



Hakijamii



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Assessment of the Realization of the Right to Housing in Kenya 2011-2012



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Contents

Acronyms and Abbreviations	iv
Foreword	v
Acknowledgements	vii
Introduction.....	1
The Context	2
1.0 Kenya's National and International Obligations on the Right to Housing.....	6
1.1 The Nature of Economic, Social and Cultural Rights (ESC) Obligations.....	7
1.2 The Right to Adequate Housing under Kenyan Law.....	8
1.3 State Policies and the Right to Adequate Housing	13
1.4 Institutional Framework	15
2.0 Status of Realization of the Right to Housing in Kenya	16
2.1 Resettlement of Persons Displaced during the 2008 Post-Election Violence	17
2.2 Forced Evictions	20
2.3 Other Vulnerable Groups.....	23
2.4 Non-Discrimination in Enjoyment of Adequate Housing	25
2.5 Access to Housing Finance	26
2.6 Adequate Housing in Rural Kenya	28
2.7 Access to Supporting Infrastructure.....	29
2.8 Civil Society Support to Government Efforts on the Right to Adequate Housing	30
3. Conclusion and Recommendations	32
Recommendations to the Kenyan Government	35
Recommendations to NGOs working on Housing Rights ...	37
Bibliography.....	38

ACRONYMS AND ABBREVIATIONS

ABT	Appropriate Building Technology
CBO	Community-Based Organization
CSO	Civil Society Organization
CSUDP	Civil Society Urban Development Programme
ESC	Economic, Social and Cultural rights
HABRI	Housing and Building Research Institute
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICS	Interim Coordinating Secretariat on the Mau Forest Complex
IDPs	Internally Displaced Persons
KENSUP	Kenya Slum Upgrading Programme
KISIP	Kenya Informal Settlement Improvement Programme
KISORA	Kisumu Social Rights Association
MDG	Millennium Development Goal
NCIC	National Cohesion and Integration Commission
NGO	Non-Governmental Organization
NHC	National Housing Corporation
NLC	National Land Commission
NPSN	Nairobi People's Settlement Network
PWD	Person with Disabilities
UDHR	Universal Declaration on Human Rights
UNDP	United Nations Development Programme
USD	United States Dollars
VAT	Value Added Tax

FOREWORD

With the coming into effect of the Constitution 2010 there has been a dramatic surge in economic and housing jurisprudence. Organizations working on housing rights, including Kituo Cha Sheria and Hakijamii have been playing an important role in this. Indeed some of the very first cases on economic and social rights under the Constitution revolved around the right to accessible and adequate housing. Very progressive jurisprudence has emerged which is quite encouraging in so far as the promotion of the right to adequate housing is concerned. A lot more remains to be done however, particularly considering the fact that translating these positive rulings into concrete benefits has remained elusive.

In one of the earlier cases, *Susan Waithera and others Vs The Town Clerk, Nairobi City Council and two others*, the judge bemoaned the absence of a comprehensive guideline on evictions and proceeded to state:

“Kenya should develop appropriate legal guidelines on forced evictions and displacement of people from informal settlements so that if people have to be evicted from such settlements the act is done without violating people’s constitutional rights and without causing extreme suffering and indignity to them.”

Most of the court decisions have mainly focused on the negative obligation of the state with regard to the right to adequate housing. So far there is very little that has been done to clarify the specific and concrete steps that the government should take to improve the livelihoods and living standards of the millions

of people who continue to live in inhumane conditions in most of the urban informal settlements and rural areas.

This is the new battle zone for the right to adequate housing and indeed for all economic and social rights. We hope that this report, which is the second in our series of annual reports on the state of housing rights in Kenya, will contribute in some small way to making this possible.

**Odindo Opiata
Executive Director**

ACKNOWLEDGEMENTS

As we had indicated in our first report last year, “generating a clear and simple report and framework that contributes to the monitoring and evaluation of the progressive realization of economic, social and cultural rights remains one of the most problematic areas in human rights advocacy”. What constitutes progressive realization remains a highly contested area.

We are grateful to Dr. Mutuma Ruteere and Mr. Mikewa Ogada for their continued efforts, once again, in developing this second report. We would not have been able to produce this document without their incisive analysis and understanding of the highly complex area of monitoring economic and social rights.

We are also very grateful to the officials from various ministries, especially the Ministries of Housing, Water and Sanitation, and Lands who agreed to share some of the information in their possession.

As usual the greatest contributors to the struggle for human rights remain the gallant men and women who continue to wage their struggles, in spite of, and not because of the numerous human rights organizations and instruments, for a dignified life. To them we say, “May your struggles not be in vain”.

Finally, we wish to most sincerely thank the American Jewish World Foundation, Misereor, Kios and the Civil Society Urban Development Program (CSUDP) without whose continued

support and encouragement this series of reports would not have been possible.

To you all we shall remain eternally grateful and may you continue to extend similar support in the promotion and fulfillment of all human rights worldwide.

Thank you and Asante sana!

INTRODUCTION

This report is the second Economic and Social Rights Centre (Hakijamii) Annual Assessment on the Realization of the Right to Adequate Housing in Kenya. The report assesses the actions taken by the relevant government agencies to progressively achieve the right to adequate housing, especially in the period 2011-2012 in relation to Kenya's existing domestic, regional and international obligations. It also touches on other areas of economic and social rights as constitutive of the right to adequate housing. The document concludes by making recommendations to various relevant actors on how to sustain and improve progress towards realization of the right to adequate housing.

This report draws from a comprehensive desk review of relevant information on housing that has been generated by Kenyan government agencies, the private sector and local and international civil society organizations (CSOs). The desk review is primarily an analysis of available baseline information and statistics on the housing sector.

This report is divided into three parts. The first section reviews the nature of Kenya's obligations in relation to the right to adequate housing. It addresses the right to adequate housing under international law and Kenyan law and policy. The second part assesses the status of realization of the right to housing in Kenya, by reviewing trends in forced evictions, housing discrimination and participation in public decision-making processes relating to housing, among other areas. Part three provides conclusions and recommendations.

THE CONTEXT

Kenya is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which obligates it to take steps to fulfill economic and social rights, among them the right to adequate housing. The realization of the right to adequate housing in Kenya is taking place in a dynamic national policy context that presents new opportunities and new challenges. The implementation of Kenya's new constitutional order is now underway, and there is already a promising, growing body of jurisprudence on the realization of the right to housing, which is a constitutional right.

Planning for the operationalization of county governments is now at an advanced stage, with the legal framework for the county governments' structures and financing having been established.¹ The national government has made the necessary budgetary allocations for the counties' operational budgets for the fiscal year 2013-2014. Primarily established to decentralize policy-making and resource allocation decisions to the grassroots, the counties will play a key role in the fulfillment of economic and social rights. From 2013 onwards, the national government will set the broad policy framework for housing, while counties will be responsible for planning and development of housing projects. Counties will also be responsible for land management and ensuring that the necessary social amenities, electricity, public transport, street lighting and schools, are available to residents.

