Salat, District Officer, Kibera.

69 Peter Munaita, 'Kenya Roads Inquiry Targets WB Funds: Will Kenya Roads Inquiry Sway Donors?', *The East African*, 12-18 July 2004, pp. 1, 4.

70 See 'Interview with Hon. Eng. Raila Amolo Odinga, Minister for Roads and Public Works, Nairobi, Wednesday, 8th December 2004' (7 Feb. 2005), [www.ebizguides.com/press/kenya\\_minister/index.php](http://www.ebizguides.com/press/kenya_minister/index.php)

71 See Nordic Development Fund, 'New Cooperation and Credit Agreements', 18 Nov. 2004, [www.ndf.fi/templateneews.shtml](http://www.ndf.fi/templateneews.shtml)

72 The EU has reported funding the sections Mahiu-Naivasha-Lanet and Sultan Hamud-Mtito-Andei: *see* European Union, *The Newspaper of the Delegation of the European Commission to Kenya*, Oct.-Dec. 2004, p. 3.



### **Box 3.1: Robert Ochieng, resident of Raila Village**

“It was Sunday and I was bedridden. When they began the demolition I was too weak to get up from bed. I heard the rumble of a bulldozer and I had no idea what was happening. The bulldozer reached my wall. My friend had the sense of mind to come to my aid, and he found me in bed. He entered the house and carried me from my bed and brought me to this house. On trying to go back and save some of my belongings, I found that the house had already been demolished, with everything else I owned inside. The only things I recovered are the clothes you see me wearing. From then, I have been suffering and I rely on food handouts from my neighbours.

“I cannot afford to pay the Ksh 400 rent of the current house I am staying in, where my friend put me. The landlady comes requesting the rent but I tell her I have nothing. My wife died and my children are staying with my aunt. I am currently on medication which I obtain from the District Officer’s office. It is very strong, and makes me very sick especially when I have nothing to eat.”

Newspaper reports and an NGO survey said 2 000 people lost their homes. This was calculated on the basis of 400 structures destroyed. This figure was confirmed in a number of COHRE interviews, although one leader estimated that between 1 000 and 2 000 people were affected. The precise numbers of school buildings, kiosks and private health clinics destroyed were not ascertained. The COHRE fact-finding team visited St Charles Lwanga, a primary school in the area, which had lost four classrooms (see Box 3.2 below), as well as the site of a health clinic that was razed to the ground (see photo at beginning of Section 3, above).

### **Box 3.2: St Charles Lwanga Primary School**

The necessity for prior consultation is evident in the case of St Charles Lwanga Primary School, in Raila Village, Kibera. This was a fully-fledged primary school offering free education from standard one to standard eight [the full eight-year range of primary education in the Kenyan system], as well as feeding programmes within the informal settlement. The school, supported by the Catholic Church and occupying land allocated to it by the Provincial Administration, had created employment for 13 teachers, among others.

It was from the newspapers that the school community first learned of the impending demolitions for the Southern Bypass. The school lost four classrooms, several toilets and its playground, and, as a result, 120 pupils were displaced. Those in charge did not know what to do with those pupils and felt that there should have been better communication and consultation. They also felt that the school should have received better treatment as they were helping to realise the Government’s mandate to provide free education.<sup>73</sup>

73 COHRE interview with Ronald Baraza of St Charles Lwanga Primary School, Raila Village, 9 July 2004.

Analysing the Raila Village evictions on the basis of information gathered by the COHRE fact-finding team highlights the following points of serious concern:

- Many evictees stated that they had been given no notice of the evictions.<sup>74</sup> One interviewee said that he had believed that the bypass would not affect his house. Some of those interviewed were unfamiliar with the term 'bypass'. Government officials claim that notice was given, yet no documentary evidence of this was found.
- There was no prior consultation whatsoever with the affected communities.
- The demolition and evictions took place on a Sunday morning when many of the evictees were in church. They were therefore unable to salvage much of their belongings. Property was also stolen and looted.
- Inspection of the eviction site revealed that in contiguous rows of houses some were left standing while others were demolished, in a pattern that seemed to be inconsistent with demolitions for a road.
- The rights of disadvantaged and vulnerable people were not protected.
- No alternative housing was provided to those affected.
- Since the evictions, there has been no provision of legal remedies, no legal protection of the affected in their attempts at obtaining legal redress,<sup>75</sup> and no offer of compensation.
- There has been no post-eviction support of any kind. Instead, institutions including the churches have been left to pick up the pieces.<sup>76</sup>
- The evictions have negatively affected the neighbouring communities. For example, the facilities demolished included a clinic that had served the wider community.<sup>77</sup>
- The evictions impoverished the affected persons, worsening their already precarious existence. One man interviewed by COHRE related that upon visiting the area he found people living in extremely inhuman conditions, with up to ten people (of all sexes and ages) in one room.
- Families have been separated and social ties strained.<sup>78</sup>
- Rents in the area surrounding the demolition sites have increased, effectively creating even greater economic hardships for other poor residents.
- In July 2004, five months after the evictions, the road-building had still not begun and the demolition sites were still open spaces, leaving the people to wonder why they had had to move out at all in February 2004.
- In October 2003, the ministry concerned – now the Ministry of Roads and Public Works – prepared a resettlement policy for communities on other sections of the Southern Bypass that was to be funded by the World Bank. However, the Ministry was not prepared to extend the same policy to cover Kibera.

74 One of those interviewed by COHRE noted that the evictees claimed this because eviction notices were published in the mass media, most of which is in English and is therefore not accessible to residents of informal settlements.

75 Furthermore, in a COHRE interview, Dalmas Owino, Secretary of the Kibera Rent and Housing Forum, indicated that his efforts at mobilising the affected community had been hampered as a result of intimidation by youths linked to a local politician.

76 In a COHRE interview, Rev. Richard of the Anglican Church in Gatwikira suggested that as the Government sees no need to deal with evictees this makes it resort to evictions much more readily.

77 Joseph Mwendwa, who worked as a caretaker at the clinic, has been jobless for five months since the evictions.

78 Two victims of evictions who were interviewed by COHRE had no alternative but to send their children to rural areas, as they could no longer support them in Nairobi.



These circumstances have led COHRE to conclude that there was a clear violation of the UN Convention Against Torture, which Kenya has ratified. The UN Committee Against Torture, in the case of *Hajrizi v. Yugoslavia*, has deemed that demolition of houses can constitute “cruel and degrading treatment”:<sup>79</sup>

*As to the legal qualification of the facts that have occurred on 15 April 1995, as they were described by the complainants, the Committee first considers that the burning and destruction of houses constitute, in the circumstances, acts of cruel, inhuman or degrading treatment or punishment. The nature of these acts is further aggravated by the fact that some of the complainants were still hidden in the settlement when the houses were burnt and destroyed, the particular vulnerability of the alleged victims and the fact that the acts were committed with a significant level of racial motivation. Moreover, the Committee considers that the complainants have sufficiently demonstrated that the police (public officials), although they had been informed of the immediate risk that the complainants were facing and had been present at the scene of the events, did not take any appropriate steps in order to protect the complainants, thus implying “acquiescence” in the sense of article 16 of the Convention. [para. 9.2]*

### **Box 3.3: Effects of eviction – Margaret Adoyo, former resident of Raila Village**

“I had no notice of the eviction. On Saturday, they began marking houses and on Sunday they began demolishing them. On Sunday, I frantically looked for an alternative house, and got a place only on Monday. Meanwhile my four children and I slept out in the cold. I only managed to recover a few things from the ruins. I got a house in Otiende at Ksh 5000 but it was too expensive. I thus moved near here [Raila Village], after two months, where the rents are much lower. My house had a shop which I relied on for my needs as well as an income. Now I do not have any income to pay school fees for my children, two of whom are exam candidates.”

The Raila Village evictions of 8 February 2004 have set an extremely bad precedent. Distrust and suspicion now pervades relations between the communities and the authorities. This will adversely affect the KENSUP slum-upgrading project planned for nearby Soweto. If these evictions were truly unavoidable, as the authorities claim, they should have been carried out with prior consultation, much less haste and much better planning. International legal standards should have been adhered to, the plight of the evictees should have been carefully considered, and alternative housing should have been provided.

79 See UN Committee Against Torture, *Hajrizi et al v. Yugoslavia*, Communication No. 161 (2000).

### **3.1.2 Other evictions**

#### **Mukuru**

Other areas were also directly affected by the threat of evictions. The Catholic Church in Mukuru kwa Njenga informed the COHRE fact-finding team that community members had demolished one of their meeting halls before the announced eviction date of 1 March 2004. (People facing imminent forced eviction may prefer to demolish structures themselves in order to safeguard their property.) The church was not only a sacred place of worship for community members, but also served as their meeting hall. A significant number of residents – estimated to be in the thousands – had also fled their structures in the Sinai Village before the proposed demolition date. The team was unable to ascertain the precise number of people affected, or the number who had subsequently returned to their homes.

## **3.2 Current threats: suspended eviction notices**

The following subsection provides further information on the communities threatened by the evictions that were suspended.

### **3.2.1 Kibera**

#### **Railway reserves in Kibera**

The railway line in Kibera runs from east to west through the villages of Laini Saba, Mashimoni, Kambi Muru, Kisumu Ndogo, Gatwikira, Soweto West and Kianda. The possible numbers of people to be affected by evictions from the railway reserves vary markedly. A survey done at the time of the eviction notice estimated that 108 000 people living in 20 000 structures would be affected. A later survey put the numbers at 51 000 residents in 5 247 structures.

However, the actual number is likely to be less than 51 000 because the density of structures along the railway lines varies significantly. Furthermore, many of the structures are not homes but workplaces, though it should be noted that demolition of kiosks raises issues related to the right to work, and livelihoods also provide the economic base for obtaining shelter. The precise number to be affected by the proposed railway evictions would have been verified by an enumeration that was planned for July 2004. However, at the time of writing, this survey had not yet been done.

### **Box 3.4: Francis Njoroge, kiosk owner on railway reserve, Laini Saba**

Since 1983, Francis Njoroge has lived in Laini Saba and conducted his business along the railway line. He sells blankets, mattresses and general clothing items. He has brought electricity into the kiosk. The land was initially allocated under the supervision of the local Chief. Mr Njoroge's son, Paul Waweru, grew up there and, due to the lack of jobs, obtained a similar kiosk nearby in 1990. He has two children and depends on the income from the kiosks to feed them.

During their 'significant period of occupancy', these kiosk owners have never had any form of secure tenure, and they are very worried about the impending evictions. They were enjoined in the suit against the Kenya Railways Corporation (KRC) and negotiated a settlement to move a minimum of 15 feet (approx. 4.5 m) away from the railway tracks. They would like the railway authorities to give them some form of assurance that they will not be evicted.

In relation to the threatened railway evictions, the following salient points need to be raised:

- According to residents, the eviction notice was only broadcast on radio and published in the printed media, although some did indicate that they had been personally served with notices.
- The railway track is an important access route for pedestrians coming from and going to the east of Kibera, providing a direct link to the industrial area. This is a natural option, given the lack of access routes into the informal settlement. The track also provides good business opportunities and access to Kenyatta Market and Ngumo Estate, where middle-class customers live.
- The Kenya Railways Corporation (KRC) had leased out the plots within 30 feet (approx. 9 m) of the railway line, in return for payment of a fee. This fact precludes them, at least in the short-term, from claiming the right to evict on the basis that the 'encroachers' are there illegally.
- The structures along the railway line serve as business premises and places of habitation. Evictions can cause enormous disruption to livelihoods and family life. Furthermore, many schools, hospitals and churches are within the railway reserve.
- The KRC has provided no alternative locations.
- Technological alternatives need to be considered. (*See further*, Subsection 3.6 below.)

The railway case-study illustrates how residents of informal settlements are able to provide solutions from within the community when the need arises. Some people did demolish their businesses, but the majority found workspace that was created by their fellow-traders. This happened after negotiations with the KRC, who reduced the minimum distance to 15 feet (approx. 4.5 m) on either side of the railway line, whereas an initial KRC statement had set the distance at 100 feet (approx. 30 m).<sup>80</sup>

<sup>80</sup> In many meetings with COHRE, residents – especially structure-owners – said that rather than relocate during the upgrade, they would prefer to squeeze into the available space pending the rebuilding of their original section.

In a bid to prevent the railway eviction, a case against the KRC was brought by 88 residents and kiosk-owners on the reserve.<sup>81</sup> They purported to represent all those affected by the railway eviction notices. The Court initially granted an injunction, on 3 March 2004, but notice was extended by only 10 days. The case was eventually settled, with the applicants withdrawing the case and the KRC agreeing to enter into negotiations.

However, in another case against the KRC – *John Samoei Kirwa & 9 Ors. v. Kenya Railways Corporation* (High Court of Kenya, Bungoma) HCCC No. 65 of 2004 – a High Court granted a temporary injunction, pending a full hearing of the issue, on the following basis:

*The plaintiffs [residents] are likely to establish that the notice was issued unprocedurally and unlawfully. They are also likely to establish at the hearing of suit that the notice was arbitrary and unreasonably inadequate.*

*The Managing Director of the defendant should have heard the plaintiffs before issuing the notice. It should be noted that human compassion must soften the rough edges of justice in all situations. The eviction of squatters not only means their removal from their houses but the destruction of the houses themselves. The humbler the dwelling, the greater the suffering and more intense the sense of loss. It is the dialogue with the person likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done.*

*I am of the view that [if] squatters ... [have] settled and have been in existence for a long time, say for twenty years or more, and ... have improved and developed the land on which they stand [and that land] is required for a public purpose, ... alternative site or accommodation should be considered. Of course the land which the plaintiffs occupy is owned by the defendant. It is required by the Respondent for the use provided for under the Kenya Railways Corporation Act.*

*From the above analysis and findings it is in my humble view that the plaintiffs have established that they have prima facie case with a probability of success....*

*[I]t is clear that plaintiffs are likely to suffer irreparable loss. No one can quantify the amount of loss when children miss the benefit of free primary education or when their homes are demolished and their parents are evicted from the only known home....*

*The applicants have shown in their averments that they have ploughed their farms and have even planted crops on it. They have also shown that they have been in occupation of the railway land reserve for over 30 years and the owner has not disturbed them.*

*It has also been shown by the notice issued that the Defendant [Railways] did not attach any reasons to it. I find that the plaintiffs are likely to be more inconvenienced if the order of injunction is not granted.*

81 *Maina Ngare Njeru and 87 Ors. v. Kenya Railways Corporation* (High Court of Kenya, Nairobi) HCCC No. 189 of 2004.

*The other matter which has struck my attention is that the conduct of the defendant has not been impressive. They have allowed the plaintiffs to occupy its land for a period of over 30 years without removing them. Why would it now give such citizens a 30 days notice to remove what they have invested for such a length of time? Why has the defendant failed to comply with Section 16 (3) of the Kenya Railways Corporation Act?*

There are indications that the KRC is taking positive steps, including the planning of detailed enumerations in the area, to ensure that those living alongside the railway line will be adequately resettled, potentially as part of the KENSUP slum-upgrading process. Apparently, however, KRC has not yet attempted to consult with local communities to work out solutions (see further, Section 3.6.1 below).

### Course of proposed link road through Kibera settlement



The link road is designed to connect with the Southern Bypass and to cut through Kibera with Mashimoni and Lindi on one side and Kambi Muru on the other. It emerges north at Makina and passes through the outermost eastern fringes of that settlement, continuing north to the office of Kibera's District Officer. It is not clear how many people would be affected by this road, though it would be possible to estimate the number of structures by an aerial survey. Provisional estimates put the number of affected people at 10 000. No eviction notices appear to have been issued. Generally, members of the threatened communities know little to nothing about this planned road. However, the potential for massive social disruption is unquestionable.

COHRE was unable to obtain much information about the intention of the authorities to widen other roads in Kibera.

### **Power-line wayleaves in Kibera**

The structures under power lines in Kibera lie within the villages of Soweto East, Silanga and Lindi. The number of people to be affected by evictions is estimated at 76 175, living in 3 255 structures.<sup>82</sup> Regulations require a six-metre buffer zone around the footprint of any high-voltage power line. This is a reasonable requirement given the potential danger that power lines pose to those living under them, including the fire risk. In addition, access to the power lines for repairs is very difficult without wayleaves. However, as in other instances examined in this report, the residents to be affected were not given sufficient notice of eviction, nor was there adequate prior consultation with them. Residents interviewed by COHRE said they just found crosses painted on their structures one morning. The potential socio-economic impact of these evictions is unquestionable. Soweto Baptist School, which is located right under the power lines, has up to 200 primary and secondary school pupils. The school caters for the poor, including AIDS orphans.<sup>83</sup>

### **Riparian reserves in Kibera**

The Ngong river skirts the southernmost edge of Kibera, from Kianda in the west to Silanga in the east. Along this whole stretch, all the way to the Nairobi dam, structures have been built a few metres from the river. It is likely that these structures are within the riparian reserve, though it is not clear whether those who dwell in and use these structures are under threat of eviction from the Ministry of Water.

#### **3.2.2 Mukuru**

The Mukuru informal settlement is adjacent to the industrial area to the south of Nairobi. It has a population of 200 000 people in two sub-locations and consists of the villages of Kwa Njenga, Kwa Reuben, Sinai, Kingstone, Lunga Lunga, Quarry, Kayaba, Marigoini, Uchumi and Fuata Nyayo.

82 These estimates were obtained from a memorandum presented by Christ the King Church Laini Saba, Kibera, to Mrs G. N. Wanyonyi, Director of Housing. The exact definition of a structure in this instance is not clear; it most likely refers to a building that is divided into several single rooms – a common type of structure in Kibera.

83 COHRE interview with Festus Mathenge, headmaster of Soweto Baptist School.





Crosses mark homes and sanitation blocks for demolition near powerlines.

### Railway reserves in Mukuru

Residents' structures have encroached upon railway reserves in several of these areas, including Kwa Njenga, Quarry (Kware), Kwa Reuben, Kingstone and Uchumi. An enumeration indicates that the numbers of structures to be affected by eviction are as follows:<sup>84</sup>

Kwa Njenga	5 129
Quarry	658
Kwa Reuben	991
Kingstone	1 382
Uchumi	1 177

According to the local Chief, Mr John Mutai, all the land in Mukuru is privately held, though some community leaders told COHRE that this is not entirely true. Only a comprehensive land audit would reveal the exact proportion of privately held land. Certainly, all those people interviewed by COHRE were structure-owners, and there seemed to be fewer renters than in other similar settlements. A typical rent is Ksh 800 per room. Some of the structures in this settlement are permanent, and there are even some multi-storeyed buildings. The people of Kwa Njenga and Quarry appeared to be neither united nor well organised; community groups such as Kazi na Jasho, the Railway Hawkers Organisation and Quarry Garbage Collectors were still in their infancy, having emerged largely due to the threat of eviction.

84 Pamoja Trust, railway enumeration, 2004.

COHRE noted the following points of criticism in connection with the threatened evictions:

- No personal notices were served; the mass media was used as the method of disseminating information. The only form of direct notification was the ominous ‘X’ sign marked on homes.
- In Mukuru, it is very difficult to determine the reason for any specific eviction threat, because there are various threats affecting different, overlapping areas. This has caused a lot of uncertainty and is arguably an infringement of the residents’ right to know exactly what they are ‘doing wrong’ and why their homes have been selected for eviction.
- The land under eviction threat was originally settled with the active participation of the local Chief.
- Many residents indicated that they were prepared to voluntarily demolish their structures before the demolitions started. This indicates that there is room for negotiation.
- COHRE heard frequent allegations that public land had been illegally allocated to private individuals for speculative purposes. According to residents, the Chief is closely involved in this process, for he uses his influence to affect decisions of the Local Development Committee<sup>85</sup> to favour his own interests.
- The railway authorities were inconsistent in their approach: they frequently inspected the railway line but did not caution residents for encroaching upon the railway or inform them of the applicable rules.
- Evictions in Mukuru reportedly caused rents to rise in neighbouring settlements to which the evictees moved.<sup>86</sup>

### Power-line wayleaves in Mukuru

Many power lines traverse Mukuru. There are the high-voltage power lines from Jinja, as well as three-phase power lines to the adjacent industrial area. COHRE acknowledges that this situation is dangerous, for reasons mentioned in Subsection 3.1 above, and that some solution has to be found. (During COHRE interviews, some residents claimed that women living under the power lines regularly give birth to deformed babies, though these were anecdotal claims and no official confirmation could be obtained.) There is an obvious need to move residents out of the affected areas, though it remains to be determined how, according to what procedures, and what alternatives will be offered. The areas of Mukuru most affected by power lines, and the numbers of structures affected, are:<sup>87</sup>

Kwa Njenga	1 365
Quarry	365
Kwa Reuben	500

These numbers are much higher than the initial estimate of 900 structures. The total number of people to be affected will exceed 11 000. Many community facilities will be affected, including a church, the church community hall, classrooms and over 25 public toilets.<sup>88</sup>

85 As the Local Development Committee has no statutory authority to allocate land, the allocations were definitely illegal.

86 COHRE interview with Mr Fredrick Mbika, Catechist at St Mary’s Church, Mukuru Kwa Njenga.

87 Figures provided by a local community group, the Quarry Garbage Collectors Organisation.

88 Campaign Against Forced Evictions, joint paper, 17 Mar. 2004.



Interestingly, a previous Chief in the Kwa Njenga area had required that mainly toilets, and not houses, be built under the high-voltage power lines. This was an attempt to ensure that fewer people would be affected if evictions were ordered. According to residents interviewed by COHRE, some of the power lines were erected above already existing settlements, though Government officials denied this.

### **Lessons learnt from Mukuru**

The Mukuru area provides a number of important lessons. Firstly, continual enforcement by the authorities can easily prevent the problems of evictions later. The Kenya Pipeline Corporation has a fuel pipeline that traverses parts of the settlement. There has been no encroachment on the required minimum distance because, according to residents interviewed by COHRE, enforcement is strict, with periodic aerial and terrestrial monitoring.

Secondly, residents expressed concern that the Chief, Mr Mutai, was involved in the unauthorised allocation of adjacent public and private land that could otherwise be used for resettlement purposes. The COHRE fact-finding team had a meeting with the Chief, who denied allocating land improperly and insisted that the land in question was legitimately sold. He produced copies of land titles, but as these appeared to be computer print-outs, their authenticity was uncertain.

Finally, adversity provides the impetus for communities to organise themselves. Mukuru, unlike the other informal settlements visited by COHRE, had only limited grassroots organisation before the planned evictions were announced.

### **3.2.3 Mitumba**

The Mitumba settlement in Nairobi South 'C' has an interesting, but unfortunate, history. It has been demolished a record seven times,<sup>89</sup> each demolition pushing the residents closer to their current location, surrounded by the perimeter fences of Wilson Airport and Nairobi National Park, and a middle-class estate.

Not surprisingly, and probably because of this history, the community is extremely well organised, with over 30 active groups – including one dedicated to raising human rights awareness – and strong links with umbrella CBOs like Pamoja Trust and Muungano wa Wanavijiji, and also with other community organisations in various settlements around Nairobi. The residents have started their own school, Mitumba Primary School, and staff it with local residents and pay the teachers themselves. According to the local Muungano Savings Group, a self-enumeration revealed that there are 1 300 structures housing 8 000 people in Mitumba.

The settlement is facing three uncertainties. Firstly, there is the issue of the ownership of the land that they currently occupy. According to the residents, their settlement was almost burnt down one night and the local Chief constantly threatens them. Secondly, the residents say a road is planned to link Muhoho Avenue in South 'C' with the Southern Bypass. It is not known how many residents will be affected by this road, although a quick observation by COHRE

89 COHRE interview with Peris Akinyi, chairperson, Muungano Savings Group, Mitumba.

showed that it would only be a small part of the settlement. Thirdly, the residents are under constant pressure from the airport authorities to refrain from building under the flight paths of planes. Although they have complied with this order, their settlement does extend right up to the airport perimeter fence.

In Mitumba, the high level of community organisation means that the local Chief has a minimal role to play in the day-to-day running of the settlement. The frequently heard accounts of Chiefs abusing their authority, for example by requiring permission for house construction and repairs, were not repeated here. Indeed, COHRE generally found that homes in Mitumba were in a better state than those in Nairobi's other informal settlements. Significantly, it is the villagers themselves who decide whether a new person may join the community, though a fee still has to be paid to the village elders.

### 3.2.4 Korogocho

The informal settlement of Korogocho is similar to Kibera in many respects, though it is much smaller and its layout is more planned. The total number of households has been enumerated at 18 537; the largest of its seven villages consists of 3 481 households.<sup>90</sup> Most of the land in Korogocho is Government-owned and was allocated to structure-owners by the Chief. At the time of COHRE's fact-finding mission, structure-owners and tenants were locked in dispute over land and tenure rights; as a result, some residents had apparently been evicted. (*See further*, the Korogocho case study in Subsection 5.4 below).

The evictions announced in early 2004, mainly those related to power-line wayleaves, affected almost the entire settlement. The Catholic Church in Korogocho estimates that 2 500 people live on such wayleaves.

### 3.2.5 Kiambiu

Kiambiu is an informal settlement in Eastleigh South Location, Nairobi, that has existed since 1950. During the 1990s, it rapidly expanded to between 50 000 and 60 000 people. Many of its new residents had been evicted from other settlements. Reportedly, Kiambiu is an extreme case of land-grabbing and abuses of power by the local Chief, the former councillor, and absentee structure-owners. Only 25 percent of Kiambiu's structure-owners actually live in the settlement. (*See further*, the separate case study on Kiambiu, land-grabbing and harassment in Subsection 6.1.1 below.)

According to residents, the February 2004 eviction notice from Kenya Power & Lighting Company to dwellers living under power lines affects some 400 people living in 63 structures, as well as three churches. An eviction notice from the Ministry of Water also effects a significant number of residents living close to the river. However, the community members were unable to accurately count the structures affected by that notice, as the Chief continued allocating waterside sites to structure-owners even while the eviction threat was effective. According to residents interviewed by COHRE, some structure-owners supported the evictions in the hope that they would receive land in other parts of Kiambiu in compensation.

90 Pamoja Trust, 'Korogocho Informal Settlements Enumeration Report' (Nairobi: Pamoja Trust, July 2001).

Residents also told COHRE that the Kenya Air Force had previously ordered the community to retreat 100 m from the fence separating the settlement from the Air Force buffer zone. This would entail the eviction of virtually the entire community, which occupies a narrow strip of land between the river and the buffer zone. However, the community disregarded the order. It was not clear whether the Air Force actually owned the land.

### 3.3 Forced evictions law: “Only justified in the most exceptional circumstances”

The UN Commission on Human Rights – composed of State representatives – has affirmed that the practice of forced eviction “constitutes a gross violation of human rights, in particular the right to adequate housing.”<sup>91</sup> The UN Committee on Economic, Social and Cultural Rights (UNCESCR), in its General Comment No. 7, defines forced eviction as: “[T]he permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”<sup>92</sup> The African Commission on Human and Peoples’ Rights has applied this General Comment to the provisions of the African Charter on Human and Peoples’ Rights, stating, in a case against Nigeria:

*The particular violation by the Nigerian Government of the right to adequate housing as implicitly protected in the Charter also encompasses the right to protection against forced evictions. The African Commission draws inspiration from the definition of the term “forced evictions” by the Committee on Economic Social and Cultural Rights which defines this term as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”. Wherever and whenever they occur, forced evictions are extremely traumatic. They cause physical, psychological and emotional distress; they entail losses of means of economic sustenance and increase impoverishment. They can also cause physical injury and in some cases sporadic deaths .... Evictions break up families and increase existing levels of homelessness.*<sup>93</sup>

According to the UNCESCR, forced evictions “are prima facie incompatible with the requirements of the [International] Covenant [on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”<sup>94</sup> As a possible justification, the Committee notes the example of tenants persistently refusing to pay rent or destroying rented property. Even in such ‘exceptional circumstances’, in which forced evictions could be carried out without violating international law, certain procedural requirements must be fulfilled.

91 UN Commission on Human Rights, Resolution 1993/77, UN Doc. E/CN.4/RES/1993/77 adopted unanimously on 10 Mar. 1993.

92 General Comment No. 7 (n. 15 above), para. 3.

93 See: *SERAC v. Nigeria*, African Commission on Human and Peoples’ Rights, Decision 155/96, para. 63.

94 General Comment No. 4 (n. 14 above), para. 18.

Firstly, States must ensure, prior to any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with affected persons with a view to avoiding, or at least minimising, the need to use force.

Secondly, “evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights.” Governments must therefore “ensure that adequate alternative housing is available ... to affected persons.” Such a situation was recently addressed by the South African Constitutional Court, which stated:

*In general terms, however, a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme.*<sup>95</sup>

Finally, in those rare cases where eviction is considered justified, it must be carried out in strict compliance with additional relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. These include, *inter alia*:

- (1) Genuine consultation to take place with all those to be affected;
- (2) Adequate and reasonable notice to be given to all affected persons prior to the scheduled date of eviction;
- (3) Adequate information on the proposed evictions, and where applicable, on the alternative purpose for which the land or housing is to be used, to be provided to all those affected, in reasonable time before the eviction;
- (4) Especially where groups of people are involved, government officials or their representatives to be present during the eviction;
- (5) All persons carrying out the eviction to be properly identified;
- (6) Evictions not to take place in particularly bad weather or at night, unless the affected persons consent otherwise;
- (7) Legal remedies to be provided; and
- (8) Where possible, legal aid to be provided to persons who are in need of it in order to seek redress from the courts.

Evictions directly and indirectly violate a whole range of economic, social and cultural rights – for example, the rights to work, to social security, to family life, to healthcare, to food, to water, to education and to cultural participation. Firstly, the loss of housing – and the resulting homelessness and/or dislocation – obstructs access to employment, healthcare, social services and education. Secondly, evictions often result in the direct destruction of the resources necessary to realise other rights. This may include the destruction of places used for maintaining livelihoods, health centres, water and sanitation services, schools, religious buildings, and community centres.

95 *Port Elizabeth Municipality v. Various Occupiers*, Case CCT 53/03, judgment delivered 1 Oct. 2004, para. 28.

Evictions may also violate international standards on non-discrimination and equality. According to the UNCESCR:

*Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the [International] Covenant [on Economic, Social and Cultural Rights] impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.<sup>96</sup>*

In some cases, evictions constitute cruel and degrading treatment. The UN Committee Against Torture recently held that the “burning and destruction of houses constitute, in the circumstances, acts of cruel, inhuman or degrading treatment or punishment.”<sup>97</sup>

In response to the draft Consultation Report (on which the present report is based), the Vice-President of Kenya, Mr Moody Awori, stated that this COHRE report “should balance housing rights with the rights of other parties to own or recover their land that has been converted into squatter camps or informal settlements.”

COHRE agrees with the Vice-President in the sense that housing rights and the prohibition on forced eviction (as elaborated above in this subsection) are not absolute: other arguments of public-interest – for example, Government ownership of land, environmental and town planning considerations, and private property rights – can be balanced against housing rights. However, the relative weight to be given to these other interests and rights depends on the circumstances. If occupiers are to be made homeless, then the presumption against eviction is very strong and the State is required to advance very strong reasons for relocation, particularly in the absence of a plan for adequate resettlement. This is partly because Kenya has ratified the International Covenant on Economic, Social and Cultural Rights and therefore has an obligation to progressively realise the right to housing. COHRE is convinced that destruction of existing housing runs counter to that objective.

The Government is obligated to protect Kenyans from activities of private owners that would deny them their housing rights, even though such owners have not ratified international treaties such as the Covenant. Balancing housing and property rights in such circumstances is not always easy. However, a recent judgment in South Africa demonstrates how a court sensitively balanced the housing rights of 40 000 informal settlers and the property rights of the private landowner. See Box 3.5 below.

<sup>96</sup> General Comment No. 7 (n. 15 above), para. 10.

<sup>97</sup> See UN Committee Against Torture, *Hijirizi et al v. Yugoslavia*, Communication No. 161 (2000), para. 9.2, and the following cases of the European Court of Human Rights: *Mentes and Others v. Turkey*, 58/1996/677/867; and *Selcuk and Askerv. Turkey*, 12/1997/796/998-999. The Court had previously stated that the prohibition on torture, inhuman or degrading treatment or punishment included “the infliction of mental suffering by creating a state of anguish and stress by means other than bodily assault”, see: *Ireland v. United Kingdom*, Report of 5 Nov. 1969, Yearbook XII.

### Box 3.5: Balancing housing and property rights: the Modderklip case<sup>98</sup>

A private landowner in South Africa sought to evict 40 000 persons from an informal settlement that had grown on his property. Invoking the right to property, among other human rights, he argued that the Government of South Africa had an obligation to carry out a court-ordered eviction of the settlers. The local sheriff had refused to execute the order unless the land-owner pay a deposit of 1.8 million rand, which the landowner could not afford.

The Supreme Court of Appeal of South Africa emphasised that while the landowner had the right to the use of his property, the “occupiers have a right of access to housing under s26(1) [section 26(1) of the Constitution of South Africa].” The Court concluded that in these difficult circumstances the only solution was to provide land to the occupiers, either through State expropriation of the land (with compensation of the owner) or through provision of alternative land.

The Court was willing to place this burden upon the Government for a number of reasons and despite concerns about ‘queue-jumping’; that is, the illegal occupation of land in order to gain priority in housing plans. The Court noted that the authorities (local, provincial and national) had, in two respects, failed in their obligations towards the occupiers. Firstly, the community were not included in housing plans in accordance with the judgment in *Government of the Republic of South Africa and Others v. Grootboom and Others* (2000 (11) BCLR 1169 (CC)). Secondly, the local authority had not intervened at an earlier stage to prevent the occupation, though it could easily have done so (in fact, the occupation resulted from an earlier eviction by the local authority of occupiers on public land). Under the relevant legislation, eviction within the first six months of an occupation does not necessitate provision of alternative accommodation. In these circumstances and due to the lack of a relocation plan, the Court ordered the Government of South Africa to appropriate the land and pay damages to the private landowner.

*Postscript:* On 13 May 2005, the Constitutional Court of South Africa affirmed this decision.

98 Excerpted and adapted from Malcolm Langford and Bret Thiele, ‘Judicial Enforcement of the Right to Housing: International and Comparative Review’ (on file at COHRE).

### 3.4 Inter-Ministerial Committee ‘evictions document’

The Government of Kenya’s decision to suspend the evictions on 29 February 2004 represents a positive step in avoiding what could have been a catastrophic sequence of forced evictions. At the time, statements from some Government ministers suggested that evictions would not proceed without resettlement and that international (and some national) requirements for evictions would probably be satisfied. The Kenya Power & Lighting Company also stated that for any future extension of the electrical power grid it would follow the World Bank resettlement guidelines.

COHRE is aware that an Inter-Ministerial Committee headed by Vice-President Moody Awori is developing an evictions policy or programme in response to the suspension of the evictions.<sup>99</sup> This ‘evictions document’ has not been made public and there is no indication as to when it will be approved by the Kenyan Cabinet. While COHRE welcomes the formulation of such a document, it wishes to raise the following concerns:

1. Has there been any consultation with the affected communities on the proposals contained in the ‘evictions document’, or will it include such consultation as an essential step prior to planning any eviction?
2. Will there be an opportunity for the public to comment on the proposed ‘evictions document’?
3. Will the document provide a set of principles and procedures to be followed by all Ministries in order to prevent forced evictions? Addressing the concerns and interests of those affected by the eviction notices issued in January and February 2004 would be a good step forwards. However, in the long-term, a policy that applies to all of Kenya is needed.
4. Will the policy specified in the ‘evictions document’ fully comply with international law, including the provision that forced evictions may occur *only in the most exceptional circumstances*?
5. Will the relevant Government department(s) be required to pursue all possible alternatives prior to any consideration of forced eviction; for example, reconfiguring existing development projects, amending regulations for wayleaves, and *in situ* slum upgrading?
6. If individuals and families are to be resettled, will their new location be adequate in terms of access to livelihoods and social services?
7. Will affected residents be adequately compensated for their losses sustained as a result of relocation?
8. Will the policy specified in the ‘evictions document’ include a process for providing assistance and redress to those who were evicted in February and April 2004?

On several occasions, COHRE has requested that the Government of Kenya answer these questions. However, it has not yet received a formal response. (For new developments on forced evictions guidelines, see Update, p. 3, above.)

99 COHRE meeting with civil society representatives, 12 July 2004.



### 3.5 Prevention of forced evictions: moratorium, CORs, policy, law

*[I]t is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the [International] Covenant [on Economic, Social and Cultural Rights] and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. ... States parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.*

UN Committee on Economic, Social and Cultural Rights,  
General Comment No. 7 on Forced Evictions, para. 9.

The existing Kenyan legislation that regulates forced evictions – particularly of people living in informal settlements – is fragmented and certainly does not comply with international human rights law. While some protections do exist – for example, the need for a court order for evictions from Government land (*see: Government Lands Act*, Section 130) – there is an urgent need for comprehensive legislation to regulate forced evictions. The current National Housing Policy does not even mention evictions; it only briefly refers to the need to ensure security of tenure and to minimise displacement during slum upgrading.

It is unlikely that a legislative framework on forced evictions could be adopted in the short-term because there is a considerable parliamentary backlog in the passing of bills. Given the urgency of the issues that need to be resolved, the Government would do well to consider fast-tracking the necessary legislative review. In the meantime, the Government should immediately reinstate the moratorium on evictions issued by the Nairobi Informal Settlements Coordinating Committee (NISCC) in 1997. The following step, which is urgently needed, is a clear statement of Government policy on forced evictions, in full compliance with international law. The Inter-Ministerial Committee's 'evictions document', which is discussed in Subsection 3.4 above, could form the basis for such a policy (*see also* Update, p. 3, above).

There is also a pressing need to develop short- and long-term tenure regularisation processes within the informal settlements. In the short-term, interim protection could be provided through measures such as declaring secure-tenure areas, granting temporary occupancy licences as provided for in Kenyan land law, or issuing certificates of occupancy similar to those adopted in Botswana (*see* Box 3.6 below). However, given the complexity of the issues and the extraordinary importance of land tenure, even interim measures would require careful consideration. It may therefore be preferable to defer any lasting decisions on a tenure model for informal settlements until the land policy process is completed. Furthermore, experience demonstrates that different types of tenure systems may



be appropriate to different settlements, and it is therefore important to involve the communities concerned in designing and choosing the tenure model. Where temporary or permanent resettlement is absolutely necessary, it is important that before any resettlement takes place the affected residents should agree on the tenure system for the decanting (resettlement) site and – where appropriate – the return to the original site, or the move to any alternative site or sites. Meanwhile, in the short-term, the abovementioned moratorium will add an important layer of protection.

Importantly, the draft National Housing Development Programme 2003-2007 prepared by the Ministry of Lands and Housing includes the provision of secure land tenure as one of six key activities for slum upgrading.<sup>100</sup> However, the relevant indicator is defined as “a title document”. This narrow definition of security of tenure is unfortunate given both international standards and the need for a multiplicity of tenure types to suit varied circumstances. This indicator should therefore be interpreted broadly to include a range of tenure types as discussed above (see also Subsection 6.2, below, with respect to the National Land Policy Formulation Process). Moreover, short-term security of tenure is unlikely to be provided along with some form of individual or communal title.

### **Box 3.6: Botswana’s Certificate of Rights<sup>101</sup>**

In 1974, Botswana developed the Certificate of Rights (COR) to assist the urban poor as part of a site-and-service scheme. The holder of a COR has the right to use and develop the land for which it was issued, and cannot be arbitrarily evicted. However, the ultimate ownership of the land remains with the State, which can revoke the COR more easily than a standard individual land title. For this reason, it is difficult to use the COR as collateral for obtaining credit.

The COR system in Botswana has proven very effective, particularly when coupled with access to land, basic services and subsidised loans for materials. Once a resident’s house meets basic requirements, the COR can be transferred into a long-term leasehold. However, CORs are easily tradable, which allows middle- and high-income earners to purchase plots, potentially diminishing the low-income housing stock.

Furthermore, suitable legislation should be adopted to provide for long-term protection from forced eviction, as required by General Comment No. 7. This might be separate legislation, or such provisions could be incorporated in the process currently underway to re-draft the *Housing Act*. This process should also seek to ensure consistency within and among the many pieces of legislation that affect informal settlements. This would entail reform of the *Rent Restriction Act* (see Subsection 4.2.1 below).

100 Government of Kenya, *National Housing Development Programme 2003-2007*, Ministry of Lands and Housing, p. 10.

101 For recent developments, see Martin Adams, ‘Human Rights Issues in Land Reforms: The Botswana Case’ (paper on file with COHRE).

It is important to note that Kenyan civil society organisations have already made detailed proposals for legislation on evictions, and for a housing law (see Box 3.7). These proposals should be considered and incorporated as appropriate.

**Box 3.7: Draft National Housing Bill 2004, prepared by civil society in Kenya**

*21 (1) No person shall be evicted from premises covered under this Act and no demolition of premises covered under this Act shall be carried out except in the following situations:*

- (a) where a person or persons occupy railroad tracks, garbage dumps, river banks, shorelines of a waterway or any other area as the Minister may determine,*
- (b) where land has been gazetted under section 18 of this Act, or*
- (c) where a court has issued an order for eviction and demolition.*

*(2) No eviction or demolition orders shall be issued involving underprivileged and homeless persons unless:*

- (a) notice has been effected upon the affected person at least 30 days prior to the date of eviction or demolition,*
- (b) there has been adequate consultation on the matter of resettlement with the duly designated representatives of the affected community,*
- (c) there is presence of local government officials or their representatives during the eviction or demolition,*
- (d) there is proper identification of all persons taking part in the demolition, and*
- (e) adequate provision has been made for the relocation of the affected persons.*

A piece of legislation adopted in South Africa is also an interesting model (see Box 3.8). This legislation provides significant protection against forced eviction, since court proceedings are always required and the adjudicator must consider all relevant factors, including access to alternative accommodation. In an attempt to provide some form of historical fairness and prevent ‘queue-jumping’, residents who have informally settled on a site for less than six months are given fewer rights.<sup>102</sup>

<sup>102</sup> However, it should be noted that ways have been found around even the best legislation. In the case of South Africa, many evictions are being effected in Johannesburg not under the PIE Act but through the use of health and building safety legislation instead. Ostensibly, this is because the buildings must be urgently cleared and eviction would be in the interest of the occupants. However, in many cases it is simply because the latter legislation is a much quicker, cheaper and easier means to the same end. Clearly, protective legislation is only one step towards securing the protection of rights.

**Box 3.8: South Africa's *Prevention of Illegal Evictions Act* – PIE**

- (1) An organ of state may institute proceedings for the eviction of an unlawful occupier from land which falls within its area of jurisdiction, except where the unlawful occupier is a mortgagor and the land in question is sold in a sale of execution pursuant to a mortgage, and the court may grant such an order if it is just and equitable to do so, after considering all the relevant circumstances, and if-*
  - (a) the consent of that organ of state is required for the erection of a building or structure on that land or for the occupation of the land, and the unlawful occupier is occupying a building or structure on that land without such consent having been obtained; or*
  - (b) it is in the public interest to grant such an order.*
- (2) For the purposes of this section, 'public interest' includes the interest of the health and safety of those occupying the land and the public in general.*
- (3) In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to:*
  - (a) the circumstances under which the unlawful occupier occupied the land and erected the building or structure;*
  - (b) the period the unlawful occupier and his or her family have resided on the land in question; and*
  - (c) the availability to the unlawful occupier of suitable alternative accommodation or land.*
- (4) An organ of state contemplated in subsection (1) may, before instituting such proceedings, give not less than 14 days' written notice to the owner or person in charge of the land to institute proceedings for the eviction of the unlawful occupier.*
- (5) If an organ of state gives the owner or person in charge of land notice in terms of subsection (4) to institute proceedings for eviction, and the owner or person in charge fails to do so within the period stipulated in the notice, the court may, at the request of the organ of state, order the owner or person in charge of the land to pay the costs of the proceedings contemplated in subsection (1).*

It also critical that Kenya adopt an institutional cross-ministerial framework for regulating any evictions. It was clear from the implementation of eviction notices in February 2004 that there was little coordination or consistency between the relevant Ministries who issued the notices and the Provincial Administration who were ordered to carry out the evictions. For example, in Mukuru kwa Njenga the area marked for demolitions under electricity lines appeared to be quite different in size to that marked in Korogocho.

The Kenyan judiciary should also take a more proactive role in applying the various constitutional provisions for some protection of housing rights, particularly the fundamental constitutional right of all Kenyans to “protection for the privacy of his home”.<sup>103</sup> The decision of the High Court in *John Samoei Kirwa & 9 Ors v. Kenya Railways Corporation*<sup>104</sup> demonstrates how courts can apply this right, though it is common for eviction cases to be simply dismissed, or for very short stays to be issued. In this railway eviction case, the Court stated: “The plaintiffs [residents] are likely to establish that the notice was issued unprocedurally and unlawfully. They are also likely to establish at the hearing of suit that the notice was arbitrary and unreasonably inadequate.” It is important to absorb the experience and best practice gained from evolving jurisprudence on economic, social and cultural rights in other developing countries; for example, India, Bangladesh and South Africa, as well as the decisions of the African Commission on Human and Peoples’ Rights.<sup>105</sup>

Furthermore, as the influence and awareness of international law grows, judiciaries in many countries where human rights treaties and declarations are not directly applicable are increasingly using them as interpretive guides. This happens in three ways.<sup>106</sup> Firstly, if there is a lacuna or gap in the law, the relevant principle of international human rights law can be utilised.<sup>107</sup> Secondly, laws should, as far as possible, be interpreted in a way that is consistent with international human rights.<sup>108</sup> Finally, in those jurisdictions that include ‘evolutionary’ customary and common laws, the law should develop in a direction that is consistent with economic, social and cultural rights.

103 See Opiata Odindo, ‘Litigation and Housing Rights in Kenya’ in John Squires, Malcolm Langford and Bret Thiele (eds.), *Road to a Remedy: Current Issues in Litigation of Economic, Social And Cultural Rights* (Sydney: Australian Human Rights Centre and University of NSW Press, 2005).

104 High Court of Kenya, Bungoma, HCCC No. 65 of 2004.

105 See Centre on Housing Rights and Evictions, *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies* (COHRE, 2003).

106 *The Road From Bangalore*, speech given by Justice Michael Kirby, 26 Dec. 1998, [www.lawfoundation.net.au/resources/kirby/papers](http://www.lawfoundation.net.au/resources/kirby/papers)

107 See Michael Kirby, Role of International Standards in Australian Courts, speech delivered at the University of New South Wales Faculty of Law, 10 May 1995, [www.lawfoundation.net.au/resources/kirby/papers](http://www.lawfoundation.net.au/resources/kirby/papers)

108 See, for example: *Mabo v. Queensland [No 2]* (1992) 175 CLR 1 (Australia).



Daily life along  
Kibera Railway Line

## 3.6 Reconfiguring infrastructure projects

### 3.6.1 Railway reserves

As argued in Subsection 3.2.1 above, residents of the informal settlements have encroached upon the railway reserves partly because there is no other suitable pedestrian access. In Kibera, for example, the railway line is a convenient access route from the east, leading westwards to the heart of settlements including Soweto West, Kianda, Gatwikira and Kisumu Ndogo. There is heavy pedestrian traffic on this route, so it is only natural that small businesses and informal traders encroach upon the reserves. The general shortage of living and working space in Kibera has also contributed to the encroachment; the high population and structure densities mean that any ‘empty’ spaces are inevitably and rapidly filled.

In a meeting with the COHRE fact-finding team, officials of the Kenya Railways Corporation (KRC) noted the possibility of train derailment and the consequent hazards for residents and traders living and working along the railway lines.<sup>109</sup> The officials pointed out that lives had been lost due to the explosion of liquefied petroleum gas (LPG) on a train passing through an Athi River settlement. They also noted that waste and garbage on and near the tracks posed health risks to railway workers and made it difficult to maintain the tracks and keep them properly ballasted. The KRC officials insisted that it was urgently necessary to construct a free corridor, 200 feet [approx. 60 m] wide, with an immovable barrier to keep residents out. However, the local communities strongly oppose plans for a wall on this rail corridor.

However, the KRC officials were hopeful that the residents in question could be resettled within a year as part of the Kenya Slum Upgrading Programme (KENSUP). This seems to be consistent with the consent order that was agreed upon between the parties in *Maina Ngare Njeru and 87 Ors. v. Kenya Railways Corporation* (see Box 3.4 above).

<sup>109</sup> COHRE meeting, 19 July 2004.

Although the current situation is clearly dangerous, COHRE refuses to accept that eviction and/or resettlement are the only options available.

Regarding the prescribed width of the railway reserves, a report conducted by a World Bank consultant noted:

*In their maps, the KRC draws a corridor of 30.48 m (100 feet) on each side of the rail (measured from the centre). This distance is apparently based on tradition. Reportedly, court cases have been pending since 1982 regarding KRC obligations to pay rates and taxes from railway reserve (track) land. These obligations are sometimes related to 100 feet, sometimes to 70 feet.*<sup>110</sup>

Significantly, the KRC was also collecting rent from some settlers on the railway reserve (until 31 December 2004, in the case of at least one temporary occupancy licensee).

While there are clearly a number of legitimate concerns about people living on the rail reserves, in the long run, as mentioned in Subsection 3.1 above, the sudden concerted push for the eviction of all such people cannot be fully explained without considering the impending privatisation of the Kenyan Railways Corporation.<sup>111</sup> It is beyond the scope of this report to discuss the appropriateness of privatising the railway, but COHRE notes that while the KRC is purportedly plagued by inefficiency and debts, many other countries that have experimented with railway privatisation have found that it is not the panacea it was initially hailed as.

Nevertheless, the KRC's willingness to take positive steps to find a humane solution is most welcome. The Corporation is reported to be cooperating with, or even supporting, the current enumeration process that is taking place under the KENSUP initiative. However, the COHRE fact-finding team was not informed of any attempts by the KRC to initiate communication or consultations with the affected residents or community groups in order to find a solution. This is a crucial process that could take place once the enumeration is completed. Since the release of the Consultation Report (on which the present report is based), it has emerged that efforts to enumerate those living on the railway reserves have commenced with World Bank support. Unfortunately, however, the process appears to have been complicated by the lack of consensus between the World Bank, the KENSUP actors – including the Settlement Executive Committee (SEC) – and the communities themselves. (See further, Section 5, below, on slum upgrading.)

The option of temporarily fencing or walling off the railway line poses the problem that it would split Kibera in half, separating Makina on the northern side from all the other settlements on the southern side. Also, if residents are to access the southern parts of Kibera from the north, they must be able to cross the railway line. A possible long-term solution is to provide a number of footbridges across the railway. However, previous experience in the Nairobi area, for example in the Industrial Area and parts of Landhies, has shown that sooner or later

110 World Bank, 'Social analysis – Operational Safety', Subsect. 5.2.2.

111 Chris Mburu and Fuastine Rwambali, 'EA Railways Move Closer to Private Hands: Kenya and Uganda Seek Joint Rail Investor', *The East African*, 12-18 July 2004, pp. 1, 3.



most railway barriers are breached. Furthermore, footbridges are not much used and tend to become crime spots at night. Moreover, the railway police have no capacity for enforcement, which is an important prerequisite for the effectiveness of barriers and footbridges.

The issue of enforcement capacity is important in another context: if the evictions had been implemented and all the railway reserves effectively cleared, who would have ensured that they remained that way, if not the railway police?

COHRE is convinced that a much more effective solution lies in working with the community and negotiating an approach that would be to the mutual benefit of all. Once community and KRC representatives have agreed on minimum safety distances, and all the necessary relocation has been done in a way that satisfies community needs and international standards, then residents could be directly involved in ensuring compliance with these safety distances. In accordance with the settlement in the court case *Maina Ngare Njeru and 87 Ors. v. Kenya Railways Corporation* (High Court of Kenya, Nairobi) HCCC No. 189 of 2004, some groups have already agreed to move back from the railway line. Railway wardens could be recruited from among the community to patrol the line and ensure that people respect safety distances and railway regulations. Such wardens could be paid by the KRC itself; the traders themselves could even contribute towards their wages. The danger posed by passing trains could also be reduced by having the wardens control the flow of pedestrians along the line as the train passes. The train service is fairly regular, so there would be a predictable schedule for doing this. Organised community groups charged with security already exist in various settlements, as well as organised groups representing the railway-line traders in both Mukuru and Kibera, so this could be an effective solution. Furthermore, the willingness of traders to move back from the line and create space for each other illustrates the potential for generating solutions from within the community itself.

It will eventually be necessary to create proper access routes into the settlement. This could be done in the context of the overall slum-upgrading programme (KENSUP). In the longer term, once the community has gained greater experience in, and capacity for, participation and control, barriers of a more permanent character and footbridges should be considered. The Kenya Railways Corporation should also consider the option of *in situ* upgrading for those affected by the railway lines, and the potential for communities to come up with plans and solutions in this regard.

Another possibility is to build a permanent market for traders near Kenyatta market that would be accessible to Kibera residents and middle-class customers; it should be noted that non-commercial sections of the railway reserves are sparsely settled.

### 3.6.2 Power lines

The overhead power lines present a more immediate danger and provide fewer alternatives for the community. However, there are some technological alternatives to explore, including underground cables (with access points for repair) or overlapping routing (that is, routing various combinations of power lines, fuel and water pipelines, sewers and railway lines along the same reserves). Wealthy residents of irregularly allocated land in other parts of Nairobi



were able to pay for the re-routing of power lines; it is unclear why residents of informal settlements should be denied alternatives simply because they live in poverty. Such alternatives should be exhaustively studied, especially with regard to technical feasibility, costs and safety issues. The public should be properly informed about them so that they can be involved in this process.

Where it is absolutely necessary to relocate people living under high-voltage power lines, this needs to be done in conformity with international law. Eviction should be avoided wherever possible; it is vastly preferable to voluntarily relocate residents according to a plan negotiated with the community as a whole. The following points are important:

- Adequate and reasonable notice should be given to all the residents to be affected.
- The affected residents should be involved in all stages of the relocation process.
- All feasible alternatives should be explored.
- Alternative resettlement – including suitable sites and homes, or at least the means to build the latter – should provide those affected with full tenure security, reasonable access to social services including schools and hospitals, and a location at a reasonable distance from sources of job opportunities.
- Some form of land audit should precede such alternative resettlement.
- The relocation planning should consider and adequately cater for the needs of vulnerable community members, including children, the terminally ill, the physically disabled and the elderly.

Again, it is very important to work closely with the residents to prevent future encroachment. The remaining residents should therefore be involved in post-relocation monitoring.

### 3.6.3 Bypass and link roads

During interviews conducted by the COHRE fact-finding team, residents often questioned the need for, and relevance of, the planned bypass and link-road reserves. This is a valid concern, given how long ago these new roads were originally planned, and the rapid growth of the city since then. Many respondents felt that the responsible authorities need to review the entire plan and consider alternative routes. Given the number of people now settled in Kibera and the difficulties associated with relocating them, it is essential for the authorities to weigh up the relative effects of social and economic disruption in the different settlements. In order to minimise the disruption, they should first conduct a land audit to determine whether there is suitable alternative land for road-building. One option is the compulsory acquisition of privately owned land, with compensation for the owners as provided for under the Constitution.<sup>112</sup> Furthermore, if the process of exhaustively considering alternatives nevertheless results in routes similar to those already planned, then any absolutely necessary evictions must fully comply with the standards of international human rights law, as discussed in Subsection 3.3 above. The Government should do everything in its power to avoid a repeat of the Raila Village experience.

112 Sect. 75(1) provides that this may be done for reasons of “town and country planning ...and public benefit”.

#### **3.6.4 Riparian reserves**

There is a need to gather information to determine whether the settlements have encroached upon riverside reserves. If this is the case, communities should be informed and any necessary relocation should be carried out in accordance with international human rights law.

#### **3.6.5 Sewer lines**

The COHRE fact-finding team was unable to determine whether those living on sewer-line wayleaves and reserves were under threat of eviction. Nairobi City Council sewers traverse various parts of the informal settlements, and the team saw structures built right on top of sewer access points. In the short term, the community should be organised to ensure that such access points are kept clear. This will require very few evictions, and the community should be able to find alternatives within the settlement for those affected.

Another issue is that sewers often burst, posing a health hazard. A rapid reporting procedure should be put in place, in cooperation with the City Council. Community members with skills in sewer-line maintenance could be authorised to make temporary repairs whenever necessary. However, in the long-term, the problems posed by sewer lines can only be solved through proper planning of these settlements, through a slum-upgrading programme.

### **3.7 In situ upgrading and resettlement**

In February 2004, the Government of Kenya committed itself to resettle those affected by the eviction notices. According to international standards this requires that, as far as possible, “adequate alternative housing, resettlement or access to productive land, as the case may be, is available”.<sup>113</sup> Rents in any new settlement must be affordable.

<sup>113</sup> General Comment No. 7 (n. 15 above), para. 16.

### Box 3.9: Requirements for adequate resettlement

Principles for adequate resettlement can be found in a number of documents, including the *UN Comprehensive Human Rights Guidelines on Development-Based Displacement*, which are relevant because development projects often lead to evictions.

These Guidelines stipulate that resettlement must occur in a just and equitable manner and in full accordance with law of general application. All persons, groups and communities have the right to suitable resettlement, which includes the right to alternative land or housing that is safe, secure, accessible, affordable and habitable. In the event of resettlement, the criteria that should be adhered to include the following:

- *A full resettlement policy must first be developed before any resettlement can take place. The policy must be consistent with the Guidelines and internationally recognised human rights.*
- *Whoever proposes carrying out the resettlement shall be required by law to pay for any costs associated therewith, including all resettlement costs.*
- *No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction.*
- *That affected persons, groups and communities provide their full and informed consent as regards the relocation site. The State shall provide all necessary amenities and services and economic opportunities.*
- *Sufficient information shall be provided to affected persons, groups and communities including information on the use [to which] the eviction dwelling or site is to be put and the persons, groups or communities who will benefit from the evicted site. Particular attention must be given to ensure that indigenous peoples, ethnic minorities, the landless, women and children are represented and included in this process.*
- *The entire resettlement process should be carried out in full consultation and participation with the affected persons, groups and communities. States should take into account in particular all alternate plans proposed by the affected persons, groups and communities.*
- *Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.*

Finding adequate land for resettlement in Nairobi is obviously extremely difficult, especially because there is massive irregular and illegal allocation of land. For example, ownership of some of the vacant land around Kibera remains unresolved and embroiled in legal disputes. However, some experts and Government officials told COHRE that sufficient public land is available. Various Ministers have referred to plans to purchase 100 000 acres (approx. 40 470 hectares) for resettling informal settlers. Moreover, the Government has the power to acquire land under the *Land Acquisition Act*. It should obtain and allocate budgetary resources for this very purpose. *See further*, Section 6.3 below.