¹ Governance has also been devolved under the new constitution which has introduced the county level governments. From April 2013, resource allocation decisions will be shared between the national government and 47 counties.

While counties will receive a significant 15 per cent of national revenues for their recurrent and development expenditure, the prevailing culture of official corruption could affect their capacity to deliver public goods.² Corruption follows resources, and therefore, investment-heavy sectors such as housing development will be at particular risk. Furthermore, questions of ethnic citizenship and its relationship to the control of devolved political power are also beginning to emerge in some of Kenya's more multicultural counties. There is the risk that these tensions could result in conflicts over land ownership and land rights generally, if they are not attended to promptly and decisively.³

However, quality housing remains largely unavailable to the low-income segment of the urban population, which comprises the vast majority of urban dwellers. The Ministry of Housing estimates that the need for new urban housing currently stands at 150,000 units annually, and just 20 to 33 per cent of this demand is being met by the government and the private sector.⁴ Currently, 80 per cent of new housing supply meets the needs of middle-to-high income households, yet the greatest demand is among the lower-middle and low-income households.⁵ Significantly, just

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- 2 Watchdog groups such as Transparency International continue to rank Kenya poorly in dealing with corruption. Kenya ranked 154 out of 192 in Transparency International 2011 Global Corruption Index. See <http://cpi.transparency.org/cpi2011/results/>. The situation is compounded by perceptions that the fight against corruption has come to a standstill: For nearly a year, there has been no substantive director appointed to the Ethics and Integrity Commission. Over the years, the Commission's record in dealing with corruption at all levels has fallen short of public expectations.
 - 3 Partly, the post-election violence of 2008 stemmed from tensions of ethnic citizenship in multicultural regions of the country, such as the Rift Valley. The violence resulted in the displacement of over 600,000 people, compounding the already existing problems of inadequate housing.
 - 4 See Simplified Version of Existing Housing Sector Incentives, Ministry of Housing, May 2011, p.2.
 - 5 According to the most recent Kenya Demographic and Health Survey 2008-2009, the majority of Kenyans, about 55 per cent, are under 19 years old and most are unemployed and/or dependent on other people.

one per cent of the national budget is allocated to the Ministry of Housing, the main institution tasked with facilitating the bridging of the supply gap in both policy-making and investment terms.⁶

Since the promulgation of the new constitution, the government has taken some important steps to fulfil the realization of the right to housing. In seeking to align the National Housing Policy to the constitutional right to adequate housing, the Ministry of Housing has proposed far-reaching changes to the Housing Act. If passed, the suggested provisions will commit five per cent of annual national revenues to finance housing development. The proposed changes have however, not adequately addressed the issue of devolution with regard to the realization of the right to housing as there is still a lot of emphasis given to a national housing authority, while the constitution is now clear that the primary responsibility for housing delivery will fall on the county governments. It is important that such anomalies are corrected before the proposed law is finally passed.

- 4 The Ministry has also developed a framework of incentives to encourage households and the private sector to invest in affordable, quality housing.⁷ Various tax incentives are now available for people planning to take out housing loans or to start home ownership savings plans. Infrastructure bonds have been issued and banking laws have been amended to allow banks to attract more deposits that could then be made available for mortgage finance. The Ministry of Housing is currently undertaking a housing survey whose data, although very relevant to this assessment, is not available. Upon completion, the survey will provide much

6 See Review and Analysis of Kenya Government Allocations to the Urban Development Sector (2010-2011), Civil Society Urban Development Programme (CSUDP), 2011. p.7.

7 Ibid., p. 8.

needed data and statistics that can be used to assess progress on the realization of the right to adequate housing.⁸

As part of Vision 2030, Kenya has also been undertaking large-scale infrastructure developments, marked especially by extensive road construction in various towns. It has also stepped up programmes to address the housing supply deficit and to improve urban settlements through programmes such as the Kenya Slum Upgrading Programme (KENSUP) and Kenya Informal Settlement Improvement Programme (KISIP). To its credit, the government has also developed the Social Protection Policy that provides a framework for allocating welfare support to the poorest and most vulnerable citizens, such as the homeless.

While these are positive, encouraging developments, there is more to be done to fulfil the right to adequate housing. A comprehensive solution has not been found to address the fact that thousands of families, displaced from their land by political violence, have not been adequately resettled. For instance, some 4,800 families displaced from their land during the 2008 post-election violence continue to live in makeshift camps.⁹ Furthermore, there is still no clear strategy to address rapid urbanization¹⁰, which has led to the mushrooming of crowded,

8 It is however not clear whether the data will include the state of homelessness, especially among the most vulnerable groups.

9 See Report of Special Rapporteur on Housing as a Component of the Right to Adequate Standard of Living, and Right to Non-Discrimination [in Post-Conflict/Post-Disaster Situations], A/HRC/16/442, 20 December 2010, p. 13.

10 Some 32.3 per cent live in urban areas and another 67.7 per cent live in rural areas (Republic of Kenya, 2010 National Population and Housing Census). According to a UN-Habitat 2008 study, some 60 to 80 per cent of residents in Kenya's largest urban centres, Kisumu, Mombasa and Nairobi, live in informal settlements. The study notes that 60 per cent of Nairobi's population lives in informal settlements but their homes occupy only five per cent of the total land area in Nairobi and its environs. The Ministry of Lands estimates that 50 per cent of Kenyans will live in urban areas by the year 2050

insecure, informal settlements that lack basic infrastructure such as electricity, water and sanitation services, refuse collection and roads.¹¹ Efforts to implement the National Land Policy have been rather slow, contributing to the continuing problem of lack of access to land and security of tenure for the poor.

Republic of Kenya National Spatial Plan, p.4).

- 11 For instance, the government acknowledges that 70 per cent of informal settlement residents in Nairobi are compelled to buy water from water vendors. See Republic of Kenya, First Annual Progress Report on the Implementation of the First Medium Term Plan (2008-2012) of Kenyan Vision 2030, p. 114.

1.0 KENYA'S NATIONAL AND INTERNATIONAL OBLIGATIONS ON THE RIGHT TO HOUSING

1.1 The Nature of Economic, Social and Cultural Rights (ESC) Obligations

A majority of the states in the world have accepted that all rights are indivisible and that ESC rights are of equal status as their civil and political counterparts. Correspondingly, the jurisprudence around ESC rights has grown considerably as have analytical frameworks, decisively putting to rest whatever lingering doubts there might have been over their justiciability at domestic and international levels. A growing number of states have also written ESC rights into their constitutions providing a rich reservoir of domestic jurisprudence and policy practice on their implementation and realization.