As far as possible, it is important to provide for *in situ* resettlement so as to minimise the disruptive effects of relocation upon access to employment, schooling and socio-economic networks. The possibility of *in situ* upgrading is discussed more fully in Section 5 below.

It is also important to provide – in compliance with international law – some form of compensation for structure-owners, particularly those who lose their basic livelihoods. This is discussed more fully in Subsection 5.3.7, below, in the context of slum upgrading. Tenants should also be compensated for relevant losses.

UN-HABITAT has given assurances that a common approach to dealing with occupation of wayleaves, road reserves and other servitudes throughout the city, including those in Kibera, is being coordinated through KENSUP. This approach involves: (1) identifying emergency areas where occupation actually poses a threat to residents, and prioritising such residents for relocation; (2) in all cases, providing alternative land and housing before asking people to move from servitudes; and (3) taking a holistic approach to the various servitudes, which will generate solutions that minimise the number of relocations.<sup>114</sup>

### 3.8 Rural areas and small towns

While this report focuses on housing rights in Nairobi, COHRE is disturbed by the increasing number of reports of forced evictions in rural and forest areas, as well as in small towns. Residents in such locations are unlikely to have the benefit of strong support from the media and civil society institutions. It is therefore crucial that all stakeholders work to ensure that the massive evictions in such locations that occurred under the previous regime of Daniel arap Moi are not repeated, particularly during land conflicts.

COHRE received specific information from Kituo Cha Sheria (legal advice centre) about evictions that were continuing in some rural areas. For example, in April 2004, residents of Migori, a small town in the Western region, were forcibly evicted. Nothing more had been heard of the victims since then. On 4 February 2005, over 3 000 residents of a settlement in Mt Kenya Forest, Meru, were brutally evicted: “Over 1000 houses and a primary school were burned to the ground” and crops were destroyed.<sup>115</sup> Even though COHRE appreciates that notice was given, and that a resettlement site was apparently offered, the squatters had been living in the area for decades and depended on the forest for their livelihoods (*see further*, Update, pp. 4-5).

114 COHRE consultations with UN-HABITAT, 15-16 July 2004.

115 See Munene Kamau, ‘Anguish as squatters evicted from forest’, *The Sunday Standard*, 6 Feb. 2005.

Residents in Kiambiu discuss  
problems with Provincial  
Administration with Umande Trust



## Good governance in the settlements?

*There is nothing anyone can do in the informal settlements, from the repairing of one's house to the building of toilets, without the authority of the Provincial Administration, through the local Chiefs.<sup>116</sup>*

Kibera Grassroots Initiative

The COHRE fact-finding mission originally intended to focus on the issue of mass evictions and alternatives to such evictions. However, it was impossible to ignore the repeated complaints concerning abuses of power by various officials and private actors. Residents alleged that Provincial Administration officials physically harassed residents and obstructed community development efforts. Irregular and illegal land allocation – past and present – equally threatened slum-upgrading initiatives. Tenants faced particular difficulties on account of the largely oligopolistic and unregulated informal rental market, while governance structures in informal settlements were marked by a lack of democratic legitimacy. The fact-finding team raised these concerns with a number of Government officials and their responses are included in this section.

<sup>116</sup> COHRE interview with leaders of Kibera Grassroots Initiative, 8 July 2004.

## 4.1 Intimidation and harassment

### 4.1.1 By Provincial Administration officials

Many residents reported harassment by the Provincial Administration, a branch of Government that reports directly to the President and, in many cases, is entrusted with supervising informal settlements. COHRE received statements that members of the Provincial Administration, particularly Chiefs, Assistant Chiefs and their agents (including the Provincial Administration police), had perpetrated violence against residents of slums and squatter settlements. This is exemplified by the case of Kiambiu (*see case study in Subsection 6.1.1 below*).

In many parts of Kibera, residents reported that Chiefs and ‘village elders’ (*wazee wa vijiji*) had pulled down structures and confiscated building materials whenever people had tried to improve their homes.<sup>117</sup> After the COHRE fact-finding mission, the District Officer for Kibera allegedly shot a resident after a group had protested that some residents had been evicted so that a developer could purchase a plot of land.<sup>118</sup> According to the Korogocho Evictions Committee, the local Chief evicted tenants by night. He also prevented structure repairs, thus contributing to the physical degeneration of the settlements.<sup>119</sup>

It is not only construction and repairs that are impeded through intimidation: in Mitumba, the local Chief reportedly arrested community members who were carrying out enumerations, and had the process stopped.<sup>120</sup> In the same settlement, the Chief was said to have used some community members to evict others, creating unnecessary tension among the residents.<sup>121</sup> There is also evidence that the Provincial Administration disrupts or even prohibits community meetings, especially if these involve factions that do not support the Chiefs. This was particularly observed in Kiambiu. Politicians have also reportedly hired youths to disrupt meetings.

Despite all this intimidation, many residents stated that they had no alternative but to rely on the protective powers of the Provincial Administration because it wielded considerable power in the settlements. For example, landlord-tenant disputes were apparently more likely to be mediated by a Chief or District Officer – despite their lack of jurisdiction – than by the official Rent Restriction Tribunal. Some tenants claimed that the Provincial Administration invariably favoured structure-owners. However, in a meeting with the COHRE team the District Officer of Kibera insisted that he took an even-handed approach to such disputes.<sup>122</sup>

One Government official acknowledged that there was rampant abuse of power by the Provincial Administration. He said that it had started under the previous government, but had continued, more or less unabated, ever since. Most Provincial Administration officials that COHRE interviewed denied involvement in such activity, but one Chief was more candid.<sup>123</sup> He noted that although the informal settlement of Kibera is largely built on Government land, it

117 Residents raised this issue in all of COHRE’s consultations with communities in Kibera.

118 COHRE telephone conversation with Julius Ochieng, 12 Sept. 2004. *See also* Patrick Nzioka, ‘Leave Us Out of Kibera Land Dispute, Says Oxfam’, *The Nation*, 1 Sept. 2004.

119 COHRE meeting with community members in Kariobangi Social Hall, 12 July 2004.

120 Reported by Mitumba residents during COHRE meeting with community members, organised by Pamoja Trust, at Pamoja Trust, Ole Dume Road, 12 July 2004.

121 *Ibid.*

122 COHRE interview with Mr Omar Salat, District Officer of Kibera, at the offices of the District Officer in Makina, 8 July 2004.

123 COHRE interview with Peter Muyala, Chief of Laini Saba, Kibera, 14 July 2004.

operates on a “free market”. He admitted that he allocates land and owns houses in the settlement. For granting permission to build there, he expects “to be given a goat”.<sup>124</sup> He commented that evictions were a simple matter: “Removing someone from the railway line or power line is a small thing.” He justified forced evictions to clear space for the AMREF Medical Centre on the basis that health services were now provided to the community. According to him, the “tenant is flexible; he can just go anywhere”. However, COHRE interviews with victims of evictions indicated that this was not the case (see Subsections 3.1 and 3.2 above).

COHRE also interviewed the Provincial Commissioner, the official responsible for supervising the Provincial Administration. He clearly stated that officials under his authority had no mandate to allocate land or carry out evictions without authority. It should be noted that under the *Chiefs’ Act 1998* the Provincial Administration has no express authority to carry out evictions.

#### 4.1.2 By locally elected officials

In a number of settlements, some councillors clearly sought to represent the interests of the residents — particularly tenants where they were in the majority. In other settlements, there was no such intention and action. As far as land speculation and harassment is concerned, some councillors appear to have close links with members of the Provincial Administration, as is demonstrated by the case of Kiambiu (see case study in Subsection 6.1.1 below). An incumbent councillor in Kibera is alleged to have engaged in activities involving intimidation in order to take control of the slum-upgrading project in Soweto.

#### 4.1.3 By the police

Residents of smaller settlements located in the wealthier suburbs – for example, in Westland’s, Deep Sea – also complained of police harassment.<sup>125</sup> Many of them have been living on private land there for a long time, and should therefore benefit from adverse possession legislation. See Subsection 6.1.2, below, and the discussion on rights of private property owners in Subsection 3.5 above.

### 4.2 Tenants and structure-owners

The plight of tenants in Kenya’s informal settlements is internationally recognised.<sup>126</sup> These settlements generally have a higher proportion of large-scale absentee structure-owners than is found in the rest of Africa; up to 85 percent of the structure-owners in Kenya’s larger settlements are non-residents.<sup>127</sup> They tend to be relatively wealthy and influential, and, according

124 Literally translated from a common Kiswahili euphemism for a bribe, ‘*kupewa mbuzi*’.

125 Reported by Virginia Wanjiru, Deep Sea community leader, during a COHRE meeting with community members organised by Pamoja Trust, at Pamoja Trust, Ole Dume Road, 12 July 2004.

126 See UN-HABITAT, *Rental Housing: An essential option for the urban poor in developing countries* (Nairobi: UN-HABITAT, 2003), Ch. IV.

127 See Paul Syagga, Winnie Mitullah and Sarah Gitau-Karirah, ‘Nairobi Situation Analysis Supplementary Study: A Rapid Economic Appraisal of Rents in Slums and Informal Settlements’, prepared for the Government of Kenya and UN-HABITAT, Aug. 2002, p. 17. The informal settlements of Kenya are highly commercialised, with a market for buying and selling of structures. On the subject in general, see M. Majale, ‘Tenure regularization in informal settlements in Nairobi’ in V. Kreibich and W. Olima (eds.), *Urban Land Management in Africa* (Dortmund, 2002), Ch. 19; P. Amis, ‘Squatters or Tenants: The Commercialisation of Unauthorised Housing in Nairobi’, 12 *World Development* 1 (1984), pp. 87-96; and P. Amis, ‘Long Run Trends in Nairobi’s Informal Market’, 18 *Third World Planning Review* 3 (1996), pp. 271-285.



to some commentators and one Chief interviewed by COHRE, include politicians and members of the Provincial Administration.<sup>128</sup> Such owners have a very strong interest in maintaining the status quo, particularly because residents are a source of both income and votes. However, earlier studies done by Lee Smith in Korogocho settlement indicated that most of the landlords were not part of the upper-income bracket.<sup>129</sup>

Some resident structure-owners and community-based groups with whom COHRE had meetings expressed frustration at the assumption that all structure-owners fall into the category of wealthy and influential.<sup>130</sup> They pointed out that structure-owners include relatively poor residents, as well as the Nubians, who were settled in Kibera by the colonial government (see Box 2.4).

It must not be forgotten that *all* informal structure-owners have contributed to the growth of Kenya's housing stock in the absence of effective Government policies. An expert who earlier asserted "that the poor might do better to eat all their money and sleep on the streets rather than enter into a housing market they cannot afford"<sup>131</sup> later commented that the "informal housing market's influence on the position of the urban poor has been neutral or perhaps even positive. This is in contrast to what is usually expected."<sup>132</sup>

Nevertheless, tenants consulted by COHRE expressed a number of concerns, including unaffordably high rents, lack of protection against forced eviction at the household level, insufficient representation of tenant interests, and the ethnic nature of the landlord-tenant relationship. In General Comment No. 4: the Right to Adequate Housing, the Committee on Economic, Social and Cultural Rights makes it clear that the seven criteria for the right to adequate housing apply to tenants.<sup>133</sup> Moreover, the Government is obligated to ensure adequate participation of tenants in housing policies, and the provision of remedies for violations of housing rights.

#### 4.2.1 Rent Restriction Act

The *Rent Restriction Act* is not expressly applicable to tenants (and landlords) in informal settlements, either because the housing is deemed to be built of 'temporary materials' or because the structure-owner has no legal title to the land. Furthermore, since the Act only applies to a landlord-tenant relationship in which the monthly rent does not exceed Ksh 2 500, some of the structures in informal settlements may be excluded from its provisions. The recently adopted National Housing Policy for Kenya states that this limit will be revised to "cover all current low-cost housing by considering the current cost of construction and price of land". COHRE urges that this important change be implemented as soon as possible.

In spite of these obstacles, tenants and structure-owners have taken cases in the informal settlements to the Rent Restriction Tribunal. However, most of those interviewed by COHRE

128 Syagga, Mitullah and Gitau-Karirah (n. 127 above), p. 125. Amis found that 35% of major landlords in Kibera were part of the local administration: see Amis (1988) quoted in C. Kariuki, 'Towards Understanding of Informal Housing Markets: A Review of Current Literature' in Kreibich and Olima (n. 127 above), pp. 152-162 at p. 158.

129 See Diane Lee Smith, 'Squatter landlords in Nairobi: a case study of Korogocho' in P. Amis and P. Lloyd, *Housing Africa's Urban Poor* (Manchester University Press, 1990) and Syagga, Mitullah and Gitau-Karirah (n. 127 above), p. 9.

130 This is also acknowledged in the literature: See Syagga, Mitullah and Gitau-Karirah (n. 127 above), Subsect. 3.7.

131 Kariuki (n. 128 above), p. 160, quoting Amis (1984) (n. 127 above).

132 P. Amis, 'Long run trends in Nairobi's informal housing market', 18 *Third World Planning Review* 3 (1996), pp. 271-285.

133 These include: security of tenure, availability of services, affordable rents, habitable and physically accessible structures, appropriate location and culturally appropriate housing: see General Comment No. 4 on the Right to Adequate Housing (n. 14 above), para. 8.

criticised the Tribunal, particularly in terms of the high cost and the long backlog of cases. Some tenant-landlord disputes can be resolved through the intervention of community-based organisations or the Provincial Administration; however, this is only a partial and in some cases inappropriate solution. The lack of an independent and effective tribunal means that tenants – and occasionally structure-owners – are deprived of a mechanism to peacefully resolve disputes, particularly those over rent-levels, evictions and the quality of housing.

#### 4.2.2 Affordability and quality of housing

According to Syagga, Mitullah and Gitau, tenants are the more disadvantaged of the two partners in this rental relationship<sup>134</sup> and the key reason for tension may not be the charging of high rents per se, but rather the lack of re-investment by structure-owners even though rents are high. These authors note that the lack of improvement in housing quality may be due to the absence of legal protection for informal structure-owners. While there may be some truth in this, the COHRE fact-finding team found other reasons for the uniform dilapidation of the informal settlements, including the local Chief's prevention of home improvement. Tenants presented evidence that even some structure-owners had resisted their attempts to improve the interior of their rooms (for example, by applying concrete to the inside of mud walls), even though the tenants had offered to pay the costs. By forcing tenants to use 'temporary materials', structure-owners may be more easily able to evade the provisions of the *Rent Restriction Act*. In some settlements, including Soweto, Kibera and Ngomongo, there was evidence that structure-owners had been fixing rents arbitrarily.<sup>135</sup>

Other authors have indicated the charging of high rents as the main cause of tension. In 1988, Amis observed that in Kibera "landlord-tenant relations center on the monthly rent payment, for which the ultimate sanctions for non-payment are physical violence and immediate eviction."<sup>136</sup> Although, in real terms, rents in Nairobi's informal settlements have declined in recent decades, real wages have fallen to an even greater extent. (For example, between 1980 and 1992 rents declined by 50 percent, while wages fell by 67 percent in the same period.<sup>137</sup>) The net result is that rental housing has become more expensive. Indeed, Syagga, Mitullah and Gitau, conclude that:

*In Kibera, there is a 100 percent return on rental investment in 9 months for structure-owners.*<sup>138</sup>

These authors also claim that:

*Rents would decrease by 70 percent if the provisions of the Rent Restriction Act were effectively applied to Nairobi's informal settlements.*<sup>139</sup>

134 'Nairobi Situation Analysis' (n. 29 above), p. 124.

135 The COHRE mission found that structure-owners were typically charging rents ranging from Ksh 500 to Ksh 2 000 for more or less similar structures. For example, COHRE interviewed one businessman who was renting a furniture stall on the railway line for Ksh 2 500 per month; a woman renting a similar-sized stall to sell vegetables was paying only Ksh 300 per month. Such large differences in rents could only be explained rationally as allowing for the income stream of the different businesses or for different charges imposed by the Kenya Railways Corporation or the Provincial Administration.

136 P. Amis (1988), quoted in Kariuki (n. 128 above), pp. 152 -162 at p. 159.

137 Syagga, Mitullah and Gitau-Karirah (n. 127 above), p. 44.

138 Ibid. p. 15.

139 Ibid. p. 5.

These recent trends do not necessarily imply that rents have become unaffordable, since variations in the cost of other basic goods and services must be taken into account.<sup>140</sup> From a housing rights perspective, however, when it is considered that slum dwellers pay more for water than formal residents and do not receive the benefit of free education for their children, it is difficult to argue that the rents are affordable. In a few cases, rents in some informal settlements have been halved or even eliminated, but this was mainly due to political intervention by Government ministers on behalf of some tenants, which incidentally resulted in significant violence.

**Box 4.1: Affordability illustrated — the case of Margaret Adoyo**

Margaret Adoyo, now a resident of Gatwikira, pays Ksh 800 a month for a two-roomed shack. She is a single mother of four children, with two daughters attending secondary school. She was among those evicted from Raila Village to make way for the Southern Bypass. (See Subsection 3.1.1 above). She was previously a structure-owner and therefore did not have to pay any rent. She became a tenant after being evicted. She initially managed to secure some resources and, as an emergency measure, rented a room in the nearby middle-income Lang'ata Estate for Ksh 5000; that is, ten times the typical rent paid in Kibera. She could not pay for the second month, so she had to look for alternatives within the slum. A friend agreed to rent her one room at Ksh 800. However, her situation remains precarious and she has started defaulting on the fees for her two daughters in secondary school.<sup>141</sup>

The cause of the high rents is disputed in the literature. Syagga, Mitullah and Gitau mainly indicate the “perceived” lack of tenure security for structure-owners, which would fuel a desire to profit as much and as quickly as possible before the authorities or others can move to demolish the structure. This would also explain why so many structure-owners demand title deeds. However, these authors also note that, in reality, many structure-owners are protected by their political connections.<sup>142</sup>

The charging of high rents may also be due to the lack of regulation of the informal rental sector. Majale argues that the structure-owners are actually favoured by non-enforcement of regulations stipulating the minimum standards of infrastructure and services to be provided, which would otherwise give renters better value for money.<sup>143</sup> Furthermore, the structure-owners largely operate outside the affordability provisions of the *Rent Restriction Act*.

140 See General Comment No. 4 (n. 14 above), para. 8.

141 COHRE interview with Margaret Adoyo, at St. Charles Lwanga Primary School, Raila Village, 9 July 2004.

142 Syagga, Mitullah and Gitau-Karirah (n. 127 above), p. 14.

143 Majale (n. 127 above), p. 272.

Another important reason why structure-owners can charge such high rents is the great demand for housing – particularly in locations near sources of employment<sup>144</sup> – and the corresponding lack of adequate rental housing stock. As average rents strongly correlate with income levels, it appears that market forces may be the dominant factor. The COHRE fact-finding team even met middle-income residents living in Kibera – a fact confirmed in the literature.<sup>145</sup> With very high population densities and low standards of living in rural areas, it is not surprising that Kenya’s urban centres are expanding rapidly, driving up the demand for housing.

If Kenya is to continue to rely, in effect, on the rental market to supply low-income housing, then it needs not only to regulate rents but also to urgently ensure that the rental housing stock expands so that housing costs are affordable to the poor. This need is addressed in the National Housing Development Programme 2003-2007, prepared by the Ministry of Roads, Public Works and Housing, which states: “This programme is geared towards facilitating the development of 45 000 rental housing units annually for the next five years with 31 500 units targeting low and 13 500 targeting middle-income earners in urban areas.” Beyond revising building laws and encouraging various actors, the main strategy appears to be the revision of the *Rent Restriction Act*. The Programme refers to “equal protection” of landlords’ and tenants’ rights, and would obviously rely for its success on other aspects that it envisages, such as an increase in the supply of land and a reduction in construction costs. Nonetheless, the fact that the Programme lists so few policy interventions raises the legitimate concern that the rights of tenants may be further sacrificed in order to expand the rental housing stock.

#### 4.2.3 Lack of protection against forced eviction

The COHRE fact-finding team also heard testimony of forced evictions at the household level. Sometimes these are in response to persistent non-payment of rents; in other cases, they appear to be simply a way of getting rid of tenants. The Korogocho Evictions Committee, in Kariobangi South, informed COHRE that in their areas numerous tenants had been evicted, for no proper reason, with the help of local Chiefs and often at night. This resulted in violence and even the death of a landlord in Ngomongo area. Evictions are also carried out by politically supported vigilantes: for example, the Kibera youth-wingers supported by Councillor Opete Opete<sup>146</sup> and the *Wazee Wa Kijiji* (village elders) in Kiambiu.<sup>147</sup>

As noted in Subsection 4.2.1 above, the relationship between structure-owner and tenant is unregulated, so there is significant potential for unjust evictions, evictions without notice, refusal to pay rent, refusal to receive rent, and harassment through the Provincial Administration, etc. In the informal settlements there is an urgent need to facilitate the development of basic, written rental contracts that are enforceable, and to develop frameworks for management of the owner-tenant relationship, including effective dispute resolution mechanisms. The Rent Restrictions Act confers security of tenure on tenants by restrict-

144 Syagga, Mitullah and Gitau in their report (n. 127 above) play down the importance of location for informal settlers in Nairobi. This was also evident in COHRE’s discussions with UN-HABITAT officials. However, residents themselves indicated that proximity to actual or potential sources of employment was the most important factor in their choice of housing.

145 Syagga, Mitullah and Gitau-Karirah (n. 127 above), p. 13. Towards the end of the report, these authors tend to give more emphasis to the high demand for housing; *ibid.* p. 30.

146 COHRE meeting with Kibera community members, 7 July 2004, Christ the King Catholic Church.

147 COHRE meeting organised by Maji na Ufanisi (Water and Development) in Kiambiu, 9 July 2004.

ing the landlords' power to increase the rent, evict a tenant or repossess premises without permission from the Rent Restriction Tribunal.

There is also the lack of alternative housing for those tenants who are evicted. As a church minister in Kibera commented: "The biggest problem after an eviction becomes accommodation".<sup>148</sup>

All Kibera tenants interviewed by COHRE expressed very strong fears about the forthcoming slum-upgrading project; in particular, uncertainty regarding their right to return to their plot after the upgrade and the affordability of the planned new houses. This anxiety was heightened by reports of tenants being pre-emptively evicted by structure-owners hoping to benefit from slum upgrading. Interestingly, a number of tenants – particularly the older ones – expressed concerns about the vulnerability of poorer small-scale structure-owners, many of whom are women or elderly persons who rely upon rent income for their livelihood. Not only were they threatened by forced eviction at the settlement level but it was also difficult for them to obtain arbitration in disputes. Furthermore, they were concerned that slum-upgrading plans had excluded them. These issues are discussed in Section 5 below.

#### 4.2.4 Representation of tenants

In the settlements visited by COHRE, it was clear that tenants were poorly organised, except where they were supported by members of the Government. Associations with tenants among their members also appeared to have problems securing registration and developing capacity to respond to group needs. Arguably, the needs of the vulnerable small-scale structure-owners should also be better represented, as organisations for structure-owners seem to be dominated by the (usually larger-scale) absentee owners.

The communities in informal settlements urgently require assistance in building more organised civil society structures to fill this gap, particularly as regards critical and constructive engagement on Government policy and implementation. Furthermore, stronger links between national-level NGOs and these communities could help the latter to influence Government policies and programmes more proactively.

### 4.3 Governance: representative and effective?

The Government's recent National Housing Policy for Kenya notes the importance of participation:

*The government will also facilitate slum upgrading through [an] integrated institutional framework that accommodates participatory approaches involving relevant stakeholders, particularly the benefiting communities, while enhancing coordination at national level ....*<sup>149</sup>

148 Reverend Richard, head of the Anglican Church in Gatwikira, Kibera.

149 National Housing Policy (n. 48 above).

In relation to existing governance structures, the COHRE mission identified several problems. These are examined in the following subsections.

#### **4.3.1 Lack of acceptance of the Provincial Administration**

The residents interviewed by COHRE often referred to the Provincial Administration as “illegitimate”. This institution is the dominant Government presence in informal settlements; however, as it is not accountable to the local community, there are very limited opportunities for residents to participate in the existing ‘governance structures’.

While the Provincial Administration is to be abolished under the draft Constitution, it is not clear whether or when this will come into effect. The reported (and generally acknowledged) problems with the Provincial Administration have been noted in Subsection 4.1.1 above. These are sufficiently serious that steps should be urgently taken to increase its accountability. This also has implications for slum-upgrading projects. For example, the Kibera Rent and Housing Forum emphasised that slum upgrading must address the “governance problem” in the slums.<sup>150</sup> Part of the problem is the lack of formal recognition of the informal settlements, which gives the existing, problematic administration greater control and leaves the residents more vulnerable to eviction.

The Nairobi Informal Settlements Coordinating Committee (NISCC) recommended that the Provincial Administration should remain as a central governance body in the informal settlements, but that it should reform itself to accommodate community requirements.<sup>151</sup> COHRE accepts that it is critical that a power vacuum should not develop in the informal settlements – because illegitimate non-state actors might then take control – but questions whether the Provincial Administration should be given a continuing role in the short-to-medium term.

#### **4.3.2 Political and community leadership**

In terms of representation and accountability, local councils and political representatives obviously have greater legitimacy than the Provisional Administration. However, this has not always translated into concrete representation in periods between elections. Furthermore, conflicts in Kibera are perpetuated by rivalry between national-level political parties and related ethnic groups, with many of the conflicts being played out in the settlements themselves. Syagga, Mitullah and Gitau have observed that there is a need for democratisation beyond the mechanism of elections every five years.<sup>152</sup> Some candidates certainly show more interest in accessing urban resources than in actually representing their constituents (*see further*, case study in Subsection 6.1.1 below).<sup>153</sup> It is therefore crucial that all residents be provided with opportunities to participate effectively in decisions that affect them.

150 COHRE meeting with the Executive Committee of Kibera Rent and Housing Forum, at Riziki Centre, 11 July 2004.

151 NISCC (n. 21 above), pp. 16-17.

152 ‘Nairobi Situation Analysis’ (n. 29 above), p. 145.

153 Ibid. p. 46.



The NISCC also recommended that steps should be taken towards the establishment of self-governance structures in informal settlements. COHRE believes that this recommendation needs to be urgently followed up. The model favoured by the NISCC is based on representative democracy, through a system of committees.<sup>154</sup> This approach has been adopted in the KENSUP slum-upgrading process, but in terms of ensuring genuine and effective participation and representation it has certain shortcomings, which should be addressed (*see further*, Subsection 5.5.7 below). Arguably, a missing ingredient in a system of self-governance is that of direct representation. However, this could be provided through a system of street committees (*see* Box 5.3 below).

#### 4.3.3 Coordination of Government and other initiatives

Another serious concern widely expressed in Kibera, as in many other settlements, is the uncoordinated nature of Government activities and initiatives and communications between the different branches of Government.<sup>155</sup> The COHRE fact-finding team noted that the Kenya Power & Lighting Company, the Ministry of Lands and Housing, and the Provincial Administration would disseminate different, often conflicting information on important issues; for example, which homes were targeted for eviction. This problem also arises in the context of slum upgrading; for example, when one actor supports eviction of residents who are actually meant to benefit from a slum-upgrading programme implemented by another. As a senior Government official noted: “These days anyone with a bulldozer can carry out evictions!”

The various actors operating in the informal settlements have no common rules of engagement and there is no broader framework to align their different activities.<sup>156</sup> This problem is exacerbated by the approach taken by many of the Chiefs. There is a need for stronger networking between the various organisations in the different slums and squatter settlements around Nairobi. It may be appropriate to establish a network of coordination committees for settlements, with community and Government representation, provided that the process for selection of community representatives is based on direct participation and that legitimate complaints about the committees can be taken to an independent mediator.

#### 4.3.4 Community policing

In light of harassment by political vigilante groups such as the *Taliban* and the *Mungiki*, as well as the partisan enforcement of law and order, particularly by the Provincial Administration (as evidenced by the night-time evictions of tenants in Korogocho and the illegal use of ‘youths’ to harass tenants and force them to vacate their houses),<sup>157</sup> COHRE proposes that appropriate systems of community policing be developed.<sup>158</sup>

154 NISCC (n. 21 above), p. 16-17.

155 See Republic of Kenya, ‘The National Report on the Review and Appraisal of the Implementation of the Habitat Agenda and the National Plan of Action on Shelter and Human Settlements’ (Government of Kenya, 2000). See also Government of Kenya and UN-HABITAT, ‘The Kenya Slum Upgrading Programme: Investigation of Actors Operating in Kibera’ (unpublished report, 2004), p. 24.