Kenya is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), having ratified it in 1972.¹² The right to housing in international law is recognized

¹² Article 2(1) of the ICESCR sets out the general obligations that states undertake with respect to ESC rights stating that: “each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” This article has been the subject of intense debate and disputation in advocacy, policy and political circles. The Committee on Economic, Social and Cultural Rights, the body established by the United Nations Economic and Social Council to monitor the implementation of the ICESCR, has usefully clarified on the nature of the obligations that state parties to the ICESCR undertake. In the past, much of the controversy has centred around the notion of “progressive realization” with concerns that it offers states with an “escape hatch” from the fulfillment of their obligations. What this means is that progressive realization is an obligation that carries with it a measure of specificity. Second, the Committee has clarified that states have the obligation to take “deliberate, concrete and targeted” steps towards achieving the full realization of these rights (paragraph 2).

under Article 11 of the 1966 ICESCR, which provides for “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.”

Commendably, Kenya has recognized the right to housing, stating in Section 43(1)(b) that every person has the right to “accessible and adequate housing and reasonable standard of sanitation”. Therefore, the expectation under international human rights law is that Kenya has an *obligation to respect, to protect and to fulfill* the right to housing.

1.2 The Right to Adequate Housing under Kenyan Law

Following the promulgation of a new constitution in 2010, the right to housing is now guaranteed under the constitution. Section 43(1)(b) of the Constitution of Kenya provides that every person has the right to “accessible and adequate housing and a reasonable standard of sanitation”. However, the jurisprudence on the right to housing, as indeed on other economic and social rights, remains thin.

A few cases touching on housing rights have already found their way into the Kenyan courts and provided an opportunity for the courts to elaborate on the nature and content. In particular, the courts have had the occasion to decide on eviction matters. In the first case, residents of Muthurwa estate, a housing complex owned by the Trustees of the Kenya Railways Staff Retirement Benefits Scheme petitioned the court in 2011 to stop the destruction of their houses, arguing that if removed from their houses, it would render them homeless and destitute, since they would find it difficult to find alternative accommodation in the

neighborhood. The petitioners argued that they would be forced to live in the slums, where they would be exposed to violations of their constitutional rights, considering that the living conditions would be unsanitary and unhygienic. They pointed out that if the court did not stop their impending eviction by the Trustees, there was the likelihood that the evictions would be carried out in an unlawful, high-handed, inhumane and degrading manner. The High Court granted an injunction stopping the Trustees from evicting the residents until the matter is finally determined.¹³

Another important case touching on the right to housing is that of *Ibrahim Sangor Osman and 1,122 others versus the Minister for Internal Security and Provincial Administration, Minister for Lands, Attorney General and Municipal Council of Garissa*.¹⁴ In this matter, the petitioners were evicted by Administration Police and Garissa Municipal Council officers from the land they had occupied since 1940 in Medina Location of Garissa Municipal Council. Their houses were demolished and the police used tear gas and physical violence to evict and eject them. No written notice had been served on the residents and the police had no court order. In addition, they did not engage the petitioners in any consultation or explanation. Those evicted included children, women and the elderly. Some of the children were school-going. The evictees were forced to live and sleep in the open, or in makeshift temporary structures, and were exposed to the elements and vagaries of nature, health risks, insecurity and lack of basic human necessities such as food, water and sanitation facilities.

13 Satrose Ayuma and others Vs The Registered Trustees of the Kenya Railways Retirement Benefits Scheme – HCCP 65 OF 2010 (Nairobi).

14 HCCP No 2 of 2011- Embu

They decided to move to the High Court seeking orders and declarations that among others, the forcible, violent and brutal eviction through demolition of homes of the petitioners without according them alternative shelter and/or accommodation, and leaving them to live in the open, exposed to the elements and vagaries of nature was a violation of their fundamental rights to accessible and adequate housing, reasonable standards of sanitation, health care services, freedom from hunger and the right to clean and safe water in adequate quantities as guaranteed by Article 43(1) (read with Articles 20(5) and 21(1), (2) and (3) of the Constitution of Kenya 2010). The High Court ruled in favour of the petitioners concluding that: "...this forced eviction was a violation of the fundamental right of the petitioners to accessible and adequate housing as enshrined in article 43(1) (b) of the Constitution of Kenya 2010." In granting the orders, Justice Aggrey Muchelule stated that:

.... by order of mandatory injunction, the Respondents are compelled to return the Petitioners to the land from which they were evicted. The Respondents are further commanded to reconstruct reasonable residences and/or alternative accommodation and/or housing for the Petitioners. Such residences, accommodation and/or housing should have all the amenities, facilities and schools that were subsisting on the land at the time of the evictions and demolitions, or should be mutually agreed upon. There will be a permanent injunction to restrain the Respondents from any such future evictions and/or demolitions unless and until the law is followed.

In this matter however, the petition was uncontested and the Court did not therefore have the opportunity to evaluate contending arguments on the right to accessible and adequate housing as spelt out by the constitution. In the *Engineer Charo wa Yaa versus Jama Abdi Noor, Trade Plus International Ltd, Municipal Council of Mombasa, County of Mombasa, and Attorney General*, the High Court in Mombasa was petitioned by a group that had been evicted from the private land they had occupied following a court order.¹⁵ The petitioners argued that their eviction was a violation of their constitutional right to housing as well as other constitutionally guaranteed rights. They also asked the court to allow those evicted and living in makeshift structures on the property “to obtain humanitarian support to construct temporary tents, portable bathrooms and toilets on the property so as to safeguard their right to accessible and adequate housing and to reasonable standards of sanitation until the hearing and determination of the (main case) herein.”

Unlike the *Ibrahim Sangor Osman* case, the *Engineer Charo wa Yaa* petition was challenged by the respondents. The Court rejected the application and the judge ruled that the provision of Article 21(2) of the constitution stating that: “The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43” meant that the “right to housing as provided for in Article 21(2) of the constitution is not a final product for direct dispensation, but is an *aspirational right*, which the state is to endeavour to render progressively”. The court also dismissed the application for the construction of temporary tents, portable bathrooms and toilets by those already

¹⁵ HC Misc. App. No. 8 of 2011 – Mombasa.

evicted and living in makeshift structures on the disputed land. To date this is the only ruling that has not categorically affirmed the right to adequate housing as being justiciable.¹⁶ It is not clear what the implications of the decision will be in the evolving jurisprudence on housing rights, but it is hoped that the superior courts will have the opportunity to finally pronounce on the matter in a way that expands the enjoyment of the right to housing.

The constitution remains the only law in Kenya that explicitly safeguards the right to housing. Besides Article 43, there are other provisions that directly have a bearing on the right to adequate housing. Article 2 makes any treaty or convention ratified by Kenya applicable to the domestic sphere. Indeed this was the position taken by the Kenyan delegation when it appeared before the UN Human Rights Committee under the International Covenant Political and Civil Rights in 2012 when in its written reply to the issues raised by the Committee it stated that:

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“Article 2(6) of the Constitution of Kenya, 2010, provides the basis for the direct application and invocation of treaties or conventions ratified by Kenya. The provisions of the constitution are largely informed by the provisions of the regional and international instruments that Kenya is a State party to. Since the adoption of the constitution, Kenyan judges have given effect to the provisions of the covenant”¹⁷.