156 Government of Kenya and UN-HABITAT (n. 155 above), p. 24.

157 COHRE meeting with community members in Kariobangi Social Hall, 12 July 2004.

158 Contribution from Susan Wanjiru, Mitumba Village, South C, during a COHRE meeting with various community leaders at Kituo Cha Sheria (legal advice centre), Ole Odume Road, 12 July 2004.



The stark reality of Nairobi  
slum conditions



## Slum upgrading: towards a solution

The problem of forced evictions in Nairobi cannot be fully considered without examining the subject of slum upgrading, which is widely acknowledged as one of the more effective means of improving the housing conditions of the poor.<sup>159</sup> Defined by the Cities Alliance as consisting of “physical, social, economic, organisational and environmental improvements undertaken cooperatively and locally among citizens, community groups, businesses and local authorities”, slum upgrading has been hailed as a “linchpin” of any urban poverty strategy.<sup>160</sup> From a housing-rights perspective, slum upgrading can play an important role in improving existing housing stock and ensuring that reliance is not placed solely upon new investment in low-income housing, which could never cover the full extent of the need. Upgrading can also improve tenure security and provide alternatives to evictions.

159 For example, the UN Committee on Economic, Social and Cultural Rights has recommended that “consideration be given to increasing the proportion of the national budget devoted to slum upgrading programmes”; *Concluding Observations on The Philippines* (1997), E/C.12/1995/7, para. 23.

160 Cities Alliance, *Cities Without Slums: Action Plan for Moving Slum Upgrading to Scale* (The World Bank and the UN Centre For Human Settlements (UNCHS) (UN-HABITAT), Special Summary Edition, 1999), p. 4, [www.citiesalliance.org](http://www.citiesalliance.org). The Cities Alliance is a “global alliance of cities and their development partners committed to improve the living conditions of the urban poor through action”. It was launched in 1999 by the World Bank and UN-HABITAT.

Slum-upgrading projects are by no means easy to organise, resource, implement or replicate, especially not in a context of poverty and underdevelopment. To be successful, slum-upgrading projects require careful design and management. In particular, local conditions need to be considered; housing affordability and project finance must be sustainable in the long-term; consultation and direct, meaningful, sustained community involvement are vital; and residents must be effectively protected from evictions and violence. Slum upgrading also requires huge resources, plus long-term political will and stamina to see the process through — in spite of the setbacks, dissatisfaction and conflicts that will inevitably occur along the way.

Given this daunting challenge, it is to the immense credit of the Government of Kenya and its development partners that slum upgrading features prominently in the recent National Housing Policy for Kenya: “Upgrading of slum areas and informal settlements will be given high priority.”<sup>161</sup> A major project has commenced in Kibera, Nairobi’s largest and socially most complex informal settlement.

Unfortunately, not many of the Kibera residents interviewed by the COHRE fact-finding team expressed significant positive sentiments on the design of this initiative. The team was struck by how frequently and emotively the issue of slum upgrading was raised — indeed, this issue dominated the consultations conducted in Kibera. Tenants voiced fears about potentially unaffordable rents, as well as evictions. Structure-owners were worried about compensation and loss of livelihoods. Community leaders were concerned that the most immediate social priorities — sanitation and water — would be ignored. All residents were apprehensive about potential violence. The most common and consistent complaint was that there was inadequate community participation and public information in the slum-upgrading process.

This section of the report reflects the views and concerns raised by many informants during the COHRE fact-finding mission and analyses some of the key challenges faced. These views and concerns, together with the analysis, form the basis of a number of recommendations — made from the perspective of the rights to adequate housing and to protection from forced evictions — on improving the current policies on slum upgrading and land, as well as the associated projects. This section is presented in a constructive spirit, on the understanding that slum-upgrading projects take time, are not easy to implement, and by their very nature are likely to arouse emotions, criticism and controversy along the way. It should be noted that the issues of recognition (Section 2), security of tenure (Section 3), good governance (Section 4) and access to land (Section 6) are all connected with slum upgrading.

After COHRE had distributed the draft Consultation Report, on which the present report is based, the Kenya Slum Upgrading Programme (KENSUP) produced a new document on the Soweto Slum Upgrading Project that provides a history and update of activities in, and sets out various principles for, the project. COHRE is pleased that the document embraces a number of the issues raised in the Consultation Report, including the development of a country-wide framework for slum upgrading. This will hopefully ensure that upgrading can commence in other parts of Kenya without it being necessary to wait for the Kibera project to be

161 National Housing Policy (n. 48 above), para. 30.

completed. COHRE also welcomes some of KENSUP's recommendations for the Kibera project – including a process, in principle, to develop a secure tenure zone. However, more detail, particularly on community participation and security of tenure, will be required in order to clarify how violent conflicts are to be avoided in the slum-upgrading process.

## 5.1 Slum upgrading: challenges

### 5.1.1 Slum conditions

The grossly inadequate living conditions observed by the COHRE team in the informal settlement of Kibera are reflected in various official and other documents, including the detailed Nairobi Situation Analysis of 2001.<sup>162</sup> The Analysis, in the case of Kibera, refers to serious problems including: uncertainty regarding structure-owners' and residents' rights; the inadequate construction of most of the dwellings; the letting of single rooms to whole households at densities of 250 units per hectare; and the associated overcrowding and lack of privacy. In addition, the haphazard housing layout poses particular challenges when it comes to introducing basic infrastructure and drainage. Furthermore, urban services – including social and health facilities – are not in place, and the inadequate living conditions have led to high incidences of disease and mortality.<sup>163</sup>

The Analysis also highlights a number of health concerns, including lack of both clean water and proper disposal of human waste.<sup>164</sup> Although NGO-initiated water and sanitation programmes do provide some limited services on a cost-recovery basis, these cannot address the health threats throughout the settlement. There is inadequate collection of refuse, and community-based initiatives cannot cope with this challenge.<sup>165</sup> With no legal access to electricity, the use of highly polluting fuels also has an impact on residents' health.<sup>166</sup> While emphasising this crisis in living conditions, the Analysis also refers to the intensity and diversity of commercial activities and initiatives within the slums, which provide an essential livelihood to many of the residents and contribute to Nairobi's economy.<sup>167</sup> Observations and interviews by the COHRE fact-finding team confirm these findings. Residents made a particular request that these realities be taken into account in the slum-upgrading programme.

162 'Nairobi Situation Analysis' (n. 29 above).

163 Ibid. p. 21.

164 Limited access to water is a direct cause of ill health. Clean water is accessible only commercially, and water-sellers charge rates that are significantly higher than in formal settlements. The only other water that is available free of charge comes from polluted sources such as the Nairobi Dam, into which Kibera's sewerage drains untreated. Another health concern is the very limited proper disposal of human waste, most of which ends up in open drainage ditches alongside public walkways, and in dumping areas that are readily accessible to children, goats and pigs. See also Sect. 2.3 above.

165 'Nairobi Situation Analysis' (n. 29 above), pp. 55-56.

166 Ibid. p. 57.

167 Ibid. p. 44.

### 5.1.2 Processes of displacement and loss of livelihood: patronage, disunity and disempowerment

The power imbalances in Nairobi's informal settlements have been discussed in detail in Section 4; in particular, the overly dominant role – often with use of force and coercion – played by the Provincial Administration and its police force. Residents of some villages within the settlements alleged that elected officials regularly abused their powers. The larger-scale and more powerful structure-owners appeared to be closely linked with these officials. This raises key questions about the role such actors play in the slum-upgrading process.

The Nairobi Situation Analysis describes the allocation of land to structure-owners as a form of “semi-traditional allocation” (*see also* Subsection 6.1 below).<sup>168</sup> This land allocation system forms the basis of a multi-layered patronage system that complicates the *de facto* tenure arrangements in Kibera. In effect, it restricts security of tenure, or rights over land that has been secured. It also exacerbates and perpetuates the inadequate living environment, in particular the decay of tenement structures. For example, the process of obtaining permission to renovate a structure is complicated. The Analysis further notes that there is a tendency for some owner-occupiers to develop into large-scale structure-owners and eventually to move out of the slums into better accommodation.<sup>169</sup> The tenancy system therefore provides certain individuals with an opportunity to escape poverty. However, this makes it harder for the majority of residents, who are tenants, ever to become owner-occupiers. Confirming this, the National Housing Policy for Kenya refers to evidence of a decline in owner-occupation.

For the slum-tenants, the multiple layers of patronage have led to high levels of marginalisation and insecurity, which in turn have resulted in low levels of confidence. People appear to be resigned to their inability to change the situation. There is a long history of tenants' issues not being addressed. Therefore, these people do not believe that they will ever obtain houses of their own (*see further*, Subsection 5.3.6 below). It is notable and praiseworthy that the Kenya Slum Upgrading Programme (KENSUP) has tried to address the tenants' issues directly. However, there are concerns about the fairness of the election of tenant representatives and the position of smaller, vulnerable structure-owners (*see further*, Subsection 5.3 below). As pointed out in Subsection 4.2 above, a further challenge to slum upgrading is that no effective mechanisms are in place to regulate the relationship between structure-owner and tenant. Agreements between these two parties are seldom, if ever, formalised in writing: they simply negotiate the price and come to a verbal agreement. This creates a potential for tension – and even household-level evictions – during the slum-upgrading process. Indeed, there are frequent disputes between owners (landlords) and tenants, and only a small number of community-based organisations are in a position to assist with and/or mediate in such disputes.<sup>170</sup> One problem is that structure-owners and tenants alike have very low awareness of their rights and obligations.

Furthermore, the tenants' poverty poses serious problems of affordability. Unfortunately, for community organisations trying to bridge the divide between structure-owners and tenants, an ongoing challenge is that structure-owners “don't believe or accept” this reality. In addi-

168 Ibid. p. 48.

169 Ibid. p. 44.

170 For example, the Kibera Rent & Housing Forum and Christ the King Catholic Church.

tion, the question of rent in Kibera has been “massively politicised” in the past, to the extent that it has even been used as a campaign tool by local politicians (see Subsection 4.3 above). This is complicated by differences in political affiliation between resident and non-resident structure-owners. Councillors, in turn, are alleged to have been playing a role in perpetuating confusion between these two groups.

### 5.1.3 Local upgrading initiatives and NGO support

Kibera is, in a sense, a city within a city. A 2004 investigation identified 700 organisations and institutions operating there.<sup>171</sup> Twenty-seven organisations were identified as being involved in water and environmental sanitation alone. Six others were involved with legal and rights-related issues.

The COHRE team visited a range of community-initiated projects in Kibera; in particular, sanitation projects. At a seminar in the Catholic Church, a group of residents reported how the community had begun to tackle the problem of inadequate or non-existent sanitation in their settlement. The community had been working with donors to improve the settlement, and this had led to the installation of water pipes. The organisation Maji na Ufanisi (Water and Development) had also been promoting environmental sanitation and hygiene, starting with community organisation and awareness-building (on issues including HIV/AIDS).<sup>172</sup> The main concerns expressed with regard to sanitation were drainage and the issue of ‘flying toilets’ (disposal of plastic bags containing human excrement in public spaces).

A number of groups and individuals interviewed by COHRE emphasised the value of their work with NGOs. They expressed particular pride in the water and sanitation improvements that had been made, against great odds. However, a deep fear was expressed in relation to the planned slum upgrading, and whether it would build on existing initiatives.<sup>173</sup> In discussions with COHRE, it was acknowledged that the NGOs and community groups had been doing work that was actually the responsibility of the Nairobi City Council. The strong community investment of time and labour in these NGO-supported initiatives meant that achievements such as drainage channels, biogas toilet blocks, schools, health-care centres and community halls could be counted among the community’s assets. Other assets mentioned were the small businesses that had been established with the support of loans or micro-finance. The community leaders interviewed were adamant that these assets must not be lost as a result of the upgrading programme.<sup>174</sup>

A number of local organisations are involved in advocacy. In 2001, skirmishes over rent led to 25 killings in the settlement, drawing international attention. These experiences prompted the community’s decision to develop a structure through which issues of rent could be dealt with, and the Kibera Rent and Housing Forum was created. This consists of tenants and structure-owners from each village within the settlement. From the Forum, a governing council of 30 residents and an executive committee of 10 residents are elected, representing all the villages.

171 Government of Kenya and UN-HABITAT (n. 155 above).

172 COHRE consultation with community members representing organising committees of Usafi, YMCA Centre, 11 July 2004.

173 Ibid.

174 Ibid.



More broadly, there is also a significant degree of cooperation between local and national non-governmental organisations; for example, the NGO Coalition Against Evictions.<sup>175</sup> NGOs in the Coalition share similar approaches, but have different areas of focus. The Coalition is able to coordinate rapid responses to crises, as in the case of the mass eviction threats of early 2004, and to work constructively with the Government – “from protest to proposals” – although representatives acknowledged that this latter area is still new and needs developing. Some of the NGOs in the coalition are directly involved in providing services in informal settlements. These organisations are all members of the Nairobi Informal Settlement Coordination Committee (NISCC), through which they try to shape planning for the informal settlements. However, this Committee appears to have been suspended. Other organisations such as Mazingira Institute also work on these issues.

It is worth noting that not all parties interviewed by COHRE were equally positive about the contribution of NGOs in the informal settlements. According to a senior official of the Ministry of Lands and Housing, NGOs spend too much time “dwelling on the past”, “concentrating on mistakes”, and “stirring up the innocent”. This official asserted that instead of valuable resources and energy being expended on “civic education”, they should be focused on assisting the actual delivery of housing and services within the ambit of official policy.<sup>176</sup> Given the importance of consultation and community involvement in the processes of slum upgrading and developing alternatives to forced eviction, such a sharp distinction between ‘civic education’ and ‘actual delivery’ is unfortunate. This issue is discussed in greater detail in Subsection 5.5 below.

## 5.2 Slum upgrading: Government initiatives

### 5.2.1 Slum upgrading and the National Housing Policy for Kenya

The National Housing Policy incorporates slum upgrading as one of the six aims summarised in its executive summary: “Encouraging integrated, participatory approaches to slum upgrading, including income-generating activities that effectively combat poverty.”<sup>177</sup> This position was welcomed and supported by UN-HABITAT, which complimented the Government of Kenya on recognising informal settlements in its National Housing Policy and no longer treating them as illegal.<sup>178</sup> In COHRE’s view, the Policy’s emphasis on integration, participation and poverty are important and commendable, and in the following paragraphs we highlight the policy areas that one would expect to be translated into actual implementation under the KENSUP programme; in particular, the current slum-upgrading pilot project.

However, the Policy seems to stop short of translating the objective of combating *poverty* in slums into meaningful policy instruments. (This is partly, but not fully, redressed in the draft National Housing Development Programme 2003-2007 that COHRE received in November 2004.) For example, the section of the Policy on ‘Housing Problems and

175 For list of members, see n. 4 above.

176 COHRE meeting with senior land and housing officials, Nairobi, 10 Nov. 2004.

177 National Housing Policy for Kenya (n. 48 above).

178 COHRE consultations with UN-HABITAT, 15-16 July 2004.

Challenges’ does not mention the vibrant informal sector that invests in tenements or in the multi-storey apartments that serve the middle class. While providing a service – particularly to the urban poor – that previous Kenyan regimes had long neglected, this sector is profit-making, operating in a largely unregulated environment, and constantly seeking better returns. In Korogocho, slum residents fear that a regularisation process will lead their structure-owners to build multi-storey tenements with rents so high that they will effectively be displaced. Although the Policy does encourage informal private-sector investment, it does not adequately engage with the challenges this sector poses in relation to the six aims stated in the Policy’s executive summary.

Under ‘Land-Use Planning and Management’, the Policy commits to the provision of incentives for “squatters to buy the land they occupy at subsidised rates”. However, it is not clear who these ‘squatters’ are, given that levels of owner-occupation within informal settlements are very low.<sup>179</sup> The Policy expresses concern about the decline in owner-occupation levels, but does not associate this with the growth of informal private tenements. Nor does it offer any clear solution to this potentially explosive problem. As a result, there is no clear indication of how the objective “to assist the low-income earners and economically vulnerable groups in housing improvement and production” is to be realised.<sup>180</sup> The only clear reference the Policy makes to the tenancy situation in slums is in relation to rent restriction. The Policy distances itself from rent restriction measures, as these are seen to discourage people from investing in this sector. This is hardly an adequate response in a context such as Kibera, where so many people are very poor, rent-paying tenants (see Subsection 4.2 above). COHRE is pleased that the Government is reviewing the *Rent Restriction Act* to provide critically needed incentives for investment in the rental sector,<sup>181</sup> but this should not be at the expense of tenants’ housing rights.

Poverty alleviation is one of the eleven elements of the National Housing Policy. The Policy envisages measures that could be relevant to slum upgrading, though they are not incorporated in the current KENSUP pilot project discussed in Subsection 5.2.2 below. One such measure is the continuous revision of by-laws, standards and regulations to ensure that the poor have their basic needs met. Another relates to the harnessing of “poor people’s pragmatic approach to housing” through community-based organisations, and “well-defined popular participatory approaches”. This is expanded: “The government will develop and support approaches which focus on community organisations and personal empowerment in ensuring creation of small-scale economic activities and promoting innovative ways of mobilising finance.” As it stands, this policy statement assumes owner-occupation, though measures to achieve the assumed owner-occupation are vague.

179 As noted in Subsection 5.1.2 above, land distribution in the settlements involves semi-traditional subdivision of land, and not land invasion in the traditional sense of ‘squattling’. In 1997, the Nairobi Informal Settlement Coordination Committee (NISCC) noted: “There is very little true ‘squattling’.” The NISCC’s Development Strategy for Nairobi’s Informal Settlements engages more realistically with the slum situation than the current housing policy.

180 In all slums visited in Nairobi, residents were prevented from improving their structures through vigilante enforcement of the unwritten rules of patronage.

181 Government of Kenya, National Housing Development Programme 2003-2007, Ministry of Roads, Public Works and Housing, p. 13.



The National Housing Development Programme 2003-2007 and a recent KENSUP document do provide further details; in particular, of micro-credit schemes. KENSUP states:

*Efforts will be made to involve micro-finance institutions (MFIs) in [the] shelter improvement programme and in the development of small and medium enterprises (Jua Kali) in slums and informal settlements. [A c]onducive regulatory framework within central and local government agencies to enable small-scale industries and business to operate in upgrading and resettlement areas will be facilitated. Group formation and networking will be the main entry points for project activities, security for borrowing and flow of information. [There will be p]rovision of business support services and appropriate technologies to enhance human resource development. This will also help in stimulating [the] ability to contribute in the programme as well as to afford housing outside the informal areas.*

In COHRE's opinion, there is an urgent need to expand such programmes to enable effective participation of tenants and poorer structure-owners in the various slum-upgrading projects, including those in Kibera and Kisumu. Government and development partners should be encouraged to contribute to such programmes, provided that there is a strong degree of community participation.

The National Housing Policy sets out the following slum-upgrading components:

- *security of land tenure;*
- *basic infrastructural facilities and services;*
- *improvement of housing structures;*
- *improvement of the socio-economic status of the target community.*

Importantly, the National Housing Policy further commits the Government to “streamline acquisition of land for housing the poor, adopt appropriate tenure systems, planning standards to suit given slum settlements and prevent unwarranted destruction of existing housing stock and displacement of residents”. The Policy also commits the Government to “appropriate compensation measures ... for [dispossessed] people” while encouraging “upgrading activities as opposed to demolitions in unplanned settlements”.

The basic infrastructure component of slum upgrading is to be financed through a “Slum Upgrading and Low-cost Housing and Infrastructure Fund, under the Ministry in charge of Housing, financed through exchequer and development partners”. It is not clear whether this fund has already been established. The Policy further advocates the use of “cost effective, incrementally upgradeable and environmentally sound” and “labour intensive” technologies.

In relation to vulnerable groups, the Policy encourages “the formation of self-help groups” and the expansion of home-based activities through community-based organisations and NGOs. The Policy further encourages the establishment of homes for the elderly. The Government should “provide the enabling hand in housing by forging partnerships with the private sector, community and other actors at different levels”. This statement is not

expanded in relation to partnerships in slum upgrading. However, the Policy does specify roles for various stakeholders: NGOs and community-based organisations are to have a role in savings and small-scale building activities, capacity building and land acquisition; international agencies are to be involved in research, capacity-building, exchange of experience, and financial resources.

The National Housing Policy sets standards for urban middle- and low-cost housing. The former has a minimum of 60 m<sup>2</sup> floor space, the latter 40 m<sup>2</sup>, both to be delivered through the mobilisation of finance from the private sector. In this context, there is no direct mention of housing subsidies, though the Policy mentions that “the amount of public funds allocated to the Housing Department will be increased”. Housing finance for low-income groups appears to be based mainly on “micro-financing and informal funding mechanisms”. It should be noted that these sources are directed at the largest portion of the Kenyan housing demand; the Policy gives very little attention to the practical financing of housing for this sector.

The National Housing Development Programme does set out the various sources of income, the emphasis being upon the Government, donors and residents themselves for low-income forms of housing. The yearly budget allocation for the Kenya Slum Upgrading Programme (KENSUP) is Ksh 6.075 billion (US\$ 75 million), whereby 45 000 units would be built each year. However, KENSUP documentation indicates that much smaller amounts will be allocated for the short-to-medium term. For example, in the Kibera project US\$ 300 000 will be initially allocated to the pilot project in Soweto village. Presumably, some funds will also be allocated to the Kisumu project. KENSUP has indicated that a total of Ksh 150 million (US\$ 1.85 million) would be required for implementation of the Soweto project in Kibera. For the slum-upgrading programme to expand in way that is commensurate with the vast housing needs of the poor, particularly outside Kibera, Government and donors will need to provide greater *actual* allocations.

Another concern is that the pilot project envisages the demolition of tenements and the construction of units with 50 m<sup>2</sup> of floor space. Given the standards spelt out in the National Housing Policy, and the comparative experience discussed in Box 5.1 below, the residents’ fear that the project will result in their displacement appears to have some basis. The danger is that projects intended for the poor will fail to benefit them, as they will no longer be able to afford to live in the housing provided. (*See further*, Subsection 5.3.6 below.)

### Box 5.1: Comparing housing delivery standards in South Africa and Kenya

In the South African experience, despite numerous costly initiatives to provide incentives and guarantees, it has not yet been possible to entice banks to lend to the lower-middle-income, let alone the low-income sector. The delivery of 1.7 million houses to low-income households over the past 10 years has been possible only through a capital subsidy mechanism that has enabled the allocation of houses to qualifying beneficiaries free of charge. The minimum floor space of these houses is 30 m<sup>2</sup>.

However, the South African government has come to realise that the cost of living in these subsidised units has not been affordable to the low-income beneficiaries, and many have had to move back to informal shack accommodation. A new government commitment to focus on the needs of the poorest has led to a shift in policy towards informal settlement upgrading with minimum disruption to livelihoods.

From the South African experience, it seems highly unlikely that the objective, set out in the National Housing Policy for Kenya, of making units of 40 m<sup>2</sup> accessible to the poor can be met without extensive Government subsidisation. Furthermore, maintenance and service charges for individually serviced three-roomed units in multi-storey buildings are relatively high. If units of this kind are allocated to the original residents of Kibera, such costs are unlikely to be recovered. ***Unless this is anticipated through planning and budgeting, the envisaged solution for Kibera will result in the displacement of the targeted population.***

#### 5.2.2 UN-HABITAT – Government of Kenya partnership (KENSUP)

The Kenya Slum Upgrading Programme (KENSUP) is based on an agreement between UN-HABITAT and the Government of Kenya made in November 2000, which led to the Collaborative Slum Upgrading Initiative. During the inception and preparatory phases of the programme, the following steps were to be taken:

- Creation of separate consultative working groups for slum dwellers, NGOs, Government, private sector and international development agencies;
- Drafting of a National Policy on Slum Upgrading;
- Making of proposals for statutory reforms and minimum standards;
- Commencement of initiatives to strengthen organisational structures and build collaboration between the various stakeholders, including tenants, structure-owners and Government.

Although these stages had officially been declared ‘concluded’, COHRE was unable to establish the exact extent to which these action points had in fact been completed, in particular the latter three steps.

The implementation phase is to consist of: (i) tenure security; (ii) service provision; (iii) shelter; and (iv) strategy for the improvement of livelihoods.<sup>182</sup> The new NARC government renewed the partnership with UN-HABITAT, with both parties signing a memorandum of understanding ('MOU') in January 2003.<sup>183</sup> In 2004, a number of the relevant bodies were established for implementation (see Box 5.2). On 4 October 2004, President Kibaki officially launched the project.

A brief document ('KENSUP Document') attached to the 2003 MOU reflects similar approaches to those of the National Housing Policy. While it translates the tenets of the Policy into more specific objectives, components and strategies, it does not deal with the relationship between structure-owner and tenant, apparently assuming owner-occupation. A recent KENSUP document openly acknowledges the difficulties of that relationship in Kibera, stating:

*The slum-lords put up their own dwellings, and also construct extra ones for rent or sale. Most of them do not live in the slums but have experienced slum life and it is often the ... rent income that affords them better residence elsewhere. Naturally they grow to become the powerful people in the slums, providing not just dwellings, shops and other commercial entities but often even political leadership in the area. Such people will naturally, more often than not, be against the project as they may lose regular income from rent with the rehabilitation of the area. Where compensation is applicable, they may not be adequately appeased with the compensation that will be offered to them since it would not take into account the development value of the land.*

Under 'objectives', the KENSUP Document makes no mention of housing delivery. Besides operationalising concepts such as decentralisation, partnerships, participation, empowerment, the establishment of an institutional framework, relevant mapping, service improvement and measures to address HIV/AIDS, reference is made only to "shelter-related infrastructure". This is important, given the strong emphasis on housing delivery unfolding in the current pilot project.

Furthermore, there is no clear indication of how the highly complex and potentially explosive problem of insecurity of tenure will be resolved. The KENSUP Document states that slums "selected for upgrading will be designated as a 'secure tenure zone', and an appropriate tenure system sought".<sup>184</sup> A more recent KENSUP document provides some additional details – see Subsection 5.3.6.2 below. However, given that discussions over, and recent tenders for, removal to decanting (temporary relocation) sites are underway in the pilot project, and given the deep uncertainties and insecurities expressed by the residents during the COHRE fact-finding mission, there is great urgency to address the tenure question, and to inform the community about the process by which this will happen.

182 Syagga, Mitullah and Gitau-Karirah (n. 127 above).

183 According to the MOU, UN-HABITAT's role is facilitating advisory expertise, provision of specialised equipment, capacity building, study and training, assistance in the provision of basic infrastructure, assistance in the mobilisation of resources, and establishment of a trust fund. See Republic of Kenya, 'Memorandum of Understanding between the United Nations Human Settlements Programme and the Government of Kenya', Nairobi, 2003.

184 'KENSUP Document', p. 8.

### Box 5.2: Institutional structure for KENSUP

#### Based on KENSUP documentation:

The *Programme Secretariat* will be established within the Housing Department of the Ministry of Roads, Public Works and Housing to execute the co-ordination of project the planning implementation, monitoring and evaluation. It is to be the link mechanism between UN-HABITAT, the donor Community and the Government of Kenya.

The *Joint Project Planning Team (JPPT)*, which includes UN-HABITAT and representatives of Nairobi City Council, the National Housing Corporation and Shelter Forum, is to work with the Programme Secretariat in defining the scope of the programme and projects, preparation of schedules, proposals, budgets and other technical aspects of the programme.

The *Project Implementation Unit (PIU)* is to be established within the Housing Development Department of Nairobi City Council to coordinate all the Council's inputs and ensure that the ensuing results comply with the Council's broad principles.

The *Settlement Project Implementation Unit (SPIU)* is to be composed of community representatives selected by the community to constitute the Settlement Executive Committee (SEC) and appoint technical support. The SPIU will identify all necessary settlement stakeholders and grassroots organisations, project intervention needs, communal areas and facilities; mobilise grassroots participation; discuss tenureship arrangements; and outline procedures for community involvement in carrying out the slum-upgrading project. SPIU will work in liaison and co-ordination with the PIU and the Programme Secretariat.

The *Inter-Agency Coordinating Committee (IACC)*: This will bring together all the concerned Government and donor agencies to review the approach adopted for the implementation of the programme and to ensure that it conforms to Government procedures and mandates of the involved sectors. It will also establish innovative ways of facilitating the Implementation of Slum Upgrading Projects. The IACC will provide the policy and programme direction to the Kenya Slum Upgrading Programme and will, as deemed necessary, establish sub-committees to take care of, and ensure delivery of, specific aspects of the project.

The *Inter-Agency Steering Committee (IASC)*: This will provide guidance, facilitation and support to the programme process and advise the Minister in charge of Housing and Human Settlements, as well as the Executive Director of UN-HABITAT, on Programme matters.

The *Multi-Stakeholder Support Group*: This is an amalgamation of representatives of key consultative stakeholders (community representatives, Government, NGOs, donors, development agencies, and private organisations) that is to provide a "powerful mechanism for participatory decision-making and information sharing".

**Note:** Community leaders identified the JPPT as the most important in terms of implementation, and were very disappointed over the lack of community representation.

The *Settlement Executive Committee (SEC)* was established during the COHRE visit to Nairobi and is purportedly composed of elected community representatives. See Subsection 5.3.1 below for an analysis of whether it is participatory.