16 The other notable case of Susan Waithera and others Vs The Clerk, Nairobi City Council and others HCCP 66 of 2010 was the first to affirm the right.

17 Human Rights Committee 105th session 9-27 July 2012 Item 7 of the provisional agenda consideration of reports submitted by State parties under Article 40 of the Covenant CCPR/C/KEN/Q/3/Add.1. It is therefore safe to conclude that this is the official government position on the status of ratified international treaties within the domestic field.

Does this imply that these treaties and conventions can now be directly applied by our courts? It will be interesting to see how the courts finally interpret this provision especially given the fact the Constitution Implementation Commission appears to have taken the position that such treaties must be specifically domesticated. This is demonstrated by the publication of the Ratification of Treaties Bill.

However, there are other laws whose effect has an implication on this right. There is legislation on governing and regulating the ownership and financing of houses¹⁸ and also legislation regulating rental rates between landlord and tenants.¹⁹

1.3 State Policies and the Right to Adequate Housing

Nothing has changed in terms of state policy on housing in the year 2011/12. Efforts to revise the Housing Act to make it compliant with the Constitution have remained painfully slow while the Eviction and Resettlement Procedure Bill has yet to be enacted into law. Currently, efforts are underway to develop a Slum Upgrading and Prevention Policy while a Task Force has been set up by the Ministry of Lands to develop Community Land and Eviction and Resettlement Bills. But with the General Elections scheduled to take place in March 2013 it is doubtful whether the current Parliament will deal with these matters.

¹⁸ See the Building Societies Act, the Housing Act and the Sectional Properties Act. The Housing Act provides for public financing for home development as it establishes the National Housing Corporation (NHC). In its 2009-2013 Strategic Plan, NHC expresses its intention to reduce its financial reliance on government funding by prioritizing the operationalization of a Private-Public Partnership (PPP) arrangement and establishing a finance subsidiary in order to insure the sustainability of its development (and recurrent) programme. Employers Ordinance also has provisions that require employers to subsidize their employees housing costs.

¹⁹ Rent Restriction Act and the Landlords and Tenants Act.

Consequently it is only Vision 2030 that remains the primary state policy document on which government policy-making is based. Vision 2030, while not explicitly linking policy to human rights, contains relevant aspects such as access to adequate social amenities, including housing, water and sanitation infrastructure, in addition to the need to improve human settlement systems in general.

The document sets out three initiatives aimed at enhancing equity in accessing adequate housing. First, the Housing Development Initiative will be the engine for the production of housing units whose annual production rate ought to be increased from 35,000 in 2008 to 200,000 by the end of 2012.²⁰ Second, the Mortgage Financing Initiative will be set up to create a variety of housing investment facilities which provide affordable financing to large numbers of Kenyans to enable them to buy their own homes. Third, Vision 2030 also recommends the passage of housing legislation to consolidate all housing related legislation into one law. Significantly however, it is unclear how much priority housing has received in the implementation of the First Medium Term Plan (2008-2012) of the Vision 2030 because the phase's progress report contains no aggregate statistics on housing sector developments over that period of time.

The key policy document on housing is Sessional Paper No. 3 on National Housing Policy of 2004. The policy, adopted before the enactment of the constitution in 2010, aims to "facilitate the provision of adequate shelter and a healthy living environment at an affordable cost to all socio-economic groups in Kenya." The policy objectives have the potential of enhancing the realization

²⁰ Republic of Kenya, Kenya Vision 2030: Popular Version, 2008, p.19.

of the right to adequate housing by enhancing ownership of housing through expanded access to housing finance, in addition to promoting security of tenure for land for all groups, particularly low-income earners. It is however doubtful whether in its current form, the Policy is comprehensively capable of addressing the right to adequate housing as provided under the constitution. There is therefore an urgent need to revise the Policy.

1.4 Institutional Framework

Following the enactment of the new constitution, the realization of the right to housing, as indeed that of other rights has an institutional home in a number of agencies. Currently, the Ministry of Housing retains the responsibility for policy development as well as direction on implementation. Actual planning of the housing infrastructure is led by the Ministry of Housing's Department of Physical Planning. Local authorities are also involved in planning and overseeing legal arrangements for housing construction in city council and local authority counties. The Department is closely assisted by the Housing and Building Research Institute (HABRI) which conducts research on housing planning and design and related issues.

The Ministry of Housing also oversees the work of the National Housing Corporation (NHC) which was established under the Housing Act 1953. It is quite clear that its establishment, and therefore, its functions are not designed to address the housing needs of the neediest. Of late, reports of massive corruption at NHC have further dented its reputation. A report, *Distortion in House Allocation: Report of Allocation Process at the National Housing Corporation* prepared by the Board Audit Committee, makes for painful and compelling reading as it reveals massive

cases of graft at NHC. Moreover with the coming into effect of the devolved system of government the role of NHC must be reviewed since the provision of housing is essentially a function of the county governments under the new system. If the right to adequate housing is to be effectively realized, it is obvious that new, more devolved, accountable and transparent institutions have to be established that will not only ensure meaningful public participation, but also improve efficient use of resources.

Already there are new institutions under the constitution that have a role in the implementation of the realization of the right to housing. The Kenya National Commission on Human Rights, for example, retains the responsibility of advising and monitoring the state's progress on the realization of all rights. The National Gender and Equality Commission has also been mandated to advise on the standards in the realization of economic, social and cultural rights of vulnerable and marginalized groups. Similarly, the National Cohesion and Integration Commission can play a role in advising the government on issues of equality and non-discrimination as they relate to the right to housing.

16

The new constitution has provided the opportunity for far-reaching reforms of the judiciary. In June 2011, Dr. Willy Mutunga was appointed the new Chief Justice of Kenya. The judiciary has embarked on the training of judges and magistrates on economic and social rights under the Judicial Training and Research Institute that hopefully will help entrench a more progressive jurisprudence in this area. Civil society organizations, such as the Kenya Section of the International Commission of Jurists (ICJ-Kenya) have also developed critical resources, including analyses of case law, which judges can draw from in their determination of matters touching on economic and social rights.²¹

21 See for instance, ICJ-Kenya, Judicial Enforcement of Economic, Social and Cultural Rights: Challenges and Opportunities for Kenya Seeks, 2011.

2.0 STATUS OF REALIZATION OF THE RIGHT TO HOUSING IN KENYA

2.1 Resettlement of Persons Displaced during the 2008 Post-Election Violence

In his 2012 report to the Human Rights Council, the Special Rapporteur on the Right to Housing set a progressive standard for governments on the implementation of the right to adequate housing in post-conflict and post-disaster situations.²² In these contexts, the elements of “adequacy” requires that the government ensure that affected persons have the “right to live somewhere in security, peace and dignity.”²³ Intensive consultations should be held with those directly affected, and the ultimate aim should be to provide tenure, where it has been lost, to displaced persons.²⁴

Kenya faced an acute crisis of massive internal displacement following the 2008 post-election violence, which rendered 664,000 people homeless and in need of emergency accommodation. In the first few months of the crisis, temporary shelter was organized by the government in partnership with development partners.