### 5.3 Slum upgrading: analysis of the Kibera project

*The principle Programme objective is to improve the livelihoods of people living and working in slums and informal settlements in the urban areas of Kenya. This will entail promoting, facilitating, and where necessary, providing security of tenure, housing improvement, income generation and physical and social infrastructure including addressing the problems and impacts of HIV/AIDS. All these will be done through engaging full and active participation of stakeholders.*

Kenya Slum Upgrading Programme Document, Section 2

In meetings with COHRE, residents of Soweto village (which is located in the eastern part of Kibera, bordering Highrise, Silanga, Laini Saba and Lindi) repeatedly expressed concern about the design of the slum-upgrading pilot project that is currently underway in their community. This subsection analyses this project on the basis of information and views given by residents of Kibera, as well as by a range of stakeholders who were interviewed by the COHRE team in Nairobi. COHRE's main concern is whether human rights principles are integrated in the project and whether its design will ensure its success in terms of respect for rights, which will be critical if this pilot project is to be replicated elsewhere. At the most fundamental level, many Kibera residents fear displacement and loss of livelihood — a fear that needs to be urgently addressed.

#### 5.3.1 Community representation and participation

Community participation in the KENSUP pilot project is facilitated through the Settlement Executive Committee (SEC). Members of this committee are drawn from the 'target group', in which various interest groups are represented. The committee is constituted as follows: one NGO representative; two representatives of community-based organisations (CBOs); two representatives of faith-based organisations; five tenants; two structure-owners; one person with a disability; one widow; and the local Chief and District Officer (Provincial Administration) as unelected members. The role of the representatives of each of the stakeholder groups, including the tenants, is set out in formal terms of reference. Their primary role is to disseminate project information and bring people's ideas back to the Committee.<sup>185</sup>

The tenants serving on the SEC at the time of writing this report were publicly nominated and elected. An open meeting (on 10 July 2004) preceded the election. Residents who attended the meeting were given the option of using a ballot or queuing system, and chose the latter. Although this structure is officially referred to as "fully participatory", it raises several concerns:

185 'KENSUP Document', p.8.

1. It is questionable whether the five tenants elected in a comparatively small meeting – of approximately 300 people – can represent the more than 50 000 tenants living within the pilot project area, particularly as there are no structures through which these representatives can engage with the individual tenant in the settlement.
2. Information obtained by COHRE from a number of sources casts serious doubt on the legitimacy of these elections. Only youth representatives were nominated and, allegedly, all five of them are directly linked to, and paid by, the local councillor. Structure-owners also attended the meeting, though it was meant to be for tenants only. COHRE has subsequently received a steady stream of complaints that the local councillor, with the support of the ‘tenant’ representatives, has intimidated other SEC members.
3. It is questionable whether *small-scale resident* and *large-scale absentee* structure-owners have the same interests; the latter may overwhelm the former.
4. Some, but not all, residents questioned whether the community should be divided up in this way.
5. The Committee’s responsibilities are significant, but there is concern about whether it is capable of fulfilling them or may simply ‘rubber-stamp’ official decisions or the views of the stronger actors.

**Box 5.3: Comparative example: street committees in South African informal settlements<sup>186</sup>**

In apartheid South Africa, in the 1980s, low-income residential communities — including informal settlements — were organised through civic structures under the United Democratic Front. The structures, where existent in their intended democratic form, were an effective means of participatory development from settlement level down to individual-household level.

At the most local level, households were organised into *section*, *block* or *street* committees. These dealt with day-to-day concerns of the local residents, resolution of disputes between neighbours, social problems, localised infrastructure problems, etc. The local civic committees took settlement-wide concerns to settlement committees, which could in turn take issues to regional and national civic structures. In the late apartheid years, the dominant national civic structure (SANCO – South African National Civic Organisation) played an important role in policy negotiations.

In post-apartheid South Africa, the local civic structures operate largely without support from SANCO’s national structure. The country’s development model has treated civic organisations as obstacles to externally defined development, promoting instead an individualised relationship between State and beneficiary. However, many of the country’s informal settlements remain well organised through local civic committees. Currently, there is new recognition of the social capital that functioning civic structures provide for informal settlements, and of the informal settlement policy that the South African government is now developing to strengthen such local organisations.

186 Marie Huchzermeyer, *Unlawful Occupation: Informal Settlements and Urban Policy in South Africa and Brazil* (Trenton, NJ: Africa World Press, 2004).



### 5.3.2 Ambiguities in the meaning of ‘participation’

In interviews with COHRE, UN-HABITAT officials indicated that the Kibera pilot project was intended to be demand-driven, with outcomes determined and designed by the community itself. The people of Kibera were to internalise the process as their own, with external support from the Government and UN-HABITAT. This was preferable to the project being Government- or donor-driven, which can form the greatest obstacle for development to be scaled up.

The process should be run by the people themselves, and it is highly commendable that the project is thought of in these terms. However, from the COHRE interviews and consultations it is evident that there is still a very long way to go before the project can become truly ‘demand-driven’. Indeed, this and other official descriptions of the process that is being followed contrasted starkly with feelings expressed by residents themselves during interviews with the COHRE fact-finding team. None of the official claims of residents’ direct and intensive involvement in designing improvements and financing solutions, etc. could be substantiated. If this matter remains unaddressed, there is a real danger that the process will inadvertently impose yet another layer of patronage on the already disempowered Kibera residents.

There was a general feeling among community members that all the key issues relating to the Kibera Slum Upgrading Programme had already been decided and that the community was simply expected to ‘rubber-stamp’ the process.<sup>187</sup> Conflicting Government statements on evictions and the Programme have added to the general anxiety. Particularly sensitive is the issue of the decanting (temporary relocation) site: the Government has been perceived to ‘shift the goal posts’ – literally, from Athi River to Kitengela to Lang’ata Women’s Prison, etc. – without a clear policy on the process of engagement.

A UN-HABITAT official informed COHRE that the agency would like to see high-rise blocks with units of 50 m<sup>2</sup> developed in Kibera, and that possible designs were being developed. These designs are to be tested first at the proposed decanting site. However, 50 m<sup>2</sup> is above the minimum standard for low-income housing as set out in the National Housing Policy for Kenya. This fact seems to confirm community fears that the new housing is actually intended for a higher-income group, and that the residents will not be able to return from the decanting site.

The UN-HABITAT official also stated that the housing plans were to be professionally designed and approved by the Settlement Executive Committee, and that the designs would be redone if the community decided that they preferred single-roomed units. However, it is doubtful whether providing one design option – with a potential alternative – would qualify as participatory. Moreover, community leaders and residents reportedly saw the design for the first time on 4 October 2004, when it was published in a Kenyan newspaper.<sup>188</sup> As Kibera is a complex community, there is no guarantee that this approach will meet the diverse social and economic needs of the residents. In COHRE’s view, more locally based, community-design solutions should be considered. (See Subsection 5.5 below.)

At the same time, COHRE recognises that the origin and structure of the Soweto project makes it difficult for it to be demand-driven. The project partners – the Government of Kenya and an international agency – are charged with trying to establish local linkages which did not previ-

<sup>187</sup> Ibid.

<sup>188</sup> Lucas Barasa, ‘New plan to transform Kibera slums’, *Daily Nation*, 5 Oct. 2004, p. 3.

ously exist. These two bodies also face the daunting task of developing new capacity in this area, though it must be acknowledged that the Government has had some important positive experience in relation to the Voi slum upgrading (see Annex A2.3). These tasks are further complicated by the choice of Soweto as the pilot site, a location that the previous President of Kenya, Daniel arap Moi, insisted upon, despite objections from UN-HABITAT.

A recent KENSUP document attempts to justify that decision as follows:

*The choice of Soweto as a site for the first Slum Upgrading Project was arrived at through a rigorous site selection process, using a set of criteria developed by stakeholders. Key issues considered included: status of land ownership, state of infrastructure and social facilities, community cohesiveness/organization, size of population and settlement, ratio of structure-owners to tenants, condition of housing structures and the presence of other interventions. Using the set of criteria, nine settlements were short-listed and ranked in terms of suitability for project implementation. Soweto village, like any other informal settlement, lacks basic infrastructure and social facilities, is densely populated and has a high level of poverty. It was selected because of the following characteristics:*

- a) Land ownership is clear (uncommitted public land except for a portion that lies on the rail reserve) hence minimal complications regarding acquisition and compensation;*
- b) Existence of well organized community groupings providing good entry points for community mobilization and minimizing controversy;*
- c) Soweto village is relatively more peaceful than the other settlements as evidenced by the absence of violence even at times when there are skirmishes in other parts of Kibera;*
- d) The existence of a large population of resident structure-owners which, it is hoped, will encourage smooth negotiations as they stand to benefit from improved conditions.*

As KENSUP states, as far as Soweto's land and rental system is concerned, it is certainly less complicated than the other villages of Kibera. In this sense, it is a very reasonable choice. However, Soweto cannot be easily divorced from the rest of Kibera. COHRE was struck by the fact that leaders and residents in different parts of Kibera viewed every KENSUP decision as applying to them. There is a potential for conflict in such settlement-wide perceptions. It is also difficult to argue that the community groups in Soweto are well-organised, especially in comparison to Kiambiu, which COHRE also visited. Given Soweto's size and the fact that groups there face much the same intimidation as other groups in Kibera, it is hardly surprising that the community has been unable to organise itself well.

Nevertheless, there are real opportunities at localised level for the project to take a more demand-driven approach than has so far been the case, and thereby potentially to avoid conflict, eviction of tenants, and loss of livelihoods for small-scale structure-owners. This is discussed further in Subsection 5.5 below. Slum-upgrading guidelines at the national or the local level may also facilitate the replication of slum upgrading before completion of the Kibera project, which may be stalled for long periods.

### 5.3.3 Communication and access to information

None of the groups and individuals consulted in Kibera during the COHRE fact-finding mission had accurate information on the Government's plans. According to Shelter Forum, the KENSUP committee has recognised this problem and is developing a communications strategy using mass media.<sup>189</sup> While this will prove valuable in disseminating general information, a different strategy involving more accessible communication may be required if specific local information is to reach the slum-dwellers effectively.<sup>190</sup>

On 10 July 2004, during the fact-finding mission, tenants at a meeting were told about plans to move them to the site of Lang'ata Women's Prison near Kibera. Some residents were told that this relocation site would have three-roomed units in high-rise buildings, with rents similar to those currently paid in Kibera. Others had been given contradictory, and to them very disconcerting, information by the Department of Physical Planning, including the news that the rent for three-bedroom units was to be Ksh 2 000. They were also told that people would be able to stay at the relocation site or buy a house over a 30-year period. They were assured that there would be schools and roads at the relocation site. They were also told that some houses in Soweto would be demolished, to make space for sanitation facilities. Mixed messages such as these could undermine the success of the overall project.

The residents called for more effective communication in relation to the slum-upgrading project. More meetings should be held, and announcements of such meetings should be more effective, made well in advance, and in all the languages spoken within the community. It was also suggested that religious leaders could facilitate communication.

A memorandum of understanding between the community and the Government was requested, whereby the latter would make clearly written and signed commitments.

### 5.3.4 Just housing?

The majority of tenants and structure-owners with whom the COHRE fact-finding team spoke in Kibera voiced their discontent with the Government's intention simply to build new houses. They fear that the poor will be 'exploited', especially if they are expected to relocate temporarily to a decanting site. Residents suggested a number of alternative approaches. Many expressed a preference for *in situ* upgrading, whereby they could continue to live in the village during the upgrading. One group said that they could live on open land at the YMCA, while construction proceeded on a small scale. Tenants expressed fears that they might not have the legal right to return to their original sites.<sup>191</sup>

Another concern was poverty: "Upgrading is meant to make people live better, but nobody tells us how the poor will be addressed. What will become of their poverty?"<sup>192</sup> Given the very real problem of disempowerment and patronage encountered by Kibera residents, one

189 COHRE meeting with NGO representatives at Pamoja Trust, Ole Odume Road, 11 July 2004.

190 This issue was raised in all meetings conducted by COHRE in Kibera.

191 This view was repeatedly expressed during a COHRE meeting at Christ the King Catholic Church, on 7 July 2004, that was attended by over 100 residents, mostly from Soweto and Laini Saba.

192 COHRE consultation with community members representing organising committees of Usafi, YMCA Centre, 11 July 2004.

Kibera NGO noted that the slum-upgrading programme had been “watered down to new housing development” and was “obsessed with new housing development rather than addressing the governance problem.”<sup>193</sup>

Some Government officials interviewed by COHRE acknowledged the complexity of the Kibera situation and the fact that it will take many years before the upgrading reaches the whole of Kibera. In that light, they acknowledged that there may well be a need for basic service intervention in the existing settlement (*see further*, Subsection 5.5.4 below). However, an official involved in the programme indicated there would be no immediate provision of basic services, as various NGOs and other initiatives were already addressing that problem.<sup>194</sup> Residents expressed pride in the NGO-supported improvements that had been made, but were disappointed that these had not yet improved their living standards in any significant way (*see* Subsection 5.1.3 above). Assessment studies of development needs have identified water and sanitation as the greatest needs experienced by the communities in Kibera.

### 5.3.5 The lack of recognition

The lack of official recognition of informal settlements has been discussed in Section 2 above. It raises a number of issues pertinent to slum upgrading; in particular, security of tenure (*see* Subsections 5.3.6 and 5.3.7 below). Residents also expressed concern that the different poverty levels among residents were not recognised. The Nairobi Situation Analysis confirms that, on average, tenants in Kibera are poorer than in other slums of Nairobi. Residents were concerned that their budgets were not being adequately taken into account in project planning.

Another issue was vulnerable groups. As one community leader put it: “We’re many generations; some are taking care of orphans. Some people are disabled, some can’t even walk. Life should not be made more difficult for these people.” It should be noted that the Settlement Executive Committee does include one representative of people with disabilities. Community leaders raised the question of whether the relocation site and the slum-upgrading design would cater for the special needs of such groups. If the community were made to move to a relocation site, some predicted that there would be more street children, as the existing system of orphan care would be disrupted. One resident pointed out that there are old men and women in the settlement who cannot even walk, yet are being told that they will have to move.<sup>195</sup> He also raised the issue of structure-owners, particularly widows, whose sole source of income is the rent they receive from their tenants. Some had apparently retired and used their retirement benefits to ‘buy’ plots and structures.

193 COHRE consultation with members of the Kibera Rent and Housing Forum, 11 July 2004.

194 COHRE consultations with UN-HABITAT, 15-16 July 2004.

195 COHRE consultation with community members representing organising committees of Usafi, YMCA Centre, 11 July 2004.

### 5.3.6 Tenure uncertainty

Syagga, Mitullah and Gitau list the following losses that tenants may sustain during upgrading: loss of proximity to job opportunities; loss of sources of income; loss of homes; and loss of socio-economic networks.<sup>196</sup> In relation to tenants, the fear is that in spite of forming the majority, they are poorly organised and are therefore the most likely to be forced out of the projects after upgrading.<sup>197</sup> In COHRE's view, the following project elements are creating uncertainties about tenure security:

#### 5.3.6.1 Affordable housing? Uncertainty of financing

The financing of KENSUP has not yet been fully resolved. In late 2004, the Government announced that it would be allocating Ksh 20 million to the project in 2005. In addition, a donor conference has apparently been planned (*see further*, Update, p. 6 above). However, the availability of long-term funding for the project is uncertain. In particular, if the residents cannot afford the new housing, the programme will not be financially viable.

UN-HABITAT indicated to COHRE that it is developing a financial model that will help residents to retain their housing during and after upgrading. A revolving housing loan programme is envisaged. This is based on making the planned three-roomed house (50 m<sup>2</sup>) affordable. The cost of such a house is estimated to be US\$ 7 500. It would be possible to rent out one of the rooms, in order to enable loan repayments. Once the results of the socio-economic survey are available, the credit model will be adjusted to give a clear indication of whether the new housing will be affordable. UN-HABITAT is also attempting to develop a mortgage guarantee mechanism that will enable formal financial institutions to give housing loans to low-income households.<sup>198</sup> UN-HABITAT also recognises the role of the National Cooperative Housing Union in Kenya, including their input into policy-making on housing finance.<sup>199</sup>

In this context, COHRE believes it may be instructive to look at lessons learnt in South Africa, where the government's much-lauded delivery of over a million houses to poor households was ultimately made possible only through full subsidisation, with no direct lending to the poor by formal banks.

In relation to possible displacement as a result of the externally designed housing solution, one UN-HABITAT official indicated that people would be free to sell their unit.<sup>200</sup> This approach should be reconsidered, given the impoverishing effect of forces such as market displacement and 'downward raiding', and the need to develop housing and land-tenure systems such that housing stock for the poorer segments of society is preserved (*see further*, Section 6 below).

There are many residents who, for a variety of reasons, will not be able to pay the rents after the upgrade. They included current small-scale structure-owners, the elderly, the indigent and the thousands of temporarily employed individuals in Kibera with very erratic incomes.

196 Syagga, Mitullah and Gitau-Karirah (n. 127 above), p. 30.

197 *See also* Olima and Gitau, (n. 41 above), p. i.

198 COHRE consultations with UN-HABITAT, 15-16 July 2004.

199 *Ibid.*

200 *Ibid.*

These categories, among others, are likely to be displaced if the slum-upgrading programme in Kibera follows the rigid path of ‘rent-to-own’. KENSUP has recently attempted to address this issue (see discussion on compensation in Subsection 5.3.7 below).

Some residents suggested that, regardless of the nature of ownership and management of the upgraded settlements, some form of rent-control should be instituted.<sup>201</sup> It was also proposed that there might be a case for partial de-commodification of land, as the value of land is invariably reflected in the cost of accommodation, especially in the context of slum upgrading.<sup>202</sup>

#### 5.3.6.2 No declaration and enforcement of tenure secure zone

Programme documentation states that the area of the slum-upgrading pilot project will be established as a secure tenure zone. However, no progress seems to have been made towards ensuring that the slum-upgrading area is made a tenure secure zone before upgrading commences. In December 2004, KENSUP stated that:

*The settlements selected for upgrading will be designated as ‘tenure secure zone’. The appropriate tenure security systems to be introduced in any project area will be determined in consultation with residents, structure-owners and other stakeholders. As a first and definitive step, an analysis will be carried out to establish the nature of land tenure that obtains in each informal settlement. The tenure system to be adopted must, however, assure rights of occupancy to resident by first and foremost eliminating unlawful evictions and providing certainty of residence.*<sup>203</sup>

So far, no such provision has been made for the short-term; no moratorium on evictions has been declared or enforced. The Government owns the land, but the means by which tenure security is to be provided is not clear. National-level NGOs pointed out to COHRE that KENSUP was overlooking many important issues relating to tenure, particularly with regard to the relationship between structure-owner and tenant.

The awareness that redevelopment is pending is already changing the social composition within Kibera. During the COHRE mission, some structure-owners were said to have increased their rents, others were reportedly evicting tenants and bringing in family members to benefit from the development.<sup>204</sup> Such evictions will have displaced the most vulnerable, and are likely to become more common. Vulnerability to eviction is compounded by the insecurity of the informal rental agreements under which households occupy the individual rooms.

Unless the existing households are given a clear form of recognition, which would enable them to avoid being evicted by their structure-owners, tenants will continue to be displaced. Community-driven enumeration is a complementary tool that can ensure recognition of individual households.

201 COHRE consultation with community members representing organising committees of Usafi, YMCA Centre, 11 July 2004.

202 COHRE interview with Dr Winnie Mitullah, Fifth Floor, Gandhi Wing, University of Nairobi, 15 July 2004.

203 Government of Kenya, ‘Kibera-Soweto Slum Upgrading Project’, Dec. 2004, Subsect. 5.3.

204 See letter from Kituo Cha Sheria (legal advice centre) to Mr Alexander Kyuli, dated 13 July 2004.



### 5.3.6.3 Temporary relocation and the right to return

It was originally planned that, during the KENSUP upgrading process, residents would be moved from Soweto East to either Athi River or Kitengela, both approximately 50 km from Kibera. Throughout the COHRE mission, residents expressed vehement opposition to any such relocation. In interviews, they repeatedly emphasised that the lack of access to employment opportunities in those areas would cause great hardship. It was clear that these plans (which, fortunately, have since been shelved) had caused great unease within the community.

As noted in Subsection 5.3.3 above, at a project meeting in July 2004 the Government informed Soweto residents that it was in the process of constructing a decanting (temporary relocation) site, most likely near Lang'ata Women's Prison, southeast of Kibera, with three-roomed units that would be rented out at Ksh 2000. None of the residents COHRE spoke to could afford that amount. A UN-HABITAT official envisaged temporary residence of two to three months in the decanting site before the residents would be able to return to Kibera. It must be pointed out that this period is unrealistically short, and it would be misleading to give such information to the residents.

Many residents indicated that they did not want to move, mentioning housing projects in other parts of Nairobi that had commenced but never been completed. They feared there was little probability of ever coming back to Kibera once they had been moved to a decanting site.<sup>205</sup> A very real fear exists on the ground that people will lose their current shelter, if they are not involved in planning, and determining the priorities and sequencing of, the upgrading. As a first step, it was suggested that everyone be given a registration number, to ensure that others do not benefit.

With continuing anxiety about the planned relocation and resettlement – particularly among those people living in power-line wayleaves and in link road and railway reserves – community leaders in Kibera emphasised the need for the Government to discuss resettlement, not just relocation, with those that would be displaced from the settlement. There is also uncertainty about what will happen to those residents who will not be able to return due to the decongestion objective of the project. Olima and Gitau have noted that: “The only lingering question is what happens to those who are likely to be excluded in the event that the settlement upgrading achieves much lower densities, as is always almost expected. The issue here is that there might be [a] need to discuss some kind of compensation for this group too.”<sup>206</sup>

205 This point was raised during COHRE consultations with communities.

206 Olima and Gitau (n. 41 above), p. ii.



#### Box 5.4: Failure of the Cingapura Programme in Sao Paulo, Brazil<sup>207</sup>

In 1993, a conservative party, which had been voted into the municipal administration of Sao Paulo, halted all *in situ* upgrading projects of the previous administration and developed the Cingapura Programme. This intervention proceeded in selected *favelas* (informal settlements) that were visible from the city's highways. Residents were moved into controlled temporary (wooden) housing on the same land, while the *favela* was demolished and replaced by a high-rise block of flats.<sup>208</sup>

Even though the temporary relocation site was nearby, residents resisted this disruptive intervention. It destroyed local enterprises and intricate social relations in the neighbourhood, and required residents to live in tightly controlled temporary housing for many more months than promised. Towards the end of the administration's term, it had accepted that people could not be forced into modern housing, and allowed communities to choose between *in situ* upgrading and high-rise flats. By then, it was widely recognised that despite its enormous cost to the administration, the Cingapura Programme had made only a minimal impact on the scale of *favelas* in Sao Paulo.

The administration was voted out in 2000, and the new administration resumed *in situ* upgrading. At that time, the media exposed large-scale corruption in the contracting system for the Cingapura Programme, zero cost-recovery (the individual flats were to be financed through a tenant purchase scheme, though for political reasons payments were never collected), a rampant informal secondary market that had displaced the original beneficiaries, control by criminal gangs, and lack of maintenance. Today, the rapidly decaying Cingapura blocks remind city motorists of the failures of a corrupt administration.

#### 5.3.6.4 Long-term tenure model for project

No final decision appears to have been made on the tenure model to be adopted for the pilot project, although official statements indicate that it will be a hybrid form: rent to own, with the ability to sell occupation/ownership rights. COHRE cannot determine whether this is an appropriate model for Soweto/Kibera and simply notes that there should be consultation on this subject. The National Land Policy, if adopted, may provide some guidance.

It is also unclear whether the tenure system will be uniform or take account of previous circumstances. Many residents, including the Nubians (see Box 2.4 above), quite justifiably feel that having stayed in an area for a long period of time should secure their rights to that area.

Some NGOs pointed out that certain stereotyped beliefs are held on the land tenure system in Kibera — such as the idea of exploitative structure-owners and exploited tenants. This

207 Source: Marie Huchzermeyer, *Unlawful Occupation: Informal Settlements and Urban Policy in South Africa and Brazil* (Trenton, NJ: Africa World Press, 2004).

208 The intervention was designed primarily to benefit the construction industry and build political capital; indeed, the construction industry was one of the main supporters of the mayor's party.

seemed to form the basis of some official statements that the slum-upgrading programme does not entail compensation of structure-owners. It has also been officially stated that land titles will be granted to the Nubians, and that a socio-economic survey will determine the rent-levels in a tenant purchase scheme that will lead to 30-year leases.

COHRE strongly recommends that the process of establishing secure tenure be built on a clear and detailed understanding of the existing tenure system, its variations, its strengths and its weaknesses in protecting the right to residence in Kibera (*see further*, Section 6 below).

### 5.3.7 Compensation for structure-owners

According to Syagga, Mitullah and Gitau,<sup>209</sup> structure-owners in Kibera would lose the following in the process of upgrading: investment in acquiring the right to build; protection fees paid to Chiefs; costs of structures; rents; income-generating opportunities and occupational premises. Some owners also point out that they have helped the Government fulfil its mandate to provide housing, and that the poor state of the structures is partly due to Government control of investment on its land in the informal settlements. In the context of slum upgrading in Kibera, Olima and Gitau recommended that structure-owners be fully compensated for their structures.<sup>210</sup> If this is agreed, then the remaining question is what would be considered equitable in the case of speculators who have many structures.

However, during COHRE consultations various Government officials alluded to academic research currently being conducted on this issue which indicates that structure-owners have benefited through non-payment of taxes and have control of land at relatively low rates. Some NGOs noted that if compensation were to be paid for all structures in slum-upgrading projects, the process would be indefinitely stalled because of the prohibitive cost. They therefore argued that compensation should not be paid, except in special cases where structure-owners depend on rental incomes for their livelihoods. Such cases, the NGOs urged, should be covered by some form of compensation regime.

According to the Kibera Rent and Housing Forum, the Minister of Public Works had assured the structure-owners that they would be compensated for their structures prior to demolition. However, the Forum had looked at the project budget and found that no provision was made for such compensation. On pointing this out, they were told this had been an oversight. According to the Forum's calculations, compensation to structure-owners would amount to Ksh 4 billion. The Forum is aware that without some form of compensation to structure-owners, the current tension in the settlement will prevent the upgrading from proceeding.

On these issues, there are clearly some difficult choices to be made. The Government has already made pledges regarding compensation, and there is concern that failure to honour these may lead to violence. From a human rights perspective, however, what is most important is that the livelihood needs of the small-scale and the particularly vulnerable structure-owners should be taken into account.

209 (n. 127 above), p. 29.

210 Gitau and Olima (n. 41 above), p. ii.

Importantly, KENSUP has now attempted to provide the information that was lacking by stating that: “In certain circumstances, displaced structure-owners may be invited to claim compensation.” However, it is not clear what these circumstances are. KENSUP has indicated that any compensation that is forthcoming is unlikely to be linked to the number of structures, which is reasonable given cost considerations. With reference to compensation for large-scale structure-owners or ‘slum lords’, the programme states:

*Where compensation is applicable, they may not be adequately appeased with the compensation that will be offered to them since it would not take into account the development value of the land.*

### 5.3.8 Potential for violence?

The potential for violence during the slum-upgrading process is patently obvious. Throughout COHRE’s mission, Kibera community leaders reiterated their concerns about possible loss of life during the slum-upgrading process. The rent riots of 2001 led to a large number of deaths, and the tensions between Nubian landlords and Luo tenants remain largely unresolved. Moreover, the August 2004 protests over evictions in Laini Saba – which left one resident dead – indicate how fragile the system is.

In addition, those groups hostile to the slum upgrading and/or the potential empowerment of other groups have closed down a number of community meetings. For the Soweto community to engage effectively with KENSUP, some form of physical protection for residents will most likely be needed.

It is important to note that the slum-upgrading pilot project is being carefully watched throughout Kibera, and that decisions taken in Soweto are seen as having implications for the rest of Kibera — particularly for the more volatile villages in the settlement.

### 5.3.9 Prior slum upgrading: reference points for community fears and hopes

For Kibera’s residents, previous slum-upgrading projects and housing developments in various parts of Nairobi, particularly those that have failed, form a troubling point of reference. Some community leaders recognised that there was a need to learn from the experience of communities who had undergone successful slum upgrading. This would provide an opportunity for exchange visits, during which lessons from the past could be shared and discussed.

Past development initiatives in Nairobi – for example, Jamhuri Estate in the 1960s, and Nyaho Estate, Fort Jesus, Olympic Estate and Nyaho Highrise in the 1970s and 1980s – set a precedent of distrust, because ‘down-raiding’ happened and informal settlement residents were displaced.<sup>211</sup> Residents interviewed by COHRE constantly referred to the case of the Highrise development – adjacent to Soweto – in the 1990s. In this upgrading, residents were temporarily moved from the site during construction of high-rise apartments. Although these residents were given legal rights to return, many could not afford the new rents and resettled in Soweto and Laini Saba. As one resident who had lived in the area for 35 years stated: “We are

211 COHRE interview with Kibera Grassroots Initiative, 8 July 2004, at the office of the District Officer, Kibera.

The Highrise apartments that never reached the intended beneficiaries in Kibera



afraid that the slum upgrading will lead to demolitions .... We don't want it to be like Highrise. I even have receipts for Highrise but rich people came and took the houses”.