The government has now provided durable solutions – permanent

22 See Report of Special Rapporteur on Housing as a Component of the Right to Adequate Standard of Living, and Right to Non-Discrimination [in Post-Conflict/Post-Disaster Situations], A/HRC/16/442, 20 December 2010, p.6.

23 Ibid., p.12.

24 Ibid., p.19.

resettlement – to nearly all displaced households.²⁵ In particular, the Protection Working Group on Internal Displacement²⁶, which brings together the Kenya government, development partners, humanitarian organizations and other civil society groups, has been instrumental to the success of the resettlement of households displaced by the post-election violence.

So far, 11,841 acres have been purchased to resettle 7,498 households, displaced by the post-election violence, at a cost of Kshs. 2.9 billion.²⁷ The Turkana County Council and the Municipal County of Lodwar have donated 1,404 acres to resettle an additional 2,593 households. The most up-to-date, publicly available government statistics indicate that some 2,073 households are yet to be resettled.²⁸ The Ministry of Special Programmes estimates that about 6,219 acres will be required to make adequate resettlement arrangements for these households.

The Special Rapporteur on the Human Rights of Displaced

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- 25 The Committee on Economic, Social and Cultural Rights in its General Comment 4 has pointed out that the provision of emergency accommodation is part of the core minimum standard of the right to adequate housing. The Constitutional Court of South Africa in the *Grootboom* case has elaborated that the ICESCR requires that the state demonstrate that it has a reasonable programme to provide emergency accommodation and housing relief to vulnerable and indigent people stating that “to be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavor to realize (p.43).”
- 26 The PWGID designs and coordinates the implementation of solutions of resolving the challenge of internal displacement in Kenya. Government agencies in PWGID: Ministry of State for Special Programmes, KNCHR, NCIC, Provincial Administration, MOJNCCA, State Law Office. Other agencies: Article 19, CLAN, DRC, GIZ, Helpage International, IOM, IDMC, IRC, JRS, Kenya Red Cross Society KHRC, Kituo Cha Sheria, NCCK, NCGD, NDOC, NRC, Oxfam, RCK, SC-UK, South Consult, USAID, UNAIDS, UNICEF, UNFPA, UNHCR, UNOCHA, World Vision and Zinduka Africa.
- 27 See Task Force Progress Report on Resettlement of Internally Displaced and Forest Evictees as at March 19, 2012. Ministry of Special Programmes, Office of the President, p.1 and 3.
- 28 Ibid., p. 5.

Persons pointed out in his February 2012 mission to Kenya that an estimated 314,000 so-called “integrated” IDPs, who sought refugee/absorption with relatives and friends in different parts of the country, were yet to benefit from durable solutions.²⁹ Although accurate data is lacking, most people displaced by political violence in the 1990s in parts of the Rift Valley, Nyanza and Coast regions are also yet to benefit from durable solutions. This has been one of the ironies of the whole resolution of internal displacement in Kenya; the fact that there has been no coherent programme to address the situation of the individuals who have suffered longest, and are therefore probably the most vulnerable.

On a brighter note, the Special Rapporteur on the Human Rights of Displaced Persons expressed satisfaction with the “important steps [government has] taken...to address internal displacement, including the development of a draft IDPs policy and draft IDPs bill, and the establishment of an institutional focal point on internal displacement.”³⁰

It should however be pointed out that the process has been unnecessarily protracted because of poor inter-agency coordination and delays, thereby exposing displaced households to needless suffering.³¹ There are also challenges of social

29 Report of Special Rapporteur on the Human Rights of Displaced Persons: Mission to Kenya, 12 February 2012 A/HRC/19/54/Add.2, p.13.

30 In March 2011, the Kenyan Parliament established the Parliamentary Select Committee on Resettlement of IDPs to inquire into how the Kenyan government has fared in assisting IDPs (e.g. compensation, food and shelter provisioning). The committee reviewed existing laws, policies and institutions and organs put in place so far to address the issue of forced displacement.

31 Even so, the government has acknowledged that the process was marred by rampant corruption, making it particularly difficult for many victims to acquire the compensation award of Kshs. 35,000 to which they are entitled. In many places, masqueraders and charlatans have thrown into confusion the process of resettling IDPs by submitting false

cohesion in certain regions where displaced persons have been resettled.³² Even though most households have now been resettled, they have yet to come to terms with the psychological and economic impact of having been compelled to live in tents, in camps and in very poor conditions for between two and four years.³³

2.2 Forced Evictions

Forced evictions have remained a key challenge in regard to the realization of the right to housing in Kenya. Human rights groups have worked over the years to propose policy reforms to provide guidelines on evictions. International law has clearly spelt out that forced evictions are a violation of the provisions of the ICESCR.³⁴

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The Kenyan constitution now provides for the protection of the right to “accessible and adequate housing and reasonable standard of sanitation.” The evolving jurisprudence of the Kenyan High Court now points to the recognition that forced evictions are unconstitutional. This is the import of the *Ibrahim Sangor Osman and 1,122 Others* decision of the High Court in November 2011. Nevertheless, forced evictions continued in different parts of Kenya in the year 2011. The most publicized case of forced evictions was the November 2011 Syokimau

claims that they were displaced and are therefore entitled to resettlement. It is not clear to what extent such individuals have succeeded in disrupting the resettlement process. (See Kenya National Dialogue and Reconciliation Monitoring Reports, 2011)

32 Ibid.,

33 Respiratory diseases afflicted many people in the IDPs camps. Encamped households also lacked access to adequate healthcare and schools for their children.

34 General Comment No. 7 The Right to Adequate Housing (Art.11.1): Forced Evictions: 20/05/97 Committee on Economic, Social and Cultural Rights, Office of the High Commissioner on Human Rights.

evictions in Nairobi after the Kenya Airports Authority obtained orders to evict those whose houses were on the flight path of the nearby Jomo Kenyatta International Airport.

In those evictions, about 229,000 more were rendered homeless in the informal villages of Kyang'ombe, Maasai, Kitui and Kyambiu, while about 3,800 people were affected in formal settlements in Syokimau. While the Kenya Airports Authority had secured an eviction order from the courts, the concern was the manner in which the evictions had been carried out, with residents not given an alternative site for emergency accommodation and many losing their household goods. Subsequently, a Parliamentary Select Committee was established to investigate the matter and concluded that the District Lands Officers and Physical Planning Department in Machakos, the Commissioner of Lands and the Department of Survey were culpable in the fraudulent sale of land to the affected residents.

The Kenya Railways Corporation has threatened to evict an estimated 50,000 people living along the railway line in Nairobi as part of its expansion and line upgrading plans. So far, the Corporation has not carried out its eviction threat, but those affected continue to live under the threat of imminent eviction, without a plan for alternative resettlement or compensation.

In July, 2011 the Nairobi City Council demolished about 100 homes and 470 market stalls in Kabete, Nairobi without notice to those affected. No alternative resettlement plans had been made, leaving families, and in particular children, without shelter and exposed to the elements of nature. One person was shot dead by the police during the confrontation that ensued. So far, no action has been taken against the officer.

In his September 2011 mission to Kenya, the Special Rapporteur on the Human Rights of Displaced Persons expressed concern that up to two million people living in Nairobi's 168 slums are at risk of eviction from commercial and infrastructure development projects, man-made and natural disasters.³⁵ The situation is compounded by the trend of rapid urbanization in the city's environs.

The resettlement of hundreds of those evicted from the Mau Forest Complex in the Rift Valley had not been completed and many still remained in makeshift shelters by the end of 2011. Some 5,710 affected households continue to squat on other people's land or live in inhumane conditions in makeshift housing along highways.³⁶ Although senior government officials repeatedly announced that adequate resettlement plans would be made before it carried out the evictions, households continued to be forcibly evicted without the said contingency plans being made. By the end of the first quarter of 2012, the Ministry of Special Programmes reported that it had finally been allocated Kshs. 1 billion to resettle the forest evictees.

Although the Eviction and Resettlement Guidelines have been developed and finalized, these are yet to be gazetted by the Ministry of Lands. In addition, while members of the National Land Commission (NLC) provided for in the constitution have been nominated, they are yet to be officially sworn in. NLC is therefore not yet in operation. These legal, policy and

³⁵ Report of Special Rapporteur on the Human Rights of Displaced Persons: Mission to Kenya, 12 February 2012 A/HRC/19/54/Add.2.

³⁶ See Task Force Progress Report on Resettlement of Internally Displaced and Forest Evictees as at March 19, 2012. Ministry of Special Programmes, Office of the President, p. 2.

institutional gaps continue to contribute to the ongoing problems around forced evictions.

The lack of accurate and reliable data on forced evictions continues to be a major challenge in monitoring the right to housing in Kenya. This is an area for future programmatic intervention by civil society groups in Kenya.

2.3 Other Vulnerable Groups

Both the international human rights law and the Kenyan constitution call for a special focus and attention to vulnerable groups in the realization of the right to housing as well as other rights. Article 21(3) of the constitution of Kenya states that: “All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, and persons with disabilities, children, and youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities.” The Committee on Economic, Social and Cultural Rights in General Comment 4 has also recommended that states must take the necessary steps to ensure that vulnerable or disadvantaged groups are given priority consideration in gaining access to adequate housing and related resources.

Kenya’s National Housing Policy also specifically identifies the poor, women, children in difficult circumstances, PWDs, IDPs and the elderly as those that require priority consideration in accessing adequate housing. The National Housing Policy also commits the state to eliminate legal and customary barriers that hinder women’s equal access and control of land and finance and also the facilitation of greater access to housing finance to

vulnerable groups. The policy also commits the state to upgrade slums and informal settlements and to develop more homes for the elderly as well as housing that is friendly to persons with disabilities.

The Kenya Slum Upgrading Programme (KENSUP) was initiated in 2005.³⁷ The programme was conceived within the broad framework of the Millennium Development Goals (MDGs), specifically Goal No 7 Target 11, which aims to improve the lives of at least 100 million slum dwellers by the year 2020. It is a multi-stakeholder programme involving the Ministries of Housing, Office of the President (Provincial Administration), Lands, Local Government, Roads and Public Works, Trade and Industry, Health, Water and Irrigation, among others. The government, in partnership with UN-Habitat, has also established the Low Cost Housing and Infrastructure Trust Fund, as a central depository for pooling funds for slum upgrading.

- 24** The upgrading programme has so far focused on slums in Nairobi, Mombasa, Kisumu, Nakuru, Nyeri and Mavoko.³⁸ A new phase of the initiative, the Kenya Informal Settlement Improvement Programme (KISIP) was launched in June 2011. This particular programme will undertake tenure regularization and installation of social and physical infrastructure in informal settlements in various urban areas, including Nairobi, Mombasa, Kisumu, Nakuru, Eldoret, Malindi, Naivasha, Kitui, Machakos, Thika, Nyeri, Garissa, Kericho, Kakamega and Embu. In

37 See Ministry of Housing website. http://www.housing.go.ke/index.php?option=com_content&view=article&id=24&Itemid=15, visited on January 7, 2011.

38 See, Hakijamii, Kenya Housing Update, November 2011. <http://www.hakijamii.com/publications/hupdate1111.pdf>

February 2012, the World Bank pledged Kshs. 17 billion (approximately USD 200 million) towards improving informal settlements in 15 municipalities across the country.³⁹ While this is a significant contribution, it should be borne in mind that the government estimates that moving all those currently living in slums to decent housing would require about Kshs. 885 billion (approximately USD 10.1 billion) over the next 10 years.⁴⁰

In the past there has been criticism on the nature and level of consultations with the beneficiary community in the slum upgrading programme. Groups working on housing access for the poor have called on the state to develop a framework for consultation in line with requirements of the new constitution and international human rights law.

2.4 Non-Discrimination in Enjoyment of Adequate Housing

The principles of “non-discrimination and protection of the marginalized” are part of the national values as per the Kenyan constitution. International human rights law, and in particular, the ICESCR prohibits discrimination in the enjoyment of the right to housing. To this end, there is an immediate obligation to identify, review and repeal existing discriminatory norms.

Data on practices in housing in Kenya remains largely unavailable. However, as noted in the previous assessments, anecdotal evidence is available on incidents of landlords discriminating against prospective tenants on the grounds of ethnicity, religion and race. Although discrimination on these grounds

39 <http://www.capitalfm.co.ke/business/2011/01/shb-needed-to-purge-kenya-slums/>

40 See The Star, January 12, 2011, p. 10.

is prohibited in the Kenyan law, there is no specific legislation or policy framework on discrimination in the area of housing. The Kenya National and Equality Commission, established following the promulgation of the constitution, is specifically mandated to address issues of discrimination, including in the area of housing. The Kenya National Commission on Human Rights also has the mandate to monitor and address all issues of discrimination.

2.5 Access to Housing Finance

Housing sector development in Kenya is mainly driven by the private sector, and continued to register steady growth in 2011. Private financial institutions fund approximately 20 per cent of the country's housing needs, and focuses mainly on urban areas.⁴¹

Access to financing for affordable housing remains a serious challenge in Kenya. There was no appreciable change in the housing market in 2011 to improve access to adequate housing for the neediest segments of the population. Available financing is mainly accessible to Kenya's middle-to-high income households. With less than 14,000 accounts, the mortgage market remained extremely small and out of reach for a majority of Kenyans.⁴² According to Shelter Afrique, mortgage loans were worth about Kshs. 52 billion (USD 655 million) at the end of 2011.⁴³

41 See Review and Analysis of Kenya Government Allocations to the Urban Development Sector (2010-2011), Civil Society Urban Development Programme (CSUDP), 2011, p.7.