In Annex 2, three cases of prior slum upgrading are presented: Mathare 4A, Huruma and Voi. The first of these cases can be characterised as relatively unsuccessful, whereas the latter two cases have generally achieved positive results. These previous attempts were remarkably well and widely known among community leaders in Kibera. Analysing these cases is important from two points of view: (1) to better understand the fears of the Kibera pilot project residents and the extent to which these fears are justified; and (2) to understand positive alternatives that have been developed within the Kenyan context.

Allegations and suspicion of corruption by officials, repeatedly stated by community members interviewed by COHRE, do not help to lessen this mistrust. There is, therefore, an urgent need for overt measures to restore trust in Government initiatives and avert fears of dispossession.

## 5.4 Slum upgrading: analysis of Korogocho

The fact-finding mission spent less time in Korogocho than in other informal settlements and therefore gathered less detailed information. Nonetheless, a number of pressing issues were raised in relation to slum upgrading. Korogocho displays similar characteristics to Kibera, though it is on a much smaller scale and has a more planned layout. The total number of households has been enumerated at 18 537; the largest of the settlement's seven villages consists of 3 481 households.<sup>212</sup> Most of the land in Korogocho is Government-owned, and was allocated to structure-owners by the Chief. The City Council provides metered water to private kiosks in the settlement, which sell the water to residents at a profit. In 2002, 60 per cent of the residents did not have access to a toilet. The pit latrines are shared by an average

212 Pamoja Trust, 'Korogocho Informal Settlements Enumeration Report' (Pamoja Trust, Nairobi, July 2001).

of 50 people per latrine. Municipal garbage collection is inadequate, and NGOs have attempted to resolve this shortfall. They have also attempted to improve drainage channels<sup>213</sup>

Livelihoods are largely earned in the informal market, contravening official laws of health, environment, safety and labour. Those involved are therefore subject to police harassment, even though this economic activity is “essential in the functioning of the legal city”.<sup>214</sup>

Land rights in Korogocho are deeply contested. Resident and absentee structure-owners are represented (after paying a membership fee) by the Korogocho Owners Welfare Association (KOWA). KOWA claims that the land was allocated to structure-owners, and that they therefore have sole rights in the land regularisation process. A second, more inclusive organisation is the Korogocho Village Committee, which was formed at the request of the Government<sup>215</sup> and consists of two representatives of each village — one elected by the structure-owners, the other by the tenants.<sup>216</sup>

In 2001, Pamoja Trust initiated an enumeration process. However, this encountered many obstacles, including false claims and accusations, and threats of violence. Structure-owners did not support the process.<sup>217</sup> Nonetheless, it was possible to move forward as community confidence was built through savings groups initiated by Pamoja Trust. Structure-owners were included in the savings groups, but it was decided not to compensate these owners, for the reason that they had benefited in the past.

However, in a COHRE group discussion, community representatives from Korogocho indicated that there was a continuing processes of disempowerment. Similarly to Kibera, parts of the Korogocho slum are on road and rail reserves and under power lines. The Chiefs had given permission for this land to be used for residential purposes. Subsequently, however, these residents began to be evicted. The community tried to count how many people were affected and sought to discuss the evictions with the Councillor. In the meantime, some residents had already been forcibly removed — and some had lost their lives in the process. The evictions were suspended, but not properly stopped. One resident told COHRE: “Right now, people are coming at midnight to evict.” In the eviction process, people were told “go back to where you came from”. However, they have lived in Korogocho for many years, and it was impossible for them to return to their original rural areas.<sup>218</sup>

Korogocho tenants fear that the envisaged upgrading of Korogocho will lead to more evictions and demolitions. Actually, the upgrading should be an alternative to demolition.<sup>219</sup>

213 Kenya Human Rights Commission, ‘Case Study: Korogocho Slums. National Civil Society Conference on Land Reform and the Land Question’, presented at ‘Land Reform for Sustainable Development’, KCCT Mbagathi, 21-23 May 2002, Nairobi.

214 Ibid.

215 COHRE group discussion with community representatives from Korogocho, facilitated by CONCERN, 12 July 2004.

216 Pamoja Trust, ‘Korogocho Informal Settlements Enumeration Report’ (Pamoja Trust, Nairobi, July 2001).

217 Ibid.

218 COHRE group discussion with community representatives from Korogocho, Kitimaro, Soweto Kahwa, Mitumba, Huruma and Deep Sea Westlands, at Pamoja Trust, 12 July 2004.

219 See n. 215 above.

The land tenure issue is arousing many fears in Korogocho. Community representatives speculate that if KOWA members are granted their claim for freehold titles (which is indeed a minority request with an unsound legal basis), the land will enter the open market and multi-storey construction will soon displace the current tenants. Community representatives are calling for measures that will ensure that the structure-owners do not construct units that tenants cannot afford. Most residents are in favour of one collective title for all, so that the middle class will not be served. This claim by the residents, in opposition to KOWA, is supported by an announcement by President Moi in 2001 that the residents would be granted tenure security.<sup>220</sup>

As in Kibera, the land tenure problem in Korogocho is compounded by patronage and vested interests. Residents told COHRE that Chiefs and structure-owners join forces to remove roofs of structures if the tenants are unable to pay their rent. Furthermore, it is believed that many wealthy people in the Government own structures in Korogocho. Their perception is that unity within the settlement reduces the power of the Chiefs. However, this unity is now threatened by the land claims made by KOWA.<sup>221</sup>

Tenants in Korogocho are calling for the Government to fix the rent so as to prevent exploitation, and for decent rules to govern rent collection so as to prevent harassment. They are also calling for a forum through which they can provide input into the slum-upgrading programme and, beyond that, into slum-upgrading policy. Networking between different settlements through grassroots savings schemes places the community representatives in a good position to address slum issues more broadly than just those faced by themselves. The need for land reform and the new constitution were also indicated as priorities. The community representatives considered all these processes important in preventing the reproduction of slums. For them, a major concern was that “slum dwellers and government are not speaking the same language”. It was felt that slum upgrading needed to go beyond providing new houses, to address economic activity, education and infrastructure.<sup>222</sup>

## 5.5 Slum upgrading: reform and replication

*In recognition of successful programmes from other communities within and outside the country, the Government will adapt, where appropriate, concepts which have made a breakthrough in alleviating shelter problems of the poor. The Government will develop and support approaches which focus on community organizations and personal empowerment in ensuring creation of small-scale economic activities and promoting innovative ways of mobilizing finance.*

National Housing Policy for Kenya

220 Ibid.

221 Ibid.

222 Ibid.



### 5.5.1 Slum upgrading: policy, framework and monitoring

Subsection 3.1.1 of the official document of the Kenya Slum Upgrading Programme (KENSUP) lists the development of a slum-upgrading policy as the first component of the Programme. The Programme document indicates that this policy will provide not only a “rational basis for addressing living conditions of people living in informal settlements” but will be the basis for ensuring that slum upgrading can proceed country-wide. Subsection 6.4 of the document commits the line ministry to “developing eligibility and prioritisation criteria” for urban centres and ensuring that the policy will enable a demand-driven approach: with Government assistance, urban centres will be expected to initiate their own slum-upgrading plans if they meet the official criteria.

COHRE is convinced that the development of such a slum-upgrading policy and an accompanying institutional framework through broad and extensive participation would be a very important advance. The existence of clear criteria and processes would enable residents to engage more adequately with the slum-upgrading process, and stakeholders would remain accountable for their respective roles. Had this policy been in place, some of the current concerns that have emerged during the KENSUP process might actually have been addressed.

Many of the key elements of such a policy and the accompanying steps are already incorporated in the KENSUP documentation (*see, in particular*, Section 3 of the Programme document), but the views of residents in informal settlement should be heard. Many of those views are included in this report and reflected in the recommendations that follow in the remainder of this section. The policy and framework will nevertheless have to include considerable flexibility to deal with the different types of settlements within Kenya.

Most importantly, a system for accountability should be included in the policy and framework. The National Housing Policy has already acknowledged that in the past the “performance of the housing sector has not been effectively monitored” [para. 69]. If residents believe that the criteria are not being adhered to, there should not only be a mechanism for participation, but also a mechanism for lodging and hearing formal complaints. An independent and properly resourced office should be established to deal with complaints arising from the slum-upgrading process. Moreover, independent evaluations of slum-upgrading projects that are currently proceeding – and will proceed under the new policy – should be commissioned on a regular basis.

In December 2004, KENSUP announced that the Programme is to be extended country-wide to all urban centres, as follows:

*The Ministry of Roads, Public Works and Housing (MRPW&H) will launch KENSUP as a countrywide undertaking for all urban centers.*

*Design criteria for eligibility and prioritization: MRPW&H will develop eligibility and prioritization criteria for urban centers that will participate in the national slum upgrading initiative.*

*This will be a demand-led process. Urban centers will be expected to initiate their slum upgrading plans and in following the set criteria request assistance of the Government.*



*Identify and commit collaborating institutions: the Government will identify and commit potential donors and partners.*

*Initiate programme at urban centers and in specific communities following the phases outlined in the implementation strategy.*

Moreover, a framework for collecting and allocating resources is to be established:

*For the sustainability of the Programme, and its eventual replication countrywide, the financial and material resources mobilized for the Programme shall be placed into “The Slum Upgrading and Low Cost Housing and Infrastructure Fund.” The Government shall establish the Trust Fund and the appropriate management mechanism, in accordance with the modalities agreed upon by the Government and UN-HABITAT and in consultation with other Programme stakeholders, as appropriate. A Joint Resource Allocation and Review Committee (JRARC) will be established, to review relevant Programme budgets and approve their allocations and disbursements to various projects under the Programme.*

COHRE welcomes these initiatives and believes that they should receive urgent attention and sufficient budgetary support from the Government and development partners. The policy should be developed in close consultation with civil society and community representatives. It should provide a system of accountability to ensure that the Government fulfills its obligations with respect to beneficiaries living in the settlements. However, such a policy is contingent on ensuring security of tenure to existing occupants. Otherwise, it will create incentives for larger structure-owners to take advantage of the slum-upgrading policy and evict poorer residents.

### 5.5.2 Recognition

Arguably, from the authorities’ point of view, Kibera residents have been given recognition through the commitment to upgrade the settlement through KENSUP. However, from the residents’ viewpoint, this form of recognition does not guarantee them their rights. They fear that unless they are recognised as individual households in some form of registry, they will have no guarantee against new people moving into the newly redeveloped Kibera. Moreover, a moratorium on forced evictions needs to be declared and enforced.

However, recognition in a slum-upgrading context needs to go further than merely registering the personal details of the resident households. Slum upgrading should be based on recognition of the religious, cultural, economic and recreational activities and institutions within the settlement. KENSUP has gone to great lengths to survey various aspects of the settlement, including the variety of actors.<sup>223</sup> However, the rich information that has been collected does not yet appear to have been translated into the slum-upgrading approach, which at this stage is intended to remove all households, demolish the settlement and redevelop three-roomed units according to an orderly plan. Kibera has to be recognised as a city within a city, with an economy directly linked to that of formal Nairobi. This economy,

223 Government of Kenya and UN-HABITAT (n. 155 above).

along with the cultural and religious institutions, constitutes the real assets of the majority of Kibera's residents. The COHRE interviews emphasised that most tenants are poor and have very few personal belongings. Their assets are what Kibera has to offer them.

Residents also expressed a strong desire to be employed during the process and Government officials have indicated that they are committed to involving the community as much as possible in the construction works. For this to happen, the technical and non-technical skills that exist in the community need to be audited, with a view to harnessing them appropriately in the upgrading programme. As observed by Elijah Agevi, Regional Director of the Intermediate Technology Development Group (ITDG), Kenya has an institution in Kisii that specialises in labour-intensive technologies. This avenue, if explored, might increase the benefits of slum upgrading to the community.<sup>224</sup> This is far less likely to happen if a contractor-driven approach is taken. In interviews with COHRE, UN-HABITAT officials indicated that the project would pro-actively seek to include local residents in the construction works.

### 5.5.3 Addressing patronage, disunity and disempowerment

Residents interviewed by COHRE were adamant that unless some form of agreement or unity be established between structure-owners and residents, they would *all* end up being displaced from Kibera. Beyond ensuring representation of both groups on the Settlement Executive Committee, KENSUP has not clarified how the relationship between structure-owner and tenant will be dissolved or resolved. In a state of such ambiguity, structure-owners fear that they will lose out. Those that have means may attempt to influence the process to their benefit, be this through the eviction of tenants and their replacement with family members, or through bribery, which for many decades has been standard practice in the allocation of land and opportunities. KENSUP recently acknowledged the difficulties in confronting 'slum lords' and political interference in Kibera. The Programme should be supported by the Government of Kenya in order to overcome these deep-seated obstacles.<sup>225</sup>

COHRE believes that it is of the utmost importance to break the pilot project area of 60 000 residents into smaller areas. Each of these areas should have its own representative structure, through which households would be able to participate directly in defining the kind of upgrading to be done in their locality. This would minimise the disruption to their lives, and thus ensure security of tenure.

Enumeration can also help in empowering tenants, although it is not necessarily a substitute for improving participation. In three of the nine Nairobi settlements in which Pamoja Trust has negotiated for tenure security, the relationship between structure-owner and tenant has been resolved. Through a community-driven enumeration process, communities were given the opportunity to resolve that relationship themselves. The enumeration was a negotiation process, progressively leading to greater accuracy and thus allowing for real recognition. However, given the previous patronage system within Kibera and the dominance of absentee structure-owners, tenants will most probably need greater support, protection and mobilisation to effectively participate in such a process. Recent reports of a stagnation of the enumeration process for those living alongside the railway line in Kibera indicate the need to ensure that tenants and small-scale structure-owners have proper and effective representation.

224 COHRE meeting with ITDG's Regional Director for East Africa.

225 Government of Kenya, 'Kibera-Soweto Slum Upgrading Project', Dec. 2004, Subsects. 6.1 and 6.2.

Such an approach may also be useful in negotiating the structure-owners' buy-in into the upgrading process. It would have to be made clear to them that the operation of their patronage system has no legal basis. At the same time, structure-owners should be offered opportunities to become part of a legalisation process from the outset. They could be offered a form of amnesty in exchange for their cooperation, and this could give them an opportunity to reinvest legally in a regulated environment that limits the numbers of structures they can own, and affords protection to tenants. However, the interference of Chiefs and other Provincial Administration staff would have to be terminated.

#### 5.5.4 Emergency responses/basic services

On reflection, some officials acknowledged that the current process may not be sustainable and that, given another chance, they would start the upgrading with infrastructure rather than by designing houses. It is noteworthy that a Rapid Needs Assessment Survey in 1997 "indicated that residents in five out of the nine villages cited excreta disposal and [in] four villages water, as the major problems face[d] respectively".<sup>226</sup>

Immediate intervention in the form of effective refuse collection and temporary sanitation in Kibera would improve the lives of hundreds of thousands of slum dwellers.<sup>227</sup> It should strengthen or build on the existing sanitation-and-refuse initiatives as well as the strength of existing community structures within the settlement. Such intervention would not interfere with the relationship between structure-owner and tenant, although improved conditions might encourage owners to increase rents. Formal recognition of households through an enumeration process, enforcement of a moratorium on evictions, as well as improved basic services, should therefore be at the top of the KENSUP agenda.

#### 5.5.5 Improving security of tenure/the process of securing tenure

A tenure system for the slum-upgrading programme has not yet been developed. Tenure legalisation in Kibera has to respond to various challenges. Formalising the *individual* right to the land may not be an effective step towards securing tenure for the current residents, unless it also prevents market displacement.

In the Nairobi slum situation, tenure will not be secure unless the residents are assured that housing is not allocated to new households. A fundamental flaw in the current conceptualisation of the slum-upgrading programme is that tenure security for the current residents will depend on whether they can afford a three-roomed housing unit of 50 m<sup>2</sup>, after many livelihood assets have been destroyed through mass removal to a decanting (temporary relocation) site and demolition of the original settlement. This also indicates the close relationship between development finance and tenure security: unless appropriate finance is obtained, tenure cannot be regarded as secure. In the case of the Kibera pilot project, the lack of clarity

<sup>226</sup> See Gitau and Olima (n. 41 above), p. 2.

<sup>227</sup> As Hardoy *et al* note regarding Kibera: "Piles of garbage ... serve as food or breeding ground for disease vectors – primarily flies and rats. Dangers to health arise both from pathogens in the refuse itself and from disease vectors which breed or feed there. Uncollected refuse often clogs drainage channels which then become stagnant pools and may overflow; if the drainage channels are carrying liquid wastes which include excreta (which is commonly the case in poorer settlements) this means further extensive site contamination. Uncollected garbage is thus a serious health-hazard for all inhabitants, perhaps most especially for children who play on streets or open ground contaminated with refuse. It is also a fire hazard". See J. Hardoy, S. Cairncross and D. Satterthwaite (ed.), *The Poor Die Young: Housing and Health in Third World Cities* (1990), p. 169.

regarding the financing mechanism for capital and operational costs renders the tenure insecure, even if the area is declared a ‘tenure secure zone’. If any major infrastructural improvements are to be made, tenure security will depend on subsidisation, as there is little evidence that costs will be recovered from the existing tenants.

This begs an even larger question related to tenure: is rent tenancy at the scale of the Nairobi slums desirable for the lowest-income sector? Box 5.5 below summarises South Africa’s community-driven experience of eradicating rent tenancy. This is, of course, not a replicable practice; it was unique to a certain period in the anti-apartheid struggle. However, the moral consensus was that rent tenancy at scale presented a form of exploitation, patronage and disempowerment, and a social movement was able to turn this around.

#### **Box 5.5: Community-driven abolition of rent tenancy in South African informal settlements**

Rent tenancy was a widespread phenomenon in South African informal settlements in the 1970s and 1980s, in particular in and around the city of Durban. The civic movement in South Africa expanded into informal settlements on marginal land in the 1980s, replacing the system of patronage by ‘shack lords’ with democratically elected civic structures. Cross describes how the system of rent tenancy gave way to a “powerful social movement against the practice of paying rent for access to land”.<sup>228</sup> Currently, a rent tenancy system is re-emerging in some informal settlements in Kwa-Zulu Natal. This will pose a particular challenge to informal settlement upgrading in that province.

It has always been argued that the informal rental market plays an important role in providing temporary shelter options at certain stages in the life-cycle of the urban poor. Owner-occupation, in turn, caters for settling and expanding households, enabling them to make individual household decisions (for example, whether to improve or consolidate their housing unit, to use parts of it for income generation, or to invest in the schooling of their children). It should be noted that owner-occupation and individualised household investment does not require a freehold title. The Zambian system of 30-year renewable occupancy licenses, which are formally transferable through a simple transaction in a local office, have afforded thousands of households secure owner-occupation. However, it is important to note that the land policy process in Kenya is still in its infancy. (See Subsection 6.2, below, where we comment further on the possible land tenure options.)

#### **5.5.6 Dealing with densities**

Residents and CBOs in Kibera understand that due to the high housing densities in Kibera, some relocation of households will be necessary to make space for infrastructure. During

228 Cross, ‘Shack tenure in the Durban area’ in C. Hemson, *Land Use and Land Administration in the New South Africa*. Proceedings of a Winter School held at the University of Natal, Durban, July 1995, pp. 29-39.

COHRE interviews, residents indicated that rather than being moved to a decanting site, they would prefer to be accommodated within the community: “The business of being uprooted is bad.” It was argued that tenants have very few belongings, which means they could easily be accommodated elsewhere in the settlement. It was also felt that resident landlords who have no other income than rent should also stay in the settlement during the upgrading. However, alternative accommodation would have to be secured before evicting people and demolishing their current dwellings. If a decanting site is necessary, this must be close by, as many residents work in the neighbouring industrial area

The Brazilian example in Box 5.6, below, is part of a programme that UN-HABITAT has highlighted as a best practice in Participatory Slum Upgrading.<sup>229</sup> The upgrading of the Sacadura Cabral informal settlement in Santo Andre (a Municipality of the Greater Sao Paulo Metropolitan Area) involved a community-negotiated de-densification and temporary relocation programme that effectively minimised disruption.

#### **Box 5.6: Non-disruptive ‘decanting’ in Santo Andre, Brazil<sup>230</sup>**

The Integrated Social Inclusion Programme in Santo Andre, Brazil, is based on the principles of integrating marginalised informal settlement communities into the city, participation of the residents, and coordination across the social, economic and infrastructural sectors. One of the projects undertaken within this programme is the upgrading of Sacadura Cabral, an informal settlement that had existed for 32 years. 780 households were occupying 4.2 hectares of flood-prone land (a density of 186 households per hectare, half the density of Kibera). The level of the land had to be raised by 2.5 m, in order to prevent the flooding. All residents would therefore have to be removed temporarily.

A new layout with plots of 42 to 45 m<sup>2</sup> was developed through many workshops with the community. However, in the new layout 200 of the original 780 households could not be accommodated. A neighbouring portion of land could be developed with new housing units. In close collaboration with the community, the concept of choice was incorporated into the relocation. Removal of households, land filling and redevelopment was to occur on a phase-by-phase basis, small portions of the settlement being removed at a time.

However, rather than treating the neighbouring development as a decanting site, a call was made to all the residents for people to come forward who wished to move out of the slum and into the new development on a permanent basis. Sufficient households volunteered, and their vacated units were then occupied by households living in the first phase of the development. Once Phase One was complete, these households moved back onto their demarcated plots of 42-45 m<sup>2</sup>, and with credit and technical support from the municipality began converting their shacks into formal multi-storey houses, with commercial space on the ground floor. In the meantime, the second phase could be handled in the same manner.

229 UN-HABITAT, *Global Report on Human Settlements* (2003), p. 132.

230 University of the Witwatersrand, notes from a study tour to Brazil, Nov. 2003.

### 5.5.7 Meaningful participation

The need for more effective forms of participation in the slum-upgrading pilot project has already been discussed in Subsection 5.3 above. Participation has to be designed so as to address several challenges that are associated with a slum of such density and scale:

- The complexity, diversity and intensity of life-sustaining activities;
- In contrast to this, the utter lack of choice in housing solution (uniform neglect and decay), and coupled with this, high levels of patronage and disempowerment;
- The vast number of households living in the pilot project area.

As a starting point, COHRE believes the authorities would do well to break the pilot project area down into smaller, more-manageable areas within which local residents could participate directly in local decision-making. Given that the upgrading project is intended to target all residents, the participation process must develop effective methods to include them all. One additional participatory approach for community mobilisation could be the development of self-reliance through daily savings, as has been promoted by Pamoja Trust.

KENSUP recently indicated that “slum dwellers may be required to chip in financial contributions” or “material or labour resources”. This represents a partial change in KENSUP policy, but the involvement of the community in contributing their own resources should be used as an opportunity to develop the possibility of *in situ* upgrading.

It should also be realised that lack of capacity and experience with slum-upgrading programmes is not limited to the affected residents; it also applies to the Government and the other players, who clearly have not dealt with complex upgrading of the magnitude that is envisaged. This is acknowledged in the programme document (Section 3.1.5), where one of the major components of KENSUP is described as follows:

*Institutionalize a capacity-building programme through exposure and on-job training of key staff and officials at central government, local authority and community levels.*

In other words, the process being undertaken in Kibera is in many ways unique, requiring new skills, processes and institutional combinations. While the pilot project is therefore a valuable learning opportunity for all parties involved, further efforts may be needed to train the key stakeholders

Spaces should also be created for direct representation. There are additional groups with unique needs who should be allowed to represent themselves directly; for example, the minority groups and schools in the slum-upgrading programmes. Representative democracy, through a few elected officials, should be enriched by having forums for direct representation, where decisions made by the community could be picked up directly.

### Box 5.7: Models of participation<sup>231</sup>

The following forms of participation have been identified in relation to different stages of slum upgrading. Partnership between government and community is possible only through shared control.

Level of participation	Community role	Outsider role
No participation	None	Acts on behalf of the community
Indirect participation	(Is given information)	Acts on behalf of the community
Consultation	Acts as interest group	Acts as advocate for the community
Shared control	Acts as stakeholder	Acts as stakeholder
Full control	Acts as principal	Acts as resource

Currently, the communities' involvement and/or participation in the mapping and enumeration processes seem limited, though there is evidence that this is growing with the support of NGOs in areas like Mitumba, Korogocho, etc. Unfortunately, the different mapping processes (physical, socio-economic, etc.) seem to be supply-driven. Many residents *see* themselves as passive, limited beneficiaries, if at all, of the intended upgrading programme. It is imperative to introduce community demands and needs in the mapping and enumeration processes.

### 5.5.8 Taking slum upgrading to scale

Taking slum upgrading to scale will require evaluation of previous slum-upgrading initiatives, including the Kibera pilot project, and careful policy design. Financing mechanisms will form an important component in the policy design. Where informal settlement upgrading has been based on a cost recovery basis with loans from international agencies to be repaid, results have not been as anticipated. In the case of a slum-upgrading programme in Tanzania, which was funded by the World Bank, only 30 percent of the costs could be recovered.<sup>232</sup> In Lesotho's upgrading schemes that were based on cost recovery "not a cent was recovered".<sup>233</sup>

Slum upgrading at scale will require partnerships. Most important will be the partnership with those living in the slums. As one author has commented: "In today's 'wired' world the opportunities for sharing the realities of poor people's lives, for changing mind-sets and for ensuring that poor people's voices are heard have never been greater. Coalitions representing poor people's organisations are needed to ensure that the voices of the poor are heard and reflected in decision-making at the local, national and global levels."

231 Source: I. Imparato, and J. Ruster, *Slum Upgrading and Participation: Lessons from Latin America* (The World Bank, Washington, D.C., 2003), p. 23.

232 Kironde, 'Presentation on the Tanzanian slum upgrading experience' at workshop entitled 'Debating international experience in informal settlement policy – relevance for South Africa?', 23 Feb. 2004, University of the Witwatersrand.

233 C. Leduka, 'Presentation on the Lesotho experience', at workshop, *ibid*.



The Cities Alliance Annual Report of 2003 focuses on “the challenge of scale – nationwide upgrading”, linking this closely with the realisation of the UN Millennium Development Goals. It discusses various country experiences, and in the case of Thailand emphasises the effective reliance on a partnership with communities.

**Box 5.8: Nationwide slum upgrading in Thailand based on a partnership with communities<sup>234</sup>**

The Government of Thailand made investments “to support the mobilisation of slum communities and networks of slum communities, initially through savings and credit and subsequently through a broad variety of development activities”. This “had created a sound basis for scaling up to a national programme”.

In 2003, the Thai government approved a national community-upgrading programme that aims to achieve ‘200 cities without slums’ within five years. Through the Urban Community Development Authority under the National Housing Authority, loans were made available to “organised communities for land acquisition, housing construction, neighbourhood improvement, and income generation”.<sup>235</sup> Community groups became stronger and began linking across provinces and regions. In response, loans were made available to networks. “In Thailand it is largely the activities of CBOs that have led the government to consider establishing a nationwide slum upgrading programme”.<sup>236</sup>

At the start of South Africa’s second decade of democracy, there are still many urban poor that have not been served by the massive housing delivery of the first decade, and there is recognition of the need for a unified voice of the poor in policy making. The Coalition of the Urban Poor was formed early in 2004. Its summit of 16-18 July 2004 brought together representatives from various federations, civic and people’s movements. While the new Coalition has to undertake follow-up work in the various regions across South Africa before concrete policy proposals will be released, Box 5.9, below, indicates the policy issues that were agreed upon at the end of the summit. The coalition was encouraged by the fact that the new Minister of Housing cancelled other engagements in order to attend a part of the summit to engage with the policy questions raised by the poor. (**Note:** In October 2004, South Africa adopted a new policy: the ‘National Housing Programme: Upgrading of Informal Settlements’).

234 Cities Alliance / Cities Without Slums, *Annual Report* (Cities Alliance, Washington, D.C., 2003).

235 Ibid. p. 28.

236 Ibid. p. 31.

**Box 5.9: Coalition of the Urban Poor (South Africa) – housing policy proposals<sup>237</sup>**

- Recognition of community-based organisations as central actors
- Education and empowerment of community organisations
- A halt to evictions
- Technical pretexts not to be used to move people off the land
- Community participation in land identification
- The issuing of title deeds to be speeded up
- Free access to land for housing development (separately from the capital subsidy)
- Land tenure to be secured in informal settlements
- Incremental/basic infrastructure to be brought into informal settlements
- Better access to finance
- Infrastructure to be separated from housing subsidy
- Organised communities to have priority in the allocation of subsidies
- Shift from family subsidies to community subsidies
- Housing subsidies to be adjusted to the inflation of building material supply

237 Notes from the Summit of the Coalition of the Urban Poor (CUP), Shaft 17 Conference Centre, Soweto, 16-18 July 2004.



Residents of Kiambu settlement struggle to hold onto this land and their homes in the face of illegal land-grabbing

6

## Access to serviced land

*It is quite clear that hopes of discouraging immigrants so as to contain the city's growth to its present geographical boundaries is unrealistic.*

J.P. Mbagua<sup>238</sup>

In implementing the right to housing in Nairobi, not only slum upgrading is urgently needed for the urban poor, but also improved access to services and land. The Government's duty and failure to provide basic water, sanitation, energy and other services to informal settlements are discussed above (see Subsections 2.3 and 2.8). High population densities in Kenyan rural areas, and the continued rural-urban drift, mean that Nairobi will continue to grow. Experts have predicted that "with an annual growth rate of 5 percent, the municipality [Nairobi] will host 5 million people by the year 2020, of which nearly 3 million will live in informal and often precarious settlements, if current trends continue."<sup>239</sup> Nairobi will not be the only urban centre affected. The Government of Kenya recently stated that:

*By the year 2005, the urban population is expected to rise to 16 million and to 41.6 million by the year 2015.*

238 J.P. Mbagua, *Problem of Shelter and Planning Constraints in the City of Nairobi*, Annual National Convention of the Architectural Association of Kenya, held at Safari Park Hotel, Nairobi, 27-30 June 2000, p. 1.