42 "Kibaki Raises Alarm over Mortgage Market," The Standard, November 21, 2012. http://www.standardmedia.co.ke/?articleID=2000071152&story_title=Kenya-Kibaki-raises-alarm-over-mortgage-market. See also Shelter Africa 2011 Annual Report, p. 26-27. <http://www.shelterafrique.org/index.php/en/publication-a-resources/annual-report-archives>

43 Ibid., 27

Shelter Afrique noted in its report that Kenya's mortgage market was only accessible to a "tiny elite" compared to the extent of the need.⁴⁴ Previous assessments had noted that the variable rates charged by the different financial institutions as well as the requirements for large down-payments have excluded most of the low income earners from accessing adequate housing through private financing.

While the Central Bank of Kenya reduced cash reserve ratios for banks in 2009 with the intention of enabling them to free up more money for lending, few have responded by lowering lending rates. Lending rates also remain susceptible to inflationary pressures, and Kenya's dependence on oil imports makes the country particularly vulnerable to externally generated inflation, which tends to exert upward pressure on lending rates.

The Ministry of Housing has developed an incentive regime to encourage individual households and private investors to invest more in the housing sector. Incentives include: lower taxation on housing bonds; tax deductibility on housing loans and home ownership savings plans; tax deductibility on social infrastructure e.g. schools; and incentives on value added tax (VAT) for builders.⁴⁵

There is however, anticipation that the housing finance environment will be radically altered if, and when, proposed amendments to the Housing Act 2009 are passed by Parliament. The far-reaching amendments propose to allocate five per cent of

44 Ibid.,27

45 Simplified Version of Existing Housing Sector Incentives, Ministry of Housing, May 2011. <http://www.housing.go.ke/wp-content/uploads/2012/06/Housing-Incentives-Revised-in-May-2011.pdf>

all national revenues to finance housing development through a proposed National Housing Fund. A National Housing Authority would also be created and charged with addressing all issues relating to housing and human settlements.

The authority would be responsible for financing national and county-level housing projects, in addition to providing mortgage insurance to safeguard mortgage providers against lending risks (currently an unavailable protection). Under the proposed law, private developers who spend their own finances to build supporting infrastructure would be entitled to file refund claims from the proposed authority.

Micro-credit schemes are also another promising model for extending housing finance to low-income households in Kenya. The Jamii Bora Housing Programme and K-Rep Bank's Makao Mashinani are important examples.⁴⁶ Besides lending to individual households, both initiatives also provide financial support for the building of basic supporting infrastructure, including sewerage systems, water and electricity connections. The government ought to pay more attention to these models and creating a facilitative environment for them to be scaled up.

2.6 Adequate Housing in Rural Kenya

Housing development in rural Kenya continues to lag far behind the urban sector. While NHC provides rural housing

⁴⁶ Jamii Bora's is developing 2,000 two-bedroom units in a 293-acre planned housing initiative in Kaputiei in Kajiado District (adjacent to Nairobi) that has associated infrastructure, including new roads and educational and health facilities. At Kshs. 150,000 (about 1,875 USD) per housing unit, payable in 10-15 years at 8.5 per cent interest per annum, buyers are required to make an average monthly payment of Kshs. 2,500 (32 USD). See <http://www.jamuibora.org/kaputiei.htm>

development loans at the relatively low rate of 13 per cent, the loan is considered limited since it only covers 50 per cent of the estimated cost of a proposed dwelling. There remains a large gap in availability of rural housing finance since there are no other scalable initiatives targeting rural households.

If passed, proposed amendments to the Housing Act 2009 will require that the constitutionally created Equalization Fund puts up housing projects in counties most affected by the housing deficit. This would benefit both urban and rural counties. The Ministry of Housing also plans to develop Regional Appropriate Building Technology (ABT) Centres in 52 constituencies.⁴⁷ The centres will promote innovative building technologies such as Interlocking Stabilized Soil Blocks that can reduce building costs by up to 50 per cent.

For the most part, the housing rights work of most civil society groups remained focused in urban areas. However, in 2011, some members of the Land and Housing Coalition, such as Hakijamii, extended their work on the right to housing to rural populations in places such as Kitale and Turkana. It is likely that this trend will be accelerated upon the establishment of county governments in 2013.

2.7 Access to Supporting Infrastructure

Development of supporting infrastructure is a critical component of the realization of the right to adequate housing. There are significant plans underway for the expansion of the coverage of water and sanitation systems as well as electricity to more

47 <http://www.housing.go.ke>

households, including people living in slums. The focus of these initiatives however, is mainly large urban centres, in particular Nairobi, and to a lesser extent Kisumu and Mombasa. Even so, urban development investment has been largely uncoordinated, with responsibility being spread among too many institutions, including local government, sector ministries, quasi-private companies and utility services.⁴⁸

Set for completion in the next few years, the Kshs. 8 billion (approximately USD 100 million) Nairobi Water and Sewerage Emergency Physical Investments Programme will increase Nairobi's water production capacity by 25 per cent.⁴⁹ It is estimated that treated water will reach 600,000 more Nairobi residents living in the densely populated Eastlands area. Another Kshs. 4 billion (approximately USD 50 million) is earmarked for expansion of water and sanitation systems in Kisumu and Mombasa.

Electric power generation is also being expanded to meet rising consumer demand, particularly in urban areas. Ken-Gen, the primary generator of electricity in Kenya, is developing geo-thermal fields in the Olkaria area with the aim of doubling national electric power generation over the next five years. If achieved, more households will not only get connected to the national grid, but will also pay less for electricity because geo-thermal energy tends to be cheaper than other generation options.

48 See Review and Analysis of Kenya Government Allocations to the Urban Development Sector (2010-2011), Civil Society Urban Development Programme (CSUDP), 2011, p.21.

49 The project is funded by the World Bank and the French Government.

2.8 Civil Society Support to Government Efforts on the Right to Adequate Housing

Civil society groups are critical supporters of government initiatives in fulfilling the right to adequate housing. The level of organization of groups working on housing rights issues improved appreciably in the period under review. Their activities are today more effectively coordinated under the umbrella of the Land and Housing Coalition, which brings together nationally-focused NGOs as well as grassroots-based networks and CBOs working on issues of housing and land rights. A number of Land and Housing Coalition members receive financial support from the CSUDP, which promotes sustainable urban development and a rights-based approach to basic service provision.