239 Habitat Debate, Vol. 7 No. 3, Sept. 2001.

Some commentators argue that the rise in urban populations will principally come from natural increases within existing urban centres, as opposed to rural-urban drift or extension of Nairobi's boundaries,<sup>240</sup> though many argue that rural-urban drift cannot be ignored. The process of slum upgrading will also mean that land will be required where de-densification, and therefore resettlement of residents, is necessary.

Commendably, the National Housing Policy for Kenya states that: "The supply of serviced land at affordable prices in suitable locations is one of the critical inputs for housing development." A Government minister has also indicated that 100 000 acres (approx. 40 470 hectares) of land will be bought for slum-dwellers, though it is not clear whether budgetary allocations have been made for this purpose. The Housing Policy sets out 13 means by which the Government will attempt to facilitate the provision of serviced land. These include: legal reforms; establishing a land bank; developing land-information systems; combining development incentives and land taxes; increasing affordability for low-income groups and providing them with legal security of tenure; subsidising rates for 'squatters' to encourage owner-occupation; decentralising and adopting participatory planning and decision-making; and encouraging ordered settlement patterns.

The National Housing Development Programme 2003-2007 contains a slightly more detailed plan:

- Inventorise alienated and unalienated land by June 2005;
- Review land laws and planning regulations by December 2005;
- Inventorise land owned by housing cooperatives and SACCOS from March 2004 to December 2004;
- Reduce stamp duty on land transfers from 4 to 2 percent for first-time home buyers;
- Waive rent arrears and penalties for cooperative societies upon subdivision of land for their members;
- Service land for the development of housing;
- Establish a cost-recovery mechanism for private development of trunk infrastructure by December 2004.

COHRE is currently unable to determine the extent to which each of these important objectives – particularly the inventorising of land, the reviewing of land laws and the servicing of land – have been accomplished. Kenyan civil society could play an important facilitating role in this regard. This is important as there does not yet appear to be a framework for enabling the setting up of site-and-service schemes. Moreover, it is not clear what budgetary support has been given, which is pertinent since the yearly target for the policy is Ksh 10.8 billion or US\$ 133.3 million. ***An effective, serviced land policy will avoid the creation of new slums.***

A number of critical and related issues arose during the fact-finding mission. This section analyses: (1) the need to halt and remedy irregular and illegal allocation of public land; (2) appropriate land-tenure options; (3) the provision of sufficient amounts of serviced land; and (4) women's inheritance rights. The issues of tenure security and participation have been extensively dealt with in other parts of the report (in particular, in Sections 1 and 3, and in Subsection 5.3).

Rural-urban drift will continue to contribute to the expansion of urban centres and in this context the Kenyan National Commission on Human Rights has noted the importance of considering land policies in connection with rural development and governance:

240 J.P. Mbagua (n. 238 above), p. 2.

*The colonial and post-colonial policies concentrating development in urban and high potential areas have led to increased poverty in marginal regions leading to more vulnerability and ghettoization. While some communities like [the] Nubians were settled by the British colonial administration as [a] special case, the rest or majority of the residents in informal settlements are economic ‘refugees’ in their own country. Therefore as the Government and other key players continue to address the problems of housing, the broader issues of rethinking the long-term development policies need to be articulated. The issue of devolution and equitable distribution of national resources is critical.*

*The Government need to work on a long-term plan to develop rural areas so that people can work in their own regions rather than having to migrate en mass to the cities in search of employment, hence overcrowding and ever-growing slums. Rural-urban migration can be contained if administrative structures, governance and distribution of resources are devolved to the rural areas and [by] providing necessary infrastructures.<sup>241</sup>*

## 6.1 Land allocation: irregular and illegal

*[T]here has been abuse of trust by the Government and the county councils, its officials and councillors in the irregular allocation of public and community land without following legally laid down procedures that ensure appropriateness, transparency and fairness. The abuse has led to massive grabbing of land reserved for public use.*

‘Njonjo’ Commission of Inquiry into the Land Law System of Kenya,  
reporting on public complaints<sup>242</sup>

Irregular and illegal land allocation in Kenya is an acknowledged fact.<sup>243</sup> On 10 December 2004, the Government of Kenya, after significant pressure, released an independent commission’s report on the matter. It includes a list of all those who benefited from such land speculation, though a number of names were allegedly deleted prior to release.<sup>244</sup> The increased public

241 Comments provided to COHRE, Jan. 2005.

242 Republic of Kenya, *Report of the Commission of Inquiry into the Land Law System of Kenya on Principles of a National Land Policy Framework, Constitutional Position of Land and New Institutional Framework for Land Administration – ‘Njonjo Commission’* (2002), p. 91.

243 See ‘Land: Political Patronage’s Greatest Weapon’, interview with Odenda Lumumba, National Coordinator, Kenya Land Alliance, ADILI No. 40 (14 July 2000). Syagga, Mutullah and Gitau comment: “The procedures for allocating public land have been subjected to abuse and violation resulting in corruption in land matters, speculation and improper allocation. This is what has come to be branded as ‘Land Grabbing’ in Kenya, which is actually an abuse of [the] land delivery system, with public land being disposed of at prices below the market value to the powerful.” See ‘Nairobi Situation Analysis’ (n. 29 above), p. 83.

244 The ‘Ndung’u’ Commission of Inquiry into Illegal and Irregular Allocation of Public Land was mandated to inquire into land allocation, collect and collate evidence relating to unlawful and irregular allocation, prepare lists of such lands, inquire into the identities of the persons who were allocated these lands, and provide advice on matters including recovery of lands or securing of outstanding taxes. The Commission may also recommend civil and criminal proceedings against individuals and make recommendations for improving the future operation of the land allocation and registration system.

awareness of the issue as well as scrutiny of individual land-grabbers by the ‘Ndung’u’ Commission of Inquiry into Illegal and Irregular Allocation of Public Land and civil society groups and coalitions – including Operation Firimbi (coordinated by the Mazingira Institute) and the Kenya Land Alliance – “shows that there has been progress”, according to the Settlements Information Network Africa (SINA).<sup>245</sup> The report of the Commission recommends the establishment of a Land Title Tribunal:

*Given the fact that each case of a suspected illegal or irregular allocation of public land must be dealt with on its own merits, it is recommended that a Land Titles Tribunal be immediately established to embark upon the process of revocation and rectification of titles in the country.*<sup>246</sup>

A draft Bill for creating the Tribunal is attached to that report.

Reforming the system is a major challenge. While the Provincial Commissioner, as noted in Subsection 4.1.1 above, emphasised that the Provincial Administration does not have the jurisdiction to allocate land,<sup>247</sup> one Chief, and an associate of another Chief, openly admitted that the practice continued. Indeed, these officials appeared to view themselves as the principal authority in allocating land and controlling development in the informal settlements.

It must be emphasised that *some* of the irregular land allocation has permitted the expansion of the country’s housing stock. Kenya’s housing crisis would be even greater if public land had not been informally used for housing. However, the effective control over land by Chiefs and other Government officials frustrates well-intentioned policy efforts; for example, attempts by policymakers and residents to improve housing and services, and secure available vacant public land for resettlement, in order to decrease housing densities and the number of dangerously situated homes.

In COHRE’s view, it is imperative that the recommendations of the Commission be implemented as speedily as possible and that the Government of Kenya and its foreign partners give the greatest possible support to the Ministry of Lands and Housing, the Ministry of Justice, civil society, and community leaders. The following case study indicates the need for swift and strong support.

#### **6.1.1 Case study of Kiambiu: a lonely community battle against land-grabbing and harassment**

In 1994, the Commissioner of Lands authorised the upgrading of the Kiambiu settlement.<sup>248</sup> Former presidents Moi and Kenyatta also issued presidential orders that the settlement be developed for the benefit of the residents.<sup>249</sup> Situated in Eastleigh South Location, the settlement has been occupied since 1950 and has a population of between 50 000 and 60 000.<sup>250</sup>

245 ‘Restore Grabbed Public Land Now!’, *SINA Newsletter*, Apr. 2003, pp. 3-4.

246 *Report of the Commission of Inquiry into Illegal and Irregular Allocation of Public Land*, Republic of Kenya, June 2004, p. 188.

247 COHRE interview with Nairobi Provincial Commissioner, Mr Sigei, 15 July 2004.

248 Copy of plan from Ministry of Lands and Settlement for upgrading of Kiambiu.

249 Letter from the MP for Kamukunji to Minister of State of the Office of the President, dated 8 Jan. 1997. The legality of these presidential orders is perhaps questionable.

250 Letter from Muungano Wa Wakaazi Wa Kiambiu to the Town Clerk, NCC, dated 22 Oct. 2002.

However, residents soon began to complain about the grabbing of land within the settlement and adjoining land that was needed for the upgrading; for example, space for urban infrastructure and over-spill of residents. The community wrote a letter of complaint to the Minister of Local Government in July 2001 and May 2002, even giving details of the tractors that were being used by the land-grabbers,<sup>251</sup> but no response was received.

In an apparent effort to frustrate the upgrading process, the Chief and the local councillor, Mr Kiungu, then proposed that allotment letters be issued to the residents, upon payment of Ksh 5 000 by each resident.<sup>252</sup> The Kiambiu residents wrote to the Nairobi City Council, requesting that it clarify this offer.<sup>253</sup> In a reply from the local Member of Parliament they were informed that the councillor was misleading the residents: “The Councillor who is working in cohorts with the Provincial Administration is using a misleading resolution of the Council ... I hope this time that somebody in government will protect what rightfully belongs to it from being sold-off by an individual.”<sup>254</sup>

In early 2003, the residents – through the community-based Muungano Wa Wakaazi Wa Kiambiu (Kiambiu Residents’ Association) – received news of the official plans for slum upgrading, apparently approved in the year 2000. The Director of City Planning, in a letter, authorised the residents and the Nairobi City Council to plan the settlement<sup>255</sup> and, in a second letter, suggested a partnership.<sup>256</sup>

However, land-grabbing continued and residents have faced significant harassment and even arrest when they have attempted to move forward with the slum-upgrading programme. Plans to establish six more water-and-sanitation blocks were apparently frustrated as a result of illegal land-grabbing of the various allocated sites. It later emerged that the Chief and local councillor were using the allotment letters to sell off Kiambiu land to non-residents.

Residents sent a letter to the Minister of State for National and Internal Security, Chris Murungaru, complaining of harassment by the previous councillor, the OCS, the Chief, and the *Taliban* and *Mungiki* vigilante groups.<sup>257</sup> Names of individuals responsible for intimidation were also given. In June 2003, residents sent another letter to Hon. Raila Odinga, then Minister of Public Works, Roads and Housing.<sup>258</sup> They told COHRE that they had received no response.

A submission was then made to the ‘Ndung’u’ Commission of Inquiry into Illegal and Irregular Allocation of Public Land,<sup>259</sup> noting land-grabbing by the Chief, Mr Mutwiri and a councillor, Mr Kiragu. This submission was passed on to the Ministry of Land, though it is not clear what

251 Letter from the residents to Minister of Local Government, dated 16 July 2001.

252 Letter from Muungano Wa Wakaazi Wa Kiambiu to the Town Clerk, NCC, dated 22 Oct. 2002.

253 Ibid.

254 Letter from the MP for Kamukunji to the Commissioner of Lands, dated 12 Sept. 2003.

255 Letter from the Director of City Planning, P.M. Kibinda, to Muungano Wa Wakaazi Wa Kiambiu, dated 4 Feb. 2003; formalisation of the Kiambiu settlement scheme was approved by the Ordinary Monthly Meeting of the NCC under minute 15, p. 1427 of 8 Feb. 2000.

256 Letter from the Director of City Planning, P.M. Kibinda, to Kiambiu Residents, dated 2 Apr. 2003.

257 Letter to Minister for National and Internal Security from the Kiambiu Residents dated 22 Oct. 2003.

258 Letter to Minister for Local Government, Hon. Uhuru Kenyatta, from Kiambiu Residents dated 27 May 2002 and letter to Minister of Public Works, Roads and Housing, Hon. Raila Odinga. In both letters the residents raised their fears that they would be forcefully evicted.

259 Letter from Kiambiu Residents dated 16 Sept. 2003.



Land grabbed from a public sportsfield by former councillor Kiragu Waichahi for a private school that bears his name. World Habitat Day was hosted by UN-Habitat on this land and Government ministers promised to halt landgrabbing around Kiambiu settlement. But the situation has worsened.



steps that Ministry has taken.<sup>260</sup> On 20 August 2003, the villagers wrote to their Member of Parliament accusing Mr Zacharia Wagura of acquiring a plot, which he paid for (the Nairobi City Council had issued a receipt to that effect).<sup>261</sup> Furthermore, in October 2003, World Habitat Day was held in Kiambiu and the Kenyan ministers in attendance were informed that the local Chief and District Officer were colluding with grabbers and using Administration Police to harass residents. In public speeches, Ministers Raila and Kimunya strongly condemned land-grabbing in Kiambiu.

In December 2003, the community alerted the Nairobi City Council of the illegal enumeration that was being conducted by the former councillor, Kiragu Waichahi.<sup>262</sup> On 25 November 2003, Hon. Betty Tett, an Assistant Minister, wrote to the Director of City Planning about the enumeration issue.<sup>263</sup> In May 2004, the issue was raised with the Permanent Secretary, Ministry of Lands and Settlement.<sup>264</sup>

However, nothing appears to have been done to prevent the land-grabbing and harassment. Even the football field in Kiambiu used for World Habitat Day has been encroached upon by land-grabbers. The old man who gave this information has been assaulted several times, to an extent that he has had to relocate temporarily from the settlement. COHRE was told that the Wazee Wa Kijiji (village elders) violently harassed other community members at the behest of the Chief and the Administration Police. Youth members who are involved in the struggle against land-grabbing have been charged with malicious damage to property and have ongoing court cases.<sup>265</sup>

This illustrates the difficulties that the poor face in confronting land-grabbing – even when they are well organised. Land speculators are often able to exploit land laws and Government institutions to gain access to land, and ensure communities are silenced through a range of

260 Letter to the Permanent Secretary, Ministry of Lands and Settlement from Wyclife Ogalo, on Behalf of the Secretary to the Cabinet and Head of Public Service.

261 Letter to the MP for Kamukunji from Kiambiu Residents, dated 20 Aug. 2003.

262 Letters to the Director of City Planning, the Nairobi City Council and to the Assistant Minister for Local Government from Kiambiu Residents dated the 18 Dec. 2003.

263 Letter from the Assistant Minister of Local Government to the Director of City Planning dated 25 Nov. 2003.

264 Letter dated 11 Feb. 2004.

265 COHRE meeting organised by Maji na Ufanisi (Water and Development) in Kiambiu, 9 July 2004.

intimidation tactics. Experts also note the complexity of laws governing land ownership in Kenya (especially in the informal settlements) and the need for these to be reformed.<sup>266</sup>

### 6.1.2 Squatting on private land: the case of Deep Sea

There are other cases of squatting on unclaimed private land. Squatters who have stayed on private property for a long period of time do not seem to benefit from the legal provisions relating to adverse possession.<sup>267</sup> Speculators appear to have taken advantage of this situation and have even been known to acquire irregular titles to the effect that the land belongs to them (see the Kiambu case study in Subsection 6.1.1 above). In COHRE's view, it is important that the Government put mechanisms in place to protect the residents of such settlements.

The Deep Sea settlement was established in 1974, on about four acres (approx. 1.6 hectares) of private land in the up-market Westlands area of Nairobi. The residents, far from benefiting from 'adverse possession', are continuously threatened with eviction. There is also evidence of irregular allocation: since the year 2000, several individuals have allegedly acquired title deeds and have attempted to evict the community. It appears that the assistance of the local Chief or District Officer of the Provincial Administration was instrumental in their acquisition. Because of these claims, the planned upgrading has been postponed. Pamoja Trust is currently helping the people to sort out legal and technical issues that would otherwise make it impossible to upgrade the settlement. There appear to be few, if any, actual mechanisms in place – except general legal provisions – to protect residents in such a situation.<sup>268</sup>

## 6.2 Land tenure and the land policy reform process

For slum upgrading and site-and-service schemes to go to scale (city- or country-wide), they need to be supported by a range of complementary policy reforms. Most important for Kenya is the reform of land policy, which is already underway under the National Land Policy Formulation Process. Four of the six thematic groups established in the guiding document are directly relevant to ensuring security of tenure in urban areas:

- Urban land use, environmental and informal sector;
- The legal framework;
- Land tenure and socio-cultural equity;
- Institutional and financial framework for implementation.

The most notable aspect of the land policy reform is the *process*. The thematic groups are composed of a wide range of different actors, including Government, civil society, private sector, and experts. In terms of tenure options, the National Land Policy Formulation Process notes that there are "Different land tenure regimes with limited harmonization". It also emphasises that land policy principles should reflect the "essential values, which the

266 'Nairobi Situation Analysis' (n. 29 above), p. 75.

267 For example, in the case of Mathare 3A residents (see Annex A2.1).

268 Comments made by Virginia Wanjiru, Deep Sea community leader, during a COHRE meeting with community members organised by Pamoja Trust, at Pamoja Trust, 12 July 2004.

society seeks to promote or preserve”. Land rights should thus “reflect inherent and progressive social values”.<sup>269</sup>

In COHRE’s view, it is vital that this process continue to be participatory. However, it should be noted that, following the fact-finding mission, the process got into difficulty when a key NGO in the process, the Kenya Land Alliance, was prevented from publicly launching a position paper on addressing historical injustices as part of its submission to the group formulating a new National Land Policy for Kenya.<sup>270</sup>

The Kenya National Commission on Human Rights has commented that:

*In regards to land tenure reforms, there is [a] need to come up with a radical change rather than just attempting to resolve the problems within the current legal frameworks, which are basically discriminative and mutually exclusive. Individualization of land ownership as it stands today is not a panacea to communal land problems. An innovative and alternative model ought to be explored. For example a model called Community Land Trust (CLT) that was developed in America in 1960s proved to be a success story in alleviating problems of homelessness. The key element was community planning, which was separated from other planning based on profits and commercial interests. Housing projects on community-owned land, which were anchored on social principles in which market concepts at most have [a] useful but subordinate role, enable majority of people to have their own cost-effective houses among the relatively poor communities in America. It may not be necessarily that kind of model but a similar strategy and approaches may be used in Kenya to ensure durable solutions to housing problems.*<sup>271</sup>

Pending the outcome of this important policy formulation process, COHRE makes five recommendations in relation to possible land tenure models:

1. The model decided upon should be *fair, flexible* and *participatory*. Fairness means that existing and historical interests and investments in the land must be taken into account. Flexibility means that there should be a range of possible and appropriate land tenure options that can be used for regularisation of informal settlements. Most importantly, residents should be able to participate in the choice of the land tenure models.
2. The selection of land tenure models should include consideration of the relationship between structure-owner and tenant. Attention should be given to tenure models that enable low-income and poor residents to achieve owner-occupation or secure adequate and affordable rental housing. It should be noted that the poor, at some stages of life, will desire cheap rental housing and at other points in time, owner-occupation. Given the already high incidence of rental housing in Nairobi’s informal settlements, some form of owner-occupation – perhaps with communal title – will probably require greater emphasis.

269 Ministry of Lands and Settlement, ‘National Land Policy Formulation Process: Concept Paper’, Aardhi House, Mar. 2004, p. 8.

270 Mathias Ringa, ‘Land lobby vows to press on’, in *Sunday Standard (Standard Online)*, 18 Oct. 2004, [www.eastandard.net/archives/sunday/hm\\_news/news.php?articleid=3425](http://www.eastandard.net/archives/sunday/hm_news/news.php?articleid=3425)

271 Communication to COHRE, Jan. 2005.

3. The land-policy process should consider land-tenure options beyond the choice between private and public ownership. (The latter may involve temporary occupancy licences, certificates of occupancy, or rental agreements with residents.) Community land trust models should be considered. Such models have already been tested in Kenya: for example in the Tanzania-Bondeni project in Voi. There are also precedents elsewhere in Africa. A community land trust model gives the residents collective control over the land. Depending on the design, re-selling of the property may be difficult, which means that the housing is more likely to remain available to low-income groups. However, this model entails losses for structure-owners, which may need to be taken into account, as discussed in Subsection 5.3.7 above.
4. It is also important that urban land policy recognise that housing is often a source of income. The principles of the National Land Policy Formulation Process are said to include security of land rights and provision for the economic and social empowerment of citizens. However, the economic aspects of land-use seem to be limited to rural areas: Policy is to be guided by objectives including enabling of a “*decent livelihood and shelter for urban population*”.<sup>272</sup> [Emphasis added.]
5. The entire process is dependent on reform of the land-allocation process. If this is not adequately addressed, then the outcomes of the land policy process are unlikely to be implemented. Given the kinds of abuses referred to in Subsection 6.1 above, it is evident that measures to ensure legal and fully transparent acquisition of land urgently need to be developed.

### 6.3 Securing land

Participants in COHRE consultations often gave differing opinions on whether land was available for resettlement and low-income housing. In most cases, it was a question of perspective. Although land, including public land, within the current boundaries of Nairobi might not be available in significant quantities for immediate usage, the Government certainly has the power to ensure that it becomes available in the short-to-medium term. The most important measures the Government can take are the retrieval of land irregularly or illegally allocated, the re-zoning of some land, and the allocation of funds for compulsory acquisition of land under the *Land Acquisition Act*. One expert from the University of Nairobi noted that a significant amount of land was owned by parastatals including the Kenya Railways Corporation (KRC) and the Kenya Power & Lighting Company (KPLC). A number of university experts also noted that some Government housing estates in Nairobi had extremely low densities.

Another key element is community participation in the identification and securing of land. Communities clearly have the interest and energy to ensure that land is not used by speculators (see the Kiambu case study in Subsection 6.1.1 above). In Mukuru kwa Njenga, community leaders displayed impressive knowledge of land ownership in the area. If this local information and energy could be harnessed, and the people in question protected, then communities could be mobilised for the process of identifying additional land for housing. COHRE understands that, by 2005, the Ministry of Lands and Housing plans to develop a database of alienated and unalienated land in order to facilitate the site-and-service scheme. The authorities should establish a mechanism for community participation in this process.

272 National Land Policy Formulation Process (n. 269 above), p. 8.

## 6.4 Women's land and housing rights

Customary laws and practices, traditionally held beliefs based on patriarchy, and inadequate and discriminatory laws all combine to create a highly unequal system of land and housing distribution. The UNDP Human Development Report of 2001 cites women's insecure property rights as a major cause of Kenya's economic troubles, contributing to low agricultural production, food shortages, underemployment and low income for most rural residents.

Informal settlements in Nairobi often house thousands of women who were forced by in-laws to leave their rural and urban homes and lands upon the death of their husband. COHRE, in two other separate fact-finding missions to Kenya, as well as through research on women's inheritance rights in sub-Saharan Africa,<sup>273</sup> found that family pressure, social stigma, physical threats and often extreme violence directed at widows force them to seek shelter elsewhere, often with children. For example, a Human Rights Watch report on Kenya states:

*Adhiambo Nyakumabor, whose husband died of AIDS in 1998, and left her HIV positive with five children, went from being relatively affluent to destitute after her husband's family took her property. Her in-laws grabbed household items from her Nairobi home and took over her house and land on the island of Runisga, even though Nyakumabor helped pay to construct the house. Soon after her husband's death, Nyakumabor's father-in-law called a family meeting, told her to choose an inheritor and ordered her to be cleansed by having sex with a fisherman. Nyakumabor refused, causing an uproar. She felt ostracized and went to Nairobi .... She now struggles to meet her family's needs and her landlord in Nairobi's Kibera slum has threatened to evict her because she cannot always pay the rent on time.*<sup>274</sup>

Property-grabbing affects all economic classes and occurs regardless of age — girls are commonly denied any share in their father's estate.

Kenyan women are still subjected to discriminatory widowhood practices such as widow inheritance or widow cleansing, which are especially prevalent in western Kenya and in certain ethnic groups. Widows are told that unless they undergo such rituals, they will be expelled from their matrimonial home and land. Widow inheritance refers to a union of the widow and a male relative of the deceased; widow cleansing refers to forcible sex between the widow and a man paid to have sex with her, which is thought to cleanse her of her dead husband's spirit. It has been reported that one in three women in western Kenya is forced to undergo this cleansing process.<sup>275</sup> Even undergoing such practices, however, does not ensure a widow housing and land — there are many stories of women undergoing the process and still being pressured off the land. It should be noted that there is no equivalent practice for widowers. It is thus inherently discriminatory.

273 The COHRE Women and Housing Rights Programme (WHRP) travelled to Nairobi in Feb. 2003 and Jan. 2005 to interview women in Mathare slum, as well as to meet with women's rights NGOs concerned with such matters. COHRE has been working closely with the Education Center for Women's Development (ECWD), a Nairobi-based NGO, on the issue of inheritance rights in Kenya. See also, COHRE, *Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan Africa* (Geneva: COHRE, 2004).

274 Human Rights Watch, *Double Standards: Women's Property Rights Violations in Kenya* (Vol. 15, No. 5(A) – Mar. 2003), p. 22. For reasons of privacy, none of the names used in the report are the interviewees' real names.

275 Beatrix Nyakisumo, 'A vile custom that must go', *Africanews*, May 1997, [http://www.peacelink.it/afrinews/14\\_issue/p6/html](http://www.peacelink.it/afrinews/14_issue/p6/html) (accessed 14 Jan. 2002), as reported by Human Rights Watch (n. 274 above) p. 13.

Besides the enormous health risks, such practices are also symptomatic of a much larger issue — that of women themselves being seen as property, and thus being unworthy or incapable of owning property. This is a prevailing attitude in Kenya, one found even in the Courts and among Government officials. Human Rights Watch (HRW) reports: “A government-appointed senior Chief in Kajiado district spelled out women’s status as chattel: ‘A woman and the cows are a man’s property.’”<sup>276</sup> The UN Human Rights Committee has previously stated that the right to equality before the law, as set forth in Article 16 of the International Covenant on Civil and Political Rights, means that “women may not be treated as objects to be given together with the property of the deceased husband to his family.”<sup>277</sup> The HRW report goes on to explain that officials, whether police or government, do not like to get involved in women’s property rights cases but choose to regard them as personal and ‘normal’ matters that do not require legal attention.<sup>278</sup>

During a separate fact-finding mission, COHRE met with several women who had been disinherited and were now residing in Mathare slum. Each of them stated that local officials, traditional leaders and police had ignored their pleas. One woman reported that a local lawyer had attempted to help some women with their inheritance rights cases, but was later killed for his actions. The local police took no action to investigate the murder.<sup>279</sup> In interviews with some Kenyan women’s rights NGOs, COHRE heard allegations that Courts are biased in their handling of women’s inheritance and property disputes.<sup>280</sup>

Evidently, the Government has taken insufficient action to eliminate this discrimination against women in law and in fact. The current Constitution, while outlawing discrimination on the basis of sex, goes on to permit discrimination in certain customary laws that govern, among other things, “devolution of property on death or other matters relating to personal status”.<sup>281</sup> This is clearly incompatible with a range of international human rights treaties, including the International Covenant on Civil and Political Rights, in particular Article 23(4), which provides that governments must guarantee the equal rights of spouses as to marriage, during marriage and at its dissolution.

The Constitution of Kenya is currently under review. COHRE welcomes the draft of the Constitutional Review Commission, which provides that “[w]omen and men have an equal right to inherit, have access to and manage property” and that “[a]ny law, culture, custom or tradition that undermines the dignity, welfare, interest or status of women or men is prohibited.”<sup>282</sup> Despite promises by the President of Kenya to introduce this new constitution by 30 June 2004, there are no signs as to when it will actually be adopted (especially since the Wako draft was rejected in November 2005).

Equally problematic, the *Law of Succession Act*, which is meant to provide for housing and land to be passed on to the surviving spouse, contains certain exceptions for women which have a discriminatory effect on them. Hence, rights in the marital property terminate upon the remarriage of the surviving widow, but not upon the remarriage of the surviving widower. Thus, men have greater rights under this Act, in contravention of international law.

276 Human Rights Watch (n. 274 above), p. 34.

277 UN Human Rights Committee, *General Comment No. 28: Equality of rights between men and women (article 3)* (2000), para. 19.

278 Human Rights Watch (n. 274 above), p. 36.

279 COHRE interview with Pamela (name changed on request), a woman living in Mathare slum, 15 Jan. 2005.

280 COHRE interview with Ann Njogu, Centre for Rehabilitation and Education of Abused Women, Nairobi, Feb. 2003.

281 Constitution of Kenya Article 82(4), last amended 1998.

282 Sects. 37(2) and (3).





# Recommendations – Government of Kenya

On the basis of COHRE's July 2004 fact-finding mission to Nairobi, as well as subsequent research and consultations, COHRE respectfully recommends that the Government of Kenya should consider taking the steps listed below.