The Land and Housing Coalition has developed a promising policy partnership with the Ministry of Housing and the Ministry of Lands. In fact, the Eviction and Resettlement Procedure Bill and the ongoing development of Slum Upgrading and Prevention Policy Guidelines are results of this partnership. The coalition has also partnered with the Ministry of Lands to carry out public education on land tenure issues and land purchase procedures in places such as Lamu in the Coast region.

CBOs such as the Nairobi People's Settlement Network (NPSN) and Muungano wa Wanavijiji now sit in official national policy forums like the Slum Upgrading and Prevention Policy. At the local level CBOs such as the Kisumu Social Rights Association (KISORA), for instance, has established a working relationship with Kisumu Water and Sewerage Company on improving the reliability of the delivery of water and sanitation services to informal settlements. These kinds of experiences will

likely position grassroots actors to play a key role in voicing communities' needs and concerns on housing and other related issues in the anticipated county decision-making mechanisms.

Community-based networks have pooled locally available resources to raise capital for slum upgrading projects. The Akiba Mashinani Savings Schemes of the Muugano wa Wanavijiji has so far disbursed over Kshs. 75 million (nearly USD 1 million) for this purpose.⁵⁰ This money has been used to build some 200 housing units in Huruma slum's Kambi Moto, Ghetto, Gitathuru and Mahira villages.

50 See <http://www.pamojatrust.org/index.php/resources/downloads>

3. CONCLUSION AND RECOMMENDATIONS

Overall, this study concludes that Kenya has taken some commendable and important steps that portray a commitment to discharge its obligations on the right to housing under both national and international law. The measures undertaken and proposed during the period under review, particularly the suggested amendments to the Housing Act 2009, are perhaps the most comprehensive on record.

In 2011, the government outlined far-reaching policy measures aimed at improving the level and quality of technical and economic resources available to expand availability of affordable housing to Kenyans. These measures are much more specific than the broad policy guidance available in macro-frameworks, such as the Vision 2030 document and the National Housing Policy. Encouraging steps have also been made to address issues of the availability of integrated infrastructure, such as safe drinking water, sanitation and electricity provision to more households, particularly those living in urban areas through the ongoing Kenya Informal Settlement Improvement Program (KISIP). The full impact of all these initiatives have yet to be assessed, but at least they are concrete signs that efforts are being made to address the issue of housing for the poor.

The courts have also emerged as a central forum for the articulation of the right to housing, providing fairly progressive interpretations of the content of this right, especially on the issue of evictions. The courts have also been positioning

themselves to provide much needed guidance to the state on the implementation of the right to housing (and other ESC rights), by training judicial officers on ESC rights with the technical support from various civil society organizations.

Commendable steps have been taken by the state to offer incentives to households and private sector developers. Furthermore, the government has taken steps to encourage financial institutions to lower lending rates. However, lending institutions are yet to respond positively and the cost of housing finance remains expensive, and out of reach of the majority of Kenyans. As a result, many Kenyans are not shelter owners and have few prospects of gaining legal security of tenure of their current dwellings. In these circumstances, many people, particularly those living in informal settlements in urban areas, continue to be vulnerable to forced eviction, harassment and other threats.

In spite of these positive developments, the broader policy framework on housing rights lacks concrete programmatic measures to address the issue of accessibility to adequate housing for disadvantaged groups, such as the elderly and PWDs. While important progress has been made in providing households displaced by the 2008 post-election violence with alternative resettlement options, many Kenyans displaced by political violence as well as natural disasters in the 1990s have not benefited from durable solutions.

Other major challenges still need to be addressed. For instance, there is still a lack of adequate political will to address the problem of forced evictions which are still being carried out

in stark contravention of the new constitution's housing rights provisions and emerging case law that effectively outlaws them. There is also no clear policy guidance on how to address the persistent problem of homelessness, best exemplified by the presence of street families in Kenya's larger urban areas. Furthermore, there are gaps in knowledge and information about the question of discrimination and the enjoyment of housing rights in Kenya.

The perennial challenge of corruption continues to place obstacles on the path of efforts to improve the housing environment in Kenya. The billions of shillings that have been lost in scandals perpetrated by institutions such as the NHC provide stark evidence of this. As has become the pattern, such corruption scandals have gone unaddressed. This situation raises questions on whether it might be premature to plan for the allocation of large sums of money, in particular five per cent of national revenues, through state institutions when the culture of corruption continues unabated.

Recommendations to the Kenyan Government

1. The national government should ensure that proposed amendments to the Housing Act 2009 are harmonised with the constitutional responsibilities of county governments in the realization of adequate housing and in particular the role of the National Housing Corporation should be radically reviewed to bring it in line with the devolved system of government. The National Housing Policy should also be revised to ensure that it conforms to the Constitutional provisions.

2. The national government should consider working with all county governments to develop a model for comprehensively addressing the issue of the proliferation of informal settlements slums and phasing out the existing informal settlements with adequate housing through internationally acceptable procedures.
3. The ongoing housing survey should focus on the plight of the homeless, PWDs and the elderly.
4. The Kenya National Commission on Human Rights, the National Gender and Equality Commission and the National Cohesion and Integration Commission should consider initiating programmes aimed at assessing the extent to which there is discrimination in access housing in Kenya.
5. The government should immediately gazette the National Land Commission members and provide adequate funding through the national budget to allow them to begin tackling the pressing issues of forced evictions, security of tenure of the poor through resettlement, landlessness and land-related corruption.
6. The Eviction and Resettlement Procedure Bill and Community Land Bill should be passed and implemented without further delay while the Slum Upgrading and Prevention Policy should be finalized, adopted and implemented.
7. The ongoing slum upgrading and prevention policy process should be made as inclusive as possible.

8. The KISIP and KENSUP projects should be integrated to ensure a more coordinated intervention and improve resource deployment.
9. The government should ensure that adequate resources are allocated through the national budget to provide social housing for the poor in both rural and urban areas.
10. The county governments, once in place, should be sufficiently empowered to develop and implement appropriate policies and legislation for the provision of basic services including the protection as well as fulfilment of the right to adequate housing for the most needy.

Recommendations to NGOs working on Housing Rights

1. Civil society groups need to step up coordinated lobbying for the speedy implementation of the IDP Act and the passage and finalization of the Eviction and Resettlement Procedure Bills and the Community Land Bill, as well as the finalization and adoption of the Slum Upgrading and Prevention Policy. In their advocacy, they should ensure that they provide evidence-based proposals on the level of resources government ought to allocate to comprehensively address the issue of resettlement.
2. Civil society groups should step up pressure on the Director of Public Prosecutions to take action on housing sector related scandals, particularly those recently unearthed at the National Housing Corporation.

3. As recommended in previous assessments, civil society groups need to establish a monitoring and documentation system to record trends on different aspects of housing rights if they are to optimize the impact of their advocacy. Currently, there is a dearth of data on the issues of forced evictions and homelessness that needs to be urgently addressed.
4. As recommended in previous assessments, civil society groups working on housing rights should expanding their work to rural areas, given that county governments will soon become the site of housing rights provision.

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