## 7.1 Short term

### Security of tenure and prevention of forced evictions

1. Reiterate and enforce the moratorium on forced evictions declared by the Nairobi Informal Settlements Coordination Committee in 1997. This moratorium should only expire upon:  
(a) the adoption of a policy and law to prevent forced evictions; (b) the adoption of an appropriate tenure model for informal settlements; and (c) the institution of consultative procedures to involve affected communities in all projects that affect their right to adequate housing.
2. Investigate, with the input of communities, alternatives to evictions:  
(a) The Ministry of Energy and the Kenya Power & Lighting Company (KPLC) should revise safety regulations where they are unreasonable. In particular, they should consider reducing the width of wayleaves for some low-voltage power lines and re-routing power lines around poorer communities.  
(b) The Ministry of Transport and the Kenya Railways Corporation (KRC) should consider whether the width of the railway reserves can be reduced, and how communities can be involved in policing the railway to ensure safety.  
(c) The Ministry of Roads should *urgently* consider re-routing major road projects – for example the Southern Bypass, which was designed at least 30 years ago – around existing settlements such as Kibera and Mitumba, and reducing the width of the road reserves.  
(d) The Ministry of Local Government should examine, in any attempt to reclaim road reserves, whether the current width of the reserve(s) in question is necessary.  
(e) In those exceptional circumstances where resettlement of people is deemed necessary and totally unavoidable, consultation and community involvement should be the key mechanisms for achieving this. Ministries should investigate and present for consideration all options for appropriate and adequate resettlement, including resettlement within the informal settlement where residents live; provision of alternative land and housing acceptable to the affected residents; and in-situ slum upgrading.
3. Provide all victims of forced evictions with tangible assistance and compensation. They would include victims of the following evictions that occurred in 2004: Raila Village (February); Mukuru kwa Njenga (February); evictions of tenants in Soweto, Kibera, by



structure-owners in anticipation of slum upgrading (July-September); as well as evictions that have occurred elsewhere in the country, such as in Migori (April), and those mentioned in the Update (pp. 4-5 above).

4. Develop and adopt a *policy* and a *law* to prevent forced evictions that are consistent with international human rights standards. The law could be incorporated in the currently anticipated revision of the *Housing Act, 1990*. The policy and law should ensure, *inter alia*, that:
  - a) Eviction is in all cases an exceptional measure of last resort, when all other options have been tried and exhausted;
  - b) Consultations first occur with affected communities in order to find mutually acceptable alternatives;
  - c) Evictions may only be carried out in certain prescribed circumstances;
  - d) Any eviction must be carried out humanely and with appropriate procedural protections;
  - e) Evicted persons must be adequately resettled, under circumstances leaving them (at least) no worse off than before.

## Recognition of informal settlements

5. Provide legal recognition to informal settlements, as proposed by the Nairobi Informal Settlements Coordination Committee in 1997.

## Slum upgrading

6. Take immediate steps to provide access to basic services in informal settlements – in particular water, sanitation, garbage disposal and energy – as well as access to healthcare and free primary education for children. Nairobi City Council and the Government should examine the possibility of commencing with a Kibera-wide basic infrastructure project on water and sanitation.
7. Adopt a comprehensive national policy for improving and upgrading informal settlements, as anticipated in the National Housing Policy for Kenya and the Memorandum of Understanding with UN-HABITAT. This should be accompanied by an institutional framework and budgetary support that allows communities to organise upgrading, with Government support for the process. During the process, residents should be able to choose appropriate tenure systems, access necessary credit and receive protection against possible violence and harassment from other actors.
8. Officially declare Soweto a ‘tenure secure zone’ for the purposes of the upgrading project. Also, enforce a moratorium on evictions in the settlement, as well as provide a mechanism – including police protection – to prevent intimidation of residents by various interest groups. In the short-term, KENSUP should also ensure that tenant representatives are accountable to resident tenants and should consider the establishment of street committees within Soweto, Kibera.

## Right to participation

9. Develop and adopt a policy and a law requiring thorough social impact assessments for all major projects and guarantee the right of communities to participation and access to relevant information concerning Government decisions in housing and development. As far as possible, allow communities in informal settlements to be partners with the Government in design and implementation of all projects.

## Prevention of abuses of power

10. Systematically increase the accountability of local authorities – particularly the Provincial Administration (while it exists) – to local communities. Complaint and dispute mechanisms should be established within informal settlements to allow residents to bring complaints about abuses of power and violations of human rights by the Provincial Administration or any other branch of Government or elected official.

## Land policy

11. Establish effective mechanisms to enforce the temporary ban on the sale of all undeveloped land that was declared by the Minister for Housing and Lands.

## 7.2 Medium term

### Prevention of forced evictions

12. Existing legislation should be thoroughly reviewed and harmonised with the new policy and law on forced evictions mentioned in Subsection 7.1, above, in order to prevent forced evictions in Kenya. This would include, *inter alia*:
  - a) Amending Section 130 of the *Government Lands Act*, in particular to ensure that evictions of occupants from public land only occurs if residents have access to alternative and appropriate accommodation;
  - b) Repealing or amending the *Vagrancy Act*, in particular so that being “without fixed abode” is no longer a criminal offence;
  - c) Amending Section 61 of the *Trust Land Act* to ensure protection from forced eviction.
13. Proactively consider ways to provide security of tenure to the residents of informal settlements. This could be done through certificates of occupancy – as was done in Botswana for example – on condition that the system does not conflict with the emerging land policy and recognises the complexity of land tenure systems within informal settlements.

14. Establish an institutional framework for the prevention of forced evictions to ensure that all branches of Government adopt a coordinated approach. In those exceptional circumstances where people must move, intensive consultation should be used to involve the community in the process. Where evictions are absolutely necessary, they should only be carried out with a court order and under the authority of a court official.
15. Provide readily accessible dispute resolution mechanisms near or in informal settlements, particularly for tenants. The *Rent Restriction Act* should be reviewed, updated and made consistent with international standards. There is a need to facilitate development of written tenancy contracts.
16. In submissions to courts, the Government should urge the judiciary to interpret the law consistently with the constitutional protections of the home, the International Covenant on Economic Social and Cultural Rights, and the International Covenant on Civil and Political Rights, so that judgments do not result in the arbitrary and unreasonable deprivation of the homes of those living in Kenya's informal settlements.
17. Provide adequate funding to the Kenyan National Commission on Human Rights to ensure the provision of effective remedies for forced evictions and the ability to open full inquiries into complaints received.

## **Serviced land and land policy**

18. Amend the Constitution and the *Law of Succession Act* to ensure equal rights to inheritance for women. Take steps to educate police, Government officials and courts on equal rights to inheritance for women and the need to protect widows from violence and disinheritance. This should be supported with education and awareness campaigns directed at women and their communities.
19. Assist residents of informal settlements in identifying and monitoring vacant public land for housing the urban poor while the new National Land Policy is being developed.
20. Provide clear budgetary allocation for the realisation of recent undertakings by Government ministers to acquire 100 000 acres (approx. 40 470 hectares) for slum-dwellers. Since Kenya's urban population will rapidly expand in the coming years, urgent consideration should be given to providing serviced land for the urban poor.
21. Proceed with the National Land Policy Formulation Process and ensure adequate consultations with civil society and communities. Also, ensure that the National Land Policy allows for fairness, flexibility and participation in the availability and choice of land tenure options.

## Slum upgrading

22. Increase efforts to ensure that the KENSUP slum-upgrading initiative in Kibera will be successful – for the residents of Kibera and as a best practice for Kenya and beyond – by implementing the original plans for the project as far as possible and appropriate and taking into account community concerns.

The project body should therefore, with the support of other actors:

- (a) Conduct in-depth community consultations in order to fully appreciate the legitimate fears of displacement and violence that residents have.
- (b) Officially declare Soweto a ‘tenure secure zone’ and enforce a moratorium on evictions in the settlement as well as provide a mechanism – including police protection – to prevent intimidation of residents by various interest groups.
- (c) Ensure tenant representatives are accountable to tenant residents and consider the establishment of street committees within Soweto, Kibera.
- (d) Establish mechanisms through which the different stakeholders, particularly those located in the community, can access accurate and timely information on the slum-upgrading programme and evictions.
- (e) Undertake, as far as possible, a process of consensus building in Soweto with different stakeholders to design the project and devote resources to building effective capacity of community-based organisations and local NGOs to engage with the process.
- (f) Undertake a community-driven enumeration, provided that the above steps are taken.

In addition, the project should consider:

- (g) Adopting a partnership model with the different stakeholders in order to achieve a memorandum of understanding. (Such an agreement should grant rights to residents in terms of retaining some form of tenure in Soweto and affordable pricing for housing: be it rental or owner-occupied.)
- (h) Providing for *in situ* upgrading – that is, as far as possible dispense with the need for temporary resettlement outside Soweto while the project is underway. If a decanting (temporary resettlement) site is required, it should be very close to Soweto, since many residents work in the neighbouring industrial area and in northeast Kibera.
- (i) Making a clear decision on compensation – that is consistent with human rights – and the guidelines for calculation of any compensation. It should be noted that certain NGOs have recommended that, due to resource constraints and the large numbers of absentee owners, compensation should only be given in special cases: for example, for those structure-owners whose livelihoods depend on rental income.
- (j) Taking an incremental approach to slum upgrading to ensure affordability. Government subsidies and private savings may be needed to ensure that it is affordable and can match the income streams of residents.

## Participation and information

23. Develop and adopt a policy and a law providing for the right to relevant information concerning Government decisions in housing and development. The legislation should provide citizens with the right to access information that affects them personally or is in the public interest. Where the Government of Kenya enters into a partnership agreement for certain projects, information relating to that project should also be available in the public domain unless it is strictly ‘commercial in confidence’. This would cover the private sector, donor agencies, inter-governmental and non-governmental organisations. Timely and relevant provision of information allows people to genuinely participate in housing decision-making processes and work with the Government to improve access to adequate housing.
24. Develop an awareness strategy to ensure that people are aware of their rights, duties and entitlements, generally and particularly in regard to housing and evictions.
25. The right to housing should be made justiciable – as provided for in the draft Constitution – and the judiciary should be provided with training on its application. Kenyan judiciary should be encouraged to examine the evolving jurisprudence on economic, social and cultural rights in other developing countries.



## **Recommendations**

### **– non-government actors**

#### **Donors, UN, World Bank**

COHRE further recommends that:

26. Donor agencies and inter-governmental organisations work with the Government of Kenya to adopt in-country policies to prevent forced evictions in relation to their own projects and policy guidance in Kenya.
27. The World Bank Office in Kenya actively engage with Kenyan civil society coalitions on any of its infrastructure projects that may potentially result in relocations, including providing sufficient information, soliciting comments and concerns and ensuring that, as far as possible, adequate *in situ* resettlement is provided where relocation is necessary.
28. UN-HABITAT considers and adopts the recommendations on slum upgrading, which are set out in paragraph 22 above, as and where appropriate.
29. Donor agencies consider providing support for the establishment of a nationwide slum-upgrading framework and grants to the proposed ‘Slum Upgrading and Low-Cost Housing and Infrastructure Fund’. Since the fund is to be a Trust Fund, highly respected representatives from civil society and academia could be asked to sit on the Board of the Trust Fund.
30. Wherever possible and appropriate, donor agencies, Inter-Government Organisations and other support institutions form partnerships with each other and the Government to ensure that slum-upgrading policies and projects are successful from a human rights perspective.

## **Civil society**

COHRE further recommends that:

31. NGOs pool their resources and work together to empower and support communities in informal settlements in order to deal with the challenges and policy gaps identified above.
32. High priority should be given to NGO support for the development of mechanisms to allow local communities to effectively participate in policy-setting and the design and implementation of programmes.
33. The Kenya National Commission on Human Rights should actively intervene with the Government to ensure implementation of the recommendations contained in paragraphs 1 to 25 above.
34. A nation-wide system for monitoring and preventing forced evictions be considered.

## **Corporations**

COHRE further recommends that:

35. Private Corporations should consider providing support for the establishment of a nationwide slum-upgrading framework and grants to the proposed 'Slum Upgrading and Low-Cost Housing and Infrastructure Fund'.



# ANNEXES

## Annex 1: Legal resources on the right to housing

### General Comment No. 4: the Right to Adequate Housing (Art. 11(1), 13 December 1991

Committee on Economic, Social and Cultural Rights,

1. Pursuant to article 11 (1) of the Covenant, States parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.
2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1989/22, para. 312) and fourth sessions (E/1990/23, paras. 281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987) including the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987<sup>1/</sup>. The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities<sup>2/</sup>.
3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing<sup>3/</sup> article 11 (1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.
4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11 (1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed<sup>4/</sup>. There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.
6. The right to adequate housing applies to everyone. While the reference to “himself and his family” reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of “family” must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.
7. In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This “the inherent dignity of the human person” from which the rights in the Covenant are said to derive requires that the term “housing” be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities — all at a reasonable cost”.
8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute “adequate housing” for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:
  - (a) **Legal security of tenure.** Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of

tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) **Availability of services**, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) **Affordability**. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) **Habitability**. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing<sup>5/</sup> prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) **Accessibility**. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) **Location.** Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) **Cultural adequacy.** The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights – such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making – is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.
10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating “self-help” by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.
11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

12. While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in paragraph 32 of the Global Strategy for Shelter, “defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures”. Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.
13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, inter alia, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to “provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing”. They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in “illegal” settlements, those subject to forced evictions and low-income groups.
14. Measures designed to satisfy a State party’s obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of “enabling strategies”, combined with a full commitment to obligations under the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.
15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy for Shelter (paras. 66-67) has drawn attention to the types of measures that might be taken in this regard and to their importance.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases the Committee is particularly interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved helpful should thus be provided.
17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.
18. In this regard, the Committee considers 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.
19. Finally, article 11 (1) concludes with the obligation of States parties to recognize “the essential importance of international cooperation based on free consent”. Traditionally, less than 5 percent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

#### Notes

- \* Contained in document E/1992/23.
- 1/ Official Records of the General Assembly, Forty-third Session, Supplement No. 8, addendum (A/43/8/Add.1).
- 2/ Commission on Human Rights resolutions 1986/36 and 1987/22; reports by Mr. Danilo Türk, Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137-139); *See* also Sub-Commission resolution 1991/26.
- 3/ *See*, for example, article 25 (1) of the Universal Declaration on Human Rights, article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, article 27 (3) of the Convention on the Rights of the Child, article 10 of the Declaration on Social Progress and Development, section III (8) of the Vancouver Declaration on Human Settlements, 1976 (Report of Habitat: United Nations Conference on Human Settlements (United Nations publication, Sales No. E.76.IV.7 and corrigendum), chap. I), article 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers’ Housing, 1961 (No. 115).
- 4/ *See* footnote 1/.
- 5/ Geneva, World Health Organization, 1990.



## General Comment No. 7: the Right to Adequate Housing (Art. 11(1), Forced Evictions, 20 May 1997\*

Committee on Economic, Social and Cultural Rights,

1. In its General Comment No. 4 (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.
2. The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to “undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made”.<sup>1/</sup> In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the “fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them” was recognized.<sup>2/</sup> Agenda 21 stated that “people should be protected by law against unfair eviction from their homes or land”.<sup>3/</sup> In the Habitat Agenda Governments committed themselves to “protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided”.<sup>4/</sup> The Commission on Human Rights has also indicated that “forced evictions are a gross violation of human rights”.<sup>5/</sup> However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.
3. The use of the term “forced evictions” is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to “forced evictions” is a tautology, while others have criticized the expression “illegal evictions” on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term “unfair evictions” is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to “forced evictions”, primarily since all suggested alternatives also suffer from many such defects. The term “forced evictions” as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.



The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

4. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.
5. Although the practice of forced evictions might appear to occur primarily in heavily populated urban areas, it also takes place in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements. In all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to States parties. Even in situations where it may be necessary to impose limitations on such a right, full compliance with article 4 of the Covenant is required so that any limitations imposed must be “determined by law only insofar as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society”.
6. Many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.
7. Other instances of forced eviction occur in the name of development. Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games.
8. In essence, the obligations of States parties to the Covenant in relation to forced evictions are based on article 11.1, read in conjunction with other relevant provisions. In particular, article 2.1 obliges States to use “all appropriate means” to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in paragraph 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against “arbitrary or unlawful interference” with one’s home. It is to be noted that the State’s obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

9. Article 2.1 of the Covenant requires States parties to use “all appropriate means”, including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No. 3 (1990) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.
10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.
11. Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.
12. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction.
13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In

this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure “an effective remedy” for persons whose rights have been violated and the obligation upon the “competent authorities (to) enforce such remedies when granted”.

14. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall General Comment 16 of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person’s home can only take place “in cases envisaged by the law”. The Committee observed that the law “should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances”. The Committee also indicated that “relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted”.
15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.
16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.
17. The Committee is aware that various development projects financed by international agencies within the territories of State parties have resulted in forced evictions. In this regard, the Committee recalls its General Comment No. 2 (1990) which states, inter alia, that “international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account”.<sup>6/</sup>

18. Some institutions, such as the World Bank and the Organisation for Economic Cooperation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale of and human suffering associated with forced evictions. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States parties to the Covenant. The Committee recalls in this respect the statement in the Vienna Declaration and Programme of Action to the effect that “while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights” (Part I, para. 10).
19. In accordance with the guidelines for reporting adopted by the Committee, State parties are requested to provide various types of information pertaining directly to the practice of forced evictions. This includes information relating to (a) the “number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction”, (b) “legislation concerning the rights of tenants to security of tenure, to protection from eviction” and (c) “legislation prohibiting any form of eviction”.<sup>7/</sup>
20. Information is also sought as to “measures taken during, inter alia, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc.) ‘beautiful city’ campaigns, etc. which guarantee protection from eviction or guarantee rehousing based on mutual consent, by any persons living on or near to affected sites”.<sup>8/</sup> However, few States parties have included the requisite information in their reports to the Committee. The Committee therefore wishes to emphasize the importance it attaches to the receipt of such information.
21. Some States parties have indicated that information of this nature is not available. The Committee recalls that effective monitoring of the right to adequate housing, either by the government concerned or by the Committee, is not possible in the absence of the collection of appropriate data and would request all States parties to ensure that the necessary data is collected and is reflected in the reports submitted by them under the Covenant.

#### Notes

\* Contained in document E/1998/22, annex IV.

1/ Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May - 11 June 1976 (A/CONF.70/15), chap. II, recommendation B.8, para. C (ii).

2/ Report of the Commission on Human Settlements on the work of its eleventh session, Addendum (A/43/8/Add.1), para. 13.

3/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, Vol. I (A/CONF.151/26/Rev.1(vol.I), annex II, Agenda 21, chap. 7.9 (b).

4/ Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, para. 40 (n).

5/ Commission on Human Rights resolution 1993/77, para. 1.

6/ E/1990/23, annex III, paras. 6 and 8 (d).

7/ E/C.12/1999/8, annex IV.

8/ Ibid.

## Annex 2: Prior slum-upgrading cases

### A2.1 Mathare 4A

Many of the Kibera residents consulted by COHRE were aware of Mathare 4A, Nairobi's first slum-upgrading project. They noted that the intervention had led to serious conflict between structure-owners and residents, and had exacerbated the poverty in the settlement.

In the Mathare 4A settlement, an estimated 8 000 households live on 18 hectares of land. The initiative to upgrade the settlement came from the Catholic Archdiocese of Nairobi in 1992. The Kenyan and German governments joined as project partners, with the German development bank KfW as donor. Donor funding was channelled through the Government of Kenya to the Archdiocese, which acted as implementing agency. The Archdiocese, in turn, set up the Amani Housing Trust to carry out the actual upgrading. The Government transferred the occupied land to the Archdiocese as a 99-year leasehold. This move was initially welcomed by the residents, but the implementing agency's perceived paternalism towards the residents eventually led to deep discontent and even violent conflict. The Mathare 4A upgrading experience is often recognised, even by some Kenyan officials, as an example of how not to upgrade Nairobi slums.<sup>283</sup> However, it should be noted that two experts who prepared reports for the KENSUP process did not draw this conclusion.<sup>284</sup>

The first lesson of Mathare 4A relates to the lack of community participation at all layers of decision-making. 25 000 residents were represented by two residents who, apparently, were handpicked to serve on the Consultative Advisory Board. This poor representation was compounded by promises made – and broken – by the implementing agency: firstly, regarding a tenant purchase scheme for three-roomed houses, which was never implemented; and, secondly, regarding alternative accommodation while the upgrading was underway. The change of tenure to permanent rental from the Archdiocese of poorly constructed one-roomed units, and the absence of alternative accommodation, were neither communicated nor explained to the residents. Furthermore, in making these decisions no input was elicited from the community. Rent collection techniques implemented by the Archdiocese involved harassment and damage to property, effectively rendering people homeless. This led to high levels of dissatisfaction within the community, and resistance by residents to hand over their dwellings to the project.

The second lesson relates to the measures to which the implementing agency resorted in enforcing project implementation. Harassment and forceful demolition by police and hired thugs were reported, and this was justified by labelling the resisting households as a 'disruptive minority'. Having been totally excluded from project decision-making, residents had indeed protested and demonstrated. The majority of structure-owners in Mathare 4A were single mothers whose only source of income was renting out rooms in their homes. The implementing agency determined the level of compensation to these structure-owners, but this did not reflect the real investment and loss of livelihood, and there was no appeal mechanism.

283 See, *in general*, Odindo Opiata and Christine Bodewes, *Mathare 4A Briefing Paper*, Kituo Cha Sheria, Nairobi, 1999.

284 Gitau and Olima (n. 41 above).

Upgraded structures  
in Huruma



A third lesson is that no mechanisms were put in place to prevent corruption in the allocation of the new units. Indeed, many of the current tenants did not reside in the settlement prior to the upgrading.

The project was officially halted in January 1999 as a result of pressure from human rights organisations. Even though a relatively representative task force was then assembled, it failed to engage with important stakeholders; namely, structure-owners and human rights groups working in the community. The German donor prevented a fundamental review and insisted that the project be carried through. Subsequent protests by community members have led to arrests. The project continues to this day. There are now 6 000 paying tenants and basic infrastructure (i.e. roads) was extended to 90 percent of the settlement; however, the remaining 21 000 residents do not appear to have benefited.

### A2.3 Huruma

The informal settlement of Huruma grew up in 1975 on land owned by Nairobi City Council. Currently, 2 309 households live on just over four hectares, at a density of around 600 households per hectare. The settlement is divided into six villages, five of which are subject to an upgrading initiative that involves a partnership led by the City Council and Pamoja Trust, but also involving, among others, the Intermediate Technology Development Group (ITDG), Coopi International, Slum Dwellers International, Shelter Forum, and both of Nairobi's universities.<sup>285</sup> Broad policy guidelines were provided by the Nairobi Informal Settlement Development Strategy.<sup>286</sup>

285 Pamoja Trust, 'Huruma Slums Upgrading Initiative: Documentation of the Process Leading up to Settlement Planning' (Pamoja Trust, Nairobi, 2003).

286 NISCC (n. 21 above).



The tenure situation in Huruma is complicated by a wide variation in the percentage of resident structure-owners (ranging from 18 percent in one village to 68 percent in another). Various savings initiatives have emerged in the past five years. Though initially dominated by structure-owners, these initiatives now embrace not only structure-owners (both resident and absentee) but also tenants. The savings groups are concerned with settlement upgrading. However, some absentee structure-owners who have significant income-generating interest in the settlement have opposed upgrading. For this reason, one village had to be excluded from the Huruma upgrading initiative.<sup>287</sup>

Effective bottom-up initiatives for the upgrading process have been the door-to-door enumeration and mapping, forums for discussion, awareness building and inclusion – in the form of house-modelling exercises – and ongoing communication within the settlement. The enumeration process can be regarded as a first step in the process of securing tenure, as it involves the numbering of all houses, the administering of a door-to-door questionnaire and the subsequent verifying of the information so gathered. This data is shared with all stakeholders, including the community, which was capacitated through the community-based enumeration process and empowered through a better understanding of the settlement. This put the community in a stronger position to negotiate in the development process.<sup>288</sup>

A further step in the process of securing tenure was the declaration of the Huruma area as a Special Planning Area by the City Council, in accordance with the 1996 *Physical Planning Act*. This allows for the reconciliation of development standards with the socio-economic, cultural and political realities within the settlement. Planning is taking place at different levels. The City Council is basing professional planning on an in-depth topographic survey, one of the universities has developed plans at village level, and the community house-modelling process, with technical support from ITDG, has developed appropriate housing types. A 2003 report by Pamoja Trust states that efforts were underway at that time to identify a legal tenure form that would protect the residents from market speculation.<sup>289</sup>

In the case of Huruma, a clear decision was made as to the role of the Local Government, and this was formalised into a memorandum of understanding. According to this, the Local Government was responsible for setting aside land, and, in order to address obstacles, was in a position “to make exceptions”. The actual community organisation, mediation and deciding who would benefit were left to the community. The Huruma experience demonstrated that this approach is viable.<sup>290</sup>

287 Pamoja Trust, ‘Huruma Slums Upgrading Initiative’ (n. 285 above).

288 Ibid.

289 Ibid.

290 COHRE consultation with the NGO Coalition Against Forced Evictions, 12 July 2004.



### A2.3 Voi

The upgrading of the Tanzania-Bondeni settlement is generally cited as one of Kenya's best examples of slum upgrading.<sup>291</sup> Although the project took 12 years to complete, it has been noted that the participatory approach that was taken ensured that the upgrading was sustainable.

The settlement, with a population of 5 000 residents, was chosen as a pilot project within the Voi Municipality. The majority of the residents were structure-owners. Although the settlement was situated on Government land – as well as on land owned by the Kenya Railways Corporation and private interests – the various stakeholders managed to negotiate secure tenure for the beneficiaries. In the case of Voi, the tenure took the form of a community land trust, which was chosen from a number of options. The land trust restricted the residents' ability to sell their units, which meant that they were less susceptible to land speculation and pressure to sell their shares. A management committee of 13 members runs the trust.

Sponsored by the German Association for Technical Co-operation (Deutsche Gesellschaft für Technische Zusammenarbeit, GTZ), the project was multi-sectoral from the outset and involved a wide range of stakeholders. Committees were also instituted at community, local and national levels. According to Syagga, two aspects that were overlooked were the need for the project to go beyond shelter to include nutrition, child health-care and family planning, as well as the need for active monitoring and evaluation.<sup>292</sup>

291 This summary is based on material from Paul Syagga, *Integrated, Multi-Sectoral and Sectoral Urban Development Initiatives in Kenya*, report prepared for ITDG-East Africa, Jan. 2001.

292 Ibid. p. 27.



In early 2004, Kenya's National Rainbow Coalition Government announced mass evictions of residents living on public lands in Nairobi's informal settlements and elsewhere that were reserved for road construction or considered dangerous, being too close to railways or power lines. Hundreds of thousands of poor Kenyans faced eviction. Some settlement areas, including Raila Village, were actually demolished, with devastating consequences for those evicted. Many national and international organisations protested, calling for the housing rights of the poor to be respected. To its credit, the Government responded by suspending the evictions and promising to provide humane alternatives. However, the relief and enthusiasm felt by the potential evictees and those acting in their interests was soon tempered by contradictory statements from various Government Ministers and the continuing absence of a coherent national policy to prevent forced evictions and ensure adequate resettlement.

In July 2004, at the invitation of Kenyan non-governmental organisations, the Centre on Housing Rights and Evictions (COHRE) conducted a fact-finding mission and met with residents of Nairobi's informal settlements, the Government of Kenya and other stakeholders.

This mission report, originally released for consultation on 3 March 2005 and subsequently revised and extended, finds that the Raila Village evictions seriously violated international human rights law and that the proposed evictions elsewhere failed to meet the standards of such law. The report examines the need for substantial protections against forced evictions, calls for immediate recognition of informal settlements as well as measures to provide their residents with basic services, advocates a complete overhaul of slum upgrading programmes, and analyses the need for effective action to prevent land-grabbing and ensure that there is adequate land for housing the poor — now and in the future.

This revised edition, released in April 2006, begins with an update on the Government's progress towards fully addressing COHRE's original recommendations. It finds that, although significant progress has been made in developing policy, the increased frequency of forced evictions and the Government's failure to address slum-upgrading and land-allocation issues are serious concerns.

#### **Centre on Housing Rights and Evictions (COHRE)**

The Centre on Housing Rights and Evictions (COHRE) is an independent, international, non-governmental human rights organisation with its International Secretariat in Geneva, Switzerland. COHRE undertakes a wide range of activities to promote the full realisation of housing rights for everyone, everywhere. COHRE opposes and actively campaigns against forced evictions wherever they occur or are planned. It works in all world regions to ensure protection and fulfilment of the right to adequate housing and related economic, social and cultural rights.



#### **COHRE International Secretariat**

83 Rue de Montbrillant  
1202 Geneva, Switzerland  
tel: + 41.22.734.1028  
fax: + 41.22.733.8336  
e-mail: [cohre@cohre.org](mailto:cohre@cohre.org)  
[www.cohre.org](http://www.cohre.org)